

Lesbian Second Parent Adoption Approved in Vermont

Continued from page 1

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."

See page 4 for Beth and Laura's story.

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