



Fact Sheet
In re Adoptions of R.A. & M.A.

What is the case about?

This case is about ensuring that ten-year-old “M” and six-year-old “R,” sister and brother, have the legal relationship with their parents that mirrors their day-to-day life of the last five years. It is about reassuring these children, who for the first time have a secure and stable home, that their family relationships are permanent and lasting.

Maine’s Department of Health and Human Services (DHHS) in early 2001 placed the children with Ann Courtney and Marilyn Kirby, a committed couple with foster parent and adoption experience, and two other adopted children living at home. DHHS had removed M and R from their home after finding that their biological parents were unable to care for them.

M was one week shy of her fourth birthday when she came to Ann and Marilyn’s home. Immediately when she arrived, M crouched behind a chair and refused to come out. Despite her age, she was preverbal, communicating through grunts, noises, and gestures. She also was not toilet trained.

R, then a four-month-old infant, at first cried for hours until he fell asleep, utterly exhausted. Otherwise, he was abnormally unresponsive to his environment. He did not react to noise, and his eyes did not track people moving in his line of sight.

Both children later were diagnosed with multiple disorders related to their earliest years, including Post Traumatic Stress Disorder, Reactive Attachment Disorder and Attention Deficit and Hyperactivity Disorder (ADHD). They were constantly anxious, had difficulty forming normal relationships, and struggled with learning and other developmental disabilities.

Ann and Marilyn devote much of their time to addressing the children’s emotional, learning, and developmental problems. Marilyn, an experienced counselor, gave up working outside the home to care and advocate for M and R, and to care for their other children. Ann kept her job as an attorney, but maintains a flexible schedule that allows her to be deeply involved in the children’s care. Both parents take them to medical and therapy appointments, work with their schools, and engage them in household and outside activities.

What is the legal issue in this case?

The legal issue in this case is about whether the courts have the power under existing law to consider a joint petition for adoption by two women rather than just one. Having raised these children for nearly six years, Ann and Marilyn want to make sure the children have all of the social and legal benefits of having two legal parents rather than one. They see it as a child's rights issue, in their words, "to maximize both their legal security and emotional security," and to give them "the safety of two legal parents forever."

This sense of safety is critical for children's well-being, especially for those in foster care. Research shows that the uncertainty and ambiguity of foster care erodes children's long-term sense of stability and attachment, often resulting in depression, withdrawal, and passivity. For M and R, the possible long-term negative effects of this anxiety can be addressed immediately through adoption by their two devoted parents.

How did this case reach the Law Court?

Ann and Marilyn applied to adopt M and R in 2002, within a year of welcoming them into their family. In the intervening six years, the children have been nurtured and supported by the family environment Ann, Marilyn, and their teenage children have created for them.

The adoption petitions were filed in the Cumberland County Probate Court in May 2006, but the Judge there denied the petitions in June because the Judge believed that the law permitted only one unmarried person or a married couple to petition to adopt. The Judge did not reach any questions about the suitability of the couple or the welfare of the children, and instead addressed only the narrow issue of the court's power to consider a joint petition.

After the Probate Court judge denied the petitions on legal grounds, the couple appealed to the Law Court claiming that the judge had made an error of law. They also believe it is in the children's best interests to have two legal parents dedicated to and responsible for their welfare.

How are the children doing today?

M and R have shown remarkable improvement. M, who once coped with social interactions by pretending she was an animal, has received intensive psychological and education services, and now is in a mainstream classroom interacting with other children and doing work at grade level. R, who dealt with his constant anxiety with impulsiveness and aggressiveness, now is also in a mainstream classroom.

Every child welfare professional who has seen R and M in this family has enthusiastically supported Ann's and Marilyn's adoption petitions. Their joint petition for adoption was approved by the adoption caseworker who has worked with the family, the adoption

supervisor, and the Commissioner of the Department of Health and Human Services, as legal custodian of the children. The children’s court-appointed guardian ad litem and the social worker conducting the home study also supported the joint adoption.

What did the Law Court decide?

