

Florida court strikes down gay adoption ban

By Jane Sutton
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(Reuters) - There is no rational reason to prohibit all homosexuals from adopting children, a Florida appeals court said on Wednesday in a ruling that upheld a gay man's adoption of two young boys.

Florida was the only remaining U.S. state to expressly ban adoption by gay men and women, and state officials said after the court ruling the ban would no longer be enforced. They have 30 days to decide whether to appeal to the Florida Supreme Court.

A lower court found in 2008 that the ban violated the state constitution's guarantee of equal treatment. It allowed the plaintiff, a gay man named Frank Martin Gill, to adopt two boys -- half-brothers he had been raising as foster children since 2004.

The Florida Department of Children and Families said the lower court erred and the adoption was illegal under the state's 33-year-old ban on adoption by gays.

But the state's Third District Court of Appeal in Miami on Wednesday upheld the lower court's finding that "there is no rational basis for the statute."

Gill said he was thrilled the court recognized that the ban did a disservice to children most in need.

"This is a giant step toward being able to give our sons the stability and permanency that they are being denied," Gill said in a statement issued by the American Civil Liberties Union.

The Department of Children and Families was weighing whether to appeal Wednesday's ruling to the Florida Supreme Court. The appellate ruling applies directly only to the Gill family, and a decision from the state's highest court would provide a clear resolution in all jurisdictions.

"We are currently not enforcing the ban," department spokesman Joe Follick told Reuters in reaction to the ruling.

"The primary consideration on whether to appeal is finding the balance between the value of a final ruling from the Florida Supreme Court versus the impact on the Gill family."

'EQUALLY GOOD PARENTS'

The children were removed from their home because of abuse and neglect when one was 4 years old and the other 4 months old. A court terminated their crack-addicted parents' rights to the boys.

When they were placed with Gill, the older boy did not speak and the younger one had an untreated ear infection. Both had ringworm and other medical problems, the court documents said.

Both sides in the case, including state officials, agreed the children were thriving in the care of Gill and his male partner. The parties in the case also agreed "that gay people and heterosexuals make equally good parents," the appellate ruling noted.

"Given a total ban on adoption by homosexual persons, one might expect that this reflected a legislative judgment that homosexual persons are, as a group, unfit to be parents," the opinion states. "No one in this case has made, or even hinted at, any such argument."

During the original trial, psychologists, social workers, family experts and a clergyman gave conflicting testimony about the development of children raised by gays.

The court found such children were no more likely to be homosexuals themselves, engage in early sexual experimentation, suffer mental illness or domestic violence, or abuse drugs than children raised by heterosexuals.

The Department of Children and Families argued that children would have better role models and face less discrimination if they were placed in non-homosexual households, preferably with a husband and wife as the parents.

But the court said the statute did not accomplish that goal since it allowed single people to adopt and allowed gays to serve as foster parents.

"It is difficult to see any rational basis in utilizing homosexual persons as foster parents or guardians on a temporary or permanent basis, while imposing a blanket prohibition on adoption by those same persons," the court said.

Florida also allows people with criminal histories or histories of substance abuse to be considered as adoptive parents on a case-by-case basis, the ruling noted.

On average, there are about 850 children in state custody and available for adoption on any given day, Follick said.

The case is No. 3D08-3044, Florida Department of Children and Families versus In re: Matter of Adoption of X.X.G. and N.R.G.