



SEXUAL LAW REPORTER

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Child custody dilemma: sexual lifestyle vs. a child's best interests

One of the most disturbing areas in the field of sexual law is child custody, with the key phrase, "the best interests of the child," all too often suffering - along with the children and their parents - at the expense of the moral indignation of the judiciary.

The way judges focus on the sexual lifestyle of loving and concerned parents and dismiss "the best interests" of children is grist for tragic dramas as painful as the great Greek tragedies that have exposed in piercing images the frailties of humankind for more than 2000 years.

When the Oklahoma Court of Appeals rejected a mother's custody plea for her three-year-old boy because the mother continued to have sexual relations with a man who had been her lover since shortly after her divorce, the judges didn't mince words:

"... this does not agree with the Court's concept of moral conduct," it said in *Brim v. Brim*, 532 P.2d 1403 (Jan. 1975).

In California, a lesbian fought for more than a year a court order taking away her two daughters. She lost in the Court of Appeal (*Frye v. Chaffin*, 45 C.A.3d 39) and took her case all the way to the California Supreme Court, which refused in May to hear the case, while her children, living with the coldness and bitterness of their grandparents, ran away.

Fortunately for her, a move for a modification in the original custody order succeeded, and a new lower court judge gave the children, 15 and 13, back to their mother.

(See Vol. 1 #1 of the SLR for details of this case through the Court of Appeal ruling.)

Cases such as these, unfortunately, are not the exception. That is why a child custody decision by a Minnesota judge (*Torrance v. Torrance*, DC 646333) stands out so strikingly. The judge is Suzanne C. Sedgwick, the first woman appointed (last year) to a District Court seat (the Fourth Judicial District) in Minnesota history.

In awarding custody (April, 1975) of two boys, 11 and 9, to their father, who had been living unmarried to a woman to the disapproval of the children's mother, Judge Sedgwick wrote a Memorandum of Fact directed at the State Supreme Court in case the mother appeals the decision.

"... there is an increasing number of cases where one, and sometimes both, parties are living with a boyfriend or girlfriend without marriage, and the question frequently is what emphasis the court should place on marriage or non-marriage of the custodial parent(s).

"Two sometimes separate factors which must be acknowledged are the motivation, religious or otherwise, of the parents and the quality of a relationship from the vantage point of the children.

"This court does not believe it is necessary to either condemn or condone any relationship, but it is necessary that

the Court assess the quality of the relationship between the adults as it affects the child. Some marriages are not stable environments in which to raise children, and some informal relationships are very stable and can provide the emotional, psychological and physical security necessary to raising children."

In this case, where the two boys had been with the father for six years until the mother objected to his sexual lifestyle, Judge Sedgwick found the father "has provided a stable environment and his liaison with his fiancee appears to have a positive, rather than negative, effect on the boys."

In her Memorandum of Fact, Judge Sedgwick comments on the Oklahoma custody case mentioned above, *Brim v. Brim*, in which a three-year-old boy was taken from his mother because she slept in the same bed with a man not her husband three to five nights a week.

That court argued that the mother's sexual lifestyle "does not agree with the Court's concept of moral conduct," to which Judge Sedgwick replied:

"Although the Court considered at length the fact that the adult majority considers the conduct of the woman to be wrong, it did not consider the effect on the child of depriving it of the only single continuous relationship it had with an adult by removing him from his mother."

In the California case of lesbian mother Linda Mae Chaffin her homosexuality appeared to be the major reason for the court order depriving her of her children, even though a probation officer found she had been a fit mother and the children, 15 and 13, wished to remain with her.

"The fact that in certain respects enforcement of the criminal law against the private commission of homosexual

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