

LEGAL



BRIEFS

# E.N.O. v. L.M.M.

BY BETH ROBINSON AND SUSAN MURRAY

**K**udos to our very own Mary Bonauto from Gay and Lesbian Advocates and Defenders in Boston, our co-counsel in the marriage case. Mary helped persuade the Massachusetts Supreme Judicial Court to recognize and protect the relationship between a non-biological/non-adoptive lesbian co-parent and the child she helped to raise. The decision represents an important victory for families and children.

The facts of the case are all too familiar. Two women, E.N.O. and L.M.M., shared a committed relationship for 13 years. In 1991, they decided to have a child through donor insemination. They agreed that L.M.M. would carry the child. E.N.O. participated in all of L.M.M.'s medical treatment as they tried to conceive a child and throughout the pregnancy. E.N.O. acted as birthing coach, was acknowledged by everyone at the hospital to be the child's parent, and assumed full and equal parental responsibility for the child. The couple sent out birth announcements naming them both as parents, and the child's last name consisted of both partners' last names. Both before and after the child's birth the parties signed agreements stating their intention to co-parent the child, and their intention that E.N.O. would retain her parental status even if the parties split up.

Throughout most of the child's first three-plus years of life, E.N.O. served as the family's primary breadwinner, supporting the family and helping to care for the child when she wasn't working. For seven months during that period, E.N.O. acted as primary caregiver for the child because L.M.M. was ill. The child called E.N.O. "Mommy," and L.M.M. "Mama," and as he grew, he told people he had two mothers. E.N.O. acted in the capacity of the child's parent in all aspects of his life, and both parents at all times referred to both mothers as the child's parents.

In the fall of 1997, the family

moved from Maryland to Massachusetts. Several months later, E.N.O. began exploring the possibility of a second-parent adoption (which is allowed in Massachusetts like it is in Vermont). About that time, the relationship deteriorated and the couple separated. Then, ignoring the fact that they had for many years presented themselves as a

ing to have children. It is to be expected that children of nontraditional families, like other children, form parent relationships with both parents, whether those parents are legal or de facto."

Back home in Vermont, the law isn't so promising. In a similar case several years ago, the Vermont Supreme Court backed the biological mother's position, noting that

*The Massachusetts Supreme Court concluded that courts have the power to authorize visitation in the best interests of a child between a non-biological (and non-adoptive) parent and the child.*

family to one another and the outside world, L.M.M. "pulled rank" as the only legally recognized parent, and she cut off all contact between the child and her "Mommy," E.N.O.

E.N.O. went to court, asking for visitation with the son she had helped to raise.

The Massachusetts Supreme Court concluded that courts have the power to authorize visitation in the best interests of a child between a non-biological (and non-adoptive) parent and the child. Even though E.N.O. was not a "legal" parent to the child, the court acknowledged that she was a "de facto" parent.

The court explained, "The recognition of de facto parents is in accord with notions of the modern family. An increasing number of same gender couples . . . are decid-

the partners could have pursued a second-parent adoption to protect the non-biological mother's rights. Although we believe that a more recent change in the laws by the legislature should lead to a different result in such cases, the only way to protect the relationship between a non-biological parent and child with any certainty is through the adoption process. ▼

*Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.*

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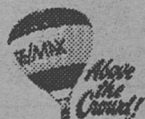
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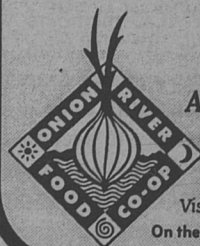
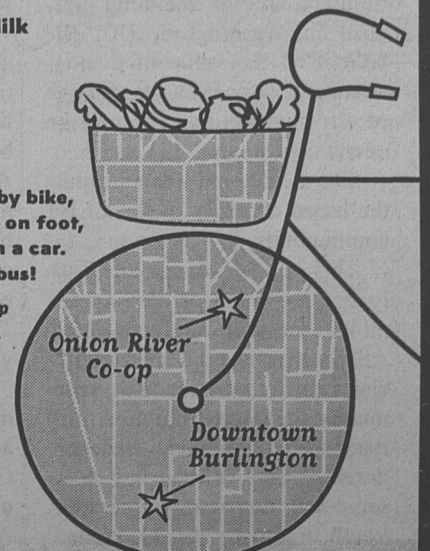
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