Adoption Issues

When Ricky Stith discovered he was HIV positive in 1996, he thought he was going to die. More than a decade later, he is a parent planning for a long future with his son. And he has discovered that being a dad can be even more daunting than surviving the virus.

January 1, 2010 By Glenn Townes

In 2006 when Ricky Stith found out that the adoption of his 3½-year-old foster child Keon was complete, he celebrated at a baby shower his coworkers threw for him. Stith allowed the ladies to dress him up in the infamous traditional baby shower hat. He even good-naturedly stayed in character as well-wishers festooned the hat with little gifts to commemorate the arrival of his new child and the start of his fatherhood.

“It was one of the happiest days of my life,” says the information technology professional, who was 46 at the time. “I had a new son and was still alive despite living with HIV for more than 10 years.”

Initially, Stith fell in love with Keon when the child was 15 months old. Three months later, he became the boy’s foster parent. The minute that Ricky brought Keon home, life for the once carefree and socially active gay bachelor changed. Parenthood humbled him. But Ricky was happy to upend his day-to-day existence to accommodate his son. Now, instead of spending Friday and Saturday nights at a club or party, Stith enjoyed watching movies with Keon or busied himself washing and ironing his son’s school uniforms for the coming week.

“Before I discovered that I was HIV positive, I never wanted children,” Stith says. “But when I found out I had the virus, my life flashed before my eyes. My mortality became real, and I wanted to share some of my personal and professional success and blessings with a child.”

And so it was in 2003 that Stith, a Washington, DC, resident with a secure government job and sizable income, signed a contract with Adoptions Together Inc. The Silver Spring, Maryland, agency guided him through what would prove to be a cumbersome—and occasionally contentious—adoption process. It assisted him with everything from choosing a child to providing parenting classes, counseling services and legal and medical advice.

The program cost more than $6,000, and on the agency’s advice, Stith hired a private attorney (for another $5,000) to help him cover all the bases. Such are the routine legal hassles and economic considerations inherent in any adoption process. But Stith also faced an intangible and

therefore more vexing challenge. He found himself battling stigma because of his HIV-positive status and his sexual orientation.

In spite of making all the right moves as an adoptive parent, Stith was thrown an unexpected curve ball.

“In Ricky’s case the only [real hurdle to adopting Keon] was one created by a homophobic, AIDSphobic state attorney,” says Stith’s attorney, Michele Zavos, founder of Michele Zavos Law Group in Silver Spring. “There were no actual legal obstacles—everyone, including the judge, wanted Ricky to adopt Keon.”

Zavos has handled dozens of same-sex partner and single-person adoptions, including several cases for people living with HIV/AIDS. She consults with clients, educating them about the process and making them aware of various ways to bring children into their families.

Stith says he was ready to start his own family, but to his chagrin, the state attorney—appointed to represent Keon’s interests—attempted to derail the adoption efforts after Stith disclosed to her that he was HIV positive during a home visit. Stith says the attorney assumed, as he once did, that the virus would kill him prematurely. He sensed that she thought this made him a poor choice as an adoptive parent.

“She said since I was HIV positive I probably wouldn’t be around long enough to properly care for Keon,” he says. “I told her that HIV-positive people are living longer with the virus. I also stressed that no parents are guaranteed not to die while taking care of their children.”

Rather than agreeing with him, the state attorney responded by escalating matters, Stith says. She requested that Stith waive his privacy rights guaranteed by the Health Insurance Portability and Accountability Act (HIPAA) and agree to immediately relinquish all his medical records to the court. (The HIPAA Privacy Rule established regulatory guidelines for disclosing an individual’s protected health and medical information to outside agencies—including hospitals, insurers, law enforcement officials and attorneys.) If Stith waived this right, the state attorney—and others—could access his medical history and possibly manipulate the information in an attempt to stop his adoption.

Stith declined to release his records.

“The state attorney wanted me to give up additional information about my health and anything else she could use against me,” Stith says. “It became obvious to everyone involved that this was a personal attack and not just professional protocol.”

Both Zavos and Stith say that the home-study process—a rigorous period of adoptive family monitoring—had already established and documented for the court Stith’s ability to care for Keon and live a normal life despite being HIV positive. Unable to substantiate any valid reasons why Stith should be ruled ineligible to adopt a child, the state attorney eventually withdrew from the

case.

But the incident left Stith feeling uncertain and confused. “I really could not understand why the state’s attorney fought so hard to stop my adoption of Keon,” he says.

Despite the state attorney’s attitude, however, Stith stood on solid legal ground. The 1990 Americans with Disabilities Act (ADA) specifically prohibits discriminatory policies—by both public and private entities—that could be used to screen out prospective parents based on their HIV status. ADA regulations define HIV as a “physical impairment” whether “symptomatic or non-symptomatic.”

