

Marriage Law Digest

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MARKS V. KAHLOR

2006 WL 3114248

Maryland Court of Special Appeals

November 3, 2006

A child was adopted by a woman in a same-sex relationship. Four years later, the couple broke up and the adoptive mother limited her former partner's contact with the child. The ex-partner of the mother sought a visitation order. The court outlined the test for de facto parenthood: (1) the legal parent consents to the third party's relationship with the child, (2) the third party lived with the child, (3) the third party performs parental functions, and (4) a parent-child bond is formed. The court affirmed the trial court's finding that the partner was a de facto parent. It also held that *Troxel v. Granville* did not modify the de facto parent doctrine so visitation is appropriate here. The court found that the adoptive parent properly awarded custody because the legal parent should receive custody except when unfit.

COMMUNITY HOUSE V. CITY OF BOISE

No. 05-36195

U.S. Court of Appeals for the Ninth Circuit

November 9, 2006

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/0D7A8B3C1A68E5538825722100018A28/\\$file/0536195.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/0D7A8B3C1A68E5538825722100018A28/$file/0536195.pdf?openelement)

A city leased a homeless shelter to a religious organization that transformed the shelter into a men-only facility and provided religious component to its services. The district court enjoined the practice of requiring facility residents to

attend religious meetings but refused to enjoin the removal of women and children from the shelter and the holding of religious services. On appeal, the panel held that the men-only policy was facially discriminatory under the Fair Housing Act because it treats women and families different from men.

The court rejected the city's justification for the policy, (1) ensuring the safety of women and children, and (2) allowing women and children to be placed in a better facility, as not being supported by sufficient evidence. Thus, the court held the removal of women and children should have been enjoined. The court also held that the organization's religious services constitute religious indoctrination and the city's lease constitutes "aid" of the indoctrination from the city. Thus, the practice violated the First Amendment.

The dissent was more accepting of the city's justifications for the policy and would have remanded for a factual determination. The dissent argued that even of these organizations services constitute indoctrination, there was no evidence that the city is "aiding" it by leasing the facility to the organization.

NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH

ASSOCIATION V. GONZALES

No. 05-5406

U.S. Court of Appeals for the D.C. Circuit

November 14, 2006

<http://pacer.cadc.uscourts.gov/docs/commo n/opinions/200611/05-5406a.pdf>

Trade organization challenged law

prohibiting recipients of federal funds from discriminating against those who refuse to refer for or provide abortions based on a number of federal constitutional claims (the Weldon Amendment). The trial court found in favor of the government.

Plaintiffs had claimed standing because their members (recipients of government grants) are uncertain about their obligations under the Act. Although previous law contained a similar provision no resulting problems have been raised by grant recipients. The court held that plaintiffs could ask the Department of Health and Human Services to clarify their responsibility under the Act but have not done so; thus the injury they claim (uncertainty) is self-inflicted.

IN THE INTEREST OF C.E.K. & C.D.K.
No. 05-05-00683
Texas Court of Appeals, Fifth District
November 14, 2006

http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?c05_07.ask+D+2040932

Children were removed from their parents because of parental misconduct. Child Protective Services required the mother to meet specific requirements for reunification (that she fulfilled) but later moved for termination of her parental rights. The trial court granted the termination based partly on a CASA volunteer's testimony that the mother lacked parenting skills as evidenced by various small episodes (once the volunteer saw one of the children drop food on the floor and then pick it up and eat it, the mother let her children play with her cell phone, the children's mattress and box springs were on the floor, etc.).

The appeals court held that "[a]lthough such behavior may reasonably suggest that a child would be better off with a new family,

the best interest standard does not permit termination merely because a child might be better off living elsewhere. This case is not one where Mother's offending behavior, on its own, is egregious enough to warrant a finding that termination is in the children's best interest. The court noted that although mother's past behavior was inappropriate, she has met CPS's requirements and "[t]he best interest standard does not permit termination merely because a child might be better off living elsewhere. Termination should not be used to merely reallocate children to better or more prosperous parents."

OVADAL V. CITY OF MADISON
No. 05-4723
U.S. Court of Appeals for the Seventh Circuit

November 20, 2006

http://www.ca7.uscourts.gov/fdocs/docs.fwx?submit=showbr&shofile=05-4723_012.pdf

A citizen who organized a small protest against homosexuality on a freeway overpass was forced by police who feared a traffic hazard, to move to another location. This action was later codified by a city regulation banning protests on freeway overpasses. The court held that the plaintiff was not singled out for the content of his message so there was no First Amendment deprivation.

BRINKMAN V. MIAMI UNIVERSITY
Case No. CV 2005-11-3736
Ohio Court of Common Pleas
November 20, 2006

<http://www.telladf.org/UserDocs/BrinkmanDecision.pdf>

Taxpayer challenged state university's domestic partner benefits policy relying on the state marriage amendment. The court held that to have standing to challenge the

policy, the plaintiff must be shown to have "been damaged individually." Here, plaintiff had shown no specific injury and taxpaying is not enough by itself.

GORY V. NO
Case CCT 28/06
Constitutional Court of South Africa
November 23, 2006

<http://www.constitutionalcourt.org.za/uhtbin/hyperion-image/J-CCT28-06>

In a dispute between the parents and same-sex partner of a decedent, the trial court decided that South Africa's intestate succession statute is unconstitutional because it allows a spouse but not same-sex partner to inherit without a will.

The Constitutional Court held that failure to include same-sex partners in the intestate succession law is sexual orientation discrimination that violates the constitution. The court found that even though Parliament was responding to the court's earlier mandate to provide marriage benefits to same-sex partners, this would benefit only those who would avail themselves of the new law in the future, not the deceased. Thus, the court "read in" to the statute the words "or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support" after the current's statute's term "spouse."

MILLER-JENKINS V. MILLER-JENKINS
No. 2654-04-4
Virginia Court of Appeals
November 28, 2006

<http://www.courts.state.va.us/opinions/opncavwp/2654044.pdf>

A same-sex couple, one of whom bore a child as the result of artificial insemination, moved to Vermont where their relationship ended after they had contracted a civil

union. The mother filed for dissolution of the civil union and listed her child as a child of the union. The Vermont trial court ordered visitation for the partner. The mother subsequently filed an action in a Virginia court seeking to be declared the sole legal parent and the Virginia court asserted jurisdiction. The Vermont court refused to give full faith and credit to the Virginia decision because it believed Vermont had jurisdiction.

The Virginia court of appeals held that under the federal Parental Kidnaping Prevention Act, the Vermont court had jurisdiction since its proceedings were pending when the Virginia petition was filed. The court rejected the mother's argument that the Vermont order was invalid because the Vermont court had not first determined the partner to be a parent under Vermont law since this argument had been rejected by the Vermont supreme court and the mother had alleged in the Vermont filing that the partner was a "parent." The court also held that the federal Defense of Marriage Act does not affect the PKPA and does not apply in this dispute because allowing Vermont jurisdiction over the dispute does not require Virginia to recognize a Vermont civil union. Since the mother subjected herself to Vermont jurisdiction, the PKPA prevents Virginia for asserting jurisdiction.