

the husband admitted violating the orders by taking the children to Alabama and having them stay with the husband and his lover. The trial court held the husband in criminal contempt for violating the orders. The Civil Court of Appeals held that in light of the husband's failure to comply with the lower court's orders, they would not disturb the limited visitation award. Todd V. Lamb

Maine Voters Narrowly Vote to Repeal Gay Rights Law

For the first time, a law banning sexual orientation discrimination enacted by a state legislature has been repealed in a state-wide referendum on Feb. 10. Fifty-two percent of the voters favored repeal, with forty-eight percent opposed. Prior to this vote, all of the New England states had passed laws forbidding discrimination on the basis of sexual orientation. Ironically, Maine voters had previously rejected a prior state-wide ballot measure that would have barred the legislature from adding new categories to the state's civil rights laws. A major difference, however, was that the prior referendum took place during a general election, while this one was scheduled as a stand-alone vote, so only the most motivated voters were moved to participate. A.S.L.

Gay Louisiana Doctor Wins Contested Child Custody Suit

Louisiana attorneys Jeffrey T. Reeder and T. Darlene Bewley report success in a contested custody matter where an openly gay doctor has been awarded custody of his four children, ages 13, 11, 9 and 7. Court records have been sealed to protect the privacy of the children, so we will refer to the parties as Dr. Doe and Mrs. Doe. The Does were married for 13 years, residing in a small town in Louisiana. Mrs. Doe filed for divorce in 1996, setting off a bitterly contested custody battle in which both parties made allegations of child abuse by the other. Reeder notes that "there is also a long, documented history of substance abuse and prescription drug dependence by the mother." Dr. Doe now lives with his same-sex partner of two years.

The court appointed a psychiatric expert to evaluate the parties. The expert produced a 55-page report, dealing extensively with the issue of Dr. Doe's sexual orientation, which was found to be inconsequential in determining the best interest of the children. The expert recommended sole custody for Dr. Doe. The issue of Dr. Doe's sexuality was also thoroughly explored in the court hearing on the custody issue. The court awarded sole custody to Dr. Doe and denied visitation for Mrs. Doe until she can make an objective showing to the court that she has made progress in dealing with her prescription drug dependency and child abuse issues.

Reeder notes the significance of such a ruling in a conservative southern state with a sodomy law and few judicial precedents recognizing lesbian and gay rights. Those interested in obtaining more information about the case can contact Reeder at 3723 Canal St., New Orleans LA 70119 (504-488-1188) (e-mail: Myohmy0000@aol.com). A.S.L.

Federal District Court Rules on Transsexual Treatment Rights in Prison

The issue before the U.S. District Court (D.C.) in Farmer v. Hawk, 1998 WL 30490 (Jan. 22), was whether a transsexual was entitled to treatment for this condition while incarcerated in a federal prison. On a defense motion for summary judgment, the court ruled that a transsexual prisoner was entitled to such treatment.

Plaintiff Dee Farmer is an inmate in the federal prison in Butner, North Carolina. Farmer is a pre-operative male-to-female transsexual, who, the court found, is suffering from gender dysphoria, a medically recognized condition. Farmer brought this action to challenge the constitutionality of the Bureau of Prisons (BOP) policy regarding medical treatment for transsexuals, claiming that it violates the Equal Protection Clause of the 5th Amendment and demonstrates deliberate indifference to her serious medical needs, in violation of the 8th Amendment. Farmer also asserted additional claims against BOP's Medical Director, Dr. Morigitsu, relating to his failure to approve treatment or to implement a new policy regarding medical treatment of transsexuals.

The defendants argued that there is already a policy regarding treatment of transsexuals in the federal prisons, and that Farmer was already receiving all treatment to which she was entitled. The court agreed that BOP already had an adequate policy for treatment of transsexuals in place, and granted defendants' motions to that extent, but denied the motion in all other aspects.

The policy calls for transsexual inmates in the federal prisons to be maintained at the level of change existing at the time of admission. The personal approval of the BOP's Medical Director is required before any progressive or regressive treatment is to be implemented. The use of hormones to maintain secondary sexual characteristics may be maintained at approximately the same levels as were implemented prior to incarceration upon a showing of appropriate medical documentation, also with the Medical Director's approval.

In this decision, District Judge Kessler ruled that this policy does require that Farmer receive treatment and that Dr. Morigitsu could not assert a claim of qualified immunity, because he failed to direct his staff to implement stated policies concerning the treatment to which Farmer would be entitled. The issues which remain relate to the extent to which Farmer received treatment and psychological counseling under this policy, and whether the requiring transsexuals to make a showing of a history of prior treatment before receiving hormone therapy violated their rights of Equal Protection as others do not have to make such a showing to receive medical treatment in prison. Steven Kolodny

ACLU Wins Settlement of Boy Scout Suit Against City of Chicago

Settling a federal lawsuit filed in 1997 on behalf of Eugene Winkler, a gay man who was denied participation in the program, and Kevin Poloncarz, a minister who found the program's religious requirements troublesome, the City of Chicago has agreed to cease sponsoring programs administered by the Boy Scouts of America as long as BSA continues to ban participation by gay people or people who do not believe in God.

ACLU staff attorney Roger Leishman, who is lead attorney for the plaintiffs in Winkler v. City of Chicago, No. 97-C-2475 (U.S. Dist. Ct., N.D. Ill., settlement announced, Feb. 4, 1998), expressed hope in announcing the settlement that "other state and local government entities providing support for BSA will take a cue from Chicago's action and end their sponsorship of these discriminatory programs." ACLU Press Release, 2/4/98. The lawsuit alleged that city involvement with the Boy Scouts violates the First and Fourteenth Amendments. In the settlement agreement, the City denies that the programs it sponsors have actually excluded people on the basis of sexual orientation or religious beliefs. However, the charter issued to the City of Chicago Corporation Counsel's office for city sponsorship of Scout