

IN THE SUPREME COURT OF MONTANA
CAUSE NO. DA 08-0483

BARBARA L. MANIACI,
Respondent-Appellant,

v.

MICHELLE KULSTAD,
Petitioner-Appellee.

On Appeal from the Fourth Judicial District Court
Cause No. DR-07-34
Hon. Edward P. McLean

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STATEMENT OF THE ISSUES

1. Did the District Court abuse its discretion in awarding partial custody of the minor children to Ms. Kulstad?
2. Does § 40-4-228, MCA, constitutionally recognize that the rights of children to maintain parent-child relationships formed with the consent and encouragement of their natural parent must be balanced against the rights of the natural parent?
3. Did the District Court abuse its discretion in its evidentiary rulings?
4. Did the District Court abuse its discretion in finding that Ms. Maniaci had been unjustly enriched and awarding a constructive trust?

STATEMENT OF THE CASE

On January 19, 2007, Petitioner-Appellee, Michelle Kulstad filed a petition against Respondent-Appellant, Barbara Maniaci, seeking, among other things, an award of a “parental interest” under § 40-4-228, MCA, with respect to LM and AM, the two children who were adopted during the course of the couple’s relationship, and equitable distribution of Ms. Kulstad’s share of the parties’ assets and debts. D.C. Doc. 1.¹

Ms. Maniaci moved to dismiss, arguing that Ms. Kulstad could not maintain an action for a parental interest absent a termination of Ms. Maniaci’s parental interest, and that a claim of unjust enrichment and equitable distribution of the property was improperly pled. D.C. Doc. 9 at 2, 4. The parenting claims were briefed first by the parties, and the District Court issued its order denying the motion to dismiss with respect to those claims on February 13, 2007. D.C. Doc. 15 at 2.

¹ Ms. Kulstad’s original petition was captioned “Petition for Dissolution of Marriage and Parenting.” D.C. Doc. 1. In her Petition, Ms. Kulstad alleged that she and Ms. Maniaci, had agreed to assume toward one another all of the responsibilities of married people, exchanged rings, opened a joint checking account and held themselves out to people close to them as married. *Id.* at 2. The District Court rejected this claim on the grounds that “same sex marriage is not recognized in Montana,” but allowed the remaining claims to go forward. D.C. Doc. 59 at 1-2.

Ms. Kulstad sought an Interim Parenting Plan. D.C. Doc. 16. The transcript of that hearing, held March 20, 2007, is part of the record on appeal. D.C. Doc. 62.² Extensive evidence was received concerning the parent-child relationship between Ms. Kulstad and the two young children. The evidence was so compelling that the District Court ruled from the bench: “This Court recognizes Michelle Kulstad as having a parental interest.” Tr. 3/20/2007 at 256. On March 22, 2007, the District Court issued its Findings of Fact, Conclusions of Law and Order on the interim parenting plan, finding that the parties shared parenting duties and each had a parent-child relationship with the children. D.C. Doc. 46, Findings of Fact, Conclusions of Law and Order at 3. The Court thereafter adopted an interim parenting plan maintaining the relationship between the children and Ms. Kulstad. Id. at 7-10.

On April 23, 2007, the District Court issued its Opinion and Order, allowing the parties to move forward on the following two issues:

1. Have the parties commingled assets that require the Court to equitably divide the assets; and
2. Do both parties have a parental relationship with the children.

D.C. Doc. 59 at 3.

² References to “Tr. 3/20/2007 ___” are to the hearing held on March 20, 2007.

On May 22-23, 2008, a two-day final dispositional hearing was held on these issues. The District Court subsequently issued a 48-page decision on September 29, 2008, awarding Ms. Kulstad joint custody of the children and an equitable interest in the property developed and shared through the course of their domestic partnership. D.C. Doc. 368. Ms. Maniaci now appeals from that decision.

STATEMENT OF THE FACTS

I. Ms. Kulstad's Parental Relationship with LM and AM.

Ms. Kulstad and Ms. Maniaci met in 1995, and moved in together in 1996. In February 2001, Ms. Maniaci and Ms. Kulstad had the opportunity to adopt a son, LM. Tr. 68.³ Ms. Maniaci knew the child's grandmother, who had suggested that they adopt the child. Tr. 70-71. Ms. Kulstad suggested that they set up a meeting and discuss the adoption. Tr. 74. The couple met the baby and both felt "very, very connected" to him. Tr. 75. Ms. Kulstad testified: "We both decided that we wanted [LM] in our family." Tr. 76.

Shortly thereafter, the grandmother called to say she believed the baby was in danger. *Id.* The baby needed medical care when Ms. Kulstad and Ms. Maniaci took custody. Tr. 77-78. He was severely asthmatic and had projectile vomiting. Tr. 78. His clothes smelled of vomit and smoke. Tr. 77. They soon took the child to the hospital. In filling out the forms for the baby's admission, the couple listed the child's last name as hyphenated "Maniaci-Kulstad." Pl. Ex. 10 (hospital admission form); Tr. 78-81.

³ References to "Tr. ___" are to the transcript of the May 22-23, 2008 hearing.

