

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date 08-06-14

Honorable **D. GOULD-SALTMAN**

Honorable

Judge **L. SHIELDS**

Judge Pro Tem

Deputy Sheriff **NONE**

Dept: **NEK**

Deputy Clerk

Court Assistant

Reporter

3:00 pm

GD053180

Jake Miller (N/A)

VS.

Elayne Angel (N/A)

Counsel For
Petitioner: **NO APPEARANCE**

Counsel For
Respondent: **NO APPEARANCE**

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NATURE OF PROCEEDINGS: COURT'S RULING

Miller and Angel
 Ruling on submitted matter
 The parties appeared on the bifurcated trial of the validity of the marriage on July 29, 2014. Petitioner was present and appeared with his attorney, Alana Chazan. Respondent was present and appeared with her attorney, Michael Whitmarsh. The Court heard the testimony of both parties and from Respondent's experts, Professor Andrea Carroll and attorney Frank Tranchina. The following are the uncontested facts:
 Petitioner was born female. In 1996 Petitioner had sexual reassignment surgery and on December 24, 1998 received a California judgment of name change and gender change. Petitioner testified, through declaration, that he provided his then-attorney, Mr. Inman, with the documents necessary to obtain a new birth certificate but that Mr. Inman did not follow through with this and thereafter could not immediately be found. In 1999 Petitioner married Karin Winslow, from whom Petitioner was divorced in 2002. In 2003 Petitioner and Respondent met on a website re: dating transsexual men. It is not disputed that Respondent knew that Petitioner had been born a woman. On October 22, 2003 Petitioner and Respondent signed a document referred to as a "Matrimonial Regime" in which Petitioner is referred to as the husband and Respondent is referred to as the wife. Both parties, at that time, resided in the State of Louisiana. [Exhibit 24]
 November 17, 2003 the parties obtained a Louisiana marriage license and participated in a marriage ceremony. Both parties testified that they were not asked for and did not provide a copy of their respective birth certificates. Both parties testified that they did provide their respective driver's licenses to the notary, who also served as the officiant at the marriage ceremony. Both parties testified that they entered into the marriage voluntarily. Both

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parties testified that they had no knowledge that a birth certificate was required to get a marriage license in Louisiana.

In 2006, and with Respondent's assistance, Petitioner did obtain a new California birth certificate identifying him as male.

During the time they lived in Louisiana the parties filed joint tax returns in the state of Louisiana and with the Internal Revenue Service.

Thereafter the parties moved from Louisiana to Mexico where they resided for a number of years. In or about September 2013 the parties had a falling out and Respondent asked Petitioner to leave the home, which he did. Petitioner came to California to stay with his sister and, on October 2, 2013, filed a Petition in Los Angeles county for legal separation, with which Respondent was served and to which Respondent filed a Response.

In April 2014 Petitioner amended his summons and Petition to a marital dissolution with which Respondent was served and to which Respondent filed a Response without objecting to jurisdiction.

On May 27, 2014 Respondent filed a motion to quash the proceedings on various grounds. On June 26, 2014 the Court denied Respondent's motion to quash on grounds of her objection to Petitioner's domicile and set the matter for a trial on the issue of the validity of the marriage for July 29, 2014. That same day Respondent had Petitioner served with a summons and petition filed on her behalf in the State of Louisiana seeking an annulment of the marriage.

Relevant California law:
Health and Safety Code, Section 103425:
 103425. (a) Whenever a person has undergone clinically appropriate treatment for the purpose of gender transition, the person may file a petition with the superior court in any county seeking a judgment recognizing the change of gender.
 (b) If requested, the judgment shall include an order that a new birth certificate be prepared for the person reflecting the change of gender and any change of name accomplished by an order of a court of this state, another state, the District of Columbia, or any territory of the United States.

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For purposes of this motion it is not disputed that Petitioner complied with this code section, or its precedent which existed in 1998, in obtaining a name and gender change [Exhibit 8]

Family Code, Section 308(a):

(a) A marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state.

For purposes of this motion it is not disputed that, if the parties' marriage in Louisiana is valid, California would recognize it.

