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NEWS

Oklahoma Approves Same-Sex Adoption Invalidation Law

By Katie D. Fletcher

Oklahoma legislature recently passed an Adoption Invalidation Law prohibiting recognition of out-of-state or out-of-country adoptions by more than one individual of the same sex.¹

The law, if upheld, would effectively invalidate legal adoptive relationships established in another state when a family visits or resides in Oklahoma.² The law states that Oklahoma “shall not recognize an adoption by more than one individual of the same sex from any other state or foreign jurisdiction.”³

Adoptive parents are already in court seeking to strike down the law.⁴ Lambda Legal represents the same-sex couples and their families who adopted children while living in other states and later moved to Oklahoma or want to visit the state.⁵ Anne Magro and Heather Finstuen, partners for 14 years, are parents to seven-year-old twins born to Anne and adopted through a second-parent adoption by Heather when they lived in New Jersey.⁶ They now live in Oklahoma.⁷ The other couple, Ed Swaya and Greg Hampel, live in Washington state and adopted their three-year-old daughter after she was born in Oklahoma.⁸ They would like to visit Oklahoma to show their daughter where she was born and to visit her birth mother.⁹

If the Governor of Oklahoma “faithfully executes this Oklahoma law pursuant to his duty to do so, no state agency will recognize these Plaintiffs as a family and these Plaintiffs could be deprived of all the legal rights and obligations associated with that relationship,” stated U.S. District Judge Robin Cauthron in an early ruling allowing the case to proceed to federal court.¹⁰

Proponents of Oklahoma’s law and similar laws in Florida, Utah, and Mississippi argue that heterosexual individuals are more likely to be better parents than homosexual ones.¹¹ An Arkansas law that would have barred gays and lesbians from adopting was introduced but failed to make it out of committee in 2004.¹²

Most states do not prohibit single persons from adopting, although one, Florida, statutorily restricts

adoption to heterosexuals.¹³ Some states allow single gays and lesbians to adopt yet do not allow a gay or lesbian to adopt their partner’s biological child.¹⁴ Gay or lesbian couples attempting to adopt a child where neither parent has a pre-existing parent-child relationship likely will find courts unwilling. “I tell potential clients that Oklahoma only permits single parent or married person adoptions, but same sex couples would not be approved during the mandatory home study,”¹⁵ said Tina Peot, an attorney in Oklahoma.

In New York, however, an appellate court reversed a family court petition by two women seeking



The Oklahoma law is unique in that it invalidates same-sex adoptions from other states.

to adopt a child together.¹⁶ In ruling for the women, the appellate court noted the spirit of the statute is to “encourage the adoption of as many children as possible regardless of the sexual orientation or marital status of the individuals seeking to adopt them.”¹⁷

Family Pride, an advocacy group for the Lesbian, Gay, Bisexual, and Transsexual (“GLBT”) community, provides information to families about state laws addressing adoption by LGBT individuals, same-sex couples, and second parents.¹⁸ Eight states received a good rating on all three including, California, District of Columbia, Illinois, Massachusetts, New Jersey, New York, Pennsylvania, and Vermont.¹⁹ Conversely, eight states received a bad rating on all three categories including, Arkansas, Florida,

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Kentucky, Mississippi, North Carolina, North Dakota, Utah, Virginia, and Wyoming.²⁰

However, the Oklahoma law is the only one that specifically severs an adoptive parent-child relationship established legally in another state, should the family find themselves in Oklahoma or dealing with Oklahoman officials.²¹

¹ OKLA. STAT. ANN. tit. 10 § 7502-1.4 (West 2005).

² Press Release, Lambda Legal, *Lambda Legal Asks Federal Court to Fast Track Case Seeking to Strike Down Oklahoma's Extreme Antigay Adoption Law*, Dec. 1, 2005, <http://www.lambdalegal.org/cgi-bin/iowa/news/press.html?record=1840>.

³ OKLA. STAT. ANN. tit. 10 § 7502-1.4 (West 2005).

⁴ Lambda Legal, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Joanna Grossman, *A New York Court Authorizes a Lesbian Couple's Joint Adoption of a Child: Part of a Growing Same-Sex Adoption Trend*, Apr. 19, 2004, <http://writ.news.findlaw.com/grossman/20040419.html> (last visited on Mar. 13, 2006).

¹² *Id.*

¹³ FLA. STAT. ANN. § 63.042(3) (West 2005).

¹⁴ *In re Adoption of Carolyn B.*, 774 N.Y.S.2d 227, 229 (2004).

¹⁵ Telephone Interview with Tina Peot, Attorney, Demastus Law Firm, in Oklahoma City, Okla. (Feb. 24, 2006).

¹⁶ *In re Adoption of Carolyn B.*, 774 N.Y.S.2d at 230.

¹⁷ *Id.* at 229.

¹⁸ Family Pride, *Laws In Your State*, <http://www.familypride.org/site/pp.asp?c=bhKPI7PFImE&b=316280> (last visited on Mar. 13, 2006).

¹⁹ *Id.*

²⁰ *Id.*

²¹ OKLA. STAT. ANN. tit. 10 § 7502-1.4 (West 2005).

ACLU Files Lawsuit on Behalf of Man Allegedly Kidnapped by CIA

By Emily Rozwadowski

In December 2005, the American Civil Liberties Union ("ACLU") filed a lawsuit on behalf of Khaled El-Masri, a German national who was born in Kuwait to Lebanese parents, alleging that El-Masri was kidnaped and detained in Afghanistan for several months without charge.¹

The ACLU suit, which was filed in federal court in the Eastern District of Virginia, was based upon both federal and international law.² Under federal law, the defendants are charged with violating El-Masri's due process rights and subjecting El-Masri to prolonged arbitrary detention.³ The complaint also stated that the defendants violated customary international law by subjecting El-Masri to torture and other cruel, inhuman or degrading treatment.⁴

El-Masri sued under the Alien Tort Statute, which was enacted in 1789.⁵ The Alien Tort Statute has been interpreted to enable "federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law."⁶ Therefore, only claims that would have been recognized at the time of the law's enactment could be heard.⁷ The statute did not create a cause of action for violation of international law.⁸

The complaint alleged that while traveling on vacation to Skopje, Macedonia on December 31, 2003, El-Masri's passport was confiscated and he was detained in a hotel room for 23 days.⁹ On January 23, 2004, El-Masri was removed from the hotel room and beaten.¹⁰ He was then placed on an airplane which, according to the complaint, landed in Kabul, Afghanistan.¹¹ The complaint further alleges that El-Masri was held in a Central Intelligence Agency ("CIA") run facility known as the "Salt Pit."¹² There he was subjected to interrogation and held in inhumane conditions.¹³ He was held there until May 2004, when he was flown to Albania and eventually to Germany.¹⁴ El-Masri was never accused of a crime or terrorist connections.¹⁵ The CIA believed that he was a member of al-Qaida and had trained at a camp run by Osama

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