

# **Child Custody: A Guide for Lesbian and Gay Parents in Mississippi**

## **Table of Contents**

Introduction . . . . .

What Is “Child Custody”? . . . . .

Types of Custody . . . . .

Procedural Matters in Custody Cases in Mississippi . . . . .

How Do Mississippi Courts Determine Custody? . . . . .

How Do Mississippi Courts View Sexual Orientation in Custody Cases? . . . . .

What Are the Legal Standards Governing Visitation? . . . . .

How Can I Prepare for a Custody Dispute in Court? . . . . .

Conclusion . . . . .

## INTRODUCTION

The purpose of this publication is to help lesbian and gay parents in Mississippi understand their legal rights and options as to child custody and visitation. Many such parents have children from a prior or soon-to-be prior marriage; others have had or adopted children with same-sex partners. Lesbian and gay parents often have concerns about how their sexual orientation will affect court determinations as to custody and visitation. Such concerns are well founded in any state, but are especially relevant in Mississippi.

This booklet can help you understand how courts in Mississippi determine child custody and visitation in general and how a court may address sexual orientation within the context of a child custody determination. It will also provide information on how to prepare for a child custody dispute and how to potentially resolve custody disputes through privately agreed arrangements.

However, it is important for you to be aware that the information contained in this publication is not, and should not be viewed as, a substitute for individualized legal advice. Each individual involved in a custody or visitation dispute has her or his own unique circumstances. While it will be helpful to you to know the basics, it is important for you to have an attorney who is knowledgeable about custody law and familiar with local judges – and, most importantly, is willing to do her best to protect your interests. If you want individual legal advice, please contact the ACLU of Mississippi or a lawyer whose primary practice is in family law.

## **I. WHAT IS “CHILD CUSTODY”?**

In a legal sense, child custody is the arrangement in which it is decided who the child(ren) will live with, and who has the authority and responsibility to make decisions concerning the health, education and welfare of the child(ren). In some cases, parents who are ending their relationship with each other come to a mutual agreement about custody issues. In other cases, custody is contested and must be decided by a court.

Many parents mistakenly assume that if their child lives with them rather than the other parent, then they automatically have legal custody. However, a parent does not have legally recognized custody until a court grants the parent a custody order. Until such an order is entered, both parents have a legal claim and equal rights to the child regardless of who the child lives with.

For various reasons, some parents do not seek custody orders immediately after a break-up. Often parents will try to work out private arrangements and/or resolve custody disputes outside of court because they want to spare their children the stress of a trial or to keep disputes from escalating. Many of these parents initially try to resolve their child custody issues through private agreement or compromise, without the aid of a third party or court. Others attempt to reach private agreements with the help of a lawyer or mediator. None of these approaches is necessarily the correct one; each individual’s case has its own unique considerations, so it is a good idea to contact an attorney who can advise you how to handle your particular situation.

If both parents can agree on a custody arrangement, a court will often incorporate this arrangement in its custody order, although there is no guarantee that it will do so. For example, courts will not enforce arrangements that are inconsistent with Mississippi custody law. Also, once disputes arise under a private custody arrangement that has not been endorsed by a court, the court is not bound by the terms of the private agreement. For this reason, if you want to work out a private custody agreement with the other parent, it is important that you consult an attorney to guide you through the process.

## II. TYPES OF CUSTODY

There are two types of custody in Mississippi: physical custody and legal custody.

**Physical custody** “means those periods of time in which a child resides with or is under the care and supervision of one of the parents.”<sup>1</sup>

**Legal custody** “means the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child.”<sup>2</sup>

Courts may award custody in one of four ways: (a) physical and legal custody to both parents jointly; (b) physical custody to both parents jointly and legal custody to either parent; (c) legal custody to both parents jointly and physical custody to either parent; (d) physical and legal custody to either parent.<sup>3</sup>

**Joint physical custody** means that both parents have significant periods of physical custody so as to assure the child(ren) frequent and continuing contact with both parents.<sup>4</sup> **Joint legal custody** means that both parents share decision-making rights and responsibilities relating to the health, education and welfare of the child(ren), as well as that the parents are obligated to exchange information about such matters and to confer with each other in making such decisions.<sup>5</sup>

There is a presumption that joint custody is in the best interest of the child(ren) where both parents have agreed to it.<sup>6</sup> This does not guarantee an award of joint custody in such cases, but militates in favor of it absent a finding of unfitness of one of the parents. Joint custody may also be awarded in cases in which only one parent requests it in contested fault-based divorces, but not in irreconcilable differences divorces.<sup>7</sup>

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<sup>1</sup> Miss. Code Ann. § 93-5-24 (5)(b).

