

Appeals court to rehear gay parent case

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By ANITA WADHWANI
Staff Writer

A divorce case involving a father who had been sentenced to jail time for telling his son he is gay is now back in court.

Joe Hogue's two-day jail sentence was thrown out by the state Court of Appeals last month.

At the same time, however, the court said it was OK to have barred Hogue from "exposing" his middle-school-age son to Hogue's "gay lifestyle."

That part of the ruling could impact gay and lesbian parents across Tennessee, said attorneys with the American Civil Liberties Union, which has asked the court to reconsider. The court has agreed to rehear the case. No date for a hearing has been set.

"The courts have no business putting gay parents in the position of having to choose between raising their children and having a loving, committed relationship with their partner," said Hedy Weinberg, executive director of the American Civil Liberties Union of Tennessee, which is now representing Hogue for free.

But Rose Palermo, an attorney representing Hogue's ex-wife, Cher Lynn Hogue, said the case was "not a gay issue" but about how to protect children from infidelity, regardless of with whom a parent may be carrying on an affair.

"Courts routinely issue these same kinds of orders in cases involving parties with heterosexual paramours," Palermo said. In papers filed with the court last week, Palermo asked for the jail sentence to be reinstated.

It's "a relatively rare event" for the Court of Appeals to rehear a case, said Nashville attorney David Raybin. "That indicates to me that they obviously want to take another look at this case and consider its broader implication."

Joe Hogue agreed that he "shall not have the child in the presence of any person that he has a homosexual relationship with or expose the child to homosexual discussions or homosexual lifestyle" until the boy's counselor says it's advisable, according to a final divorce decree between Hogue and his wife signed Sept. 30.

Cher Lynn Hogue had filed for the divorce in February 2002. Seven months later, a Williamson County judge found Joe Hogue in contempt of a restraining order barring him from "taking the child around or otherwise exposing the child to his gay lover(s) and/or his gay lifestyle."

"He said that he was gay and had always been gay and that he was in love with Sean and that Sean was attracted to big men," the Hogues' son said in court, according to court documents.

Hogue was sentenced to two days in jail. The judge reduced his visitation with his son and gave his ex-wife all decision-making power over the son.

Hogue appealed the contempt charge to the Tennessee Court of Appeals. In January, that court cleared Hogue of contempt, saying that telling his son that he was gay was not part of the restraining order. However, the court went on to say that the restraining order was valid.

The ACLU is objecting to that point, said Ken Choe, a staff attorney with the ACLU's Lesbian and Gay Rights Project.

"It establishes a precedent that it's OK to restrict visitation of a gay and lesbian partner. The court clearly, when it talks about 'gay lifestyle,' was trying to say the mere fact that one parent was gay meant that he should be subject to restrictions that would not apply to a straight parent."