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Lesbian Co-Parent Advance in New Jersey

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CHANGE IS IN THE AIR, BUT IS IT IN THE CARDS FOR CYNTHIA?

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DONNA ACETO
Democratic gubernatorial hopeful Cynthia Nixon
meeting with LGBTQ people of color at the Aloft
New York Brooklyn Hotel on August 22.

Lesbian Co-Parent Advance in New Jersey

Mother's partner eligible for emotional distress relief in child's death

BY ARTHUR S. LEONARD

In a significant ruling on August 17, the New Jersey Appellate Division, the state's intermediate appeals court, expanded the range of "bystanders" who can claim relief for emotional distress caused by the negligence of others to include non-marital same-sex families.

A unanimous three-judge panel — taking account of the momentous developments in public attitudes toward LGBTQ families in recent decades — ruled that a Mercer County trial judge should

not have dismissed the lesbian co-parent of a young child who died in a tragic traffic incident from a lawsuit seeking relief.

In 1980, the New Jersey Supreme Court first recognized, in the case of *Portee v. Jaffee*, that a parent who witnessed the agonizing death of her young son, trapped between an elevator's outer doors and the wall of the elevator shaft, could sue for the emotional distress she suffered due to the negligence of the building owners and the elevator company in causing her son's death.

The courts have gradually shed

their earlier reluctance to award damages for emotional distress to people who had not themselves suffered a direct physical injury, but they have been cautious about expanding the range of such potential liability.

The 1980 *Portee* case limited the range of bystanders eligible to seek such compensation to those in "a marital or intimate, familial relationship" with the injured party.

In 1994, the State Supreme Court ruled that the fiancé of a man killed in a traffic incident, who had witnessed the vehicle strike his body and attempted to

comfort him while awaiting an ambulance, could sue the driver of the vehicle for negligent infliction of emotional distress. The court emphasized that they were cohabiting and engaged to be married at the time, concluding that this was a sufficient "familial relationship."

In the case decided on August 17, co-plaintiff Valerie Benning was standing on a street corner with her then-same-sex partner — and now spouse — I'Asia Moreland and their children. Benning and Moreland had been living together

► **BYSTANDER**, continued on p.13

er for 17 months and were jointly raising Moreland's two children born (before their relationship began) and Benning's young godson. Benning was holding the hand of two-year-old L'Maya Moreland as they waited for a traffic signal to change in Trenton. Suddenly, a fire truck collided in the intersection with a pickup truck, and the pickup truck struck L'Maya, who was "propelled" 65 feet south of the intersection and later died from her injuries.

Benning was also knocked down, and the next thing she remembered was lying on the ground and the confused panic that ensued around her, struggling to her feet and running toward L'Maya, and hearing screams from observers of the scene, then the ambulance trip to the hospital and the

hysteria she suffered upon learning L'Maya was dead. The opinion quotes extensively from her deposition describing her experience and the emotional and psychological trauma she suffered.

Moreland and Benning filed suit against multiple defendants, claiming a variety of damages. The Appellate Division's ruling involved the trial judge's decision to grant the defendants' motion to dismiss Benning's claim for compensation for the emotional distress she suffered as a "bystander."

At the time of this 2009 incident, Moreland and Benning were not legally related to each other, and Benning was not legally related to L'Maya. The couple could not marry in New Jersey, though they could have registered as civil union partners.



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