



BARNAVERNDARÁSTYÐIÐ

Alþingi

Erindi nr. D 120/1423

komudagur 15.4 1996

Nefndadeild Alþingis,
b.t. Sólveigar Pétursdóttur,
Þórshamri v/ Templarasund,
150 Reykjavík.

Reykjavík 15. apríl 1996.

Vísað er til bréfs yðar, dagsett 12. mars 1996, sem barst Barnaverndarstofu 14. sama mánaðar, þar sem óskað er umsagnar Barnaverndarstofu um frumvarp til laga um staðfesta samvist.

Barnaverndarstofa telur frumvarp til laga um staðfesta samvist stórt skref í áttina að viðurkenningu á sambúð samkynhneigðra. Ljóst er að samkynhneigðir hafa lengi búið við mikið misrétti hér á landi og hefur það m.a. bitnað á börnum sem eiga samkynhneigða foreldra svo og ungmennum sem eru að átta sig á eigin kynhneigð.

Barnaverndarstofa er sammála frumvarpinu í megindráttum. Þó gerir stofan athugasemdir við 6. gr. frumvarpsins.

Í 6. gr. frumvarpsins koma fram undantekningar frá þeirri meginreglu að réttaráhrif staðfestar samvistar verði þær sömu og réttaráhrif hjúskapar. Ákvæði 1. og 2. mgr. 6. gr. frumvarpsins hljóða svo: „Ákvæði ættleiðingarlaga um hjón gilda ekki um staðfesta samvist og reglur um heimildir til tæknifrjóvgunar með skilyrði um hjúskap gilda ekki um staðfesta samvist“.

Í IV. kafla almennra athugasemda frumvarpsins segir að það hafi meðal annars verið rökstuðningur fyrir undantekningu frá meginreglunni um að réttaráhrif staðfestar samvistar verði þær sömu og réttaráhrif hjúskapar að að tekið hafi verið tillit til þess almenna sjónarmiðs að það sé að jafnaði barni fyrir bestu að eiga sér bæði föður og móðurímynd. Þá segir í athugasemdum við 6. gr. frumvarpsins að í IV. kafla almennra athugasemda við frumvarp þetta hafi verið lýst helstu sjónarmiðum meiri

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BARNVERNDARSTOFA

hluta nefndarinnar um málefni samkynhneigðra um rök fyrir þeim undantekningum sem birtast í 1. og 2. mgr. og varða börn. Þar kom meðal annars fram að með hliðsjón af hagsmunum barnsins og með hliðsjón af því sé að jafnaði fyrir bestu að eiga sér bæði föður- og móðurímynd þætti ekki rétt að stuðla að því með lögum að samkynhneigðir í staðfestri samvist öðluðust óskoraðan rétt til að ættleiða börn samkvæmt lögum um ættleiðingar og til tæknifrjóvgunar samkvæmt gildandi reglum um það efni.

Sá rökstuðningur er fram kemur í athugasemdum frumvarpsins um að það samræmist hagsmunum barnsins og að það sé því að jafnaði fyrir bestu að eiga sér bæði föður- og móðurímynd er ekki ótvíræður. Barnaverndarstofa hefur ekki séð því stað að sú vitneskja liggi fyrir um það að börn sem alast upp hjá samkynhneigðum hljóti nokkurn skaða af. Því telur Barnaverndarstofa að endurskoða beri fyrrnefndar undantekningar 1. og 2. mgr. 6. gr. frumvarpsins.

Varðandi tæknifrjóvgun vill Barnaverndarstofu jafnframt nefna að stofan telur að það sé börnum sem getin eru með gjafkynfrumum fyrir bestu að eiga rétt til vitneskju um líffræðilegt faðerni eða móðerni sitt (líffræðilegan uppruna) sbr. 2. 3. 7. og 8. gr. barnasamnings Sameinuðu þjóðanna.

Barnaverndarstofa tekur undir það sjónarmið í athugasemdum við 6. gr. frumvarpsins að edlilegt sé að ákvæði 3. mgr. 30. gr. barnalaga nr. 20/1992 um lögbundna forsjá stjúpfóreltris gildi með sama hætti um staðfesta samvist og um hjúskap væri að ræða. Því geta tveir einstaklingar í staðfestri samvist farið sameiginlega með forsjá barns annars þeirra. Barnaverndarstofa telur að stíga beri skrefið til fulls og heimila stjúpfóreltri í staðfestri samvist að ættleiða stjúpbarn sitt samkvæmt ættleiðingarlögum nr. 15/1978 þar sem stofan hafi ekki séð því stað að sú vitneskja liggi fyrir um að börn sem alast upp hjá samkynhneigðum hljóti nokkurn skaða af.

