

# Out in the Mountains

VERMONT'S NEWSPAPER FOR LESBIANS, GAY MEN, AND BISEXUALS

Volume VII, Number 2

March 1992

## The New American Family

### Lesbian Second Parent Adoption Approved in Vermont

(Note: The names of the parties to this adoption have been changed.)

On December 20, 1991, in Addison County Probate Court, legal history was made in Vermont when Judge Chester S. Ketcham approved the first second parent gay/lesbian adoption in the state. The state did not contest the adoption, which came final one month later. There are only a handful of these adoptions in the country, putting Vermont in the forefront on gay/lesbian family law issues. All cases to date involve lesbians. What makes the Vermont case especially significant from a legal standpoint is that Judge Ketcham wrote an opinion which can be used as a legal precedent in future adoptions. This case demonstrated once again the essential fairness of the Vermont judiciary, which decided a case on its merits, rather than on the sexual orientation of the parties involved.

The circumstances of the case are these. A lesbian couple who had been together for more than ten years decided to adopt a child. The adoption agency they contacted was fully aware of the nature of Beth and Laura's relationship when it placed Hannah, who was then about a month old, with them. Since single-parent G/L adoptions are relatively common and second parent adoptions practically unheard of, they were advised to adopt Hannah one at a time. Accordingly, Beth petitioned to adopt the child first.

A home study was undertaken which found Beth to be an excellent potential mother and recommended approval of the adoption. As before, all parties knew about Beth and Laura's relationship. Beth's adoption of Hannah was approved in November 1990.

A month later Beth and Laura went to see Middlebury attorney Susan Murray about Laura's adoption of Hannah. Murray has developed considerable expertise in gay/lesbian family law in Vermont, partly because, as she says, "there aren't a whole lot of attorneys out there who are thinking about the kinds of issues that lesbians and gay men have to think about from a legal standpoint. I've [also] thought about a lot of these issues from my own personal life." Murray's best known G/L family law case is the Collin Hamilton custody case (see the December 1991 issue of *OITM*).

Normally, an adoption takes three to four months to complete. This one took about ten months because of the extensive legal research Susan Murray had to undertake. There is no central repository of information on G/L second parent adoption cases, and finding them took a lot of legwork. The most useful was a Washington, D.C. case from August 1991, because it was the first time a legal opinion was written when the adoption was approved.

Then there was a second home study, this one looking specifically at Laura. It was ordered by the judge and carried out by Vermont Children's Aid, under its contract with the Vermont Department of Social and Rehabilitative Services (SRS). In her report, Ann Clark, the Director of Children's Aid, wrote that she wholeheartedly endorsed the adoption if the court found that Vermont law allowed it.

Throughout the process SRS's position was unclear. It sent letters to Vermont Children's Aid and to the Addison

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### Victory in New York; Rights for Lesbian and Gay Parents

A judge in Manhattan approved the adoption of a 6 year-old boy by the lesbian partner of his biological mother, in the latest in a series of such cases in the past year. The adoption January 30, is the first in New York State. Other cases in Washington, D.C. last fall and here in Vermont this December, all add to the growing list of jurisdictions in which second parent adoptions have been approved.

In a ruling similar to the Vermont decision, Judge Eve Preminger said that, "No provision of New York law requires that the adoptive parent be of any particular gender." "The fact that the petitioners here maintain an open lesbian relationship is not a reason to deny adoption." Addressing the issue of whether a child can be properly raised in a lesbian or gay household, Judge Preminger added: "concern that a child would be disadvantaged by growing up in a single-sex household is not borne out by the professional literature examined by this court."

The court said there is a significant emotional benefit to the child from adoption. "The adoption brings him the additional security conferred by formal recognition in an organized society. As he matures, his connection with two involved, loving parents will not be a relationship seen outside the law."

Lesbian and gay rights advocates hailed the decision, saying the court had extended the legal status of a family to the

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County Probate Court which took the position that G/L second parent adoptions were not permitted under Vermont's adoption law. However, SRS did not attend the hearing in November 1991 and did not file an appeal during the statutory waiting period after the adoption was approved.

In reaching his decision, Judge Ketcham considered four main issues. The first was to determine whether the adoption was in the best interests of the child. All the evidence clearly indicated that it was. According to the opinion, "The Court is fully aware that the love of a child toward adults is not related to the sex of the adult. The evidence is undisputed that the Petitioners have extended their love and care to [Hannah]. [Hannah] has responded to that love. It is in the best interest of [Hannah] to be assured that each of these two people have the same degree of legal relationship to her."

The second concern was what would happen if Beth and Laura ever broke up. The judge concurred with the testimony of the director of a local child care center who said that when a couple separates, it is in the best interests of the child to maintain a relationship with both parents in all cases except where there has been child abuse. If in the future Beth and Laura

separate, they will have to work out a custody arrangement just like any set of divorcing parents.

A third issue concerned Beth's parental rights. Normally in an adoption, the natural parent gives up all claim to the child. Beth isn't Hannah's natural mother, but the question remained whether Laura would gain parental rights at Beth's expense if the adoption were approved. Murray argued that this case most closely resembled a step-parent adoption, in which natural parents do not lose their rights when their new spouse adopts their children. The judge also cited the District of Columbia opinion, which found that the so-called "cut-off" provision does not have to be applied in situations where it is clearly inappropriate. Although Beth is not Hannah's biological mother, Murray feels the issues would have been the same if she were.

And finally the big question: even though the adoption was clearly in the best interests of the child and the collateral issues had been satisfactorily resolved, is the adoption of a child by both members of a gay or lesbian couple legal in Vermont? Vermont adoption law allows "a person or husband and wife together" to adopt a child. When Beth

originally adopted Hannah, she did so as a person under Vermont law. Susan Murray argued that Laura was also a person under Vermont law and, as such, could adopt Hannah, adding that a primary purpose of the husband and wife provision was to ensure that neither spouse could adopt a child without the consent of the other. In effect, she argued that Vermont law permitted the adoption by not specifically prohibiting it, and the judge agreed with this interpretation of the law.

When asked about the importance of this decision Susan Murray says, "There are only two cases now in the entire country that have written opinions in this kind of case, one in Vermont and one in Washington, D.C. So this will be used whenever anybody anywhere wants to make the same kind of arguments. It was well reasoned, it was thorough, which is very rare, and it wasn't based strictly on the facts of this case. He [Judge Ketcham] clearly found that it was in the best interests of this child for this woman to adopt her. But he went further than that. He said in addition, 'I find that Vermont law allows these adoptions.'...So he did go beyond just the facts of this case. And for that it's very helpful."

Although this case isn't as famous as the Hamilton custody case, legally it is much more significant. Asked how she feels about making legal history in Vermont, Susan Murray says, "It always feels good to win a case. And while I've won other kinds of cases, this one felt especially good because gay and lesbian family issues have become important to me."

### Victory

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couple and that it will encourage other lesbian and gay couples to adopt. According to various studies discussed by the court, three to four million lesbian and gay Americans have had children.

In an editorial the following day in the *New York Times*, the couple's lawyer, James Marks of the American Civil Liberties Union, described the case as a, "triumph. recogniz(ing) a functioning family in law as well as in practice." ▼

Join us in celebrating our  
15<sup>th</sup> anniversary as we  
revisit past issues of the  
paper throughout 2001.