

Justices: Cohabitation no bar to child visits

By [Sean Beherec](#)

A split Arkansas Supreme Court on Thursday found that there is no “blanket ban” on unmarried, cohabiting couples hosting overnight visitation and reversed a lower court’s order denying a domestically partnered gay man such stays with his son.

In the 4-3 decision, the court declined to address the constitutionality of such a ban but found that the practice could not be used without weighing the other circumstances of a case.

Justice Cliff Hoofman wrote in the majority opinion that provisions setting cohabitation as a barrier to visitation were designed to promote stability for the children.

“We have also held, however, that the primary consideration in domestic relations cases is the welfare and best interest of the children and that all other considerations are secondary. Therefore, we have emphasized in more recent cases that the policy against romantic cohabitation in the presence of children must be considered under the circumstances of each particular case and in light of the best interest of the children,” Hoofman wrote.

Chief Justice Jim Hannah and Justices Donald Corbin and Paul Danielson joined Hoofman in the majority. Justices Karen Baker, Courtney Hudson Goodson and Jo Hart dissented.

John Moix and his wife, Libby, divorced in 2004. Libby Moix, now Libby Stell, was granted sole custody of their youngest son, and Moix was denied overnight visits while “struggling with an addiction to pain medication,” according to court filings.

In 2012, Moix asked the court to modify the visitation agreement for overnight visitation, citing his sobriety and substance-abuse treatment. As part of the request, Moix asked the court to allow his domestic partner, Chad Cornelius, with whom he had been in a relationship since 2007, to be present during the visits.

Stell contested the visitation, arguing that there had been no material change in circumstances and that it was not in the child’s best interest to have the overnight visits because Moix’s relationship with Cornelius was volatile. Moix countered that there had been no instances of violence between him and his partner since 2005.

In November 2012, Pulaski County Circuit Judge Mackie Pierce granted visitation on the condition that Cornelius not be present, citing the public policy of the state to include a noncohabitation provision.

Moix appealed.

Goodson wrote in a dissenting opinion that the state’s appellate courts have “steadfastly” upheld rulings that prohibited the presence of romantic partners in the home when children are visiting.

“I would affirm the circuit court’s decision in keeping with our time-tested law,” Goodson wrote.

Baker wrote in a separate dissenting opinion that the court should not address Moix’s arguments because there had been no change of material circumstances to warrant modifying the visitation agreement. Baker also disagreed with the majority’s finding that the circuit judge had not determined whether the noncohabitation provision was in the best interest of the child.

“The circuit court stated, in speaking about the noncohabitation provision: ‘The best interest dictates that that be the continued policy of this court, in my opinion. So that will be the order of the court.’ It is clear to me that the circuit court did determine that the noncohabitation provision was in the best interest of the child,” Baker wrote.

Kelly Olson, an associate professor at the W.H. Bowen School of Law at the University of Arkansas at Little Rock, said the ruling would have wider implications on other child-visitation cases. While the noncohabitation rule was never a law, it has been used by judges in “many, many cases,” usually with the prompting of one of the parents, she said.

The Supreme Court’s decision would now require judges to determine whether the prohibition would be in the child’s best interest, Olson said.

“What this does is it brings it back to a case-by-case basis to decide, for judges to decide,” Olson said.

Olson said that she also expects a case in the next couple of years to address the constitutional issues presented in the case.

Holly Dickson, the legal director for the Arkansas branch of the American Civil Liberties Union who represented Moix, said she was pleased with the ruling and that it was never appropriate to use a “blanket ban.”

“I think what we argued is what the court has found. You can’t have a blanket ban unless it’s in the best interest of the child,” Dickson said.

Little Rock attorney Richard Worsham, who represented Stell, said he thinks his client “100 percent agreed” with the dissenting opinions and that it remains to be seen how Pierce will rule on the best interest of the child.

“I don’t think the court reversed its prior precedence. ... I don’t think this changes the law,” Worsham said.

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