Jafnframt fyrrgreindu bendir Barnaverndarstofa á þá þversögn sem er að finna í 1. mgr. 4. gr. frumvarpsins þar sem staðfest samvist er einskorðuð við borgaralega vígslu. Hér kemur fram miðmunun vegna kynhneigðar. Þetta ákvæði byggir á afstöðu íslensku þjóðkirkjunnar sem

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BARNVERNDARSTOFAN

fram kemur í athugasemdum með frumvarpinu. Sú afstaða orkar tvímælis þar sem kirkjan er öflug og mótandi stofnun í þjóðfélaginu. Þannig gæti það orðið þungbært fyrir börn og aðstandendur samkynhneigðra að kirkjan hafni þessum hópi fólks í þessu tilliti. Með hliðsjón af markmiðum frumvarpsins um staðfesta samvist og almennu jafnræðisreglu stjórnarskrárinnar sbr. 65. gr. stjórnskipunarlaga nr. 33/1994 vill Barnaverndarstofa benda á að æskilegt væri að þjóðkirkjan breytti afstöðu sinni, a.m.k. á þann hátt að samkynhneigðum gæfist kostur á að fá blessun á staðfesta samvist sína.

F. h. Barnaverndarstofu.

Þráttur Ástfránda Þingmann

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Interventions for Children of Divorce

Custody, Access, and Psychotherapy

Second Edition

William F. Hodges



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ETHNICITY AND CUSTODY EVALUATIONS

Although mental health professionals have suspected that ethnicity makes a difference in divorce and custody issues, they have not had the research to support these suspicions and have not had the training in understanding ethnic differences. Professionals have based their studies on experience or intuitive knowledge or used the same criteria across cultural groups. Thus, evaluators have tended to use classical criteria for Hispanic and black families, although there is reason to believe that custody recommendations should be culture bound. Certainly, attachment between parent and child differs in various cultures. As a start, an entire issue of the *Journal of Divorce* (Everett, 1987) was devoted to minority and ethnic issues in divorce. There were three articles on black families, two on Hispanic, and one on Catholic Italian women. As an example of information from those studies, Fine and Schwebel (1987) argued that data on children's and adults' reactions to divorce and single parenthood may not generalize to blacks and that blacks, as a group, may cope more successfully than whites. It should be noted that none of these groups is homogeneous in that different subcultures exist within each. What is desperately needed is research on different Asian groups.

HOMOSEXUAL PARENT AND CUSTODY OR ACCESS

Prior to recent changes by the American Psychiatric Association on whether homosexuality is a criterion for maladjustment, homosexuality was grounds for denying custody. Indeed, in many court jurisdictions, it continues to be a decisive factor. Judges have been concerned about the stigma for the child, the possibility of peer ridicule, the possibility that the child might grow up to be homosexual, and the likelihood that the child might have inappropriate sex-role behavior (Harris, 1977; Hitchens, 1979/1980). Hitchens noted that a high number of custody battles involving a homosexual parent are between a lesbian mother and another relative, often the child's grandparent. Ironically, such battles are often with the parents of the lesbian mother, who have already demonstrated that a child of their upbringing can end up homosexual.

Kirkpatrick, Smith, and Roy (1981) did a careful study of 20 boys and 20 girls, half living in homes with lesbian mothers and half with heterosexual mothers. They used an extensive mother interview and tested the children. The testers were blind as to the type of family to which the child belonged. The maternal interests of the two types of mothers were the same. Lesbian mothers were more interested in breast feeding than heterosexual mothers. The marriages had been the same length for the two types of families. Lesbian mothers did not cite sexual dissatisfaction as the reason for the divorce (as might be expected), but indicated that the absence of psychological intimacy was the basis. Heterosexual mothers listed drug use, alcohol, and

women, psychotic behavior, and physical abuse as reasons for divorce. Visitation patterns were the same for the two families, and there were no differences in gender development in the two groups of families. The lesbian mothers were more concerned about providing adult male figures for their children than were the heterosexual mothers. In addition, Kirkpatrick et al. found that children of lesbian mothers were as well adjusted as children of heterosexual mothers. Waters and Dimock (1983) likewise noted that there is no evidence that homosexual parents have any particular deficit in parenting ability.

