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FAMILY LAW

Top state court recognizes same-sex adultery as grounds for divorce

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contact, not just vaginal penetration, the court said.

The New Hampshire Supreme Court has overturned a 2003 decision

(<https://www.courts.state.nh.us/supreme/opinions/2003/blanc150.htm>) that had defined adultery as voluntary intercourse between members of the opposite sex.

Ruling Thursday

(<https://www.courts.state.nh.us/supreme/opinions/2021/2021015Blaisdell.pdf>) in a divorce case, the state supreme court defined adultery as intercourse between a married person and someone other than the married person's spouse, regardless of sex. Intercourse can include any genital

The New Hampshire Union Leader (https://www.unionleader.com/news/courts/supreme-court-ruling-recognizes-same-sex-adultery/article_5d74b9e9-de06-54e7-8b15-4448e666d653.html) and New Hampshire Public Radio (<https://www.nhpr.org/post/nh-supreme-court-opinion-updates-definition-adultery-include-same-sex-affairs#stream/0>) have coverage.

The husband in the case, Robert Blaisdell, had claimed that he was entitled to a divorce on fault-based grounds of adultery because of his wife's alleged relationship with another woman. Blaisdell's wife is Molly Blaisdell.

The state supreme court noted that New Hampshire legalized same-sex marriage in 2009 (https://www.abajournal.com/news/article/same-sex_couples_now_allowed_to_marry_in_maine), and the U.S. Supreme Court found a constitutional right to such marriages in 2015 (https://www.abajournal.com/news/article/gay_marriage_is_a_constitutional_right_supreme_court_rules).

Defining adultery only as sex between opposite genders “removes the legal protection of the marital promise of fidelity from same-sex marriages and is clearly a remnant of the abandoned doctrine denying same-sex couples the right to enter into legally valid marriages,” the New Hampshire Supreme Court said.

The court said it was applying its definition retroactively.

The case is *In the Matter of Blaisdell*. The overruled decision in 2003 is *In the Matter of Blanchflower*.

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