

Out in the Mountains

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Hamilton Custody Case Finally Settled

The two and a half year custody battle over three-year old Collin Hamilton has ended. Custody was awarded to Susan Bellemare, surviving partner of Susan Hamilton, Collin's biological mother, in an out of court settlement announced in October. Hamilton's parents, Philip and Elsa Hamilton, retained visitation rights.

This case made headlines in Vermont. Susan Bellemare and Susan Hamilton were partners for 13 years. They owned a house together in Duxbury and worked side by side as surgical intensive care nurses. They wanted a family; Susan Hamilton became pregnant and gave birth to Collin in 1988. In May 1989, they went away for a long weekend at the New Jersey shore. Collin was 14 months old, and it was the first time they had been alone together since his birth. He spent the weekend at his grandparents' house. On May 15, they picked him up and were on their way home when their car was struck by another car on Route 4 in Rutland in an accident that killed Hamilton and seriously injured Bellemare. She was hospitalized for about 12 days, and then spent a month recuperating at her parents' home in Bennington. Collin suffered a broken rib.

Fortunately, Susan Hamilton had left a will, naming Bellemare as Collin's guardian and executrix of her estate. Her parents immediately announced that they would contest the will, because of the guardianship provision. While Bellemare was recovering from her injuries, Collin stayed in New Jersey with the Hamiltons, with the stipulation that they would return him to her when she was on her feet again. Collin returned to Vermont in early July 1989, and he has lived with Bellemare ever since.

About this time Susan Murray entered the picture. As soon as she read about the case in the *Burlington Free Press*, Murray, an attorney in Middlebury, knew

she wanted to be part of it. She has an extensive background in family law, and as a lesbian herself, has a strong professional interest in the legal issues facing gay and lesbian families. She called Bellemare's attorney and offered to help in any way she could. Bellemare had hired the lawyer who had drawn up Hamilton's will. He was the only lawyer she knew. However, as a witness to the will, he would be called upon to testify in court as to its validity. Therefore, he could not also represent her, and had to withdraw from the case. He suggested that Bellemare talk to Murray. This she did, and Susan Murray signed on as Bellemare's attorney.

Thus began a complicated series of legal wranglings, interrupted by long delays, which produced enough paper to fill an entire file cabinet at Murray's law firm, and which ultimately resulted in October's settlement in favor of Bellemare.

First the Hamiltons tried to contest the will in Probate and Superior Courts. However, disagreeing with a will's contents is insufficient grounds to contest it, and their appeal failed. They then filed a motion in Probate Court to have Bellemare removed as guardian, alleging that 1) she was unfit, 2) it wasn't in Collin's best interest for her to be his guardian, and 3) guardianship of Collin was a conflict of interest with her duties as executrix of Hamilton's estate. The last charge was not a serious one, but the first two went to the heart of the issue -- whether Bellemare's sexual orientation would deny her custody of Collin.

Ironically, while this battle was being waged in the press and the legal system, Bellemare and the Hamiltons were resolving some of their disputes privately. They quietly agreed on a regular visitation schedule. About once a month, Bellemare would drive Collin to Bennington, her home town and the halfway



Susan Bellemare

point. The Hamiltons would pick him up there, and he would spend 3-4 days with them in New Jersey. The first visit took place on Labor Day weekend 1989, only four months after the accident. Although Bellemare was nervous, it went off without a hitch. The Hamiltons also called Collin in Vermont, and Bellemare called him when he was in New Jersey.

By November 1990 it looked like pre-trial work was ready to begin, but another delay occurred. Finally in February 1991, the Hamiltons' lawyer approached Murray and suggested that perhaps it was time to settle the case. The negotiations lasted until October 1991 when the settlement was announced. The stipulation spelling out the terms states that the parties recognize that Susan Bellemare has been Collin's primary caregiver, and that she will remain his guardian, trustee of his estate, and executrix of Susan Hamilton's estate. Collin's last name will remain Hamilton. The Hamiltons retain visitation rights, although there is no fixed visitation schedule.

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