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Equal Protection: In re Cooper

SECOND DEPARTMENT

In re Cooper[830]
(decided February 1, 1993)

Petitioner, who was the surviving partner of a homosexual relationship, claimed that his state equal protection rights[831] were violated.[832] Petitioner alleged he was prohibited from exercising his right of election against the decedent's will as a "surviving spouse,"[833] as set forth in section 5-1.1(c)(1)(B) of the New York Estates, Powers and Trusts Law (E.P.T.L.).[834] The Appellate Division, Second Department concluded that the survivor of a homosexual relationship is not deserving of a right of election because he is not deemed to be a "surviving spouse."[835] Consequently, the court held that the petitioner's constitutional rights had not been violated.[836]

The petitioner had lived with his lover, the decedent, in a spousal-type relationship for approximately four years.[837]

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830. 187 A.D.2d 128, 592 N.Y.S.2d 797 (2d Dep't 1993).

831. N.Y. CONST. art I, § 11 ("No person shall be denied the equal protection of the laws of this state or any subdivision thereof . . . .").

832. *Cooper*, 187 A.D.2d at 132, 592 N.Y.S.2d at 799.

833. *Id.* at 130, 592 N.Y.S.2d at 798.

834. N.Y. EST. POWERS & TRUSTS LAW § 5-1.1(c)(1)(B) (McKinney 1981 & Supp. 1994) provides in relevant part:

> (c) Election by surviving spouse against wills executed and testamentary provisions made after August thirty-first, nineteen hundred sixty-six . . . .
>
> (1) Where, after August thirty-first, nineteen hundred sixty-six, 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, subject to the following: . . .
>
> (B) The elective share . . . is one-third of the net estate if the decedent is survived by one or more issue and, in all other cases, one-half of such net estate.

Id.

835. *Cooper*, 187 A.D.2d at 134-35, 592 N.Y.S.2d at 801.

836. *Id.* at 135, 592 N.Y.S.2d at 801.

837. *Id.* at 129, 592 N.Y.S.2d at 797.

Although the petitioner and the decedent were of the same sex, the petitioner alleged that they assumed the roles of husband and wife by keeping a home together, maintaining a physical relationship, sharing expenses, and acknowledging their spousal relationships to their friends.[838] Moreover, the petitioner claimed that the two lovers wanted to get married but were denied their constitutional right to do so because no clerk would issue a marriage license to them.[839] When the decedent died, the petitioner received the residuary of the decedent's estate, whereas the decedent's former lover received real estate, valued at eighty percent of the entire estate.[840] Although the petitioner was not legally married to the decedent,[841] he asserted that he was a "surviving spouse" as defined in the E.P.T.L. and thus, was entitled to a right of election against decedent's will.[842]

The court found that refusal to permit petitioner a right of election against his lover's will, as provided in the E.P.T.L., did not violate his state equal protection rights.[843] In reaching this conclusion, the court noted that even if the statute had failed to provide an express definition for the term "'surviving spouse,' an interpretation of the statute to the same effect would be warranted."[844] Although the E.P.T.L. defines a "surviving spouse" to be a husband or wife,[845] the court interpreted the statute as being read in its most "ordinary and accepted meaning," and thus, refused to incorporate homosexual partners into the definition.[846] The court relied on the reasoning of the

838. *Id.* at 129-30, 592 N.Y.S.2d at 797.

839. *Id.* at 130, 592 N.Y.S.2d at 797-98.

840. *Id.* at 129, 592 N.Y.S.2d at 797.

841. Petitioner claimed that the court's denial of a right to exercise his spousal rights resulted in a constitutional violation. *Id.* at 130, 592 N.Y.S.2d at 798.

842. *Id.*

843. *Id.*

844. *Id.* at 131, 592 N.Y.S.2d at 798.

845. N.Y. EST. POWERS & TRUSTS LAW § 5-1.2(a) (McKinney 1981 & Supp. 1994) states that "[a] husband or wife is a surviving spouse within the meaning, and for the purposes of . . . 5-1.1 . . . ." *Id.*

846. *Cooper*, 187 A.D.2d at 131, 592 N.Y.S.2d at 798.

