

Marriage Law Digest

Volume 4, Number 10

Marriage Law Foundation

October 2007

M.M. V. E.T.

16 Misc3d 1136(A)

**New York Family Court, Rockland County
September 11, 2007**

A mother in a same-sex relationship gave birth to a child through artificial insemination. The couple broke up shortly after the birth of the child. The mother then sought child support from the former partner alleging an agreement to do so.

The court first noted that a “former same-sex partner who is neither an adoptive nor biological parent of the subject child has no standing to seek custody or visitation, and cannot rely upon the doctrine of equitable estoppel to establish her status as a de facto parent of a child to which she is a biological stranger.” The court, however, said that since other cases have held “that a ‘parent’ does not necessarily have to have a biological link to the child in order to be liable for child support” the case should not be dismissed.

The court concluded that to “automatically relieve an individual from any duty of furnishing support for a child resulting from artificial insemination of her same-sex partner, to which insemination the same-sex partner submitted in reliance upon certain promises, could be against the best interests of the child as well as cast a financial burden upon the biological parent which in equity and conscience should be shared.” Thus, the court ordered a trial to determine whether an agreement between the parties existed.

NGUON V. WOLF

Case No: SACV 05-868 JVS(MLGx)

**U.S. District Court, Central District of
California**

September 25, 2007

A school had a policy prohibiting “Inappropriate Public Displays of Affection” (IPDA). The female plaintiff and another girl were warned after being subject to a complaint of violating this policy. Five or more episodes of IPDA followed. After the sixth incident, the principal suspended the students and explained the reason for the suspension (including the gender of the partner) to plaintiff’s mother. The plaintiff sued alleging violation of various constitutional rights.

The court concluded that the school officials disciplined opposite-sex as well as same-sex couples for IPDA and that the principal’s “sole motivation here was maintaining discipline and a proper school environment” not sexual orientation discrimination. Thus, there was no equal protection violation.

In regards to plaintiff’s First Amendment claim, the court said the “school did not prohibit all forms of affection which might display not merely one’s affection but one’s sexual orientation as well” so “it cannot be said that the school sought to eradicate expressions of sexuality, or even expressions of gay sexuality.” The court also said IPDA can disrupt a school environment so prohibiting it was not unreasonable.

Finally, the court held that in telling the

mother that plaintiff had kissed another girl, the principal had revealed plaintiff's sexual orientation. The court believed plaintiff had a privacy interest in not having that orientation disclosed at home but the principal had a statutory duty to explain the suspension to plaintiff's mother, including giving some context. So, the principal had not inappropriately infringed her privacy.

LOUDERMILK V. ARPAIO

No. CV 06-0636-PHX-EHC

U.S. District Court, District of Arizona

September 27, 2007

http://www.hsllda.org/hs/state/az/Loudermilk_9-28-07.pdf

Acting on an anonymous tip, sheriff's deputies and state social worker sought to search a home and threatened to remove children and arrest the parents when their request for a search was refused. The family eventually allowed the search which resulted in a finding of no abuse or neglect. The family then sued alleging an illegal search that violated the Fourth and Fourteenth Amendments to the U.S. Constitution.

The court noted the Constitution generally requires a warrant for a search. While consent can vitiate this requirement, here plaintiffs allege the consent only came after threats of removal of the children, arrest and other coercion. If this is true, it would establish a Fourteenth Amendment claim. The court found the facts as described by the plaintiffs suggest there was "no necessity allowing the children's removal without a warrant." If these charges are true "no reasonable official would have believed that his or her conduct was authorized by state or constitutional law." The court thus allowed the case to proceed to a trial.

STRONG V. STATE BOARD OF

EQUALIZATION

C052818

California Court of Appeals, Third District

October 2, 2007

<http://www.courtinfo.ca.gov/opinions/documents/C052818.PDF>

The California state constitution was amended to constitutionalize legislation exempting interspousal transfers of property from re-valuation for property tax purposes. In 2005, the legislature enacted a law based on a Board of Equalization rule, giving to domestic partners the same exemption as spouses given by the constitution to spouses. California assessors challenged the Board rule and legislation. The plaintiffs argued that the Board and legislature acted without statutory or constitutional authority in creating the domestic partner exemption since, they believed, such a change should have been made to the constitution itself.

