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SUPREME COURT OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

Langan v. St. Vincent's Hospital of New York[1]
(decided October 11, 2005)

In 2002, the Supreme Court of New York found that plaintiff John Langan was entitled to recover damages under the New York State Estates, Powers and Trusts Law (EPTL) section 5-4.1 for the wrongful death of his partner Neil Conrad.[2] St. John's Hospital of New York argued on appeal that same-sex couples, joined by a Vermont civil union ceremony, were not considered married and therefore, possessed no standing in a surviving spouse claim.[3] The Appellate Division reversed the ruling of the lower court, holding that the denial of benefits under the New York State EPTL section 5-4.1 did not violate the Equal Protection Clause of the Federal or New York State Constitutions.[4] The Appellate Division also determined that the plaintiff failed to establish that the denial of benefits served no legitimate governmental interest.[5]

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[1] 802 N.Y.S.2d 476 (App. Div. 2d Dep't 2005).

[2] *Id.* at 477. N.Y. EST. POWERS & TRUSTS LAW §5-4.1 (McKinney 2006) provides, "The personal representative, duly appointed in this state or any other jurisdiction, of a decedent who is survived by distributees may maintain an action to recover damages for a wrongful act, neglect or default which caused the decedent's death."

[3] *Id.*

[4] *Id.* at 478.

[5] *Id.* U.S. CONST. amend. XIV provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." N.Y. CONST. art. I, § 11 provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion,

In November 2000, plaintiff John Langan and his now deceased partner, Neil Conrad, formalized their relationship by entering into a civil union in the state of Vermont.[6] The relationship continued, functioning as a traditional family unit until February 2002, when Conrad was struck by a car.[7] Due to a severe fracture, Conrad required hospitalization, which was provided by St. Vincent's Hospital of New York.[8] Following the surgeries performed by the defendant, Conrad died.[9] The plaintiff then instituted an action to recover damages under the wrongful death statute.[10] The defendant moved to dismiss Langan's complaint on the ground that, as a same-sex couple, Langan and Conrad were not recognized as being married and therefore, Langan had no claim as a surviving spouse.[11] The court denied defendant's motion and defendant subsequently appealed.[12] The Appellate Division reversed the decision of the lower court, finding that the equal protection clause was not violated by the application of the survivorship statute to married survivors only, and determined that any decision to the contrary would result in a usurpation of the legislature's power.[13]

In *Romer v. Evans*, the United States Supreme Court considered whether the adoption of amendment 2 in a statewide

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be subjected to any discrimination in his or her civil rights by any other person."

[6] *Langan*, 802 N.Y.S.2d at 478.

[7] *Id.* at 477.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 477.

[11] *Langan*, 802 N.Y.S.2d at 477. It is important to note, that the decedent, upon entering the hospital did not indicate that he was married. *Id.* at 479. In addition, plaintiff declined to state that he was married upon filing the appropriate probate papers. *Id.* at 479.

[12] *Id.* at 477.

referendum violated the Equal Protection Clause of the Constitution.[14] In practice, the amendment withdrew legal protection from discrimination and prohibited the government from adopting protectionist measures for homosexuals, thereby placing homosexual citizens in a solitary class.[15] The Court articulated that the rational basis test was the appropriate standard of review when the classification involved sexual orientation.[16] The Court stated that, "a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group."[17] Upon analysis of the facts, the Court found that amendment 2 did not further a legitimate state interest, but rather, it made homosexuals unequal to the other citizens of Colorado.[18]

Furthermore, in *Lawrence v. Texas*, the Supreme Court held that laws criminalizing sexual activity between same-sex couples could not survive constitutional scrutiny and therefore, violated the Due Process Clause of the Fourteenth Amendment.[19] Since the legislation allegedly discriminated against homosexuals, a non-

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[13] *Id.* at 477, 480.

[14] 517 U.S. 620, 623 (1996). The referendum sought to repeal ordinances adopted by such cities as Aspen and Boulder, which banned discrimination based upon sexual orientation or practices in areas such as employment and housing. *Id.* at 624-25.

[15] *Id.* at 627. The state argued that the amendment was adopted out of "respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality." *Id.* at 635.

[16] *Id.* at 632.

[17] *Id.*

[18] *Id.* at 624, 635-36.

[19] 539 U.S. 558, 578 (2003). The dissenting Justices, Thomas, Scalia and Rehnquist reasoned that the sodomy law did not infringe upon a "fundamental right," was based upon a legitimate states interest and failed to deny equal protection under the Constitution. *Id.* at 605.

suspect class, the state statute was subject to the rational basis test.[20] Under this standard of review, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest."[21] In applying the rational basis test, the Court concluded that the legislation made the private, sexual and consensual conduct between the Lawrence and his partner, a crime.[22] Moreover, the Court reasoned that the state furthered no valid legitimate interest, which justified its intrusion into individual lives.[23] The Court added that "[w]hen a law exhibits such a desire to harm a politically unpopular group, we have . . . [struck] down such laws under the *Equal Protection Clause*."[24]

More importantly, however, was the fact that the Justices of the *Lawrence* Court suggested that the exclusion of marital rights to same-sex couples did promote a legitimate state interest.[25] The majority noted that the decision did not require the government to give formal recognition to a relationship between homosexual partners.[26] Justice O'Connor stated in her concurrence that just

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[20] *Id.* at 579. The state law in this case made it a criminal offense for "two persons of the same sex to engage in certain intimate sexual conduct." *Id.* at 562.