In a review of four studies, Nungesser (1980) found that the majority of lesbian mothers were committed to nonsexist child rearing and that 80% of the children of lesbian mothers had male role models. Golombos, Spencer, and Rutter (1983) evaluated 27 lesbian single mothers and 27 heterosexual single mothers, with a total of 75 children from 5 to 17 years of age. They interviewed the mothers and the children. There were no differences between the two groups in gender identity, sex-role behaviors, or sexual orientation (for those children who were old enough to evaluate sexual orientation).

R. Green (1982) also compared 58 children of 50 lesbian mothers with 43 same-age children raised by 34 divorced heterosexual mothers. He obtained no significant differences for femininity, masculinity, sexual identity, ratings of peer group popularity, and gender of peer group. Hoefler (1981) studied 20 lesbian and 20 heterosexual single mothers and their only or oldest child, age 6 to 9. She found few differences on measures of sex-role behavior. The mothers had little impact on boys' behaviors because the mothers were infrequently involved in encouraging particular play. Boys were just as sex typed regardless of type of family and were more sex typed than the girls.

In a fascinating discussion of family dynamics involving a lesbian mother, her lover, and the children, Hall (1978) reported behaviors of the lover that are remarkably similar to dynamics of remarried families as discussed in Chapter 9. The new partner either felt pressure to be a "supermom" (like many stepmothers) or to set limits on misbehavior (like many stepfathers). Children often felt threatened by loss of attention from the biological parent, just as in heterosexual remarried families.

Knight (1983) noted that the evidence was strong that economic deprivation was far more powerful as a predictor of the quality of child rearing than was having a lesbian mother. Lewin (1981) and Lyons (1983) felt that the primary source of difference between lesbian mothers and heterosexual mothers was the fear of loss of custody, and some mothers reduced property settlements in exchange for not having the homosexual orientation brought up in court.

Few studies have looked at the adequacy of parenting by homosexual fathers. B. Miller (1979) interviewed 40 gay fathers and 14 of their children. The sample was a snowball volunteer sample ("can you give me the name of a friend in the same situation"), so sample bias is a problem. No participants reported molesting their sons, and none was aware of any molestation from gay friends. Although Miller felt that adult heterosexual males were a

greater sexual risk to children than adult homosexual males, supporting data are limited.

Of the sample's 27 daughters and 21 sons old enough to evaluate sexual orientation, only 3 daughters and 1 son were self-reported to be homosexual, figures similar to or lower than the number that would be predicted from heterosexual families. In this study, harassment of the children for having a gay father was not a problem. Daughters were more accepting than sons, and sons were more accepting than their mothers.

Clinical experience has suggested that gay fathers can be just as caring and concerned for the child's welfare as lesbian mothers. Higher levels of homophobia for males may lead to fewer cases of custodial homosexual fathers than custodial heterosexual fathers, but I have seen no data on the frequency of custodial homosexual fathers or mothers.

It should be remembered that there is no evidence that homosexuality is passed from one generation to the next (an issue that is important only if the task is to reassure the court that homosexuality is an unlikely outcome). Harris (1977) noted that sexual orientation identity takes place some time between infancy and middle childhood and is not passed from parent to child. One could argue that nothing is wrong with a parent deciding to rear a child with a homosexual orientation, but the courts and many mental health professionals (who are willing to accept the adult decision to be homosexual, but not the imposition of that decision on a child) are likely to disagree.

In any family, it is important to evaluate that a child is not being exposed to sexually explicit material or to adults' sexual behavior. Questioning may need to be more explicit in an evaluation with a homosexual parent, because norms concerning parenting behavior are less well defined and the "coming out" behavior (and concomitant increase in self-esteem) may conflict with "hiding" something about the homosexuality from the children.

SEX ABUSE ALLEGATIONS IN CUSTODY EVALUATIONS

It is generally believed that children rarely make false allegations of sexual abuse. Because child abuse is recognized as extraordinarily harmful to children during childhood and subsequent adulthood, allegations of child sexual abuse during a custody evaluation tends to bring the evaluation to a halt and the accused is denied access. An emerging literature, however, suggests that such allegations made during or immediately after separation and divorce are not always true. An important issue is how to handle an allegation of sexual abuse in the middle of a custody or access battle, when the allegation was not made before and there is no real corroborating evidence.

The Association of Family and Conciliation Courts' Research Unit (1988) conducted a study to try to evaluate the frequency of such allegations and the degree to which such allegations could be substantiated. The

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