

TIPS ON FIGHTING A CHILD CUSTODY CASE

More and more lesbian women are going into courtrooms across North America and England to fight for custody of their children. Some are losing, or winning custody on condition that they live separately from their lovers. But more than a score of unconditional custody awards have been won in recently recorded cases. There have been two such victories in England, and one published case in Canada in which the woman won the unrestricted right to custody of her children (K. vs. K., in Alberta, 1975). Most custody battles are unrecorded, or settled out of court, so we do not know the real number of lesbian women who have succeeded in their fight against forced separation from their children. We do know that each victory is a milestone for all of us, and teaches us more about how to win.

Criteria usually used in court: In deciding which parent will be granted custody, the courts look at what is in "the best interest of the children". They examine the "fitness" of each party with respect to certain criteria:

1. who already has the children
2. the conduct of the parents -- This includes the question of "willful misconduct" of either parent, and really has to do with whether the court thinks lesbianism will be a bad influence on the child. Although there are precedents now against lesbianism being considered sufficient grounds for withholding custody from a woman, it is always a key, if not determining factor.
3. the provision of a stable home environment -- Under this heading, which is being given more and more weight, the question of which parent can better provide financial and emotional security is assessed. A woman who has a steady, paid job will have a better chance than a welfare mother; and men, because they make twice the wages women do, will measure up better than either woman against this yardstick. Judges who shy away from removing children from women solely because of their lesbianism can still penalize them by awarding the children to the father on the basis of his larger paycheck.

Here are a few key pointers for women facing a custody fight:

Choose your lawyer carefully

Find a lawyer who is sympathetic and experienced in custody cases. Most lawyers are unfamiliar with the recent history of cases involving lesbian mothers, but the lawyer you decide to use should be looking for the information that exists. If s/he doesn't seem to be doing this homework, don't hesitate to look for another lawyer. (The LMDF can provide you with a list of good lawyers in Toronto, and we are compiling names of others from all parts of Ontario. We also have a large library of information to give to your lawyer, including transcripts and written judges' decisions, briefs, etc. from recorded cases in North America.)

Going to court is the last resort

Since the odds are better if you negotiate a settlement out of court than if a judge imposes his decision, your lawyer should be making every effort to dissuade your husband (parents, etc.) from taking you to court. Your lawyer should present all the positive recent history of lesbian mothers winning custody to your husband's lawyer, and put together any information there is that might weigh against the father -- his record of violence against you and/or the children, his alcoholism, poor job history, or criminal convictions. This may be enough to intimidate him into settling out of court.

Do not leave the children behind

The courts are anxious to ensure continuity for the children, and are hesitant to move them from one home to another. This means that whoever the children are living with has an important advantage. So, when you move, take the children with you, even if it means having to stay in an emergency hostel or shelter. If you leave them behind, because you think it will be better for them until you are established, it will look to the courts as if you had deserted them. The longer the children are with you, on a continuous basis, the better your chances of keeping them.

Beware of kidnapping

Pending the outcome of a custody case, and sometimes after a decision has been made in favour of the mother, kidnapping has been known to happen. Be wary of your ex-husband or relatives who may not return your child to you after a visit, or may come to your home or to the children's school when you are not there.

Expert witnesses

There are a variety of "experts" who can be called on to testify on behalf of a lesbian mother. They may report on the social and official psychiatric standing of homosexuals in today's society -- e.g. psychiatrists, or religious professionals. Or they may be used to support the mother's claims to the psychological, social and moral well-being of her children, and the relationship she has with them. Often called are: psychiatrists, psychologists, child psychologists, social workers, family therapists, Children's Aid Society workers, school counsellors, teachers, child care workers, family doctors, ministers, etc. Sometimes, the courts have heard testimony from other lesbian mothers about their experience and the "normalcy" of their children.

How public should a woman be?

Although the courts are increasingly sympathetic to the claims of lesbian mothers to child custody, they are still prejudiced against those lesbians who are publically gay, e.g. members of gay or lesbian groups, or women who speak to the media about their fight. Since this risk is so great, public support, money and publicity must often be organized without using a particular lesbian mother's name, or details of her case. Speaking publically about the general situation of lesbian mothers is an important function of the LMDF, since public opinion in favour of lesbian mothers will influence the courts to grant us custody more readily.

Who can get Legal Aid?

Your lawyer will explain the ins and outs of Legal Aid, but some rough guidelines do exist. In general, if your net income is \$130/week or less you will probably qualify. But even if you earn \$200 or \$225/week, it's worth applying, because all your expenses, e.g. childcare, are assessed. In cases in which Legal Aid will not pay the cost of expert witnesses, the LMDF may be able to help.

For more information, call (416) 921-9091 or write to the Lesbian Mothers' Defence Fund at PO Box 38, Station E, Toronto, Ontario M6H 4E1.

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Do not leave the children behind

The courts are reluctant to ensure custody for the children, and are hesitant to move them from one home to another. This means that whenever the children are living with an important advantage, do what you move, take the children with you even if it means having to stay in a temporary hotel or shelter. If you leave them behind, because you think it will be better for them until you are established, it will look to the courts as if you had deserted them. The longer the children are with you, on a continuous basis, the better your chances of keeping them.