

Courthouse Chronicle #5

In Re: The Estate of Susan Hamilton, 1989

Although the cornerstone of the American Constitution is its proclamation of equality for all, over the course of our history, it's been the day-to-day courtroom battles that have moved equal rights from ideology to reality. Today, as more and more states legally accept same-sex adoption, we can look back at a 1989 Vermont court case that helped forge the way.

Susan Bellemare and Susan Hamilton were intensive care nurses and ten-year domestic partners who decided to have a child through artificial insemination in 1987. As co-parents, they agreed that Hamilton would carry and give birth to the child.

In 1989, tragedy struck when they, along with their now 15-month old son, were hit head-on when a truck crossed the center line on Route 4 in Mendon, Vermont. Ms. Hamilton was killed and Ms. Bellemare seriously injured. Fortunately the boy survived the crash with only minor injuries.

While Ms. Bellemare was hospitalized, the boy was cared for by the late Ms. Hamilton's parents, who resided in Montvale, NJ. When Ms. Bellemare recovered, she presented her partner's will to the Probate Court, which gave guardianship of the child to her. Hamilton's will was the only recourse for Ms. Bellemare to keep custody of the boy at the time, as same-sex parents could not legally adopt children until 1993. However, the grandparents sued for custody, feeling that blood relatives in a traditional marriage setting would offer the boy a more stable future. A court date was set.

After the Washington County Probate Judge recused himself from the case, Chittenden County Probate Judge L. John Cain, my father, was called upon to preside over the court battle. When the grandparents entered the courtroom with the child, Judge Cain noticed that the boy seemed to want to be with Ms. Bellemare.

The grandparents filed for custody saying “it was inappropriate for Bellemare to raise the child.” They further stated that Bellemare “planned to end the relationship” with their daughter, and exerted “undue influence” on her. Bellemare countered that she had been “co-parenting the boy” and that she would “love him and nurture him.” When Judge Cain asked if she was physically and mentally up to the task of raising the boy, she answered: “Yes, and my doctor has told me that it is time to get on with my life.” The boy, she believed, was an important part of that life.

After hearing both sides, Judge Cain awarded temporary guardianship to Ms. Bellemare and asked that the Sheriff take the boy from the grandmother’s arms and hand him over to Ms. Bellemare. There wasn't a dry eye in the courtroom as the Sheriff complied with Judge Cain's order.

Three months later, the will was declared to be valid and full custody was given to Ms. Bellemare. Thanks to Susan Murray, Bellemare’s attorney, an agreement was reached in lieu of an appeal. Both parties agreed it was in the boy’s best interest to keep a strong bond with his blood relatives. The grandparents were given visitation rights of one weekend a month, plus holidays and vacations.

The court case and its decision received national attention and spurred debate as to whether more legislation was needed for same-sex couples and their children.

When I asked my father recently about the decision he said:

“Susan Hamilton's parents were trying to do the right thing with their grandson, but had already raised their children and were not in a position to be sole guardians. Susan Bellemare had planned on being the boy's parent all along and went into parenting knowingly... it was the right thing to do.”



Chittenden County Probate Judge L. John Cain as seen in 1955.

Connie Cain Ramsey is the Assistant Judge of Chittenden County. She can be reached at Connie.Ramsey@state.vt.us or 651-1720.

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