

MARK LEWIS, et al.,
Plaintiffs,
v.
GWENDOLYN L. HARRIS, et al.,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

DOCKET NO. MER-L-15-03

Before:
Honorable Linda R. Feinberg, A.J.S.C.

AFFIDAVIT OF
KAREN NICHOLSON-MCFADDEN

State of New Jersey)
 : ss.
County of)

Karen Nicholson-McFadden, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit, and I provide this affidavit in support of the Plaintiffs' motion for summary judgment.
2. I am 36 years old, and I am in a permanent committed relationship of 14 years with Marcye Nicholson-McFadden, who has also provided an affidavit.
3. We have two children. Our son Kasey is four years old, and our daughter Maya is an infant, born earlier this year on January 28, 2003.
4. I gave birth to Maya, and Marcye gave birth to Kasey. When Kasey was born, Marcye was the stay-at-home mom through the first year, and I have been home with our children ever since. Our children call me Mommy and Marcye is Mama. Both children

were conceived through anonymous alternative insemination. At the time of their births, we were not both presumed to be the legal parents, so we have spent a great deal of time and money on second-parent adoptions, living through home studies by social workers, fingerprinting, and an FBI background check, which felt degrading. Kasey's legal status with one parent was up in the air for many months, but now each of us is his legal parent. Maya's legal status with one parent is currently up in the air, hopefully to resolve soon.

5. I feel incredibly fortunate about so many of the things in my life, but few things compare with the joy of being a mom. Parenting is truly the greatest profession and both Marcye and I have grown in ways we never imagined because of it. Being a mom was always part of the life I envisioned for myself. From the time I was a young girl, I knew I wanted to be a parent. I dreamed of finding the love of my life, getting married, and having a family together. When I met Marcye, I knew she was the person I would spend my life with, and from early in our relationship having children was part of the life we wanted to build with one another.

6. For almost twelve years we have lived in Aberdeen, New Jersey, where we bought what we thought was a "starter" house. But we have fallen in love with our neighborhood, and our neighbors, many of whom have young children and share our values. Kasey's best friend lives next door, and he knows all the neighbors on the block. We organize an annual Christmas caroling event in the neighborhood complete with cookies and hot chocolate, and we've hosted a neighborhood egg hunt the last two years. Both Marcye and I are active in a book and a dinner club, whose members are primarily stay-at-home moms on the block. I am a member of the township Zoning Board, and Marcye and I

both try to stay informed on issues involving the local school district.

7. Marcye and I are small business owners. In 2001, we launched Nicholson McFadden Group Inc. Our business is an executive search firm. Marcye works full time during the day and manages the business development end of things. I work during nights and weekends and the kids' naps. I do the bookkeeping, maintain our database, and handle technology issues. We are very proud to have juggled the joys and demands of two children along with the demands of small business ownership, keeping our family as our first priority.

8. The juggling of family and work has been much more difficult because we are not allowed to marry. We are unable to get a family health care policy. Instead we have to purchase two separate parent-child policies that cost us almost \$4000 per year more in additional premiums. Our family also has to pay double deductibles, another thousand dollars annually, since we have two health plans rather than one. It is maddening that Marcye and I are unable to put that \$5000 where it really belongs – in college funds for Kasey and Maya. Over the years, we've paid four lawyers, a financial planner, and a tax accountant to advise us on the ways to best protect our family -- in ways married couples never need to worry about. For example, we filed legal papers to hyphenate our two last names so we could share a family name. Our children also share the same hyphenated last name. It is important to us that the outside world understands we are a family. Since we are unable to get married, we have chosen to do all that we can to lessen the opportunity for others to disrespect our family, especially when that disrespect involves our children. Marcye and I have also signed legal documents that married couples do not need, like a

health care proxy in the event one partner needs the other to make health care decisions.

We have powers of attorney allowing one another to sign legal and financial documents in each other's absence. None of this would be necessary if we were married.

9. We also have the fear and anxiety of worrying about what happens to the family in the event one of us dies. Even though we jointly own everything, if one of us dies the other will face a huge inheritance tax. Because Marcye and I are not allowed to marry, one hundred percent of the jointly owned property - including our home, automobiles, savings accounts and more - is taxed under inheritance tax laws. There is no way we can afford that tax. Our only option to pay the enormous inheritance tax on the assets we commonly own would be to sell our house. A surviving spouse from a married couple doesn't pay one penny of inheritance tax. For us the financial repercussions would be crushing, but the emotional and psychological blow would be devastating. We fear that one of us could be a grieving single parent with two children who have to move out of the only home they ever knew, to be forced to leave a community of friends and neighbors, all because the state refuses to allow us to marry.