The adoption statutes do not explicitly speak to this issue. Maine law has never barred joint adoptions by unmarried persons and has always required married couples to adopt jointly.

The purpose of the adoption statutes is and always has been to protect the interests of the children involved. The benefits to children – including the security of being raised by their legal parents and the actually benefits received – support joint adoption by qualified unmarried couples.

According to the Court, allowing joint adoptions in these circumstances will also provide “a greater incentive for other unmarried persons to undertake the profound and difficult responsibility of serving as pre-adoptive foster parents for young children with significant special needs. Absent the incentive that the possibility of joint adoption provides, there will be fewer homes for such children.”

It remains the case that every adoption petition must be considered on a case-by-case basis and no petition for adoption can be granted unless a judge (usually with the support of the child welfare experts closest to the situation) believes the adoption is in that particular child’s best interests. Now that it is clear the Probate Court has the power to consider the case, it will go back to that court for a determination of the children’s best interests and finalization.

Who is affected?

This case affects Maine’s children who need permanent homes, and the families who want to adopt them. Specifically:

- Children in DHHS custody who are cared for by qualified foster parents who seek to adopt jointly may now do so.
- Children who are born to an unmarried couple may now be adopted by both of their parents as long as no third legal parent exists.
- Children adopted by one parent from a private agency may now be adopted together by both of their parents.

There are 2,286 children in foster care in Maine, according to the Central Office Adoption Manager at the DHHS in Maine. Of those, 530 have a goal of adoption: 203 of those are in homes where foster parents are considering adoption; 175 are living with a family who has signed an adoptive placement agreement; and 152 are without an

identified adoptive home. Of the children without an identified adoptive home, 111 have been waiting for more than a year.

Any unmarried couple jointly raising a child may petition to jointly adopt that child and both become the child's legal parents. Of course, if there is another existing legal parent, such as a biological or adoptive parent, that person would have to consent to the adoption.

What is the effect of a joint adoption?

An adoption creates a legal tie between a child and his or her parents, reinforcing both emotional security and legal rights.

- Adoption ensures that both parents are legally obligated to support the children in their minority and sometimes beyond.
- In the even of either parent's death or disability while the child is a minor, the child may receive substantial Social Security and other benefits based on the deceased or disabled parent's work record, and may also be the beneficiary of worker's compensation benefits, of a wrongful death action, and of intestate succession.
- Adoption means that either parent can provide workplace benefits to the child, including medical, dental and life insurance.
- Adoption means both parents are authorized to make medical and school-related decisions.
- Adoption also ensures that each child may continue his or her relationship with both parents in the event the parents separate.

What does the Attorney General say about this case?

Ann and Marilyn's joint petitions were supported in a friend of the court brief by **Attorney General** Steven Rowe, chief legal officer for the state, who made three major points to the Law Court. First, nothing in the existing adoption law prohibits the joint adoption requested. Second, the history and purpose of the Adoption Act are consistent with a reading of the statute to permit joint adoption by an unmarried couple when it is in the child's best interests. The Attorney General also argued that prohibiting these parents from adopting their foster children would be wrong, as the following excerpts show.

- "M.A. and R.A. have significant needs that are being met, and have been met, for the last five years by two individuals who have committed themselves to caring for the children. ... The abuse and neglect suffered by M.A. and R.A. has been replaced by care, attention, and devotion of a committed, unmarried couple."
- "Permitting Appellants to adopt in this case serves the purpose of the statute and underlying principles supporting the Adoption Act and Child Protective Act. It also prevents an illogical result: hampering permanency by proscribing joint adoption by qualified persons to whom the children are attached."

- “Allowing Appellants to adopt M.R. and R.A. also avoids the incongruity and illogic of stating that Appellants are perfectly acceptable joint long-term foster parents (even outstanding ones), but somehow are not appropriate adoptive parents: they can love, care, and be devoted to the children; they can educate themselves and become advocates for the children; and they can provide a stable, financially sound, and safe environment – but they can’t adopt the children.”

What do child welfare groups think about this case?

