

New York Court Defines Family To Include Homosexual Couples

ALBANY, July 6 — New York's highest court today expanded the legal definition of a family, holding that a gay couple who had lived together for a decade could be considered a family under New York City's rent-control regulations.

Lawyers and gay-rights advocates said the 4-to-2 decision by the Court of Appeals, which would also apply to heterosexuals living together, was the first by a state's top court to examine a long-term gay relationship and find that it qualified as a family.

"Today's decision is a ground-breaking victory for lesbians and gay men," said William B. Rubenstein, the Amer-

ican Civil Liberties Union staff lawyer who argued the case. "It marks the most important single step forward in American law toward legal recognition of lesbian and gay relationships."

But the decision was narrowly written to deal only with New York City's rent-control regulations. The court carefully avoided ruling on constitutional grounds, which could have, for example, opened the possibility of homosexuals and other unrelated couples qualifying for health-insurance benefits normally limited to a spouse or family member.

'Reality of Family Life'

The ruling was in a case involving a gay couple but does not refer specifically to sexual orientation or marital status, though it does spell out the characteristics of a relationship to qualify for legal consideration as a family.

In the majority opinion, Judge Vito J. Titone wrote that protection against eviction "should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life."

"In the context of eviction," he added, "a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment and interdependence."

Advocates for the poor and elderly hailed the decision, saying it would in-

fluence governments around the country that are struggling to determine how unrelated people living together fit into existing laws and regulations.

"From our perspective, it is a tremendous victory for low-income people who for economic and historic reasons are not able to reside in legally recognized relationships," said Lynn M. Kelly, a staff lawyer for the Legal Aid Society, a nonprofit organization that provided legal assistance in civil cases to 20,000 poor people in New York City last year.

Today's decision reversed a ruling by a lower appeals court and blocked a landlord from evicting Miguel Braschi from a Manhattan apartment he shared with Leslie Blanchard for more than a decade until Mr. Blanchard died of AIDS in September 1986.

Dean G. Yuzek, the lawyer for Stahl Associates, which owns the building on East 54th Street where the 34-year-old Mr. Braschi lives, could not be reached for comment today. A woman who answered his telephone at Shea & Gould said the firm would have no comment on the case.

The decision by the Court of Appeals is likely to add momentum to the drive for domestic-partner laws — like the one recently enacted for San Francisco — that allow couples in nontraditional relationships to register their partnerships with the city, in much the same way that a couple applies for a marriage license.

'Profound and Difficult'

New York City, which had filed a friend-of-the-court brief supporting Mr. Braschi, said the decision was particularly significant because of the city's housing shortage and the rapidly growing number of people with acquired immune deficiency syndrome and AIDS-related complex.

But the city's Corporation Counsel, Peter L. Zimroth, said the decision should not be applied to other questions before the court, such as a case in which several gay teachers are suing the city's Board of Education in an attempt to win health insurance benefits for their companions.

"All of these other issues are very profound and difficult," Mr. Zimroth said. "The court ought to deal with them on a more conservative way and go one step at a time."

Today's ruling was not the final judicial step in the case, which the Court of Appeals sent back to the Appellate Division of State Supreme Court. But in its language, lawyers said, the court left little doubt about the ultimate outcome of the case. "If we can show that the facts are as we say they are," Mr. Rubenstein said, "Braschi will not be evicted from the apartment."

Rent-control guidelines in New York, which cover apartments built before 1947 that have been occupied by the same tenant at least since 1971, affect about 167,000 apartments, most of them in New York City. Rent-stabilization laws, which were not affected by today's ruling, cover about 950,000 apartments.

Nationwide, rent regulations are in effect in about 200 municipalities, most of them in New Jersey and California, with the cities including San Diego, Los Angeles, Boston and Washington.

A New Test

Although the court ruled on a narrow statutory grounds, legal experts said it established a new test for determining what kind of relationship qualifies as a family. The factors that judges and other officials should consider, Judge Titone wrote, include these:

¶ "Exclusivity and longevity" of a relationship.

¶ The "level of emotional and financial commitment."

¶ How a couple has "conducted their everyday lives and held themselves out to society."

¶ The "reliance placed upon one another for daily family services."

But these factors should not be the only issues considered, Judge Titone said. "It is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control," he wrote.

'Permanent Life Partners'

In its decision, the court said Mr. Braschi and Mr. Blanchard had established themselves as "permanent life partners" for the more than 10 years they lived together. "They regarded one another and were regarded by friends and family, as spouses," Judge Titone wrote.

In addition to their "interwoven social lives," the court said, they shared all financial obligations, including a household budget, joint checking and savings accounts and credit cards. "A court examining these facts could reasonably conclude that these men were much more than mere roommates," Judge Titone said.

Judge Titone was joined in his decision by Judges Judith S. Kaye and Fritz W. Alexander. Judge Joseph W. Bellacosa wrote a concurring opinion.

In a dissent joined by Judge Stewart F. Hancock Jr., Judge Richard D. Simons wrote that the majority had overreached in its definition of family

in the rent-control law and expanded it to "include anyone who can satisfy an administrator that he or she had an emotional and financial 'commitment' to the statutory tenant."

Chief Judge Sol Wachtler had refused himself from the case, taking no part in the decision. He gave no reason, a traditional approach for the court.

The question of defining a family has become increasingly controversial around the country in recent years. Today's decision, groups on all sides said, is likely to be precedent setting.

"We've not seen a decision like this anywhere else in the country," said Gary L. Bauer, the former Reagan Administration domestic affairs adviser who is now president of the Family Research Council, a conservative research group in Washington.

'Extraordinary' Phrase

"Using the phrase fictitious legal distinctions to describe the more common family is an extraordinary thing for anyone to say," he said. "I wouldn't be surprised to hear that phrase from homosexual activists, but to hear it from the highest court of New York is both odd and a disappointment."

Thomas F. Coleman, the co-director of the Family Diversity Project in Los Angeles, which is lobbying for governments to recognize changing definitions of the family, called the decision a

landmark. "As the definition of family is litigated across the country," he said, "courts are going to be looking for precedents and this case is going to be the landmark relied on as the family diversity movement emerges as a political force."

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