



The Legal Aid Society
of ROCHESTER, NEW YORK

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Contact:
Amy Schwartz-Wallace, Empire Justice Center [585-295-5726]
Vivian Aquilina, Legal Aid Society of Rochester [585-295-5753]

Victory for LGBTQ Families! 4th Department Determines Civil Union Spouses Have the Right to Equitable Distribution

For the first time in New York State, an appellate court ruled that property acquired during a civil union is entitled to equitable distribution when that civil union ends.

In its unanimous decision, the 4th Department ruled that “comity does require the recognition of property rights arising from civil union in Vermont.”

The Defendant, Christine O’Reilly-Morshead, was jointly represented on the appeal by Empire Justice Center and The Legal Aid Society of Rochester NY. Both legal services organizations, partner agencies in the Telesca Center for Justice, are proud of this collaboration and the outcome achieved together.

The ruling recognized that one of the consequences of a civil union in Vermont was that parties would receive all the same benefits, protections, and responsibilities as are granted to spouses in a marriage, including the right to divorce and the right to division of their property. Comparing New York and Vermont’s statutory schemes, both states predicated property rights on the objective evidence of a formal legal relationship and provided for division of that property through similar equitable distribution frameworks. As this rule is consistent with New York’s public policy, the court announced, “...under the principles of comity, the property acquired during the civil union and prior to the marriage is subject to equitable distribution....”

The parties, Christine and Deborah O’Reilly-Morshead, consistently sought the strongest legal recognition and protection for their relationship that was available to them at the time. Barred from the freedom to marry in New York in 2003, the couple entered into a civil union in Vermont. Three years to the date of their civil union, they married in Canada. Sadly, they later ended their relationship and sought dissolution of both their marriage and their civil union. This appeal ensued after the court below determined that it had authority to dissolve the civil union itself, but could not extend comity to recognize any other rights, remedies, and benefits

attendant to the spousal status, including the right to both accumulate and equitably distribute joint property accruing from the date the spousal status was created.

“This decision is in lockstep with New York’s state policy that reflects the growing legal recognition and respect for LGBT couples and their families”, said Amy Schwartz-Wallace, a Senior Attorney with Empire Justice Center who represented the defendant in this case. “This Court’s holding, together with prior precedents around custody and dissolution, provides much-needed clarity and predictability for the hundreds of similarly-situated New Yorkers who have civil unions from our sister states.”

Vivian Aquilina from The Legal Aid Society of Rochester, New York, who was co-counsel, stated "Our client is very happy with this outcome, not just for her case, but for all civil unioned couples in New York State. This decision recognizes that Ms. O’Reilly Morshead and her civil unioned spouse lived together like any other family in New York State – sharing their affection, labor, time and assets while they raised their child. The Appellate Division, in recognizing the equitable distribution of civil union property between spouses, has taken a step in respecting the mutual promises these couples have made to each other.”

“Undoubtedly, this ruling is an important advance because it provides critical tools these families need to untangle the knots created on the day they became legally bound. While we hoped the appellate court would go further in its holding, those issues are saved for another day. New York families with civil unions continue to live with the uncertainty that comes without broad relationship recognition, but this is a step forward. We are pleased that this decision will serve as useful precedent for other families,” reflected Schwartz-Wallace.

Read the full opinion in [O’Reilly–Morshead v. O’Reilly–Morshead](#).

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Empire Justice Center is a statewide, multi-issue, multi-strategy, public interest law firm focused on changing the “systems” within which poor and low-income families live. Empire Justice protects and strengthens the legal rights of people in New York State who are poor, disabled or disenfranchised through: systems change advocacy, training and support to other advocates and organizations, and high quality direct civil legal representation. Empire Justice has four offices in Albany, Rochester, Yonkers, White Plains and Central Islip on Long Island.

The Legal Aid Society of Rochester is a not-for-profit organization that provides direct civil legal services, including lay advocacy and related human services, to adults and children. We ensure that those who seek justice have an opportunity to receive a fair and full hearing. We obtain legal solutions that have a beneficial impact on our clients and the community. We strive to create an environment in our community that values access to legal counsel, so every person is treated with dignity, equality, and fairness.