

# A PIONEER IN FAMILY COURT

Re: *Nguyen v. Boynes*, 133 Nev., Advanced Opinion 32<sup>1</sup>

BY JOHN "JACK" BLACKMON, ESQ.

Over roughly the last three years in Department R of the Eighth Judicial District Court, Family Division, a particular paternity case raged. The case ultimately resulted in a landmark Nevada Supreme Court decision, currently known as *Nguyen v. Boynes*. This case was truly one in a million. Those who closely follow the Nevada Supreme Court will have already read the court's advanced opinion, but a great many have not.

## The Case: *Boynes v. Nguyen*

In 2012, Rob Boynes and Ken Nguyen were in a romantic relationship, and even though they had no access to marriage, decided that they wanted to raise a child together. There were many bumps along the road to adoption; however, the primary challenge for Boynes and Nguyen was that Catholic Charities maintained a policy that prohibits the organization from facilitating an adoption to a same-sex couple. That policy forced the couple to pursue adoption for one party at the outset, and then complete a second-parent adoption once the first was finalized. Ultimately, Boynes and Nguyen could not make their relationship work. Nguyen was the first to adopt the child at issue, and the evidence in the case established that the parties had intended for Boynes to adopt second. However, the relationship ended prior to Boynes' completion of that second parent adoption.

The facts of the case uncovered at the trial court were extensive. In short, Boynes filed a paternity action to be named a legal parent to the child whom his former boyfriend, Nguyen, had already adopted. Predictably, Nguyen opposed Boynes' position and attempted to make a case that Boynes' petition should be dismissed or denied. On multiple grounds, the trial court ruled in Boynes' favor and awarded him parental/paternity rights, including joint legal and joint physical custody of the child. As anticipated, Nguyen promptly appealed the decision.

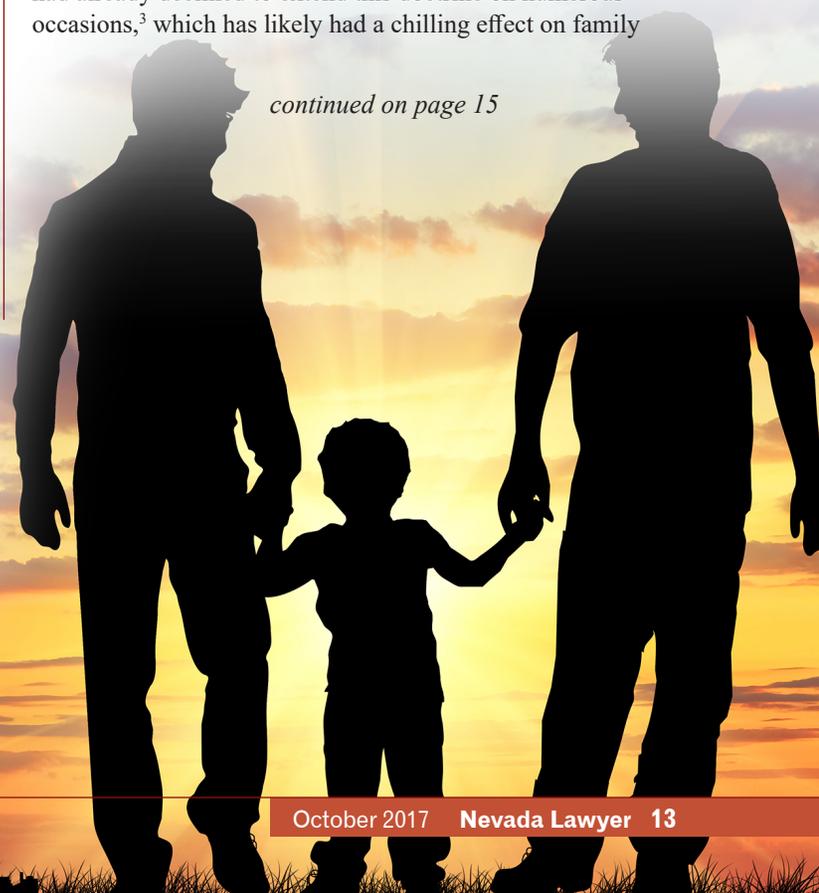
## The Decision

The Nevada Supreme Court affirmed the district court's final orders applying the principles of equitable adoption by awarding Boynes paternity rights. Nguyen argued that this doctrine should not apply, because the only well-developed case law dealing with the doctrine of equitable adoption in Nevada was in child support cases. Nguyen also asserted that the doctrine had only ever been applied when there was at least one biological parent, and in this case, obviously, neither party was a biological parent.

