

NC Supreme Court hears custody appeal against gay father

by Peg Byron
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RALEIGH—A North Carolina father who won a court order restoring custody of the two sons he raised from birth now faces his ex-wife's appeal in the state's court on the only grounds she has ever used against him: he is gay.

In a surprising move, on May 14 the NC Supreme Court heard the appeal in *Pulliam v. Smith*. The state Court of Appeals last fall reversed a lower court and ruled that the father should maintain custody of his children. The appeals court said the trial court's conclusion against the father had been based on improper speculation rather than facts in evidence.

"Fred Smith provided a stable, loving home for his sons, who thrived in his care. As long as the children are doing well, this family should not be pulled apart just because his ex-wife, or anyone else, is uncomfortable with the father's being gay," said Beatrice Dohrn, legal director of Lambda Legal Defense and Education Fund.

"North Carolina, like most other states, has a well-founded precedent for looking to the experience of the children to determine their best interests," she said, adding, "In this case, the children themselves are clear evidence of Fred Smith's excellent parenting."

Dohrn and Sharon Thompson of North Carolina Gay and Lesbian Attorneys (NC GALA) are lead counsel for Smith.

"Like the trial court, this appeal inappropriately focuses on speculation, not evidence, about any real problems linked to having a gay father," Thompson said. "This single-minded obsession with Fred Smith's sexual orientation ignores the fact that he is a good parent who helps his kids with homework, coaches their sports teams, and has cared for them all their lives, with obviously wonderful results. Any child would be lucky to have a parent like Fred."

Pulliam's attorney's arguments ignore the children's health and well-being and, instead, attack Smith solely because he is gay. They stress

the state's archaic sodomy statute, ignoring the fact that the law applies to non-gay as well as gay couples and that Pulliam acknowledged engaging in private oral sex, just as did Smith.

"It is sad when ex-spouses seek to exploit prejudice against gay people in an effort to gain custody. Children's best interests are not served when courts rely on worn-out myths about families and sexual orientation," Thompson said.

Dohrn added, "Thankfully, the Court of Appeals decision is on solid footing and follows a national trend in custody cases. State by state, courts are recognizing the truth — lesbian and gay parents are raising healthy, well-adjusted children."

She noted that North Carolina long has guided its custody decisions with the principle that children need a stable environment and should not be yanked from one home to another when there is no evidence that anything in their circumstances causes harm.

Smith's ex-wife, Carol Pulliam, left Smith and the children, now 11 and 8, in 1991, to live with Bill Pulliam, whom she later married. After Smith's partner moved into his home in 1995, Pulliam sought and won custody of the children, arguing they may one day be harmed because of their father's sexual orientation.

The Court of Appeals noted that the children appear well adjusted, have good grades, attend school regularly and participate in athletic activities. "...there is no evidence that the conduct has or likely will have a deleterious effect on the children," the court said in its October 15 ruling that restored Smith's custody of his sons. That order was stayed pending appeal and the children have been in Pulliam's household since the court shifted custody.

The lower court inappropriately allowed questions about and then relied on details of the men's sex life, although it deemed irrelevant on the mother's similar testimony. A ruling is not expected for several months. ▼

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