All of the child welfare professionals who worked with this family, as well as many local and national child welfare groups, believe that the best interests of the child is paramount in any adoption. Because of the misinformation that sometimes accompanies children raised by gay and lesbian parents, Ann and Marilyn’s joint petitions were also supported by a friend of the court brief of **child welfare groups** – both in Maine and nationally – who presented a “comprehensive, fair and balanced review” of the scientific and professional literature on parenting by gay and lesbian couples. They were represented by Portland attorney Michael Asen and the brief was written by Mr. Asen, the American Psychological Association and their attorneys at Jenner & Block in Washington, D.C. The brief concluded:

- “[A] person’s sexual orientation tells nothing about that person’s suitability to parent. A large number of children are currently being raised by lesbians and gay men, both in same-sex couples and as single parents.”
- “Empirical research has consistently shown that lesbian and gay parents do not differ from heterosexuals in their parenting skills, and their children do not show any deficits compared to children raised by heterosexual parents. It is the quality of parenting that predicts children’s psychological and social adjustment, not the parent’s sexual orientation or gender.”
- “[T]o the extent that household stability may be a factor in adoption placements, sexual orientation is not an indicator of a couple’s stability or commitment. Many gay and lesbian people are already in same-sex relationships that are equivalent to heterosexual relationships in essential respects.”
- “The scientific consensus is thus that lesbian and gay parents are as capable and as fit as heterosexual parents.”

The organizations joining that brief include:

- American Psychological Association, both the national and Maine chapter
- National Association of Social Workers, both the national and Maine chapter
- Maine Association of Psychiatric Physicians
- Maine Chapter of the American Academy of Pediatrics

- Maine Medical Association
- Child Welfare League of America
- Kids First
- Community Counseling Center
- Evan B. Donaldson Adoption Institute.

Does this have anything to do with marriage for gay and lesbian couples?

No. This case is about the legal and emotional relationship between the child and his or her two parents. It is not about the relationship of the two parents to one another.

How many other states have laws or rulings permitting adoptions by same-sex couples?

Adoptions of this type are expressly permitted state-wide in:

California	Connecticut	District of Columbia
Illinois	Indiana	Massachusetts
New Jersey	New York	Oregon
Pennsylvania	Vermont	Washington.

According to published reports, these adoptions have also occurred in trial courts in:

Alabama	Alaska	Delaware
Georgia	Hawaii	Iowa
Louisiana	Maryland	Michigan
Minnesota	Nevada	New Mexico
Rhode Island	Texas	

Legal Timeline

2001

- *Early 2001*: Department of Health and Human Services assumes legal custody of MA and RA pursuant to a January jeopardy order; children are placed by Department of Health and Human Services with Ann and Marilyn

2002

- *December 1, 2002*: Ann and Marilyn petition to adopt MA and RA

2003

- *May 2003*: Court terminates birth parents' rights

2006

- *January 30, 2006*: Home Study completed, recommending that Ann and Marilyn be approved to jointly adopt the children. Children’s guardian ad litem recommends to the Attorney General’s office that the joint adoptions proceed and that having “two legal parents forever will clearly be in the children’s best interests
- *April 5, 2006*: Department adoption worker for children recommends that the joint adoptions “be legalized as soon as possible to provide (each child) with the security that only permanence can provide”
- *April 2006*: the Department, through its then-acting but now permanent Commissioner, and as legal custodian of the children, consented to the joint adoption of MA and RA by Ann and Marilyn
- *May 2006*: With all of the legal prerequisites complete, Ann and Marilyn file petitions to jointly adopt both children with the Cumberland County Probate Court
- *June 21, 2006*: Court denies both Petitions for Adoption, stating only that each petition was denied “for lack of jurisdiction pursuant to 18-A M.R.S.A. sec. 9-301”
- *June 29, 2006*: Notice of Appeal from the denial of both Petitions is filed
- *July 18, 2006*: Court enters an Order sealing and impounding the case file, closing any proceedings to the public and permitting the parties to use pseudonyms

2007

- *February 2007*: The appeal that reached the Law Court in September 2006 is officially considered

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