

LESBIAN COUPLE ALLOWED TO ADOPT

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In a landmark decision yesterday, the Supreme Judicial Court ruled 4 to 3 that state law allows a lesbian woman to adopt her partner's biological child and become a co-parent. The decision came in two test cases, one brought by two lawyers and the other by two doctors, including nationally recognized breast cancer specialist Dr. Susan Love. In Love's case, the SJC approved a 1992 Middlesex Probate and Family Court judge's decision permitting Love's partner, Helen Cooksey, also a physician and surgeon, to adopt Love's biological daughter, now 5.

In the second case, the SJC ruled that lawyers Ellen Wade and Maureen Brodoff are entitled to a hearing on their petition to allow Wade to adopt the 4 1/2-year-old girl Brodoff gave birth to.

"Like everyone else, gays and lesbians who happen to be parents are very concerned with their children," said Brodoff, whose joint adoption petition with Wade was not allowed to be filed in Suffolk Probate and Family Court before yesterday's rulings. Allowing adoptions by same-sex partners "afford children many, many benefits. How could one not be excited?"

The high court ruling makes Massachusetts the second state, after Vermont, to have a binding decision, which lower court judges must follow, allowing a lesbian woman to adopt her partner's biological child, without requiring the partner to give up her legal parental status.

Justice John M. Greaney, author of the majority opinion, noted that while laws in states such as Florida and New Hampshire include specific language barring adoptions by gays and lesbians, "there is nothing in [Massachusetts law] that prohibits adoptions based on gender or sexual orientation. Nor is homosexuality a bar to custody."

"Is this a sweeping endorsement of homosexual relationships? No. It's simply saying it should be treated like any other situation. It would still have to be decided on a case-by-case basis whether an adoption would be in the best interests of the child," said Elaine Epstein, a family law practitioner and immediate past president of the Massachusetts Bar Association.

Word of the decision swept quickly through the gay and lesbian community, which had been anxiously awaiting the outcome of the two cases, especially in the wake of a decision by a Virginia judge earlier this month deeming a woman to be an unfit mother for her biological son because she is a lesbian.

"Our switchboard is ringing off the wall from people wanting to know what the decision means for them," said Michele Frost, a spokeswoman for the Fenway Community Health Center. "This is a victory for the gay and lesbian family."

A central issue in the cases was whether the state's 1851 adoption laws allowed unmarried cohabitants to be recognized legally as the parents of a child. The majority of SJC justices decided it does.

"While the Legislature may not have envisioned adoption by same-sex partners, there is no indication that it attempted to define all possible categories of persons leading to adoption in the best interests of children," Greaney wrote.

Greaney noted that the courts have allowed children to be adopted into nontraditional family settings, including a 1944 Massachusetts case that permitted two orphaned boys to be raised by their dead mother's aunt and two cousins.

But Justices Neil Lynch and Francis O'Connor dissented, writing that even though Love and Cooksey "have provided the child with a healthy, happy, stable family unit," state laws permit only married couples and single individuals to adopt.

By concluding otherwise, Lynch and O'Connor wrote, the majority was "invading the prerogatives of the

Legislature and giving legal status to a relationship by judicial fiat that our elected representatives and the general public have, as yet, failed to endorse."

Lynch and O'Connor wrote that they favored an alternative solution, where Cooksey would become the adoptive parent of the child. Love, the biological parent, would be given post-adoption custody and visitation, an arrangement that the couple's lawyer, Katherine Triantifillou said would in effect unacceptably diminish Love's legal parental status.

Justice Joseph Nolan joined in the dissent, but indicated that, unlike Lynch and O'Connor, he disapproved of the homosexual lifestyle.

Greaney noted, "Adoption will not result in any tangible change in [the child's] daily life; it will, however, serve to provide her with a significant legal relationship which may be important in her future."

Specifically, Greaney wrote, the child will be entitled as a result of the adoption to inherit from three trust funds set up by Cooksey's family, be eligible for coverage under Cooksey's health insurance policies and continued support from Cooksey should the couple later separate.

In addition, the adoption prevents the possibility of a prolonged custody battle should the child's biological mother die. If Cooksey died, the child could receive Social Security benefits and inherit from her if there is no will.

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