<sup>2</sup> Miss. Code Ann. § 93-5-24 (5)(d).

<sup>3</sup> Miss. Code Ann. § 93-5-24 (1).

<sup>4</sup> Miss. Code Ann. § 93-5-24 (5)(c).

<sup>5</sup> Miss. Code Ann. § 93-5-24 (5)(e).

<sup>6</sup> Miss. Code Ann. § 93-5-24 (4).

<sup>7</sup> See *Wolfe v. Wolfe*, 766 So.2d 123 (Miss. App. 2000); *Dearman v. Dearman*, 2000 WL 35981 (Miss. App. 2001).

### III. PROCEDURAL MATTERS IN CUSTODY CASES IN MISSISSIPPI

#### *Where to file – jurisdiction and venue*

Mississippi is one of a few states that has a bifurcated court system – in other words, Mississippi has separate courts of law and equity. The courts of law are known as the Circuit, County, and Justice courts. The court of equity is referred to as the Chancery court; its jurisdiction includes cases that we might refer to as “family law,” including wills and estates, minor’s business, and all matters touching upon divorce, including alimony and child custody. Thus, divorces and resulting custody cases must be filed in Chancery court, in the county in which the plaintiff resides (except for irreconcilable differences divorces, which may be filed in the residence county of either spouse). Petitions for modification should be filed in the county in which the divorce or original custody order was granted, whether or not the parties still live in that county.

Where the parties in a custody case do not both reside in Mississippi, or where the original divorce was granted in another state, there are often questions as to which state has jurisdiction to hear motions for modification of custody or visitation. Mississippi is one of several states that have passed the Uniform Child Custody Jurisdiction Act (UCCJA). The act sets out the criteria for whether a Mississippi court should exercise jurisdiction.<sup>8</sup>

#### *Temporary Custody*

At times, some parents wish to have a court place their child temporarily in their custody until the trial for permanent custody begins. If one parent moves for temporary custody, a hearing will be held at which the chancellor will award physical custody to one of the parents or parties pending the permanent custody hearing. The temporary custody

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<sup>8</sup> In general, Mississippi may exercise jurisdiction if this state is the home state of the child, if the child and at least one parent have a significant connection to the state and evidence is available within the state, if the child is physically present in the state and has been abandoned or needs protection from abuse, or if no other state may or will exercise jurisdiction. Miss. Code Ann. 93-23-5. Physical presence of the child in the state is neither a prerequisite nor alone sufficient for jurisdiction to decide custody.

hearing may be held as soon as 7 days after completion of service of process, although it usually takes longer to get a court date.

### *Permanent Custody*

The term “permanent custody” is a misnomer; no custody order is actually permanent. The other parent can always file for modification due to a material change in circumstances of the custodial parent that has an adverse impact on the child. Hearings for custody are triable 30 days after completion of service of process. This does not mean that the trial will necessarily take place in exactly 30 days; it is just a guideline. Often the trial will take place several months after the complaint or motion is filed because of various procedural issues.

#### IV. HOW DO MISSISSIPPI COURTS DETERMINE CUSTODY?

First, and most importantly, how courts determine custody is directed in large part by the type of proceeding that is occurring. The most common types of custody proceedings are discussed below.

##### *Custody proceedings between the biological or adoptive parents*

Probably the most common type of custody proceeding is that which takes place at the time of the divorce and involves a dispute between the two natural or adoptive parents of the child. In such a proceeding, there are several basic principles to keep in mind.

