

Lesbian & Gay Parents: Some Legal Precautions

One of the reasons Susan Murray and Susan Bellemare were willing to talk publicly about this case is because they want to help lesbian and gay parents avoid similar legal battles. Murray says, "The (legal) framework fits these situations imperfectly, but we should certainly take advantage of the law that is there. I just can't emphasize enough how important it is to get the paperwork in order."

Real protection will come when second parent adoptions are legal. This has happened a few times on the West Coast. The first second parent adoption on the East Coast took place in Washington DC in August 1991. Until this happens in Vermont, Murray recommends that gay and lesbian parents draw up the following types of documents with their lawyers.

1. First and foremost, a will. This is absolutely imperative. Vermont law allows a natural or adoptive parent (the client) to designate a guardian in his/her will. Lesbian and gay parents should include a long and fairly personal paragraph in the will detailing the reasons why the partner has been named guardian. This can be done before the child is born or as soon thereafter as possible. The client should update the will no less than once every three years, reaffirming the guardianship designation and restating the reasons. This provides a paper trail, showing the consistency of the client's wishes over time.

2. A power of attorney, giving the partner equal rights to make decisions for the child vis à vis the outside world: for example, giving permission for the child to participate in school field trips, or making medical decisions on behalf of the child. This document should be given to the school, the doctor, etc., and should be restated every couple of years.

3. An affidavit from the client, stating "This is the person I have chosen to live with. We have chosen to have this child together." It should go on to give the reasons why the client wants this person to be recognized as the child's parent. It is a kind of letter to the world. It should be distributed as widely as the client finds comfortable, and should be kept on file in the lawyer's office as well. "The point is to say it early and often and to as many people as possible, so it's not a surprise."

Hamilton Custody Case Finally Settled

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Murray doesn't know why the Hamiltons gave up. She speculates that they realized 1) that they couldn't win, 2) that the case was going to be a nasty public debate of private issues, and 3) that they really did have access to Collin and a good relationship with him under the existing arrangement. In fact, Bellemare and the Hamiltons are now engaged in the long, slow process of rebuilding a relationship they believe to be in Collin's best interest.

When asked if she's pleased with the outcome, Murray says, "The lawyer in me really wanted this to go all the way and make some law in Vermont. I think that by and large we have a relatively friendly court system on this issue. Judge Cain (the Probate Court judge) was clearly not prejudiced by Susan's sexual orientation. I don't know who the judge would have been in Superior Court, but I could have guaranteed that if we'd continued it and litigated it until the end, the losing party would have appealed to the Supreme Court in Vermont. The Supreme Court in Vermont is a liberal court, and most likely would have made some good law in this area. So I'm sort of sad that I didn't get a chance to do that. But for Susan's sake and for Collin's sake, this is by far the preferable outcome. They can get on with their lives now. She feels that her life has been on hold for two and a half years...There's nothing in the stipula-



Susan Murray

tion that she conceded that she didn't want to concede. There's nothing in the stipulation that she feels uncomfortable with...It feels great to me. It feels like this is the right outcome, this is the way it should be. I'm a lawyer, I'm a litigator, and I suppose by definition, litigators like to argue. But I feel just as good when I can resolve something so that everybody feels like they have won. And I think that in some ways that happened here."

Sage Russell ▼

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