

Same-Sex Custody Battle Ends With Parental Rights Victory

In a victory for parental rights, the Supreme Court of Ohio on Tuesday ruled that a woman who allowed her same-sex partner to coparent her biological child did not permanently give up her right to exclusive custody.

The Supreme Court ruling upheld two lower court decisions that Kelly Mullen, who allowed Michelle Hobbs to help her raise her biological daughter while they were in a relationship, retains full custody rights.

Recognizing the need to protect the biological mom's constructional rights to raise her child, the court ruled, "'Coparenting' is not synonymous with an agreement by the biological parent to permanently relinquish sole custody in favor of shared legal parenting."

The ruling is significant because it limits the claims of third parties to gain custody over children to whom they are not related biologically or by adoption.

"This is a great victory for parental rights," says Mathew D. Staver, founder of Liberty Counsel and dean of Liberty University School of Law. "A person who is neither the biological parent nor an adoptive parent cannot be a de facto parent by merely alleging an emotional bond to the child." Liberty Counsel filed an amicus brief in support of Mullen's parental rights.

Here's the back story: Mullen and Hobbs lived together for several years in a house. In 2003 Mullen decided to have a child through in vitro fertilization. She gave birth to a daughter in 2005. Hobbs was listed as Mullen's "partner" on the medical documents related to the pregnancy and birth.

After the partners separated in 2007, Mullen decided to not permit Hobbs to have any contact with her child. Hobbs responded by filing for legal custody of Mullen's daughter.

Although Hobbs had no legal basis for custody of the child, Hamilton County Juvenile Court decided that Hobbs should be granted custody, because she acted like a parent and was listed as a "coparent" in a few documents. That ruling was reversed by Juvenile Court Judge Thomas Lipps because "The most important factor in the determination of whether the mother's words, actions and deeds amounted to a contractual relinquishment of some of her custodial rights was her consistent refusal to enter into a shared custody agreement."