First, mothers and fathers are considered to be equal in their rights to their children, except where the children are very young: here mothers may still have an advantage. At one time, Mississippi and many other states followed the so-called “tender years doctrine,” which created a maternal preference in child custody decisions for children who had not yet reached adolescence and for girls. The Mississippi Supreme Court has stated that there is no preference for mothers over fathers in Mississippi custody law,<sup>9</sup> but in other cases has stated that although the tender years doctrine has been abrogated, it still exists in modified form.<sup>10</sup>

Second, children over the age of twelve are supposed to be allowed to choose which parent she or he wants to live with where both parents are fit to have custody and either can adequately support the child. A chancellor who refuses to follow the child’s wishes in such cases must make specific findings on the record to support the decision.<sup>11</sup> However, in practice, the child’s choice is one factor to consider, but the chancellor is not bound by it.

The factors for consideration in making a custody award were set out by the Mississippi Supreme Court in *Albright v. Albright*, 437 So.2d 1003 (Miss. 1983). They are:

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<sup>9</sup> See, e.g., *Chamblee v. Chamblee*, 637 So.2d 850 (Miss. 1994).

<sup>10</sup> See *Mercier v. Mercier*, 717 So.2d 304 (Miss. 1998).

<sup>11</sup> See Miss. Code Ann. §93-11-65; *Polk v. Polk*, 589 So.2d 123 (Miss. 1991).

- ? age, health and sex of the child
- ? which parent had continuing care of the child prior to separation
- ? which parent has the better parenting skills
- ? which has the willingness and capacity to provide primary child care
- ? employment responsibilities of both parents
- ? physical and mental health and age of parents
- ? emotional ties between parent and child
- ? moral fitness of the parents
- ? home, school and community record of the child
- ? stability of the home environment and employment of each parent

In addition, there is a presumption that it is in the best interest of children that siblings be kept together. A chancellor who splits siblings up must make specific findings to support that decision.<sup>12</sup> In some cases, the presence of extended family has weighed in favor of granting custody to one parent rather than the other.<sup>13</sup> Finally, marital fault (most often adultery on the part of the mother) seems to play a role in custody awards in Mississippi. Although courts are not allowed to base a custody award solely on the adultery or post-divorce sexual behavior of one parent,<sup>14</sup> usually the chancellor's decision will be upheld if other factors are cited, even if sexual behavior was the most influential factor.<sup>15</sup> Marital fault is considered a part of moral fitness.

### ***Modification of custody proceedings***

Once custody has been awarded to one parent, modification will be allowed only upon a showing of a material change in circumstances that adversely affects the welfare of the child and that a change in custody is in the best interests of the child. The change can have taken place in either the custodial parent's home (a negative change) or in the non-custodial parent's home (a positive change, combined with an allegation that the child is not being properly cared for in the custodial parent's home).

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<sup>12</sup> See *Sellers v. Sellers*, 638 So.2d 481 (Miss. 1994).

<sup>13</sup> See *Neville v. Neville*, 734 So.2d 352 (Miss. App. 1999).

<sup>14</sup> See *Moak v. Moak*, 631 So.2d 196 (Miss. 1994); *McAdory v. McAdory*, 608 So.2d 695 (Miss. 1992).

<sup>15</sup> See *Chamblee v. Chamblee*, 637 So.2d 850 (Miss. 1994); *Carr v. Carr*, 480 So.2d 1120 (Miss. 1985).



Non-custodial parents often file for modification of a custody order when the custodial parent is planning to move the child to another town or state. Where the custodial parent has primary physical custody, a move is not a material change, even where the parents have made an agreement not to move (such agreements are unenforceable). However, where the parents have joint custody, a move is a material change – even though it is not necessarily an *adverse* change – and allows for a new hearing as to custody.

