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The News Journal
April 19, 2011

Court upholds woman's 'de facto' parental rights

An order by the Delaware Supreme Court appears to have resolved a complicated 7-year-old custody dispute between two women whose same-sex relationship ended 13 months after one of them adopted a child.

The order, issued April 12 and released Monday, denies a request to re-argue the case and leaves standing the court's decision in March to recognize the "de facto" parental rights of the woman who was neither a biological nor adoptive parent. The ruling acknowledges a 2009 change to Delaware law that grants legal status to de facto parents, those who have established a committed level of care and involvement with a child. That law is not specific to same-sex partners but applies to other unmarried partners and stepparents.

The women were assigned pseudonyms by the court. The adoptive mother was "Lynn Smith." Her former partner was "Carol Guest."

The women ended their 10-year relationship in 2004, just over a year after Smith adopted a young girl from Kazakhstan. Court documents say the couple traveled together for the adoption, but Kazakhstan does not allow two women to adopt the same child. Delaware does allow such adoptions, and Guest intended to file those papers later.

After the couple broke up, Guest sued for -- and won -- custody of the child in Family Court, which ruled that she had established sufficient bonds with the child to be a "de facto" parent. Smith appealed and in February 2009 won sole custody when the Supreme Court -- relying on law in place at the time -- overturned the Family Court decision, ruling that Guest had no legal standing as a parent. Only biological or adoptive parents could claim such status in Delaware, the court said.

A few months after that ruling, the General Assembly passed legislation to amend the Delaware Uniform Parentage Act and establish "de facto" parental status. The bill included the intent that

the new law be retroactive even in the case of a previously adverse court decision, and Gov. Jack Markell signed S.B. 84 into law.

The new law took effect in July 2009, and Guest filed another petition for custody in Family Court. She won again and, last month, the Supreme Court upheld the Family Court decision because of the amended law.

The girl is now 9 years old.

"Upholding the legality of de facto parent status will improve the quality of life for children throughout Delaware," Kathleen MacRae, executive director of the Delaware chapter of the American Civil Liberties Union, said in a prepared statement. "It gives all families, especially single parents and same-sex couples, a legal alternative to provide for and protect the well-being of their children."

Richard Morse, who argued the case for the ACLU along with Michael Arrington of Parkowski Guerke & Swayze, said the issue was important to "preserving the rights of children in non-traditional families and ensuring them stable, long-term relationships with the people who raised them."

Efforts to reach Guest were unsuccessful Monday, but Smith said the decision was unconstitutional and part of a larger "gay rights" social agenda.

"Parental rights have been dismantled," Smith said. "It will take a few years for people to realize what it means, but parents don't have the right to care and custody of their children any more. Another individual now has the right to sue you for rights to your children. It's downright scary."

Smith's attorney, Michael P. Kelly, said he was concerned about the future implications of a law that really applied to just one court case -- Smith's.

"I am troubled that the General Assembly can target and undo only one court decision," said Smith's attorney, Michael P. Kelly of McCarter & English. "But I have great respect for our courts in Delaware, especially our Delaware Supreme Court. I try cases in a lot of other states and our courts here are the best in the nation. I am just a dumb Irishman. What do I know?"

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