

Defending Families

Lambda Legal's HIV Project tackles an often overlooked area of parenting law to protect vulnerable members of the HIV-affected community.

Keri Rowell is the mother of three children in Mississippi. Her sister, Tanya Wilkins, is HIV-positive and has a close relationship with Rowell and her children. For several months, Rowell and her children stayed with Wilkins in her home in Hawaii, and Rowell intended to move her family to that state permanently to live with her sister. However, Rowell's ex-husband objected because of Wilkins's HIV status and sought to remove the children from Rowell's custody. The court awarded temporary custody to Rowell, but with one condition: The children could have no physical contact with their aunt.

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Director of the HIV Project at
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This restriction was based on the faulty assumption that the children were somehow endangered by Wilkins because she has HIV. Lambda Legal stepped in on Rowell's behalf, representing her at a court hearing in Mississippi and presenting a brief detailing the medical facts regarding the transmission of HIV. We also brought in an infectious disease specialist to testify and confirm the science behind our brief.

“We were hopeful that the court would conclude that the restriction was unnecessary once it was provided accurate information about HIV transmission. There is simply no risk of HIV transmission through casual contact in the home,” said Greg Nevins, Senior Staff Attorney in Lambda Legal's Southern Regional Office. Armed with sound science, the court agreed and the family was reunited.

Rowell's case sheds light on the intersection between HIV and family law, a growing issue as more people with HIV become parents. In a recent study published in the *American Journal of Public Health*, researchers found that 28 percent of HIV-positive adults in care were parents, with HIV-positive women three times more likely than HIV-positive men to have children. Parents also continue to have children after their diagnosis: 26 percent of the women studied under the age of 30 had conceived and given birth to their first child after learning they had HIV. These aren't just numbers — they highlight the needs of these parents and their children in the legal system, and underscore Lambda Legal's commitment to protecting this growing population from harmful bias.

Lambda Legal has been fighting in the courts on behalf of people with HIV since the beginning of the epidemic more than two decades ago. We won the first AIDS-discrimination case in the country, and since then we've demanded fair treatment in all aspects of life for people with HIV. Protecting families is an important part of that mission. “With so many HIV-affected families in every part of the country, it is vital that courts everywhere safeguard their rights,” says Jon Givner, Director of the HIV Project at Lambda Legal. “Ignorance and fear should never stand in the way of family.”

But that's exactly what happened to a father in Maryland, who found himself fighting with his late wife's mother for the custody of his three children. Following the death of his wife, the father

(identified as B.G. to protect his privacy) was temporarily disabled by an HIV-related illness. His mother-in-law then sought and received full custody of the children based on her unfounded and erroneous assertion that B.G. was unfit to care for his children because he has HIV.

When the case went up on appeal, Lambda Legal submitted a friend-of-the-court brief delineating the relevant facts. We provided information about the nature, course and treatment of HIV, and argued that the court had an obligation to respect the rights of legal parents, regardless of their HIV status.

The appeals court took the time to understand and explain the facts regarding HIV, quoting extensively from our brief in its reasoning. The appeals court even chastised the trial judge for relying on his personal biases in ruling for the grandmother. The case is now back before the trial court for reconsideration. Meanwhile, the appeals court decision provides a strong precedent for other HIV parenting cases by making clear that parents cannot lose custody of their children because of HIV (or other conditions) that may periodically disable them.

These cases show how families can find themselves ripped apart by irrational bias and misguided judgment when HIV enters the picture. And with HIV spreading fast among women, advances in antiretroviral therapies leading to longer life spans and effective treatments for pregnant women that decrease the chances of infection for their children, we are likely to see the number of families living with HIV increase in the coming years. Unfortunately, stigma and ignorance around HIV persist in society. Lambda Legal will keep educating the courts and policy makers in all areas of the law where people with HIV continue to face undue hardship. ■

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