



Written by [Dave Bohon](#) on July 18, 2011

Lesbian Loses Court Battle in Child Custody Case With Former Partner

An Ohio lesbian has lost her legal battle to share custody of the child to which her former same-sex partner gave birth in 2006. The decision by the Ohio Supreme Court highlights the legal nightmare that appears to be evolving as homosexual “families” begin to fracture.

By a four-to-three margin the state high court ruled that the biological mother, Kelly Mullen, could retain sole custody of the child, name Lucy, who is now five years old. Until their split in 2007 Mullen had shared parenting and financial responsibility for the girl with her lesbian partner, Michele Hobbs.



“Hobbs argued that the jointly planned pregnancy plus documents citing Hobbs as Lucy’s ‘co-parent’ — including a ceremonial birth certificate and will — created a contractual agreement between the women,” reported the [Associated Press](#). “A magistrate who initially reviewed the evidence ruled the pair had a binding agreement.” But an appeals court subsequently decided in favor of the biological mother, a ruling the state supreme court affirmed in its decision.

Writing for the majority, Justice Robert Cupp (pictured above) explained that Mullen’s argument for sole custody outweighed the evidence offered by Hobbs that she should share custody with her former partner. “The court noted that all the documents created by Mullen which purported to give Hobbs some custodial responsibilities not only were revocable, but were, in fact, revoked by Mullen,” wrote Cupp. “Testimony supported Mullen’s statement that she did not intend to relinquish sole custody of the child to Hobbs.” He noted that Mullen had “consistently refused to enter into or sign any formal shared custody agreement when presented with the opportunity to do so.”

In a dissenting opinion, Justice Paul Pfeifer wrote that Hobbs had marshaled sufficient evidence to prove that the pair had, indeed, intended to serve together as Lucy’s parents. “Can an agreement that another person is a co-parent in every way possibly not include a right to custody?” Pfeifer asked in his opposing opinion. “It cannot. The trial court seems to agree, and thus turns its emphasis on the fact that the documents were revocable. But the question before the court was whether Mullen agreed to share custody of her child with Hobbs, not whether she eventually came to regret that decision.”

As reported by the [Cincinnati.com](#) news site, Mullen and Hobbs “lived together as a couple and decided to have a child, agreeing the younger Mullen would give birth. They took out a second mortgage on the house they built together to pay for the \$12,000 in-vitro procedure.” Mullen even signed an array of documents that seemed to prove that “she wanted Hobbs to have parental rights ‘in every way’ over the child. But each time Mullen had the opportunity to memorialize those wishes in a binding, written contract, she refused.”



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Mullen's attorney, Douglas Dougherty, pointed out that under Ohio law Hobbs is not considered Lucy's parent, and when the couple's relationship ended Mullen terminated any custody rights her former homosexual partner had. "The court recognized that parents have a constitutional right to raise their children ... and those parental rights can be limited or terminated," Dougherty said of the ruling. "A nonparent has no constitutional [parental] rights."

Dougherty emphasized that his client was still living a homosexual lifestyle, and the case had nothing to do with the issue of sexual orientation. "My client is a lesbian and proud of it, and she thinks lesbians should have all the rights that straight people have, and so do I," he said. "The problem here wasn't that it was a lesbian or gay relationship, it was that they didn't love each other anymore, and very sadly didn't respect each other anymore, and my client felt a clean break was in the best interest of the child."

In his dissenting opinion Pfeifer noted that the decision demonstrates the unique problem that exists in homosexual relationships where the "family" includes children. "The law has not caught up to our culture, and this court has failed to craft a rule that addresses reality," he wrote. "Mullen and Hobbs employed a well-versed lawyer who represents people in their situation, and with his advice did all they could do to protect Hobbs. A maternal relationship existed between Hobbs and Lucy. Mullen taught her daughter to call another woman 'Momma' and to love her as a mother. She now wishes she hadn't, and for the majority, that's enough. It shouldn't be."

[LifeSite News](#) noted that the recent case "bears a striking resemblance to that of Lisa Miller, a Christian and an ex-lesbian who fled the United States with her daughter in 2009 before a court could transfer custody to her former lesbian partner. Miller had given birth to her daughter Isabella, now eight years old, while living in a Vermont civil union with sex partner Janet Jenkins. Isabella was conceived through artificial insemination, and Jenkins never adopted the child."

Matthew Staver, founder of the conservative legal advocacy group [Liberty Counsel](#) and dean of the [Liberty University School of Law](#), said the ruling represented "a great victory for parental rights." Staver, who filed an amicus brief in support of Mullen's parental rights, said in a statement, "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."



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