[21] *Id.* at 579 (citing Cleburne v. Cleburne Living Center Inc., 473 U.S. 432, 440 (1985)). In *Cleburne*, the city required a special use permit from the respondents, who wished to open and operate a home for mentally retarded adults. 473 U.S. at 435-37. The city's ordinance did not require a special use permit for other dwellings such as boarding houses and nursing homes. *Id.* at 447. In conducting its analysis, the Court concluded that the record did not reveal a rational basis for believing that the home would pose any special threat to the city's legitimate interests, such as health and safety. *Id.* at 448. Ultimately, the United States Supreme Court held that the zoning ordinance was not rationally related to a legitimate state interest. *Id.*

[22] *Id.* at 578.

[23] *Id.*

[24] *Lawrence*, 539 U.S. at 580.

[25] *Langan*, 802 N.Y.S.2d at 478.

[26] *Lawrence*, 539 U.S. at 578. The Court turned its focus toward the privacy of two

because the Court held that the Texas statute in question violated the Equal Protection Clause, that "does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail under rational basis review."[27] In her conclusion O'Connor added, "other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group."[28]

The New York State courts also examined the subject of homosexual relationships under the Equal Protection Clause. In the case *In re Cooper*, the Appellate Division held that the spousal requirement of survivorship was constitutional under the Fourteenth Amendment.[29] In this case, the surviving partner asserted that he and the deceased lived as a married couple.[30] Upon these circumstances, the claimant believed he was entitled to his right of election pursuant to the New York State EPTL section 5-1.1.[31] In response to the claim, the court stated that a statute is generally interpreted in its most obvious sense, unless the legislature provides a special meaning.[32] Referring to the reasoning of the Minnesota Supreme Court in *Baker v. Nelson*, which held that the term "marriage"

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consenting adults rather than the potential marital rights and privileges of those who are involved in homosexual relationships. *Id.*

[27] *Id.* at 585. Moreover, O'Connor stated that in *this* case, Texas could not assert that the "deviate sexual intercourse statute" furthered the state's interest in the preserving the traditional institution of marriage. *Id.*

[28] *Id.*

[29] 592 N.Y.S.2d 797, 801 (App. Div. 2d Dep't 1993).

[30] *Id.* at 797. The claimant asserted that he and the deceased, shared a common residence and expenses, were recognized as spouses amongst friends and maintained a physical relationship. *Id.*

[31] *Id.* at 797. N.Y. EST. POWERS & TRUSTS LAW § 5-1.1 (c) (1) (McKinney 2006) provides, "Where, . . . a testator executes a will disposing of his entire estate, and is survived by a spouse, a personal right of election is given to the surviving spouse to take a share of the decedent's estate."

[32] *Id.* at 798.

employed the common meaning, between those persons of opposite sex, the Appellate Division rejected the contention that the term surviving spouse must be replaced with a broader definition.[33]

Since *Cooper* involved sexual orientation, the court classified the petitioner as a member of a non-suspect class.[34] In conducting its equal protection analysis, the court stated that the factual scenario presented required rational basis review, where "government action 'is presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate state interest.' "[35] The court articulated that the state has an interest in promoting marriage and procreation, adding that these historical institutions are "more deeply founded than the asserted contemporary concept of marriage and societal interests for which petitioners contend."[36] Therefore, the Appellate Division concluded that the term "surviving spouse" did not include "purported [homosexual] marriages,"[37] and that the state's classification was neither "irrational or invidious discrimination."[38]

Furthermore, in *Valentine v. American Airlines*, the Appellate Division denied spousal status to homosexual couples for workers'

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[33] *Id.* at 799. The court in *Baker* determined that the draftsmen of the state marriage statutes did not intend for the term "marriage" to apply to homosexual relationships. 191 N.W.2d. 185, 186 (1971). It should be noted that the Appellate Division in *Langan* added, "no justice of that court has ever indicated that the holding in *Baker* is suspect." *Langan,* 802 N.Y.S.2d at 478.

[34] *Cooper,* 592 N.Y.S.2d at 800.

[35] *Id.* at 799-800.

[36] *Id.* at 800.

[37] *Id.* at 801.

[38] *Id.* at 800.

compensation benefits.[39] The Third Department utilized the rational basis test and held that the "state has a legitimate interest in providing an efficient administrative system for resolving and paying workers' compensation claims in a consistent manner."[40] The court acknowledged that the task of presenting proof of a domestic relationship is a difficult one, and one which may result in litigation or delay of the administrative process.[41] The court reasoned that there existed a legitimate state interest in "efficient, swift and consistent processing and payment."[42] Therefore, the spousal provision survived the rational basis test and thus, there was no constitutional violation.[43]

Although the *Langan* court determined that plaintiff failed to demonstrate that the denial of benefits under the New York State EPTL section 5-4.1 to homosexual couples serves no legitimate state interest, the dissent, written and supported by Judges Fisher and Crane, asserted an argument which equated a civil union to a marriage.[44] The dissenting judges recognized that when individuals enter into a committed relationship, the partners make each other

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[39] 791 N.Y.S.2d 217, 221 (App. Div. 3d Dep't 2005).