## Equitable Adoption

The Nevada Supreme Court previously defined the doctrine of equitable adoption, *and* when the same would apply, as, "where there is a promise to adopt, and in reasonable, foreseeable reliance on that promise a child is placed in a position where harm will result if repudiation is permitted, the courts of this state stand ready to provide such remedies as equity requires."<sup>2</sup> The Nevada Supreme Court had already declined to extend this doctrine on numerous occasions,<sup>3</sup> which has likely had a chilling effect on family

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law attorneys, because asserting parental rights under equitable adoption is not routine. The assertion of the doctrine necessitates a very high factual burden, and many attorneys have likely never even heard of it.

In both of the most well-known cases where the Nevada Supreme Court declined to extend the doctrine of equitable adoption, at least one parent was a biological parent to the child at issue. However, the individual whose paternity was in question was clearly not a biological parent, therefore the presumptions of paternity under NRS 126.051 applied in prior cases.

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*Boynes v. Nguyen* was unique in that it focused on the agreement the parties entered into prior to the adoption completed by Nguyen, as neither party at that time was a legal parent. Without analyzing the case law or statutes further, the court dismissed any reliance on the Uniform Parentage Act or the paternity statutes outlined in NRS 126, and decided to review the case through a *contractual* lens.

The court found that pursuant to the doctrine of equitable adoption, which is very much analogous to the doctrine of equitable estoppel, Nguyen and Boynes had entered into an agreement for Boynes to adopt the child, that there was reliance on that agreement,

and finally, if the agreement was repudiated, the child at issue would likely suffer harm. Therefore, the court's ultimate holding established Boynes as a legal father to the child: a remarkable outcome, the likes of which has never been seen before in this state. The *Boynes v. Nguyen* case at trial and *Nguyen v. Boynes* at the Nevada Supreme Court were fascinating, and the case is rich with unique facts and circumstances between the parties.

### James M. Davis, Esq.



Jim Davis was not only my first real mentor in the practice of law; he's also a friend. Through different LGBT organizations, Davis

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and I met while I was a law student and president of the LGBT student organization, known as OutLaws, at the William S. Boyd School of Law. Davis had accepted my invitation to be a contributor to a panel I was moderating for an annual ABA event taking place at Boyd. After I graduated from law school, the job market was not great, and despite clearly expressing my disdain for the practice of family law, Davis convinced me to work for him as his law clerk prior to my bar passage. I begrudgingly accepted his offer. I did not have anything better to do at the time, and he assured me that he had some cases I would undoubtedly find interesting. I had my reservations; I was wrong.

Immediately upon my arrival in his office, in late summer 2014, Davis introduced me to *Boynes v. Nguyen*, a paternity action involving an unmarried, same-sex couple. The case grabbed my attention immediately. This was a novel case, involving unique issues, the likes of which had never been considered by any court in this state. Davis knew that, I did not.

Because I accepted a position with the Family Court in spring 2015, I was only able to participate in the case for a brief period, which included only the first day of trial. Thus, once I left Davis's office to work as judicial law clerk to Judge Sandra

Pomrenze, I had to wait, just like everyone else, to find out how the case would turn out.

I would not be a family lawyer without Davis' influence and encouragement, and in a roundabout way, I never would have landed at a law firm with founding partners who share my level of enthusiasm for this area of the law. **NL**

1. This decision was filed in the Nevada Supreme Court on June 22, 2017.
2. *Frye v. Frye*, 103 Nev. 301, 303, 738 P.2d 505, 506 (1987).
3. See generally, *Russo v. Gardner*, 114 Nev. 283, 956 P.2d 98 (1998), and *Hermanson v. Hermanson*, 110 Nev. 1400, 887 P.2d 1241 (1994).

**JOHN R. BLACKMON** is a graduate of the William S. Boyd School of Law (class of 2014). He practices almost exclusively in complex domestic relations matters.

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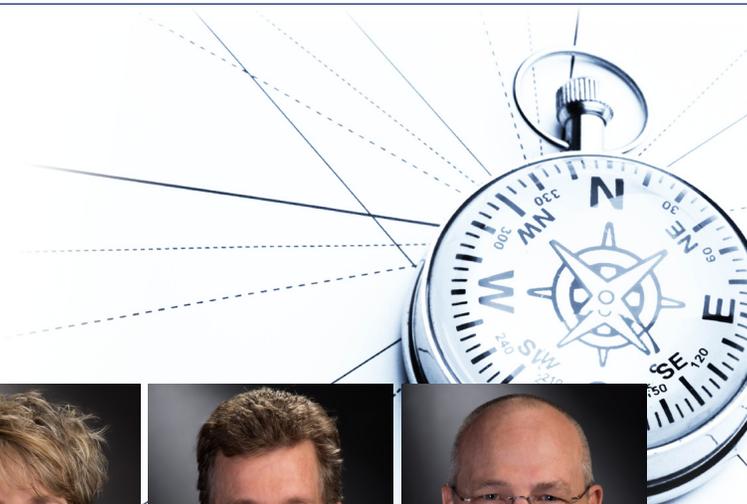
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