### ***Proceedings in which a third party seeks custody***

In a growing number of cases, grandparents or other close relatives seek custody as against one or both parents. The danger of this happening is especially great where the natural parents are divorced or never married and the custodial parent is lesbian or gay. Fortunately, in Mississippi there is a presumption that the child's best interest will be served by placing the child with one of the natural parents. Custody will be granted to a third party only upon a showing that the natural parent has abandoned the child, is unfit to have custody, or engages in conduct so immoral as to be detrimental to the child.<sup>16</sup> The exception to this presumption is in cases in which a natural parent voluntarily relinquishes custody to a third party; in such cases, the presumption in favor of the natural parent is waived, and the analysis is based on the best interest of the child as enumerated in the *Albright* factors.<sup>17</sup>

### ***Termination of parental rights proceedings***

Any person, agency, or institution may file for the termination of parental rights in chancery court,<sup>18</sup> though most termination proceedings are brought either by DHS or by a party or parties wanting to adopt the child (parental rights must be either relinquished or terminated before an adoption can proceed). The burden of proof is on

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<sup>16</sup> *Sellers v. Sellers*, 638 So.2d 481 (Miss. 1994).

<sup>17</sup> *Grant v. Martin*, 757 So.2d 264 (Miss. 2001).

<sup>18</sup> Miss. Code Ann. § 93-15-105.

the party who is in favor of the termination.<sup>19</sup> A guardian ad litem will be appointed to protect the best interest of the child.<sup>20</sup>

Parental rights terminations in Mississippi may be granted on the following grounds:<sup>21</sup>

- (1) desertion or abandonment of the child;
- (2) parent has made no contact with the child under the age of 3 for six months or child over the age of 3 for a year;
- (3) parent has been responsible for a series of abusive incidents involving children;
- (4) parent has failed to cooperate with DHS, where the child is in DHS custody;
- (5) parent has a diagnosable condition unlikely to change such as alcoholism, drug addiction, mental illness, or severe physical incapacitation, or fails to eliminate behavior the state finds harmful enough to justify removal of the child from the parent's custody;
- (6) extreme antipathy by child toward parent or other substantial erosion of parent-child relationship caused by the parent's neglect, abuse, absence, failure to visit, or prolonged incarceration;
- (7) parent has been convicted of rape, sexual battery, felonious abuse, exploitation, or murder or felony assault of a child, committed against his natural or adopted child, and in some cases a stepchild;
- (8) child has been found by a court or state agency to have been abused or neglected and a court decides that reunification is not in the child's best interest.

A parent may also voluntarily relinquish her or his parental rights; unless such a relinquishment is procured by fraud, duress, or undue influence, it may not later be revoked.

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<sup>19</sup> See *N.E. v. L.H.*, 761 So.2d 956 (Miss. 2000).

<sup>20</sup> Miss. Code Ann. § 93-15-107.

<sup>21</sup> For a more detailed explanation of the grounds for termination of parental rights, see Miss. Code Ann. § 93-15-103.

It is unlikely that an individual's parental rights can be terminated just because the parent is gay or lesbian, without more. Sexual conduct does not seem to be as important in termination cases as in custody cases.<sup>22</sup> But if there are other grounds for termination, sexual orientation will almost certainly become an issue during the hearing and may tip the balance in favor of termination where the evidence is equivocal.

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<sup>22</sup> See *In Interest of J.D.*, 512 So.2d 684 (Miss. 1987); *Petit v. Holifield*, 443 So.2d 874 (Miss. 1984).

## V. HOW DO MISSISSIPPI COURTS VIEW SEXUAL ORIENTATION IN CUSTODY CASES?

In Mississippi, as in most other states, the sexual behavior of an unmarried custodial parent cannot be the sole factor in determination of custody absent a finding that the relationship caused harm to the child.<sup>23</sup> However, it can be and often is one factor – likely the predominant factor – in the chancellor’s assessment of a parent’s “moral fitness” and, in many cases, the custody determination itself. Sexuality and sexual behavior are almost certain to be at issue where one parent is in a same-sex relationship or identifies as lesbian or gay.

The standard for consideration of homosexuality with regard to custody is officially the same as the standard for all sexually active parents: the parent’s sexuality, whatever it is, can be one but not the sole basis for an award of child custody to the other parent. What this means, in practical terms, is that even if the chancellor cannot find anything else wrong with the lesbian or gay parent, the chances of being granted custody are slim unless the other parent has some pretty weighty strikes against him or her – and even then there is no guarantee of a favorable decision.

