



Does biology really equal destiny? Non-biological lesbian mothers struggle for their right to maintain contact with their children.

lesbian custody loss

By Stephanie Shroeder

by all accounts Frankie Travis is a loving, caring and responsive parent. But she was torn from her 10-year-old daughter Jennifer* after the Sonoma County, Calif. court drastically changed Travis' full joint legal and physical custody arrangement with her former partner in the fall of 2009.

"It's like my daughter has been kidnapped and I can't go to the authorities because they played a part in the crime," says Travis. She said she waited months to start the court-ordered hour and 40-minute supervised visitations due to her former partner's "evasion and delays, [which] played a crucial part in alienating me from Jennifer," laments Travis, whose daughter has since been appointed her own attorney who recommended "reunification counseling" that was also ordered by the court. "I want to rock 'n' roll," says Travis, eager to reunite permanently with her daughter, "but the court system does not move that fast."

Travis is not alone; there are thousands of similar lesbian

custody scenarios playing out around the country. Kate Kendall, executive director of the National Center for Lesbian Rights (NCLR) says that organization saw non-biological LGBT parents fighting for rights begin "as a trickle in 1996. Then, as a tidal wave from 2000 to the present, the majority of our custody cases have become disputes between and among a lesbian couples. In the first years of NCLR's existence, the cases almost always involved heterosexual couples and us representing a gay dad or lesbian mom."

The change in demographics, of the proportion of lesbians having children together in the first instance, and the subsequent breakup of lesbian relationships, often leaves non-bio lesbian parents without legal recourse.

The NCLR and others are working hard to change that. "Our position, and the law we've been able to develop in some states to protect the right of the parents, is irrespective of biology and regardless of whether they have marriage or domestic partnership," says Kendall. Travis and her ex in fact did have a domestic partnership, which is the main reason Travis was awarded full joint legal and physical custody in

2005. She is currently trying to regain full joint custody.

Nanette Gartrell, M.D., is an associate clinical professor of psychiatry at the Center of Excellence in Women's Health for the University of California, San Francisco and founded the National Longitudinal Lesbian Family (NLLFS) Study to investigate the lives of lesbian moms and their children in the United States. Gartrell indicates lesbian custody disputes are very similar to heterosexual custody cases in terms of the level of anger, frustration and vindictiveness. She also adds that the most important person to consider in any custody dispute is, of course, the child.

Another non-biological lesbian co-parent caught in the crossfire of an ugly custody battle and inadequate legal system is Linda Rice.* Rice lives in the Midwest and a month before Thanksgiving 2009 was handed a decision denying her any access to her four-year-old twins.

Rice now says she questions everything, including humanity. "How can someone do this? I mean was [my former partner] fraudulent then, too? Or is she just being fraudulent now? I've been reflecting on this for almost three years, since she sent an email breaking off any relationship between me and the twins." Rice lives in a county where second parent adoption is encouraged and she had planned to take advantage of that, but her former partner kept making excuses and delaying the process so it never happened. "The judge seemed very sympathetic and all his writings seem to be going our way. Then someone got to him or he lost his nerve and just dismissed my case." She has no real recourse. "I could appeal, but as my lawyer plays it out [the judge] had his opportunity and it would go right back to his court on appeal and judges don't want to look foolish. It's really hard for me to accept that there's no help."

There is a common theme among many non-bio lesbian moms regarding the mystery surrounding the loss of first, their primary adult relationship and second, their children. They are baffled by the dramatic change in the woman they once loved and formed a family with to someone they now see as a controlling, narcissistic, inflexible and often vicious person who will lie, throw accusations and stop at nothing to prevent them from gaining access to their children.

Amanda Mullins is the non-bio mother of James* and lives in Indiana. Her former partner moved to Ohio with their child to be with another woman a few months after they split. "I'm pretty young," says Mullins, "I'm not even 30 and I don't have \$10,000 to retain an attorney."

Mullins hadn't seen her son since October 2009. She was able to make contact with her ex-partner, who has since split with the other woman, and now allows Mullins to see her son every other weekend. However, Mullins is not allowed to take him out of the state of Ohio to her own home in neighboring Indiana. "I just try to enjoy the time I do get with him," she says. She does not broach the topic of legal custody with her ex because she does not want to risk losing contact with her son again.

A recent high-profile lesbian custody dispute that has

garnered much attention is the Miller-Jenkins case. In that case, a non-biological lesbian co-parent (Janet Jenkins) in 2009 was awarded full custody of her then 7-year-old daughter. However, Lisa Miller, Jenkins' now "ex-gay" former partner took the child and disappeared and, as of this writing, has still not surfaced to return the child to Jenkins.

Kendall of NCLR says, "What's remarkable about the Miller-Jenkins saga and the latest court ruling is that they are a lesbian couple. If they were a straight couple who had a child together, whether they were married or not, there would be nothing remarkable about what happened. This is a situation where one parent unilaterally took the child, moved to another state and forbade any contact with the other parent. So, up until that point in the facts, no one even raises an eyebrow—in fact the reaction you would get is 'that parent shouldn't be able to do that' because a child is entitled to be involved in both her parents' lives. What the Miller-Jenkins case did that I was most gratified by, is transfer custody from the bio parent to non-bio parent and treats this couple just as hundreds and thousands of courts have treated heterosexual couples in disputes where one parent utterly refuses to honor the child's relationship with the other parent."

How can non-biological lesbian parents protect themselves when their relationship with their partner, the biological parent of their child, breaks apart?

Executive Director of the Family Equality Council, Jennifer Chrisler, lays it out like this: "We strongly recommend that folks who are in a relationship and who are going to parent together define upfront what it will look like when they break up. Develop a will, do a power of attorney. Determine who will be the guardian of your children in the event that you both die and they need to be placed somewhere, and determine what it will look like if the relationship ends as it relates to your parenting. And, if you live in a state where you can pursue second parent adoption, put both names on the birth certificate." Chrisler also says that a couple should get married, if possible, because that helps the case in the event of a breakup and custody battle.

Meanwhile, Frankie Travis is fighting back: She has been vigorously campaigning among her friends and communities, reaching out to both raise funds for her legal expenses and find assistance in helping to reunite with her daughter. She's even got a website and blog, which chronicle her progress. Lisa Rice, however, reflects, "I feel like I have spent the [past] year trying to survive; each day is laced with grief. The year marker was tough."

"The bottom line is this," says Kendall, "We want our parenting rights protected and treated exactly the same way they are protected and treated for heterosexual parents. And, the good news is that in many states we have been successful in shaping the law to protect lesbian or gay parents in just that way." ■

**Names have been changed by request.*