

The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

[Florida's Statute Banning Gays and Lesbians From Adopting Ruled Unconstitutional](#)

September 23, 2010 by [Eric L. Lundt](#)

In a landmark decision, Florida's Third District Court of Appeal unanimously upheld a lower court's ruling striking down as unconstitutional the state's statute that prohibited gays and lesbians from adopting. In a 42-page opinion, [Florida Department of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G. \(pdf\)](#), the Court found there was no rational basis for the statute, and therefore held it to be unconstitutional on equal protection grounds.

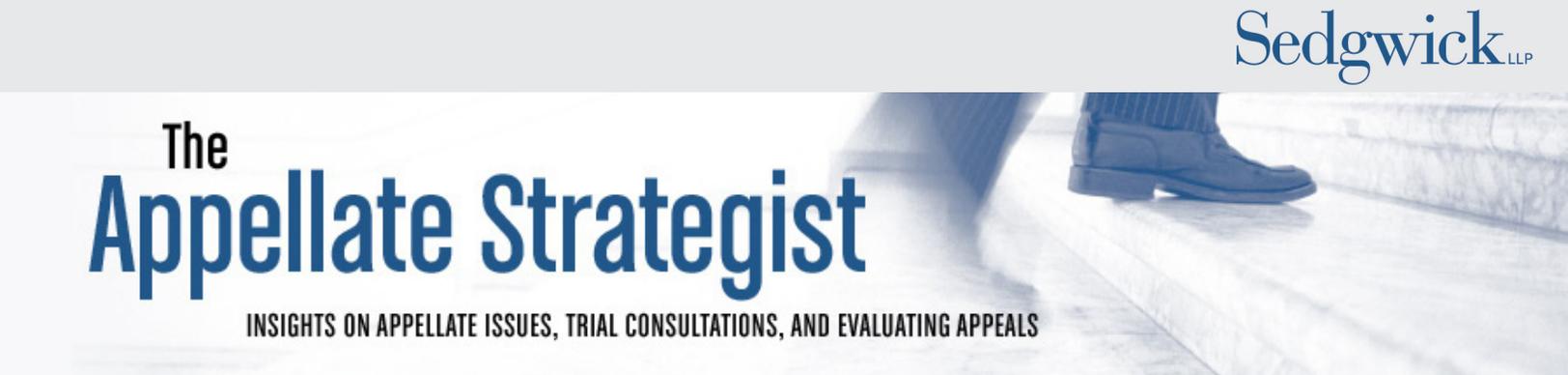
The facts of the underlying case were not substantially disputed. In 2004, the Florida Department of Children and Families removed two brothers, a four-year-old and an infant, from their home based on allegations of abuse and neglect. The children were placed into foster care with Frank Gill, an experienced foster parent. For the next several years, the children "thrived" in the household. When the children became available for adoption after the termination of their natural parents' rights, Gill applied to adopt them. Although the State agency responsible for monitoring the children reported that Gill's home presented a suitable environment and that he met all the criteria for adoption, it recommended against adoption on the sole basis that Gill is a homosexual. After Gill's adoption application was denied on that basis, he filed a petition in the circuit court to adopt the children and a trial ensued.

At trial, the Department argued that Florida's blanket prohibition on homosexual adoption was justified because children will have better role models and face less discrimination if they are placed in non-homosexual households, preferably with a husband and wife as parents. After hearing extensive expert testimony on the issue of gay parenting, the trial court disagreed and concluded:

"The quality and breadth of research available, as well as the results of the studies performed about gay parenting and children of gay parents, is robust and has provided the basis for a consensus in the field....These reports and studies find that there are no differences in the parenting of homosexuals or the adjustment of their children....As a result, based on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of the children are not preserved by prohibiting homosexual adoption."

Based on this finding, the trial court ruled that the statute was unconstitutional and violated Gill's equal protection rights because it created an absolute prohibition on adoption by homosexual persons, while allowing all other persons - including single persons and those with criminal histories or histories of substance abuse - to be considered on a case-by-case basis.

On appeal, the Department argued that there is a rational basis for the statute's blanket exclusion of homosexual adoption because homosexuals are less able to provide a stable home for children than heterosexuals. However, the appellate court, quoting at length from the testimony of the experts, disagreed. Premised on the notion that



The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

“[t]he reason for the equal protection clause was to assure that there would be no second class citizens,” the Court noted that under Florida law, homosexual persons are allowed to serve as foster parents or guardians, but are barred from even being considered for adoptive parents. All other persons are eligible to be considered case-by-case to be adoptive parents, but not homosexuals, even where the adoptive parent is a fit parent and the adoption is in the best interest of the children. This distinction established that there was no rational basis for banning gay adoption, rendering the statute unconstitutional.

Despite a constitutional provision that allows the Department to appeal this decision to the Supreme Court of Florida, early indications are that the Third District’s opinion may well be the last word on this issue and thus the death knell to the gay adoption statute. Florida’s current Governor, and candidate for U.S. Senator, Charlie Crist, referred to the ruling as “a very good day for Florida” and “a great day for children.”