For example, one of the most well-known Mississippi LGBT custody cases is *Weigand v. Houghton*, 730 So.2d 581 (Miss. 1999). In that case, the Mississippi Supreme Court upheld the chancellor’s decision refusing to give custody to the father despite the fact that the mother was married to an unemployed ex-felon who abused alcohol, physically abused her, and had threatened to kill the son. The chancellor’s analysis of the *Albright* factors found four factors in favor of the mother (child’s preference, continuity of care, home, school and community record, and moral fitness) and two in favor of the father (employment responsibilities and stability of the home). The other five factors (parenting skills, emotional ties, health and age of the parents, health and sex of the child, and child’s age) weighed in favor of neither parent. Willingness and capacity to provide primary child care was not discussed, but presumably would have weighed in favor of neither parent because of the child’s age.

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<sup>23</sup> See, e.g., *Forsythe v. Akers*, 768 So.2d 943 (Miss. 2000); *Moak v. Moak*, 631 So.2d 196 (Miss. 1994); *McAdory v. McAdory*, 608 So.2d 695 (Miss. 1992).

Despite the severity of the material change in circumstances that prompted the father to seek custody (including two domestic abuse incidents in which the police were called), the chancellor's decision focused heavily on the moral fitness factor, citing two things: the father's same-sex relationship and the mother's diligence in taking the son to church. (The father told the chancellor that he would take his son to church if he wanted to attend, but that it was his son's choice). Although neither of these factors should be relevant to a child custody decision, the Mississippi Supreme Court upheld the chancellor's decision emphasizing them.

Several other cases in which the Court has upheld an award of custody to the other parent based on one parent's same-sex relationship had more equivocal fact patterns; in other words, the lesbian mothers in these cases had strikes against them that were not necessarily related to sexual orientation.<sup>24</sup> However, it is unclear whether these factors alone would have been enough to deny these mothers custody. Either way, when sexuality issues are added to a chancellor's other concerns about a parent, the chancellor has free rein to deny that parent custody.

A chancellor's determination as to which parent should have custody will only be reversed if it is clearly erroneous based upon the facts in the record. Reversal is a rare occurrence because chancellors are given a great deal of discretion. However, reversal does occur periodically, and can be in favor of a lesbian or gay parent. For example, in 2001 the Mississippi Supreme Court decided *Hollon v. Hollon*, 784 So.2d 943, in which it reversed a chancellor's decision giving custody to the father. The court held that the chancellor had abused his discretion by placing too much weight upon the "moral fitness" factor, in which the chief allegation was that the mother had had an affair with another woman. While acknowledging that moral fitness was properly one factor in the

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<sup>24</sup> See *Morris v. Morris*, 783 So.2d 681 (Miss. 2001) (holding that chancellor's consideration of wife's relationship with another woman as a factor in awarding custody to husband was not clearly erroneous where chancellor discussed all *Albright* factors and found others weighed against wife); *Bowen v. Bowen*, 688 So.2d 1374 (Miss. 1997) (holding that award of custody of couple's younger child to father due to mother's failure to dispel rumor that she was in a same-sex relationship was not clearly erroneous); *White v. Thompson*, 569 So.2d 1181 (Miss. 1990) (holding that finding that mother was unfit to have custody of children was sufficiently supported by evidence where mother was in same-sex relationship, used marijuana, sometimes failed to properly supervise children and did not always provide them with adequate clothing and food); *S.B. v. L.W.*, 2001 WL 244350 (Miss. App.) (holding that evidence was sufficient to find that awarding custody to father was in child's best interest and that although mother's same-sex relationship was an important factor in the chancellor's decision making, it was not the sole factor where mother quit well-paying full-time job to move to another city and start a business).

chancellor's decision, the court emphasized that each of the *Albright* factors is of equal weight in determining the child's best interest. In this case, the mother had more factors weighing in her favor than did the father (age, health and sex of the child, continuity of care, parenting skills, willingness and ability to provide primary child care, employment, and stability of the home, versus only moral fitness weighing in favor of the father; the other factors weighed equally for both parents). Thus, it was an abuse of discretion for the chancellor to award custody to the father based solely on his apparent prejudice against same-sex relationships.