Minnesota Supreme Court in *Baker v. Nelson*,[847] which rejected the argument that the lack of an explicit statutory prohibition against same-sex marriages indicated "a legislative intent to authorize such marriages."[848] The *Baker* court further stated that the Equal Protection Clause of the Fourteenth Amendment is not "offended by the state's classification of persons authorized to marry [because] [t]here is no irrational or invidious discrimination."[849]

Adopting the *Baker* rationale, the second department refused to extend the holding in *Braschi v. Stahl Associates, Co.*,[850] which expanded the traditional definition of a "surviving spouse."[851] Instead, the court relied on their decision in *Alison D. v. Virginia M.*,[852] which held that a lesbian partner was not considered a "parent" under the Domestic Relations Law, and that the application of the *Braschi* decision would be "totally misplaced."[853] Therefore, the court concluded that a survivor of a homosexual relationship is not within the common definition of a "surviving spouse" under E.P.T.L.[854]

Petitioner contended that such a narrow reading of the term "surviving spouse" violated the Equal Protection Clause of the State Constitution.[855] Petitioner further claimed that this reading highlighted the state's failure to interpret the Domestic Relations Law, which prohibits homosexuals and lesbians from obtaining

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847. 191 N.W.2d 185 (Minn. 1971) (defining "marriage as the state of union between persons of the opposite sex").

848. *Id.* at 185.

849. *Id.* at 187.

850. 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989). In *Braschi*, the court held that in the absence of a statutory definition, the term family, *for rent control purposes*, included unmarried lifetime partners of tenants, as well as individuals related by blood or law. *Id.* at 211, 543 N.E.2d at 54, 544 N.Y.S.2d at 789 (emphasis added).

851. *Cooper*, 187 A.D.2d at 132, 592 N.Y.S.2d at 799.

852. 155 A.D.2d 11, 552 N.Y.S.2d 321 (2d Dep't), *aff'd*, 77 N.Y.2d 651, 569 N.Y.S.2d 586, 572 N.E.2d 27 (1990).

853. *Id.* at 15, 552 N.Y.S.2d at 324.

854. *Cooper*, 187 A.D.2d at 132, 592 N.Y.S.2d at 799.

855. *Id.*

marriage licenses.[856] However, in applying the rational basis test,[857] the court found that the classification drawn between allowing heterosexuals to obtain marriage licenses and prohibiting homosexuals from attaining them, is rationally related to a legitimate state interest.[858] Accordingly, the institution of marriage is "'a union of man and woman, uniquely involving the procreation and, rearing of children within a family . . . . This historic institution manifestly is more deeply founded than the asserted contemporary concept of marriage and societal interests for which petitioners contend.'"[859] Thus, according to the narrowly tailored interpretation of "surviving spouse," the court found that the Equal Protection Clause of the State Constitution was not violated.[860]

Similarly, under the Equal Protection Clause of the Fourteenth Amendment,[861] the state's restrictions on who may be permitted to obtain marriage licenses would be allowed. For example, in *Bowers v. Hardwick*,[862] the United States Supreme Court applied the rational basis test, and held that "homosexual activity is not a fundamental right."[863] Thus, application of this standard can be used regarding classifications based on sexual orientation.

In conclusion, according to this court, the equal protection rights under both the State and Federal Constitutions are not violated when a surviving partner of a homosexual relationship is denied the right of election against the decedent's will pursuant to New York's Estates, Powers and Trusts Law.

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856. *Id.*

857. *Id.* at 133, 592 N.Y.S.2d at 799-800 (citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985)) ("[Legislation] "is presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate state interest . . . .").

858. *Cooper*, 187 A.D.2d at 133, 592 N.Y.S.2d at 800.

859. *Id.* (quoting *Baker*, 191 N.W.2d at 186-87 (quoting Skinner v. Oklahoma, 346 U.S. 535, 541 (1942)).

860. *Id.* at 134-35, 592 N.Y.S.2d at 800.

861. U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

862. 478 U.S. 186 (1986).

863. *Cooper*, 187 A.D.2d at 134, 592 N.Y.S.2d at 800.