10. Marcye and I have worked very hard to provide the things we think are important to raising children well: a stable, loving environment; a focus on caring and compassionate relationships instead of material possessions; activity and family fun instead of passive TV and solitary video games; being thankful for what we have instead of complaining about the things we don't. We have made hard choices and sacrifices in our careers and earning power to keep a parent home with our children. We believe having a stay-at-home

parent is important to their sense of security, and being at home helps us to reinforce the values we think are critical. It is unthinkable to me that in the case of either of our deaths, the tax liability could be so great as to upend everything we have worked to establish for them. I've already mentioned the threat of losing our home, but it goes beyond that. It would mean losing a way of life we've worked hard to create, a life that focuses on the family first, on being there for the kids and helping them, especially in the early years. I cannot imagine how we could ever plan enough, save enough, or do enough to overcome the financial and tax burden that we would face in the case of one of our deaths. And to think that legal marriage would make all of the worry disappear makes it all the more unjust that we are denied it.

11. We also experience the very deep sadness that comes with everyday conversations, such as being in a group and everyone talking about how long they've been married. We are always the outsiders, always having to use a different language to describe our commitment and our family. It chips away at our self-esteem and makes us feel like second-class citizens.

12. Furthermore, unlike our married neighbors, we have the daily stress of dealing with systems that do not acknowledge us as a family because we are not able to marry. For example, we constantly have to re-write forms and make explanations for doctors, school officials and others who only acknowledge single or married people. While it may sound like a minor inconvenience, having to re-write forms and make explanations over and over

again, along with all the other hardships and disrespect that come from not being able to marry, discounts and cheapens our relationship. We are constantly jumping through hoops and over hurdles because we're denied marriage. It takes an emotional toll. It feels like our dignity is always on the line, open for anyone to question rather than assume. It wears me down, and it wears at our relationship.

13. My mom and dad also suffer from this cheapening of our relationship. Like most parents with grown children, they are asked all the time about how their kids are doing. They can say their two sons are married with wives, but they cannot say their daughter is married. So much is implied in the word "marriage" that never gets associated with the word "partner." My parents long to talk about their three married children, all with spouses, because they are proud and happy that we are all in committed relationships. They want to be able to use the common language of marriage to describe each of their children's lives. Instead they have to use a different language, which discounts and cheapens their family as well as mine.

14. The cheapening of our relationship was painfully clear when our nephew first came to the realization that we weren't married. He was upset and asked us why we hadn't married one another. When we explained that we were not allowed to marry, he was frustrated and angry. He offered a wonderful suggestion, "I have a great idea," he said; "You can get pretend married and have a vanilla marriage cake!" He understood that we should be married, because he knew that we loved each other and cared for each other

just like the other important people in his life like his parents, aunts and uncles, and grandparents. It hurts me to think what it means for our children when they learn and absorb that we are not allowed to marry. With our dignity always on the line because we cannot get married, our battle is not to feel like our commitment and our family is “pretend.”

15. The assault on our dignity hurts the most in the moments of our lives that matter the most. Kasey’s birth was difficult – Marcye was in the hospital for 28 hours and needed a C-section. As the hours wore on and difficulties arose during labor, I had to worry about re-establishing my role each time the nurses changed shifts or a new resident walked through the door. The significance of our relationship would have been plainly obvious and completely understood had I been able to say we were married. Then, after Kasey was born, a nurse challenged my right to be in the newborn nursery. This should have been a moment of pure joy, untainted by this type of questioning. Being with a new baby as he is weighed and measured is a joy for all parents, but some of that joy was taken from me because my relationship to Marcye and to my son was questioned.

16. Living with dignity and respect are all the more important now that we have children. We have the responsibility to instill self-respect in our son and daughter, and pass on our core values to them, values like the importance of lifetime commitments. But the government in the state of New Jersey, a government to which we pay taxes each and every year, treats our family and our commitment as second-rate.

17. As gay people, we understand bias, and face challenges similar to those faced by other minority parents. But to work as hard as we do to be good parents, dependable neighbors, contributing community members, and to pay high taxes, and then to have our own state government cheapen it all by preventing us from getting married is a slap in the face. It makes it doubly hard to be successful at all we strive to do as a family and as responsible tax-paying citizens.

Karen Nicholson-McFadden

Sworn to me this _____
day of September, 2003.

Notary Public