

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**  
**MARCYE NICHOLSON-MCFADDEN**

State of New Jersey    )  
                                  : ss.  
County of                )

Marcy 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 39 years old, and I am in a permanent committed relationship of 14 years with Karen Nicholson-McFadden, who has also provided an affidavit.
3. Our family is the center of our lives, and our two children are an incredible source of joy. Kasey is old enough to be noticing a lot of things, and as he grows we watch how his experiences help him to fit in. Maya will soon be going through the same process.

4. Kasey sees many of our relatives regularly. He visits with his aunts and uncles, his Grandmom and Grandpop, and his “great” aunts, uncles and cousins throughout the year. Kasey and his Grandpop are great buddies. They play super hero games together, build forts and do lots of outdoor exploring. Kasey loves going to his Uncle Jeff and Aunt Bethanne’s house. His favorite part is playing drums in the basement with Jeff. We also host Thanksgiving for Karen’s extended family each year. Through our friends and various parent groups we’ve joined, Kasey has made friends with kids from other gay-parented families. He sees many families like his own, as well as lots of families who are different. When Kasey meets a new child and he is learning about their family he often asks whether they have a Mom and a Dad or a Mommy and a Mama or two Dads. He sees families as they are, people who love each other and take care of one another.

5. But Kasey is getting older, and more aware of how his family is set apart. On general issues of bias, we’ll have the same tasks as other minority parents. But governmental bias is much harder.

6. Marriage is everywhere. At homes of friends, family, and neighbors, Kasey sees wedding pictures and asks about them. As with most kids his age, he spends a lot of mental energy working out how people are related to each other, including the members of all the families in the neighborhood. More and more in the books he reads and in the media he sees, there are issues of falling in love and proposing marriage, and weddings, and husbands or wives. He hears and sees about love leading to weddings in videos, and cartoons, and he hears about it in conversation. He understands marriage as meaning a lifetime commitment between two adults, and knows that a marriage between two parents is the center of a family.

7. Kasey frames the world in terms of families. He assumes that in any two-parent family the parents are married to one another. He does not yet understand that in the eyes of our government, there are two classes of people: some whose marriage commitments are recognized, and some whose are not. He will understand too soon that his parents, and the parents of some of his friends, can not legally marry. It breaks my heart to think of having to explain to him, and later to Maya, that although our family and friends and neighbors recognize our “married” relationship, the government does not and denies us the right to be legally married. It crushes me to think about the insecurity this could cause him, and later Maya, and the way it will set them apart from their friends who have married parents. How do you explain to a child that kind of discrimination? How do you explain that all people are created equal, but that some are “more equal” than others?

8. As parents, we will find it difficult to explain to our children that our relationship is just as valuable as a married relationship, that our family is just as valuable as others, and that they too should believe in committed relationships, when at the same time the government is sending the exact opposite messages. Explaining this to Kasey and Maya seems impossible to do without hurting them.

9. We want Kasey and Maya to get the right messages. We want to tell them that their parents are married just like Grandmom and Grandpop.

10. One of the most painful sadnesses in my life is that my parents died and never got to see me married. They both loved Karen so much, and would have loved to know we had the legal security of marriage. My dad just died a few weeks ago. I was with him in his last days at a hospice care center. Karen and I had to make arrangements to fly the whole family out to Arkansas for the funeral. As we talked to the airlines about “bereavement

airfares,” they wanted to know the relationship to the deceased. And in the midst of my grieving and sadness, I was not even allowed the small comfort of answering “daughter and daughter-in-law,” because Karen has no legal standing as part of my family. This was so painful for me. On top of dealing with my father’s death, it was one more hurtful reminder of how we are viewed as less than a full married couple. This eats away at the legitimacy of our relationship, and even our relationship to one another’s families.

Although my dad was a traditional guy, during his visits with us he would always comment on how happy he was that we had one another, and how much love and cooperation we have in our relationship. He recognized our relationship as a marriage, but was never able to call it one.

11. My mom and my dad did not live long enough to see me married. It would have made both of their lives so much more meaningful and complete to know that their daughter and their grandchildren had the stability and security that comes with a legal marriage, and to be a part of the wedding that created the marriage.

12. On June 17, 2002, Karen and I went to the office of the Registrar of Vital Statistics in Aberdeen, which is the appropriate marriage licensing office for where we reside. We requested a marriage license. At the time we made our request, each of us was over the age of eighteen, not married, and not adjudicated mentally incompetent or infected with a venereal disease in a communicable phase, and we were accompanied by a witness over the age of eighteen and were prepared to tender the fee of twenty-eight dollars (\$28). The clerk responded to our request by making a phone call, during which she stated "I have a same-sex couple here asking for an application for a marriage license," and "Can I give

them one?" After concluding the call, the clerk stated that under the law in New Jersey she could not give us an application.

13. Attached to this affidavit is a true and correct copy of a photograph of my family.

14. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.

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Marcy Nicholson-McFadden

Sworn to me this \_\_\_\_\_  
day of September, 2003.

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Notary Public