

Judge rules in same-sex custody case involving Tim Bishop daughter

By: Rick Brand
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Photo credit: Daniel Goodrich, 2005 | Brian X. Foley greets campaign workers, Molly Bishop, left, daughter of Tim Bishop, and Mercedes Counihan, right. (Nov. 8, 2005)

A state Supreme Court justice has ruled that the estranged spouse of the daughter of Rep. Timothy Bishop does not have parental rights because their son was born before New York's same-sex marriage act was approved in 2011.

State Supreme Court Justice John C. Bivona on Friday found that Mercedes Counihan did not have standing to seek custody or visitation of the boy, now age 2. Bivona said it "is clearly the right" of Molly Bishop, who carried the baby after artificial insemination, "to determine whether . . . the nonbiological parent has the standing to raise the issue of access or assert the rights of parenting." Counihan and Bishop, both New York residents, are in the midst of a divorce.

Bivona in the ruling said Bishop and Counihan married in Connecticut in 2009. Both later signed documents to begin the in vitro process, with Counihan providing the health insurance for medical expenses.

But while Counihan was present at the birth of the baby and claimed the child called her "mommy," Bivona found there was "neither consent by the birth mother to co-parent the child with the plaintiff nor approval to permit adoption of the child by the non-birth mother."

Bivona said he made the ruling with "great reluctance," adding: "Perhaps the issue merits further consideration of the legislature and the judiciary."

Sari Friedman, Counihan's attorney, called the ruling "outrageous." She said the decision ignores the fact that Counihan's name is on the child's birth certificate and that state law stipulates that babies conceived through artificial insemination are the birth children of both parents. Friedman said she will appeal immediately to the appellate division in Brooklyn and seek to reinstate temporary visitation that had been in place.

"This is absolutely unprecedented; I cannot make sense out of this ruling," Friedman said.

In a prepared statement Counihan said: "This is about parents and a little boy and that boy is my son, too. He should not be taken from me and I should not be erased from his life because a marriage fell apart." But David Mejias, Bishop's attorney, said, "In this case the court system worked protecting Molly and her son."

Mejias said his client, a political fundraiser who works for Suffolk Democrats and her father's campaigns, declined to comment.

The congressman, reached Monday night, said, "This is a private family matter that is in the hands of the court."

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