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What are Dads Made Of?

A Question at the Heart of a Custody Battle

by Jeanne McDowell, Time Magazine

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Joshua Vecchione prides himself on being a devoted and doting father. He is teaching his daughter Briana to use a computer, supervises play dates and reads to her in their home in San Clemente, California. His answering machine message is a booming "Hello, this is Daddy," trailed by the little voice "and Briana." Right off the top of his head, Vecchione knows his daughter's favourite colour (blue), how she likes her corn (scraped off the cob) and her favourite video (The Lion King).

This is a fathering issue, not a transgender issue. I want to co-parent my child.

But in the bitter divorce and custody battle with his estranged wife Kristie, Vecchione's fathering is not at issue. What is, is whether Vecchione is even a man. Twenty years ago, Joshua was Janine Vecchione. Then Janine had a sex change operation at Stanford University Medical Centre. That transformation is at the heart of a legal strategy by his wife's lawyer, Larry Ross, to obtain sole custody of Briana, 3. His argument: Vecchione is really and legally a woman, and therefore the couple's five-year marriage is null, since California law prohibits same-sex marriage. On 11th July a superior court judge in Orange County will decide whether Vecchione has to submit to a blood test to determine if he has a female genetic make-up (two X chromosomes).

Vecchione, 40, hasn't made a secret of his gender transformation. As he was growing up in a close-knit, Italian/American family in Mission Viejo, California. He always felt like a boy living in a girl's body, he recalls. "When I played house, I wanted to be the male figure. I wanted to shave like my brother and wear ties like my father." One revelatory incident was Janine's 1973 crowning as homecoming queen. "I really wanted to be homecoming king", Joshua says.

In 1976 Janine Vecchione began the long process of gender change. She started having hormone injections. She had a hysterectomy and double mastectomy. A penis and testicles were constructed, giving the emerging Joshua a range of sexual function, although he doesn't produce sperm. For almost twenty years, Vecchione has lived happily as a man. He has married twice, each time disclosing his gender change as a matter of trust. "It's very important for a transsexual to be honest and share information", he says. In 1991 he met Kristie, now 27, at a sign-language class, and the two dated for a year before marrying in Laguna Hills where Joshua owned a jewellery store and Kristie was studying to be a teacher. Two and a half years later, Briana was conceived through donor insemination using sperm from Joshua's brother.

When the marriage started unravelling last year, Kristie moved out and the couple informally shared custody of their daughter. Then, like many custody battles, the accusations grew ugly, Joshua insists his gender change was never an issue in the marriage. Kristie recognises that Joshua is a "significant person in Briana's life", but does not want to use the appellation "father" when talking about Joshua. "In reality it was a marriage between two women", says Ross on behalf of Kristie (who declined to be interviewed).

Nowhere in California law does it say a person can elect his or her gender. You may be able to change the outward manifestation, but the law recognises the gender you are born with. Ross's argument has never been tried in California, and only a few times in other parts of the country. In '76, a New Jersey appellate court ordered a man to pay alimony to a transgendered woman he had divorced. He had argued that his wife was really a man. On the other hand, in 1990 a California court denied shared custody to a lesbian whose partner had given birth to a child through donor insemination and who had not taken steps to legally adopt the child.

Meanwhile, the American Civil Liberties Union of Southern California has taken up Vecchione's case, arguing that he is being discriminated against and denied his civil liberties. Says A.C.L.U. staff attorney Taylor Flynn: "No matter how they want to argue, this is based on Joshua's transgender status." Experts predict Kristie Vecchione will have a hard time selling her argument to a judge. She was fully aware of her husband's gender change when she married and had a child with him. "A chromosome might make a difference in the outcome of a sports event", says Grace Blumberg, a specialist in family law at U.C.L.A. "But for the purposes of marriage law and fatherhood, it doesn't matter. California doesn't make marriage turn on one's chromosomes."

The increasingly vocal acrimony worries Joshua Vecchione. When Briana was born, the couple agreed to keep his gender change and the identity of the sperm donor a secret to protect the child. Now Vecchione is concerned about the emotional toll the public disclosure might have on his daughter, and fears Briana's friends might reject her. He says he never intended to become a poster boy for the transgender movement. "This is a fathering issue, not a transgender issue. I want to co-parent my child".

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