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Texas

Lesbian moms in custody fight
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Dallas woman's attorneys say case may set Texas precedent

The last time Kristie Vowels saw her daughter was on April 25, 2007. And whether she ever will have the legal right to see the nearly-4-year-old child again depends on the 5th District Court of Appeals' decision in what Vowels' attorneys said could be a precedent-setting case.

Vowels filed the lawsuit seeking joint custody, and later, the right to adopt the girl — whose name is being withheld to protect her privacy — on May 23, 2007, less than a month after the child's biological mother and Vowels' former partner, Tracy Scourfield, cut off Vowels' contact with the girl.



Kristine Vowels, left, consults with attorney Michelle May O'Neil, outside the courthouse in downtown Dallas. - TAMMYE NASH/Dallas Voice

Judge Tena Callahan in Dallas' 302nd District Court dismissed the suit, for lack of standing, on April 4 this year, and on April 29 Vowels' attorneys, Michelle May O'Neil and Susan Vrana, filed papers appealing that ruling.

But, O'Neill said, the appeals court isn't likely to take any action for at least six months.

For Vowels, that six months seems, she said, like an eternity.

"I think I am still in disbelief that I am having to fight to see my child," Vowels said. "My daughter deserves equal rights and equal protection. She deserves to have two parents raise her."

Scourfield did not return a call seeking comment. Her attorney, Paul Brumley, declined comment through an e-mail.

According to information provided by Vowels and her attorneys, Vowels and Scourfield moved in together in December 1998. After several years of discussion and several sessions with a therapist, the two women decided to have a child through artificial insemination, with Scourfield as the biological mother and sperm from an anonymous donor.

The child was born May 21, 2004. She was given Vowels' first name as her middle name, and her last name was a hyphenated combination of her mothers' last names.

Then, 15 months after the child's birth, Vowels and Scourfield separated, agreeing at the time to a visitation schedule very similar, O'Neill said, to what is considered a "standard" visitation schedule between divorced parents in Texas: The child lived with Scourfield, but stayed with

Vowels every other Tuesday overnight, every other weekend and every other Sunday from after church to 6 p.m. The women also agreed that Vowels would be allowed to share holiday time, as well, O'Neill said.

That arrangement lasted for about 20 months.

In August 2006, Scourfield had the child's last name changed from Scourfield-Vowels to Scourfield. She cut off visitation completely the following April.

Vowels said she doesn't really know what prompted Scourfield to end her visitation with the child, and that Scourfield had only said Vowels had violated her trust by accessing the child's day school records.

But, Vowels added, Scourfield had listed Vowels as a parent on the forms at the school, and the only thing she had seen that might be considered records was a routine e-mail, sent to both her and Scourfield, that told what the child's activities had been during the course of the school day. The school had, Vowels said, recently begun giving parents updates on daily activities through e-mail.

Vowels initially retained Vrana as her attorney and filed suit seeking conservatorship with a legally designated visitation schedule. Vrana said when she realized that the case would most likely be going to the appellate court, she brought in O'Neill, who has more experience with appealing family law cases.

Associate Judge Christine Collie in the 302nd District Court ruled last August that Vowels had no standing under Texas law to sue for such status, but said she did have standing as "a person with substantial past contacts" with the child to sue for adoption.

Judge Callahan confirmed those rulings last November and again in January following a December hearing asking her to reconsider.

Judge Callahan held a hearing in March on Scourfield's motion to dismiss the case and signed the final order dismissing the case on April 4.

O'Neill said Vowels' appeal is based on a section of Texas law that allows persons who have had "actual care, control or possession" of a child to file for conservatorship.

By virtue of the visitation schedule the two women had agreed on, and exercised, for more than a year following their split, O'Neill said, Vowels did meet the "care, control or possession" requirement, and she did file her lawsuit within the 90-day period following the date when Scourfield cut off contact between the child and Vowels.

But Barbara Nunneley of the Nunneley Family Law Center said she believes Vowels' hopes are hanging by a thin thread.

Texas law, Nunneley said, would grant Vowels standing for her suit if she had filed suit seeking joint custody and visitation within 90 days of the date Scourfield and the child moved out of Vowels' home.

The law also gives standing to a person who has had “actual care, control and possession” of a child, ending not more than 90 days before the suit is filed.

“There is no case law that I know of holding [that visitation such as Vowels had] meets the care, control and possession requirement,” said Nunneley, who is board certified in family law and president of the Texas chapter of the American Academy of Matrimonial Lawyers. “I do know of cases where grandparents and aunts and uncles have tried to get custody” under this clause of Texas family law.

“The question here is, is there a Texas case holding that [under this clause], ‘possession’ means weekend visits? That’s going to be pivotal for the trial court [and the appellate court].” Nunneley continued. “You would have to be very creative and have an expanded interpretation of our law for [Vowels] to come in as having had possession.”

O’Neill, however, said there is a case out of El Paso, *Doncer v. Dickinson*, in which a stepmother was given standing under the law based on a visitation schedule similar to the one between Vowels and Scourfield.

O’Neill also said that while the visitation schedule between Vowels and Scourfield had been a verbal agreement only, Scourfield’s attorney had acknowledged in court that it had existed.

“Could this case set a precedent? I think it could. I think it should. I think the court should have a remedy for [Vowels and her daughter],” O’Neill said.

Although Vowels’ case could set a legal precedent in Texas, both O’Neill and Vrana said their primary interest is to fight for what they believe is right, for both Vowels and for the child.

“Judge Callahan totally avoided the question of what is in the best interest of this child, and she kicked us to the curb at the very beginning of the case,” O’Neill said.

“Right now, [Vowels] has zero rights, only what the biological mom is willing to give her, and right now, that is nothing. All she is wants is court-ordered visitation, to have legal access to her child.”

Vrana added, “Would a court tell a divorced father that he doesn’t have the right to see his children? The court is treating [Vowels] differently, and that is not fair,” Vrana said.

That, said O’Neill, is the crux of the situation: Vowels and Scourfield were not married. They are not divorced. And legally, according to Scourfield’s lawyer, Vowels is “a stranger” to the child she helped raise for the first three years of her life.

“The perception is different when it’s a straight couple,” O’Neill said. “The law has a gap in it for parents who have had a substantial relationship with a child but happen not to be biological parents We are trying to help the law catch up with the way people are really living. This is a real issue for a whole bunch of real people.”

For Vowels, it’s all about having the chance to see her daughter again, and possibly, helping other lesbian and gay parents.

“Being in the public eye and talking to people is part of what I do for my job,” said Vowels, an administrative employee with the Dallas Independent School District. “But I don’t like to talk so publicly about my private life. But if telling my story helps just one person who might be a similar situation, then it’s worth it. It’s all worth it to see my daughter again.”

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