

Out in the Mountains

established in 1986

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To Submit Articles and Letters

We encourage and implore our readers to do what they can to make *OITM* a paper both for and by gay, lesbian, and bisexual Vermonters. Please assist us by typing your articles and letters double-spaced and including your name and phone number in case we have any questions. Your submission should be received by *OITM* no later than the 1st of the previous month. *Thank you* for helping out!

New Mexico Court Reverses National Trend

In a decision that moves away from a reliance on antiquated definitions of functional families and reverses other court rulings, the New Mexico Court of Appeals ruled that a non-biological lesbian mother may be entitled to seek custody or visitation with the child she raised with her former partner of 14 years. This is the first appellate victory in the United States in favor of recognizing a legal relationship between a non-biological lesbian parent and a child conceived through donor insemination. The New Mexico court ruled that a parent "may enter into an agreement with another person concerning the custody of a child," including persons who are not biologically related to the child, and specifically held that "sexual orientation, standing alone, is not a permissible basis for the denial of shared custody or visitation."

The ruling was issued in a custody/visitation dispute between two women who had lived together for fourteen years and shared parental responsibility for their seven-year-old child, who was born by alternative insemination. The non-biological co-parent sued for visitation rights after the biological parent refused contact between her former partner and their child.

The suit initially filed by the non-biological co-parent was withdrawn when the biological mother agreed in settlement negotiations to allow visitation. When that agreement was not honored, the co-parent moved to have her lawsuit reopened, at which point the lower court dismissed her claims, with-

out giving a hearing, ruling that, based on past New Mexico law, a non-biological party could not sue for visitation.

In refuting the lower court ruling, the Court of Appeals noted that "a determination of the best interests of the child must be made on the basis of evidence before the court" and that the lower court "erred in concluding that this type of agreement is unenforceable as a matter of law."

"This brave and rational ruling by the New Mexico Court of Appeals is a tremendous validation of lesbian and gay families," commented Paula Ettlbrick, Lambda Legal Defense Fund Legal Director. "The Court specifically refused to follow other state courts which are stuck in the view that 'family' only takes one form, which does not include lesbians and gay men. We are very hopeful that this case will reverse the trend of decisions that failed to recognize our families."

The Court of Appeals ruling compels the lower court to reopen the non-biological co-parent's case and give her a hearing, at which she can present her facts and evidence of her relationship with the child and the couple's intention that they would both be parents to the child. ▼

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