

# Two Gays Can Be A Family, Court Says

New York Rent-Case Ruling Is the First of Its Kind

by PETER FREIBERG

In a ruling that gay rights activists said would fuel demands for legal recognition of gay domestic partnerships, New York State's highest court expanded its legal definition of the word *family* to include a long-term gay couple.

The state court of appeals ruled 4-2 that a gay man whose longtime lover died is eligible as a spouse under New York City's rent-control laws to retain the apartment they shared, even though only the deceased lover's name was on the lease. "This is the first time that a state's highest court has recognized a gay couple to be the legal equivalent of a family," said William Rubenstein, who argued the case as staff counsel for the American Civil Liberties Union Lesbian and Gay Rights Project.

The ruling "marks the most important single step forward in American law toward legal recognition of lesbian and gay relationships," he said. "Any time any court anywhere is confronted with the question of how to go about defining families, this court's analysis will be tremendously helpful to gay couples."

## LEASE TROUBLE

The case centered around Miguel Braschi, a 34-year-old man who lived for more than ten years in a rent-controlled apartment on Manhattan's East Side with his lover, Leslie Blanchard. Blanchard was the only one of the two men who signed the lease for the apartment, and when Blanchard died of complications from AIDS in 1986, the apartment's landlord tried to evict Braschi so the apartment could be leased to a new tenant at a higher rent.

Under New York City rent-control law, a surviving family member who lives in a rent-controlled apartment is allowed to remain there after the apartment's lessee dies even if the survivor's name is not on the lease. Blanchard's landlord argued that Braschi was not a member of Blanchard's family under city rent-control laws because he was not legally married to Blanchard or one of his blood relatives. Braschi, though, contended that he and Blanchard were a family, albeit a nontraditional one, and the four-member majority of the court of

appeals agreed.

In the majority opinion, written by chief justice Vito Titone, the appeals court did not refer specifically to sexual orientation, but it ruled that "the term *family*... should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order.... Protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but [it] instead should find its foundation in the reality of family life."

## A "VALID" DEFINITION

Titone then outlined what he called a "more realistic, and certainly equally valid" definition of *family*—"two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment and interdependence."

The court noted that Braschi and Blanchard

- lived together as "permanent life partners" for more than a decade,
- considered each other, and were regarded by friends and family, as spouses,
- maintained the rent-controlled apartment as their joint home, and
- shared financial obligations and had joint checking and savings accounts; Blanchard named Braschi executor of his estate, in which Braschi reportedly was left \$5 million.

A "court examining these facts could reasonably conclude that these men were much more than roommates," Titone wrote. The appeals court ordered a lower court to reconsider Braschi's case, and Rubenstein said he was confident that Braschi would not be evicted.

Gay activists said the decision would increase momentum for the notion of expanding societal benefits for nontraditional families. Tom Stoddard, executive director of Lambda Legal Defense and Education Fund (LLDEF), a national gay rights group based in New York City, said the Braschi ruling could strengthen an LLDEF lawsuit that seeks health benefits for the domestic partners of gay New York City public school employees. The judge in the case had postponed a ruling pending the outcome of the Braschi lawsuit.

## NATIONWIDE EFFECTS

Even though rulings by the New York court have no legal force outside of New York State, Tom Coleman, a lawyer who founded the Family Diversity Project, a Los Angeles group that seeks legal recognition for nontraditional families, said the New York decision will affect courts in California and elsewhere.

"In my opinion," Coleman said, "this case will have greater impact than *Marvin v. Marvin*," a well-known case in which a California judge determined that a longtime participant in a heterosexual domestic partnership could be eligible for palimony payments when the domestic partnership ends. Coleman said the Braschi case "confers family status, so it has [a] much more far-reaching impact [than the *Marvin* case].... It blows the stereotype of who families are."

Coleman said that the movement for legal recognition of domestic partnerships, which scored most of its advances on the West Coast, would pick up steam in the East as a result of the Braschi ruling. ■

**The ADVOCATE**

AUGUST 15, 1989