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Rights and Responsibilities

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Pennsylvania court finds lesbian co-parent liable for child support

By ARTHUR S. LEONARD | In a unanimous decision establishing that the responsibility to pay child support goes along with the right to custody and visitation, a Pennsylvania appellate court ruled that a lesbian co-parent must make regular child support payments to her former partner, who now lives in California. The ruling from a three-judge panel of the Superior Court of Pennsylvania, which refers to the women only by their initials in order to protect their children's confidentiality, was issued on December 17. Disputes between former partners, L.S.K. and H.A.N., have been in the news before, like when the court awarded H.A.N. the right to partial custody and extended visitation with the five children borne by her former partner through donor insemination. The new decision is a logical extension of the previous one. The two women lived together as a couple from the mid-1980s until 1997. L.S.K. conceived a child through donor insemination in 1990, with H.A.N. participating in the planning, attending at the birth, and taking care of the newborn when the biological mother returned to her job. The couple intended for H.A.N. to bear the next child, but she could not conceive due to medical problems, and ultimately L.S.K. was again inseminated and bore quadruplets. H.A.N. served as the primary caregiver until the couple broke up and L.S.K. moved with the children to California to accept a job transfer. Co-parent adoption was not then available to gay or lesbian couples in Pennsylvania and H.A.N. never adopted any of the children. When H.A.N. filed suit for custody and visitation rights, L.S.K. responded with a counter-suit seeking child support. After the trial court awarded partial custody and visitation rights to H.A.N., it determined that it was only fair to require H.A.N. to contribute to the support of the children, a decision with which the Superior Court concurred. In making their rulings, the courts relied on the legal doctrine of "equitable estoppel," which bars a party to a lawsuit from taking a position or asserting a right to the disadvantage of another party which is inconsistent with a position previously taken. In other words, since H.A.N. sought to assert rights as a parent to custody and visitation, she could not then deny the parental obligation to support the children. "Although statutory law does not create a legal relationship, applying equitable principles we find that in order to protect the best interest of the children involved, both parties are to be responsible for the emotional and financial needs of the children," the court found. "We recognize this is a matter which is better addressed by the legislature than the courts," wrote Judge Orie Melvin. "However, in the absence of legislative mandates, the courts must construct a fair, workable, and responsible basis for the protection of children, aside from whatever rights the adults may have vis a vis each other." The court also rejected H.A.N.'s argument that since she was not a legal parent, the official state guidelines on child support should not apply to her case. This decision is only the latest in a recent explosion of gay family decisions by the Pennsylvania appellate courts that represent an extraordinary turnaround from prior case law. Most significantly, the Pennsylvania Supreme Court recently held that same-sex partners could adopt a child, embracing a creative interpretation of the state's adoption law. That decision no doubt signaled to the Superior Court that it was to take a more realistic approach to gay family issues than it had been following in earlier decisions.