In addition to the *Albright* factors, a lesbian or gay parent should be aware that the following factors are often considered important by judges in custody cases involving them:<sup>25</sup>

- (1) whether the parent lives with a partner, is involved in a same-sex relationship, or has multiple sexual partners;
- (2) if the parent is sexually active, whether the children are exposed to that activity in any way, or are even aware of it;<sup>26</sup>
- (3) whether the parent is active in LGBT rights endeavors and will expose the children to that activity; and
- (4) whether there will be "appropriate" opposite-sex role models available to the children.

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<sup>25</sup> It is highly questionable, both legally and factually, whether any of these factors are appropriate for judges to consider. Nevertheless, because they have been so important in so many cases, parents and their lawyers should be aware of them.

<sup>26</sup> This factor often creates a double bind: the judge may believe the children are harmed by knowing of a parent's same-sex sexual activity, but if the parent keeps that information from the child, she or he is likely to be painted as deceitful and dishonest.

## VI. WHAT ARE THE LEGAL STANDARDS GOVERNING VISITATION?

Visitation, like custody, is governed by the best interest of the child.

Courts should take into consideration both the rights of the non-custodial parent and the objective of creating an environment conducive to developing as close and loving a relationship as possible between parent and child.<sup>27</sup> The chancellor has broad discretion in determining appropriate visitation between parent and child and limitations thereon.<sup>28</sup> However, some chancellors have abused their discretion in imposing limitations on parental visitation. The Court of Appeals has stated that liberal visitation, at a minimum, means two weekends per month (until Sunday afternoon) and five weeks in the summer.<sup>29</sup>

The two most prominent concerns of lesbian or gay parents usually are (1) whether the court will award them less visitation time overall because of sexual orientation; and (2) whether the court will impose the limitation that the visitation not take place in the presence of the parent's partner.

In *Chamblee v. Chamblee*, 637 So.2d 850 (Miss. 1994), the Mississippi Supreme Court held that the mere fact that a parent is having an affair is not enough to create danger requisite to limit that parent's visitation with her child. Similarly, in *Harrington v. Harrington*, 648 So.2d 543 (Miss. 1994), the Court held that a non-custodial parent's cohabitation with a new girlfriend did not justify restriction of visitation to preclude overnight visits. In other words, visitation is intended to allow children to maintain a close, loving relationship with their non-custodial parent, not to punish the parent for perceived wrongdoing. Thus, if the visitation granted by the chancellor is clearly not in line with what is customary, her or his decision may be overturned on appeal.

In general, chancellors have been admonished by the Supreme Court to fix visitation rights with the presumption that absent extraordinary circumstances, the non-custodial parent will have broad authority and discretion with respect to the place and

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<sup>27</sup> See *Rayburn v. Rayburn*, 749 So.2d 185 (Miss. 1999); *Chalk v. Lentz*, 744 So.2d 789 (Miss. App. 1999); *Harrington v. Harrington*, 648 So.2d 543 (Miss. 1994).

<sup>28</sup> *Harrington v. Harrington*, 648 So.2d 543 (Miss. 1994).

<sup>29</sup> *Chalk v. Lentz*, 744 So.2d 798 (Miss. App. 1999).

manner in which the visitation is exercised, subject only to the reasonable time constrictions enumerated in the decree.<sup>30</sup>

Thus, absent evidence of actual danger or substantial detriment to the child, the perceived “moral climate” of a parent’s home cannot be the basis of a visitation restriction. For example, the Court in *Weigand v. Houghton* reversed the portion of the chancellor’s order that restricted the exercise of visitation in the presence of the father’s male partner, stating that even the child’s embarrassment or dislike of his father’s lifestyle was not a substantial enough harm to justify the restriction on visitation. For the chancellor to restrict visitation, there must be evidence that the particular restriction on visitation is necessary to avoid harm to the child.<sup>31</sup> The harm shown must be something more substantial than the child’s preference for the restriction (usually concerning the parent’s new partner).

In a general way, then, the law in Mississippi with regard to visitation is favorable to the situations of most lesbian or gay parents; though chancellors do retain a measure of discretion, the position of the Supreme Court tends to support the idea that it is important for children to maintain relationships with non-custodial parents, even where the court does not approve of the parent’s lifestyle, and that restrictions on visitation should be upheld only in extraordinary circumstances where they are necessary to prevent harm.

