

Tribunal de Grande Instance de Lille, 11 December 2007, No. 06/05918

1) Reference Details

Jurisdiction: Tribunal de Grande Instance, Lille, Judgment of the Family Court, France

Date of Decision: 11 December 2007

2) Facts

Mrs X and Mrs Y were a homosexual couple who each had a child. The children were conceived by each mother, during their relationship, through artificial insemination which, as French law provided artificial insemination to heterosexual couples only, took place in Belgium. The two women by practice exercised joint control and authority over the two children. As each of them often spent time away for work, they sought to ensure that were anything to happen in the absence of one parent the other could exercise parental authority for either child.

Their application for the delegation of parental authority, in the case of each child to both mothers equally, was met with resistance from the Public Prosecutor who was charged with giving his opinion.

3) Law

- Articles 371-1 and 377 of the Civil Code

4) Legal Arguments

The mothers submitted that article 377 of the Civil Code permits the delegation of parental authority by the mother or father, together or separately. They argued that there was no legal provision which stated that parental authority could only be shared by persons of different sex. They submitted that the police report demonstrated that they shared the raising of the two children equally, and that they were considered a family by the school, their extended family and friends.

The Public Prosecutor based his negative opinion on the fact that the delegation of parental authority did not involve the secession of parental control upon the death of the biological parent. He further contended that there were other means by which a third party could play a recognised role in the raising of a child, and indeed both women were treated in their daily lives as having authority over the children. Finally, the Public Prosecutor noted that the women could not legally obtain artificial insemination in France and so avoided the law by obtaining artificial insemination in Belgium.

5) Decision

The Judge firstly stated that, while artificial insemination is not provided to same sex couples in France, there is no such limitation in Belgian law, and they each conceived their child in respect of the law. The children were however born in France and thus benefitted from French law.

The judge found that it would be discriminatory to exclude from a child the benefit of shared parental responsibility between his mother and her partner on the sole basis that they were of the same sex.

Article 377 of the Civil Code permits the mother or father of the child to delegate authority separately; it therefore poses no obstacle that the biological father is not involved, nor has any relation with the child.

The Judge considered that each mother is on occasion called to work temporarily elsewhere in France and abroad, therefore it is entirely in the child's interest to take measures to prevent difficulties in the case where an accident occurs during the absence of the biological parent.

Whilst it is true that in the case of the death of the biological parent legal guardianship will still have to be obtained, in such cases the practices of the family until that time will be taken into account, including the will of the mother in showing that her partner be equal in exercising parental authority.

The Judge therefore concluded that Mrs X and Mrs Y shall have delegated parental authority each over the other's child.