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# Unequal Equality for Lesbian Mom

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# Unequal Equality for Lesbian Mom | Arkansas appeals court allows kids to stay with her as long as partner leaves every night

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BY ARTHUR LEONARD | The Court of Appeals of Arkansas has affirmed a circuit court decision to award primary custody of a teenage boy and girl to their lesbian mother over the objections of their heterosexual dad, but in a burst of unequal “equality,” it also upheld the lower court’s requirement that both parents “refrain from having any romantic partner to whom they were not married as overnight guests when the children were present.”

The September 21 ruling upholding Pulaski County Circuit Court Judge Vann Smith means that the mother’s same-sex partner must maintain a separate residence until the children reach the age of majority. If the father has a new girlfriend, of course, they could marry and live together without infringing on his visitation rights with the children.

Bob and Lisa Bamburg, who split up in 2009 after a 22-year marriage, have two children -- a daughter born in 1995 and a son born in 1996. Judge John B. Robbins, in his opinion for the Court of Appeals, noted the son is “severely autistic” and enrolled in a special ed program.

During a pre-trial custody hearing, Lisa and her girlfriend, Mary Alice Hughes, falsely testified they did not have a romantic relationship, saying they instead were best friends. Admitting in the final custody hearing that they had been romantically involved since the time of her separation from her husband, Bamburg testified she had not been ready to tell her daughter about the relationship at the time of the earlier hearing.

At the end of that first hearing, the judge said that Hughes was not to “be around” the children, but there was controversy about how strictly the women complied with this requirement. At the divorce trial, the daughter testified she liked Hughes, and there was also testimony that she told others she blamed her father for the court ordering Hughes to stay away from the kids pending the case’s resolution.

Lisa’s ex strenuously objected to her getting primary custody of the kids. “Bob held strong reservations about Lisa having custody of their children because Lisa was in an adulterous homosexual relationship and openly had her girlfriend stay overnight while the children were present,” Robbins wrote in the Court of Appeals opinion. “Bob disapproved of Lisa and Mary Alice sleeping in the same bed together when the children were present, a sign of poor judgment and morals.”

The father claimed that “Lisa’s relationship was detrimental to the children’s welfare and embarrassing for them,” and charged that the women defied the court’s interim order by allowing continued contact between Hughes and the children.

The children, however, told the trial judge they preferred to live with their mother.

Circuit Court Judge Smith agreed that the children’s best interest was served by them living with their mother, finding that their father, a busy lawyer, does not have the time to spend with the children that Lisa has. With a substantial income from her interest in a family business and a holiday gift shop she runs only a few months each year, Lisa is mainly a stay-at-home mom able to give her special-needs son significant attention.

Robbins wrote that the circuit court judge had noted “the unfortunate circumstance of Lisa’s affair and her failure to be forthcoming about it,” but concluded it did not preclude her qualifications as primary caregiver. Still, Judge Smith did not “condone her introducing a romantic partner to the children,” and so placed the overnight guest limitation on both parents.

On appeal, Bob characterized Lisa as “an adulterous liar who disobeys court orders,” but his argument was rejected. “It is true that unmarried cohabitation with a romantic partner, or a parent’s promiscuous conduct or lifestyle, in the presence of a child cannot be abided,” Robbins wrote, adding, however, “Custody is not awarded to reward or punish either parent.” Instead, he noted, the “paramount concern” is the best interest of the children. The trial court’s limitation on cohabitation was sufficient, the Court of Appeals found, to address any moral concerns.

The bulk of the appeals court opinion deals with matters of asset disposition between the former couple. Nowhere is there any recognition that this decision places an unequal burden on the parties, making it impossible for Lisa to live with a same-sex partner so long as she has primary custody of one or both of her children. Bob, meanwhile, has the option of marrying a woman he wishes to live with -- or can simply make sure she is out of the house for the handful of nights each month when his kids are visiting.