The couple hyphenated LM's name at the time of admission to the hospital because they believed they would both be adopting LM together. Tr. 82. After Ms. Maniaci spoke with an attorney who advised them that same-sex couples could not both legally adopt,⁴ they together decided that Ms. Maniaci would be the adoptive parent, because she would be the child's primary caregiver during the day while Ms. Kulstad worked outside of the home to support the family. Tr. 85. Ms. Kulstad was told she could be the baby's guardian and she believed that gave her some rights as a parent. Tr. 84. They together decided that LM would call Ms. Maniaci "Mom" and Ms. Kulstad "Shelly," not to differentiate their relationship with their son, but to protect him because they did not want "our family to be in kind of a retaliation– sort-of-thing with homophobic people." Tr. 86-87.

A home study was done for LM's adoption by Cindy Garthwait in June 2001. Tr. 87, 143; Pl's Exs. 22 and 23. Ms. Garthwait concluded after her investigation that Ms. Kulstad was "involved in the parenting of [LM] and planned to continue." Tr. 151. Ms. Garthwait testified at the hearing in this matter that although she knew she was doing the adoption homestudy "[l]egally . . . for Barbara...it was clear to me that it was considered a committed couple. And, so, I was interviewing and doing background on both of them." Tr. 141. Ms. Garthwait

⁴ Ms. Kulstad is not suggesting that is the actual legal situation in the state, only that this was the representation made to the couple by an attorney.

assumed based on statements made by both parties that both Ms. Kulstad and Ms. Maniaci would be parents to the baby. Id. Ms. Maniaci admitted at trial that she had told Ms. Garthwait she and Ms. Kulstad would both be parenting the baby, although she attempted to characterize her prior statements as a “lie.” Tr. 525. As part of Ms. Garthwait’s investigation, she confirmed that the prospective parents had made “their commitment for a lifetime” and had made plans if one of the parents died. Tr. 151. Ms. Garthwait affirmed that Ms. Kulstad was committed to LM both emotionally and financially. Tr. 152.

In 2003, Ms. Maniaci suggested adopting another child. Ms. Kulstad was initially opposed. Tr. 96-97; Tr. 3/20/2007 at 218. However, Ms. Maniaci told her she “had to get on board,” Tr. 95, and Ms. Kulstad helped complete the paperwork required for that adoption. Tr. 95-96. As part of Ms. Maniaci’s research into adopting another child, she sought advice from an organization that advocates for rights for same-sex couples. Pl’s Ex. 36. In her inquiry, Ms. Maniaci referred to Ms. Kulstad as her “partner”, and stated that they together completed a private adoption of their previous child and together, “we” would like to adopt a baby girl. Id.

In connection with the second adoption, a home study was done by Dennis Radtke in April 2003. Tr. 268; Pl’s Ex. 40. The home study report shows that

both Ms. Maniaci and Ms. Kulstad were intended parents to AM. See Pl. Ex. 40 at 1 (“An Adoptive Home Study was conducted on behalf of Barbara Maniaci and Michelle Kulstad.”); id. at 6 (“Assessment of Barbara Maniaci’s and Michelle Kulstad’s Ability to Provide an Adoptive Home”). AM was adopted from Guatemala in May 2004. Despite her initial hesitation, Ms. Kulstad soon formed a close parent-child bond with AM, just as she had with LM. Tr. 95-96.

In his testimony at trial, Mr. Radtke stated that Ms. Kulstad and Ms. Maniaci were deeply committed to the welfare of LM. Tr. 273. He believed they demonstrated unequivocally that they were able to organize their lives and priorities around their children’s well being. Id. As such, Mr. Radtke found Ms. Kulstad and Ms. Maniaci to be an “ideal family to adopt.” Id. Ms. Maniaci testified at trial, however, that she had “lied” to Mr. Radtke, in the same way that she had “lied” to Ms. Garthwait during the first home study. Tr. 526.

Unfortunately, after deterioration in the couple’s relationship, the parties began to separate in the fall of 2006, after LM had been in the family for five years and AM for over two years. This action was filed in January 2007. During the proceedings below, Ms. Kulstad and other witnesses confirmed that she was a parent in every way to the children, that the children viewed her as a parent, and that Ms. Maniaci held Ms. Kulstad out as a parent to LM and AM.

The March 20, 2007 Hearing on an Interim Parenting Plan

The District Court held an initial hearing on Ms. Kulstad's petition for a temporary parenting plan on March 20, 2007. D.C. Doc. 62. At that hearing, Ms. Kulstad presented extensive testimony about her parental relationship with her son and daughter, as did a friend of both parties, and two of LM's teachers.

Ms. Kulstad described her day-to-day parental relationship with the children at this hearing. She noted that she worked during the day to support the family, and cared for the children in the evening, when Ms. Maniaci would see her chiropractic patients. Tr. 3/20/2007 at 190-191. She was often the primary caregiver on weekends. Id. at 191-192. Ms. Kulstad confirmed, "I absolutely have a promise to those children that I will look after them for as long as I live... I'm totally committed to those children." Id. at 213.

One of LM's teachers, Carrie Brunger, from the Clark Fork School, testified that the people she understood to be part of LM's family were "Barbara and Shelly (Michelle)." Id. at 101. Ms. Brunger said that when LM was asked to draw a picture of his favorite summer experience, he drew a picture of "his moms, Shelly and Barbara, and [AM] down in the lower corner of the piece." Id. at 102.

Another teacher, Laura Loveland, confirmed LM perceived his family to be "Barbara, Shelly and [AM]." Id. at 164. Both Ms. Kulstad and Ms. Maniaci

