

# **Vermont judge grants child-custody rights to partner in same-sex civil union\_120604**

December 3, 2004

Posted: 12/03/04

## **Vermont judge grants child-custody rights to partner in same-sex civil union**

**By Robert Marus**

*ABP Washington Bureau*

WASHINGTON (ABP)-A Vermont judge has ruled that gay couples united in civil unions should be treated no differently than heterosexual married couples who have had children by artificial insemination when it comes to custody disputes.

The decision sets up a dispute with another family-law court in Virginia-meaning the issue of the rights of same-sex couples ultimately could end up in the Supreme Court.

A Vermont newspaper reported that Rutland-based Family Court Judge William Cohen had ruled that Janet Miller-Jenkins, who resides in Fair Haven, Vt., has custody rights to 2-year-old Isabella Miller-Jenkins.

The child was born to Lisa Miller-Jenkins when she and Janet were united in a civil union under Vermont law.

The couple was living in Virginia at the time they entered into the union, which gave them all the same rights and responsibilities as married couples. After Isabella was born, the two divorced, and Lisa Miller-Jenkins returned to Virginia, taking the child with her.

A Virginia judge later ruled that, under that state's law, Lisa Miller-Jenkins, the birth mother, has custody of the child.

Under a recently passed law, Virginia has become one of the most restrictive states in the country for same-sex couples, denying them any rights or privileges resembling those given to heterosexual married couples.

But Vermont law meant Janet Miller-Jenkins had equal custodial rights as her ex-partner, Cohen said.

"Parties to a civil union who use artificial insemination to conceive a child can be treated no differently than a husband and wife, who, unable to conceive a child biologically, choose to conceive a child by inseminating the wife with the sperm of an anonymous donor," the judge wrote.

"Under Lisa's interpretation of the law, because there is no established precedent in Vermont, the husband would be no more than a mere step-parent and would be required to adopt the child in order to be considered a parent in the eyes of the law. This argument is without merit," he said.

Both women are appealing the respective negative decisions in each state. Normally, a federal law designed to smooth out custody disputes across state lines would rectify the situation, but it never has been tested with respect to a same-sex couple.

The dispute means that, if the parties do not reach a settlement, the Supreme Court could be forced to deal with the issue.

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