

Marriage Law Digest

Volume 4, Number 5

Marriage Law Foundation

May 2007

BACZKOWSKI V. POLAND

Application No. 1543/06

European Court of Human Rights

May 3, 2007

<http://cmiskp.echr.coe.int/tkp197/viewhbk.m.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=62205&sessionId=817622&skin=hudoc-en&attachment=true>

The mayor of Warsaw refused a permit for a gay rights march in 2005. Even though the proposed assemblies were eventually held the court found that “the applicants were negatively affected by the refusals to authorise them.” The court held that states have a positive duty to foster freedom of association. The court specifically noted “the strong personal opinions publicly expressed by the Mayor” and concluded that the expression of these opinions “impinged on the applicants’ right to freedom of assembly in a discriminatory manner.”

IN THE MATTER OF R.L.C.

No. 531A06

Supreme Court of North Carolina

May 4, 2007

<http://www.aoc.state.nc.us/www/public/sc/opinions/2007/pdf/531-06-1.pdf>

A juvenile was adjudicated delinquent for violating the “crime against nature” statute when he engaged in sodomy with a 12 year old girl (he was 14 at the time).

On appeal, the delinquent argued that the statute should be construed to apply only when there is a significant age differential between the parties because other sexual

offense statutes contain such differentials. The court said that if the sodomy statute contained an age differential requirement it would be redundant since it would duplicate the crimes covered in the other sexual offense statutes. The court thus refused to add an age differential requirement.

The delinquent also claimed the statute was unconstitutional. The court first distinguished *Lawrence v. Texas* because *Lawrence* involved only adult privacy. The court also held that there were legitimate interests served by the statute: (1) “promoting proper notions of morality among out State’s youth,” (2) protecting youth from medical consequences of sexual conduct and (3) protecting youth from the psychological consequences of sexual conduct between minors.

The dissent said that not requiring an age differential in the sodomy statute creates unfairness and an absurd result.

IN THE MATTER OF SOOHOO

A05-537

Minnesota Supreme Court

May 10, 2007

<http://www.courts.state.mn.us/opinions/sc/current/OPA050537-0510.htm>

After a trial court granted child visitation to a former partner of the children’s adoptive mother, the mother challenged the constitutionality of the statute allowing visitation awards to third parties over the objection of legal parents as long as the third party had lived with the child for at least

two years.

The supreme court said it would apply strict scrutiny to the statute but concluded that the state “in its role as *parens patriae*, has a compelling interest in promoting relationships among those in recognized family units . . . in order to protect the general welfare of children.” Because the statute requires that “the petitioner stand in *loco parentis* with the child” and the petitioner must have lived with the child for two years “and have a parent-child relationship with the child” it is narrowly drawn to advance the state interest.

Although the portion of the statute placing the burden of proof on the parent to prove third party unfitness is unconstitutional, the trial court would have found in favor of the partner regardless of the burden of proof.

Finally, the court held there was no evidentiary hearing required because the court had affidavits from parties and other testimony and resources.

One judge concurred in the decision, saying that an award to a third party that parallels visitation to a non-custodial parent would usually be problematic (especially the alternate holiday arrangement) but was justified in this case.

**IN RE N.M.
No. 24946-8-III**

**Court of Appeals of Washington
May 10, 2007**

<http://www.courts.wa.gov/opinions/pdf/249468.unp.doc.pdf>

When their foster child was placed for adoption, foster parents tried to intervene but were denied by the trial court. The foster parents argued that they had standing as psychological or *de facto* parents but the

appeals court held that foster parents have no constitutionally protected interest in ties with the child and found the trial court had properly used the best interest of the child standard in rejecting intervention.

IN RE ROBERT D.B

No. 110

Maryland Court of Appeals

May 16, 2007

<http://www.courts.state.md.us/opinions/coa/2007/110a02.pdf>

An unmarried man fertilized eggs provided by a donor and the carrier of the fertilized embryos delivered twins. On the birth certificate, the “gestational carrier” was listed as the mother. The father and the carrier both sought to have the carrier’s name removed and the trial court refused.

On appeal, the father said Maryland, “parentage statutes allow a man to deny paternity, and do not, currently, allow a woman to deny paternity [so] these statutes, unless interpreted differently are subject to an E.R.A. challenge.” In other words, a man can deny paternity by showing a lack of genetic connection but a woman who carries a baby to whom she is genetically unrelated cannot. The court said that the Maryland E.R.A. “forbids the granting of more rights to one sex than to the other” so the paternity statute has to be interpreted as gender neutral. Thus, the trial court can order a birth certificate with only a father’s name. The court further held that since there’s no dispute between the parties, there was no need for a best interests of the child analysis.

A strong dissent characterized the childbirth this case as a “manufacturing process” and the decision of the majority as resulting in the child having “no mother at birth.” He notes that the decision could result in a situation where a child has neither father

nor mother at birth. He distinguished a typical paternity challenge because in such a case the challenging man is not asserting that a child has no father, only that he is not the father himself. Here, the dissent argues, the majority has allowed for a denial of all maternity. He also argues that this precedent could lead to situations in which both parents could disclaim responsibility for a child by contract (since mothers can now do so and men must be treated the same as women). The dissent claims that it “defies common sense and all principles of logic” to argue that the people of Maryland intended to endorse a situation where a child would have no mother when they approved the state E.R.A. The dissent concluded that the court should have deferred to the legislature on this matter.

A second dissent argued that the court shouldn’t have ruled because there were no adverse parties in the case. This dissent believed the majority should have remanded for an analysis of the best interests of the child.

**DEXTER V. DEXTER
2007-Ohio-2568**

**Ohio Court of Appeals, Eleventh District
May 25, 2007**

<http://www.sconet.state.oh.us/rod/newpdf/11/2007/2007-ohio-2568.pdf>

After divorce, the father sought change in the child custody award. The trial court granted the change and the mother appealed arguing that the court had inappropriately considered “her lifestyle choices, religion and sexual orientation” in making its decision.

The appeals court found that the trial court appropriately considered all relevant factors and consideration of these is not per se unreasonable. The court noted blog posts by

the mother indicating she had and would continue to use drugs including when children were in the home and would engage in sado-masochism. So, to this court, the trial judge correctly found that the child’s “best interests could be adversely affected by this lifestyle.”