

A MAJOR DILEMMA

Adoption and Marriage

By K. Dean Kantaras



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AMONG THE MANY POLITICAL and social issues being debated in America today is the issue of gay and lesbian rights. Some states have recently sanctioned gay marriages. Others haven't. Some states recognize gay unions, some don't. Likewise, adoptions by gays or lesbians have been debated here in Florida and all across the country. As with most sociological issues, opinions vary widely. Feelings run strong, and lawsuits will invariably follow. Florida, by statute, does not permit same sex marriages or adoptions.

On May 13th of this year, the Second District Court of Appeal entered a very short but extremely important decision. It involved this adoption issue. By a 2003 statute in Florida, homosexuals are prohibited from adopting. This obviously raises serious constitutional issues. Other states, however, have no such restriction. In those states, homosexuals may adopt just as heterosexuals, under all of the same rules and regulations.

The decision in the case being discussed, *Embry v. Ryan*, involves another Florida statutory provision and constitutional issue. The facts were that Ms. Embry and Ms. Ryan lived together in a homosexual relationship in the State of Washington. Ms. Ryan gave birth to a child whom Ms. Embry adopted. This procedure is legal and permitted in the State of Washington. The couple and the child then moved to Florida, after which they ended their relationship. As you might expect, custody and visitation became an issue, and litigation commenced. Ms. Embry filed a petition in the Circuit Court in Sarasota. She asked that the Court determine her right to shared parental responsibility for

the child, now four years old, her right to visit with the child and her obligation (and right) to help support the child. The trial judge dismissed Ms. Embry's petition on the grounds that the Washington judgment didn't have to be recognized by Florida and that homosexual adoption is contrary to the public policy of this state.

The legal problem with the trial judge's ruling is twofold. First, the Constitution of the United States contains what is known as the Full Faith and Credit Clause. That means that courts in the United States must recognize judicial proceedings from other states as long as the judicial proceeding was held in a court with appropriate jurisdiction. In a United States Supreme Court case involving the full faith and credit clause, that Court ruled that there are no public policy exceptions

for judgments from another state. So, the first argument relied on by the trial judge was overruled. The second is that Florida also has a statute that requires all adoptions from other states to be recognized by Florida. There is no exception in that statute for homosexual adoptions.

This case may be appealed to the Supreme Court of Florida. If it is, it will present the Court with an interesting dichotomy in the law, since Florida is not required to recognize same sex marriages from states where they are legal. Local courts, including local federal courts, have ruled that statute does not violate the full faith and credit clause of the constitution. It is hard to understand why the adoption law specifically requires recognition of same sex adoptions, but the marriage law does not.

It will be interesting to follow this case to its conclusion for many reasons. ■■■

EDITOR'S NOTE: K. Dean Kantaras is an attorney limiting his practice to family law matters, including custody, related appeals and immigration. He is a member of the bar of the Supreme Court of the United States, The Florida Bar, and Clearwater Bar Association Family Law Section. Mr. Kantaras is Board Certified by The Florida Bar in Marital and Family Law. His offices are located at 3531 Palm Harbor Boulevard in Palm Harbor, 1014 U.S. Highway 19 North, Suite 110 in Holiday and 1930 East Bay Drive in Largo. He can be reached at (727) 781-0000, fax: (727) 938-3939, and emailed at kdk@kalawgroup.com.