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<sup>30</sup> See *Caldwell v. Caldwell*, 579 So.2d 543 (Miss. 1991).

<sup>31</sup> See *Carr v. Carr*, 724 So.2d 937 (Miss. 1998).



## VII. HOW CAN I PREPARE FOR A CUSTODY DISPUTE IN COURT?

In terms of strategy, the most important principle to remember is that fighting for custody of your child is a 24-hour-a-day job. Custody disputes often bring out the worst in people, and many lawyers (not to mention ex-spouses) are willing to play dirty in order to win.

It is realistic to assume that in most Mississippi custody cases, a parent who has a same-sex partner or identifies as gay will not have the “moral fitness” factor counted in her favor. Thus, the objective of the lesbian or gay parent who wants custody of her or his child should be to make sure, to the best of her or his ability, that as many of the other *Albright* factors as possible are clearly favorable to her or him. Because the Mississippi Supreme Court has held that each of the *Albright* factors is weighted equally, the more factors that clearly weigh in one parent’s favor over the other, the more likely that parent is to be awarded custody.

In some cases, the question arises whether a parent whose sexual orientation is not known to her ex-spouse should conceal that information. There are reasons both for and against doing so. First, the parent will gain little by raising his or her sexual orientation as an issue in the case, and will be more likely to retain custody if that information is withheld. Generally, the longer one parent has primary custody, the better her chances of retaining custody if the ex-spouse discovers the sexual orientation issue later and files for modification, providing she can show that the children have lived with her without suffering any harm.

On the other hand, deciding not to reveal sexual orientation can contribute to other difficulties. For example, the parent will sacrifice a more open lifestyle: because all custody decisions can be modified upon a showing of changed circumstances, the parent may live in fear of being discovered and taken back to court. It is also risky to withhold this information if other people know of the parent’s sexual orientation, because it may be alluded to or raised at trial. If the parent suspects that someone who knows of her sexual orientation will reveal it in court, she should give serious thought to the decision to withhold information about her sexual orientation. It is almost always better to bring up an issue that will be counted against you first than to let someone else bring it up.

Another thing you can do to prepare for a custody dispute is to have credible people who will testify to the fact that you are a good parent. These can be friends, neighbors, teachers, coworkers, clergy, and the like. What you are looking for are witnesses whose testimony the court will credit, so such individuals should be articulate and be considered respectable, upstanding members of the community. Of course, your lawyer will play an integral part in this process, but you can help by taking an active role in the preparation.

One of the most important ways that you can help yourself in preparing for a custody trial is to be completely honest with your attorney. Often parents will leave out details they consider to be negative or inconsequential. This is almost always a mistake. Your attorney will be better prepared to deal with any possible negative factors raised by the other side if she is informed of them as early as possible, rather than in court, when it is too late to prepare an adequate response or rebuttal.

## CONCLUSION

Child custody cases are often unpredictable, and their resolution often depends more on who the judge is than on what the facts are and what evidence is presented. Still, lesbian and gay parents in Mississippi should not assume that they will not be granted custody of their children because of sexual orientation. Most chancellors frown on homosexuality, but depending on individual circumstances, other factors may outweigh that. At the very least, even though many lesbian and gay parents may lose custody, absent unusual circumstances, they are entitled to full and unrestricted visitation so that they can maintain a close relationship with their children.

The first step a lesbian or gay parent should take to try to obtain custody is to maintain a close relationship with the child and play an active role in his/her life. The second step is to hire a knowledgeable attorney with experience litigating child custody cases, in the chancery court where the case will be tried if possible. Third, cooperate fully with the attorney as you prepare for court.

Understandably, many lesbian and gay parents may have trouble finding or not know where to look for a gay-friendly attorney who will provide them with knowledgeable and sympathetic representation. If you need a lawyer or want more information, you can contact the ACLU of Mississippi at (601) 355-6464 or [www.msacLU.org](http://www.msacLU.org), or Equality Mississippi at (601) 936-7673 or [www.equalityms.org](http://www.equalityms.org).