



Written by [Gregory Hession](#) on October 20, 2009

Former Lesbian Lover Awarded Custody of Non-biological Children

The Montana Supreme Court has awarded custody of two children to the non-biological partner of a former lesbian couple, when the actual adoptive mother of the children went “straight.”

Non-married relationships with children have become much more common recently, with some areas having as many as 70 percent of the children born out of wedlock. Non-married couplings where there are existing children biologically or legally related to only one of the parties are also increasing rapidly. A small, but significant, subset of these mixed custody relationships are gay and lesbian couplings, where only one partner often has biological connection to the child.



In this new era of relationships which come in so many permutations other than marriage, and with these relationships breaking up at breakneck speed, family courts are overwhelmed with new challenges that would have been unimaginable in the recent past.

Into this milieu came a coupling which could not help but push the boundaries when they broke up. Barbara Maniaci was the adoptive mother of a nine-year-old boy and a six-year-old girl. She was in a 10-year lesbian relationship with Michelle Kulstad, which ended in 2006.

At that point, Maniaci got married to a man, and began to raise the two children with her husband. However, Kulstad filed a complaint in the Missoula County (Montana) District Court, seeking to get joint custody, although she had not adopted the children and had no biological relationship with them. *The New American* has obtained the judge’s 54-page opinion of the Montana Supreme Court, which contains surprising expansions of custodial rights for what some states now call “de facto parents.” In so doing, the court has given nonparents legal right to the custody of children who are not theirs, but with whom they have a mere emotional or residential connection.

The court called Kulstad the “psychological parent” and a “loving and stable force in the children’s lives,” and thus substituted this concept for the the traditional right of an actual parent to direct the upbringing of his or her children, as against all other persons challenging that role. Following this determination, it was an easy step for the court to conclude that “it was in the best interests of the children” to be with Kulstad.

As authority, the court cited a 1999 Montana law that establishes “nonparental parenting proceedings.” The actual mother sought to have this law declared unconstitutional, but the Montana Supreme Court would not do so.

In the judgment, the court stated, “Naming it for the evil it is, discrimination on the basis of sexual orientation is an expression of bigotry. Lesbian and gay Montanans must not be forced to fight to marry, to raise their children and to live with the dignity that is accorded heterosexuals.”



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This ruling appears to be in conflict with numerous rulings by the U.S. Supreme Court, which has repeatedly ruled that parents have a right to direct the upbringing of their children. For example, in the 2000 case of *Troxel V. Granville*, the Supreme Court upheld the right of a mother to exclude the grandparents from visitation with her children. The Montana court addressed this precedent, and did a pretzel-like circumlocution to explain it away, so that it could rule in the way that it wished, despite the law.

Family law has traditionally dealt with custody of children when parents divorce, and more recently in cases of unmarried biological parents. Now, courts are going to increasingly have to deal with custody claims of unmarried, non-biological persons. State laws have usually lagged far behind societal trends, often leaving the cutting-edge changes to the judicial branch, even though the establishment of custody criteria is purely a legislative function. Montana's "nonparental parenting proceedings" are a rare exception.

Similar cases have established custody for "de facto parents" in Virginia and Massachusetts. As more families, heterosexual and homosexual, opt to live together without marriage, it is likely that this trend will accelerate, in absence of a strong state legislative effort.



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