The court concluded that the exclusion for domestic partners "is not palpably arbitrary and is supported by a rational basis." This basis was the legislature's intent (in its own words) "to guarantee equality for all Californians, regardless of gender or sexual orientation, and to further the state's interests in protecting Californians from the potentially severe economic and social consequences of abandonment, separation, the death of a partner, and other life crises."

The assessors had argued that the exclusion was "an impermissible end run" around the constitutional amendment that granted an exclusion only to married couples, but the court believed the amendment did not change the legislature's power to exclude transfers from property tax re-valuation, particularly since that amendment did not include "limiting language." Thus, changes to the property tax law need not come by constitutional amendment.

LEY 100 DE 1993
Sentencia C-811/07
Colombia Constitutional Court
October 3, 2007

http://www.colombiadiversa.org/images/stories/comunicado_corte.jpg

The court was asked if a statute mandating health coverage for family members, defined by statute to include spouses and cohabitants extended to same-sex couples.

The court found that it did, holding that the country's constitution prohibited discrimination on the basis of sexual preference. To provide benefits to opposite-sex cohabitants but not to same-sex cohabitants, the court believed, would violate principles of human dignity and equality. The court also said that same-sex cohabitants need not live together for two years to establish eligibility if they could get a judge or notary to certify they were bona fide cohabitants.

One judge dissented, arguing against the lifting of the two-year cohabitation requirement and the coverage of same-sex cohabitants on the grounds that it created an undue financial burden to the government.¹

WESTPROP CORP. V. SMYTHE
2007 WL 2915597
New York City Civil Court
October 3, 2007

Two men lived together in their apartment during and after a romantic relationship. One of the men, in whose name the apartment was rented, suddenly disappeared and the apartment owner sought to evict the remaining partner.

¹Translation assistance was provided by Gabriel Gonzalez.

The court found "based upon all the credible documentary and testimonial evidence adduced at trial, that respondent's relationship with Mr. Smythe does satisfy the criteria set forth of 'emotional and financial commitment and interdependence' that would indicate a "nontraditional family" entitled to succession in an apartment.

QUINTERO-SALAZAR V. KEISLER
No. 04-73128
U.S. Court of Appeals, Ninth Circuit
October 9, 2007

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3001EB2A402087478825736F005257D9/\\$file/0473128.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3001EB2A402087478825736F005257D9/$file/0473128.pdf?openelement)

A lawful permanent resident of the United States and citizen of Mexico pleaded no contest to engaging in sexual intercourse with a minor under sixteen years old. On returning from a visit to Mexico, he was detained and removal proceedings began alleging he had "been convicted of a crime involving moral turpitude."

The court said a crime of moral turpitude must be "vile, base or depraved," violate "societal moral standards" and "be done willfully or with evil intent." Typically, the court said, an act that "is only statutorily prohibited, rather than inherently wrong" it will not be a crime of moral turpitude.

Here, the charging statute could include "consensual intercourse between a 21-year-old (possibly a college sophomore) and a minor who is 15 years 11 months (possibly a high school junior" which the court believed "may be unwise and socially unacceptable to many, but it is not 'inherently base, vile, or depraved.'" The court further said that the act would not be criminal if the parties were married, the statute's purpose "was not moral, so much as pragmatic—they were

attempting to reduce teenage pregnancies” and the statute did not require “willfulness of evil intent” in order to support conviction.

The dissent noted that the Ninth Circuit has held statutory rape to be a crime of moral turpitude in a number of cases.

BRINKLEY V. BRINKLEY
No. 269725
Michigan Court of Appeals
October 16, 2007

http://courtofappeals.mjud.net/DOCUMENTS/OPINIONS/FINAL/COA/20071016_C269725_78_269725.OPN.PDF

After divorce, both parents denied the maternal grandparents visitation with their children. The grandparents sued, alleging the statute that allowed them to be excluded from visitation is unconstitutional.

Their first claim was that the statute “denies them their substantive due process right to maintain a family relationship that is in their grandchildren’s best interests.” The court rejected this claim because it held precedent “does not support the notion that appellants have a fundamental right to visitation with their grandchildren without parental consent.” The court also held the statute was “rationally related to the legitimate goal of protecting and encouraging the grandparent-grandchild relationship without infringing on the parents’ fundamental right to manage the upbringing of their children.” The court said “court intrusion into parent-child matters is only justified when the parents are in opposition to each other, such as in a custody dispute, or where the parents are unfit.” The court thus rejected the grandparents’ claims.