[40] *Id.* at 220. The opinion made reference to the legislature's decision to permit recovery of benefits by domestic partners of the employees who died on September 11, 2001. *Id.* at 220-21. The court stated that special legislation was created in response to the attacks, for the survivors of those killed. *Id.* at 221. However, the court was quick to add that the legislature's decision to permit the receipt of benefits for the survivors of September 11th did not negate the burdens that would occur in determining the substantial relationship between domestic partners generally. *Id.*

[41] *Id.* (adding that the determination of a substantial relationship would be subjective).

[42] *Id.* at 221.

[43] *Id.*

[44] *Langan*, 802 N.Y.S.2d at 487.

responsible for the other's financial support.[45] Therefore, the relationship between a heterosexual couple, which results in marriage, is equivalent to a relationship between a homosexual couple that results in a civil union.[46] The dissenting opinion noted that the death of one party to the union or marriage causes economic injury to the survivor in an identical way.[47] In each case, death results in the loss of expected and future support.[48]

According to the dissent, the question presented to the court was whether the state's interest in promoting traditional marriage was advanced by a statute that afforded relief to surviving spouses, but not surviving civil partners.[49] Judges Fisher and Crane relied upon United States Supreme Court decisions in which the Court determined that wrongful death statutes, which discriminated against illegitimate children, were unconstitutional.[50] For example, in *Levy v. Louisiana*, the Court held that a state statute prohibiting illegitimate children from maintaining a wrongful death action for a parent, violated the Fourteenth Amendment.[51] The Court in *Levy* reasoned that the child, even though illegitimate, was still dependent upon his or her mother, regardless of the child's legal status.[52] The *Langan* dissent analogized the relationship and dependency between

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[45] *Id.*
[46] *Id.*
[47] *Id.* at 488.
[48] *Id.*
[49] *Langan,* 802 N.Y.S.2d at 489.
[50] *See* Levy v. Louisiana, 391 U.S. 68, 72 (1968); Glona v. American Guar. & Liab. Ins. Co., 391 U.S. 73 (1968). In *Glona*, the Court struck down a statute that barred a mother from maintaining the wrongful death action of her illegitimate child. 391 U.S. at 75.
[51] *Levy*, 391 U.S. at 72.
[52] *Id.*

the mother and her illegitimate children to the relationship between same-sex partners.[53]

Moreover, the dissent stated that no statute in New York recognizes a marriage between same-sex couples,[54] yet, Vermont civil unions are open to homosexual couples.[55] Therefore, the dissent concluded that a wrongful death statute that permits recovery for married spouses, but not for civil partners, is in effect treating similarly situated persons different based upon their sexual orientation.[56] Judge Fisher reasoned that, under an equal protection analysis, there was no reasonable way to conceive how a state's interest in promoting a traditional marriage was furthered by denying a person, based upon their sexual orientation, access to the courts regarding compensation for lost financial security that is created and guaranteed by law.[57]

The *Langan* court examined case law from both the United States Supreme Court and courts within the New York State jurisdiction. Utilizing the rational basis test articulated in both *Romer* and *Lawrence*, the *Langan* court determined that the New York State EPTL spousal provision did further a legitimate state interest, by promoting traditional marriage and the procreation of children.[58] Relying upon the similar factual situations in *Valentine* and *Cooper*, the *Langan* court added that the language presented in such statutes

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[53] *Langan*, 802 N.Y.S.2d at 489.
[54] *Id.* at 488.
[55] *Id.*
[56] *Id.*
[57] *Id.* at 490 (recommending the amendment of the EPTL to include surviving members of a Vermont Civil Union).
[58] *Langan*, 802 N.Y.S.2d at 478-80.

regarding wrongful death actions or workers compensation benefits did not include same-sex partners.[59]

The court in *Langan* addressed the analogous state and federal constitutional claims collectively.[60] Both the New York State Constitution and the United States Constitution afford similar privileges and protections.[61] In this case, the court found that the petitioner failed to demonstrate that the denial of an elective share to a homosexual couple fails to serve a legitimate state interest.[62] Parallel case law has established that laws confining spousal privileges to married couples only, do not offend the Equal Protection Clause of either the federal or state constitutions.[63] Therefore, the classification of "spouse" in the New York State EPTL did not violate article 1, section 11 of the New York State Constitution or the Fourteenth Amendment of the United States Constitution.[64]

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[59] *Id.* at 479-80.
[60] *Id.* at 478-79.
[61] *See* U.S. CONST. amend. XIV; N.Y. CONST. art. I, § 11.
[62] *Langan*, 802 N.Y.S.2d. at 478.
[63] *See Valentine*, 291 N.Y.S.2d 217; *Cooper*, 592 N.Y.S.2d 797.
[64] *Langan*, 802 N.Y.S.2d at 478.