

Marching into a New Age

Written by Administrator

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As it is Pride Month, which is officially recognized by the United States as of June 2020, it is important to acknowledge how far the United States and Pennsylvania have come in learning to accept the LGBTQ+ community. 116 U.S. Senate Resolution §627. Same-sex marriage in Pennsylvania was legalized in 2014 through the ruling in *Whitewood v. Wolf* determining the statutory ban on same-sex marriages to be unconstitutional. *Whitewood v. Wolf*, 992 F. Supp. 2d 410, (MD Pa., 2014). In 2015, the Supreme Court of the United States ruled in *Obergefell v. Hodges* that same-sex couples have a constitutional right to marry. *Obergefell v. Hodges*, 576 U.S. 644, (2014). This is an important step towards equality as marriage is highly valued in society. It will provide more direction in the event a couple separates. A divorce proceeding could assist a separating couple in equitably dividing their belongings; rather than separating from a non-legally recognized relationship which does not have the same protection. In the event a married individual's partner were to die intestate, without a will, the surviving spouse would presumably be entitled to their spouse's estate or a portion of the estate. 20 Pa.C.S. §2102. Previously, a partner may not have this ability as a person's biological family would receive shares of the estate if there was no spouse. 20 Pa.C.S. §2103.

Members of the LGBTQ+ community who are single have the ability in Pennsylvania to adopt children. 23 Pa. Cons. Stat. Ann. § 2312. In *the Interest of Z.E.*, 221 A.3d 260, Footnote 27, (Pa. Super. Ct. 2019). A same-sex couple would also be able to adopt a child, who has no legal parent, jointly as no Pennsylvania statute exists which would prevent this. In *re Adoption of E.O.G.*, 28 Pa. D. & C.4th 262, 265 (C.P. 1993).

Stepchild adoption by a person who is the same sex as the legal parent was not permitted until 2002. §2711 of the Adoption Act requires the legal parent to consent to the adoption which involves relinquishing the parental rights of the child for the child to be adopted. 23 Pa.C.S. §2711. This provision prevents an individual in a same-sex relationship from adopting their partner's child when the partner is already the legal parent of the child. In 2002, in *In re Adoption of R.B.F.* it was determined that 23 Pa.C.S. §2901 provides the court with discretion to determine whether the facts of a case give a reason for a statutory requirement for adoption provided in §2711 of the Adoption Act to be disregarded. In *re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002). By giving the court discretion, the court can decide that it is not necessary when consenting to the adoption for a legal parent to relinquish parental rights of the child for the legal parent's same-sex partner to adopt the child.

Additionally, now that same-sex marriage is legal, an individual trying to adopt their same-sex spouse's child could rely on 23 Pa.C.S. §2903 which would ensure the legal parent retains parental rights, while still allowing the adoption of their child by their spouse. By allowing an individual to adopt their same-sex partner's child, if the couple were to separate, the individual would be in a position that they could argue for custody, partial custody, or visitation rights. The separation would not prevent the individual from maintaining contact with the child as the individual would have received parental rights through the adoption. Without the ability to legally adopt a child that one is helping to raise and care for, there is a heightened possibility that a separation would result in not being able to see the child again as the legal parent would retain custody.

Marriage and adoption are only two examples of the steps that have been taken legally to create more equality for members of the LGBTQ+ community. Certainly, it has not been an easy journey, nor is it over as this community still faces discrimination and inequality, and people continue to judge them for things they can not change about themselves. However, it is important to see how the country and the states have made positive changes, and acknowledge

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that while there is still work to be done to eliminate the discrimination and inequality people experience, change is occurring, and will continue to occur.

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