Furthermore, the idea that HIV-positive people should be ruled ineligible to adopt children because of the possibility of a shortened lifespan, as the state attorney hinted to Stith, is illegal and subject to legal sanctions under the act’s provisions. Individuals who feel they have been discriminated against by a public adoption agency can file a complaint with the Department of Justice and/or file a private lawsuit. When private agencies discriminate, either an individual or the Department of Justice may file a lawsuit. (If won, Department of Justice suits may impose civil penalties of up to $50,000 on an agency for a first violation and up to $100,000 for any subsequent violation.)

Zavos suggests that HIV-positive prospective parents can minimize adoption problems by, first and foremost, knowing their civil rights. “HIV status may *not* be used to bar adoptions,” Zavos stresses. “But adoption will not be granted if a person is very ill and unable to care for a child.

“Prospective parents must almost always go through a home-study process that will, among other things, expose any medical issues that may interfere with their ability to parent,” Zavos adds. The process includes a series of extensive medical and psychological parental tests.

But another important point, Zavos indicates, is that HIV-positive people trying to adopt should know that they aren’t legally required to reveal their status. Although they can’t lie about it, they only need to disclose their physical issues. “If Ricky Stith had not revealed his status—which he did thinking it was the right thing to do—he would have had a much easier time,” Zavos says.

She also recommends that HIV-positive people educate themselves about their state’s adoption laws and work with an adoption agency that has experience in handling special needs cases.

While there are no absolute statistics available about how many HIV-positive people (singles or couples) have adopted children, perhaps some parallels can be drawn by looking at another minority group. Statistics from the Williams Institute at the University of California, Los Angeles, School of Law indicated that as of 2005 more than 270,000 children were living with same-sex couples in the United States—about 65,000 of them were adopted.

Despite the lack of data on HIV-positive people, it’s a reality that they adopt children. It’s also a reality that many of them are routinely discriminated against by decisionmakers involved in the

adoption process. “Stigma, racism, discrimination and sexism exist in society, and they also exist in adoption,” says Devon Brooks, a senior research fellow at the Evan B. Donaldson Adoption Institute, a New York City–based think tank. “Adoption is a human services institution [and subject to human biases]. But discrimination based on race, gender and ability status are against the law. All civil rights laws applied to [Stith’s] situation.”

Nevertheless, because of human biases, laws and practices still discriminate or give preference to certain adoptive parents based on their health history, sexual orientation and marital status, Brooks says.

Zavos agrees. “Adoption agencies have their own internal policies, which may grant privilege to straight, married couples,” she says. “I’ve also had clients go to other lawyers or adoption agencies and be told that they could not adopt because of their HIV status.”

In Stith’s case, he had the full support of the adoption agency he selected. In addition, Brooks says, Stith benefited from civil rights and child welfare laws that prevented the biased state attorney from stopping Stith’s adoption of Keon.

Many experts on adoption issues contend that diseases such as HIV and other successfully treated illnesses should not prevent or deter someone from adopting a child. “Many people who have chronic diseases maintain their state of health and are certainly capable of raising a child,” says Nancy Hemenway, executive director of the InterNational Council on Infertility Information Dissemination (INCIID) in Arlington, Virginia.

Stith’s personal experiences with HIV—and, in turn, with health and medical issues—helped prepare him to raise his adopted son, who also had health issues. Under Stith’s care, Keon eventually was able to stop taking all meds for his severe asthma, and his kidney condition greatly improved. “Today, he is a healthy child in the first grade,” Stith says. “He holds a red belt in tae kwon do and is in training for his brown belt. He also takes weekly swimming lessons. Anyone looking at Keon can tell that he’s loved.”

Adds Stith: “I wanted to make a difference in a child’s life. My son gives me a reason for living. Whenever I do pass away, I want Keon to say without a doubt that ‘My daddy loved me.’”

Adoption Assistance
Key resources for HIV-positive people who want to adopt a child

The American Civil Liberties Union (ACLU)
HIV/AIDS Project
125 Broad St., 18th Fl.
New York, NY 10004
212.549.2627
Website: aclu.org/hiv-aids

Provides general information to individuals facing discrimination and civil rights issues. Offers legal referrals in discrimination cases.

National Center for Lesbian Rights (NCLR)
870 Market St., Ste. 370
San Francisco, CA 94102
415.392.6257
Website: nclrights.org
Provides direct legal services to LGBT people and their families and does advocacy work to advance and ensure this group's human and civil rights.

American Academy of Adoption Attorneys (AAAA)
P.O. Box 33053
Washington, DC 20033
202.832.2222
Website: adoptionattorneys.org
Provides names of adoption attorneys by state. Access the listing online for individual contact information.

Human Rights Campaign (HRC)
1640 Rhode Island Ave., N.W.
Washington, DC 20036
800. 777.4723
Website: hrc.org
Provides information for connecting to adoption agencies with inclusive policies, offers advice about best practices and has a legal department to handle intake calls and make the appropriate referrals.

The International Council on Infertility Information Dissemination (INCIID)
P.O. Box 6836
Arlington, VA 22206
703.379.9178
Website: inciid.org
Provides information to couples and individuals exploring their family-building options. Connects clients with a network of adoption professionals who provide specific services to people with special needs. (Note: INCIID is pronounced in-side.)