Relevant Louisiana law :

It is significant to note that, as testified by Respondent's experts, Louisiana is a Code jurisdiction which does not recognize the concept of *stare decisis* as California does; that is, the rulings of other courts in Louisiana are not binding on the trial courts which must exercise independent judgment in the interpretation of, and application of facts to, Louisiana statutes. In doing so, Louisiana courts are directed to use the plain meaning of statutes and may consider secondary sources as persuasive and instructive in that interpretation.

Louisiana Civil Code, Article 86

Marriage is a legal relationship between a man and a woman that is created by civil contract. The relationship and the contract are subject to special rules prescribed by law.

Acts 1987, No. 886, §1, eff. Jan. 1, 1988.

Louisiana Civil Code, Article 87

Contract of marriage; requirements

The requirements for the contract of marriage are:

The absence of legal impediment.

A marriage ceremony.

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The free consent of the parties to take each other as husband and wife, expressed at the ceremony.
 Acts 1987, No. 886, §1, eff. Jan. 1, 1988.

Louisiana Civil Code, Article 91

The parties must participate in a marriage ceremony performed by a third person who is qualified, or reasonably believed by the parties to be qualified, to perform the ceremony. The parties must be physically present at the ceremony when it is performed.
 Acts 1987, No. 886, §1, eff. Jan. 1, 1988.

Louisiana Revised Statutes, Section 40:62

§62. Issuance of new birth certificate after anatomical change of sex by surgery
 A. Any person born in Louisiana who has sustained sex reassignment or corrective surgery which has changed the anatomical structure of the sex of the individual to that of a sex other than that which appears on the original birth certificate of the individual, may petition a court of competent jurisdiction as provided in this Section to obtain a new certificate of birth.

Louisiana Revised Statutes 9:225:

§225. Same; attachments
 A. An application for a marriage license shall be accompanied by:
 (1) A certified copy of each party's birth certificate.
 (2) The written consent for a minor to marry, or the court's authorization for the minor to marry, or both, as required by Chapter 6 of Title XV of the Children's Code.*
 (3) If applicable, the declaration of intent for a covenant marriage, as provided in Part VII of this Chapter.

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B. It shall be unlawful for any officer authorized to issue a marriage license in this state to issue a license to any male or female unless both parties first present and file with such officer a certified copy of their original birth certificate. A photostatic or photographic reproduction of the certified copy of the birth certificate may be filed with the officer.

Acts 1988, No. 344, §1; Acts 1988, No. 345, §1, eff. July 7, 1988; Acts 1988, No. 808, §1, eff. July 18, 1988; Acts 1995, No. 415, §1; Acts 1997, No. 1380, §2.

*In Paragraph A(2) see Ch.C. Art. 1543 et seq.
 {{NOTE: SEE ACTS 1988, NO. 808, §3.}}

By implication, the testimony of the experts referenced the United States Constitution, Article IV, Section 1, to-wit: " Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

Testimony:

Petitioner testified that, at the time of the Louisiana wedding ceremony, the only birth certificate he possessed was Exhibit A, his original birth certificate.
 Respondent testified that, in 2003 she did not want to marry a transgendered person and did not want to get married at all, at the time she met Petitioner. She testified that they did discuss the possibility of marriage and that she didn't know if marriage in Louisiana to Petitioner would be legal. She did not voice concerns about the legality at the time of marriage. She testified that she did see Petitioner as a man during the marriage and that she changed her opinion about Petitioner being a man when he asked for spousal support which she believed was an example of him "not acting like a man."

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Professor Andrea Carroll is a law professor at Louisiana State Law School. She has published numerous articles and two books related to Louisiana family law. She was qualified by this Court as an expert on Louisiana matrimonial law.

Professor Carroll opined that the parties' marriage was an "absolute nullity," Louisiana's equivalent of a "void marriage" under California law. As such, and as contrasted with a voidable marriage (relative nullity under Louisiana law) it is not subject to ratification. The basis for Dr. Carroll's opinion was that, as of the date of the marriage, the only birth certificates for the parties which existed declared both to be female and under Louisiana law, in 2003 as now, parties of the same sex can not legally marry in Louisiana. Under Louisiana Revised Statutes, Article 87, one of the categories of a "legal impediment" to marriage is that both parties are of the same sex.

Professor Carroll testified that the clerk issuing a marriage license in Louisiana is required to see the parties' birth certificates to issue the license. She testified that she found no case in which a Louisiana court had recognized a gender change without a new birth certificate (there appear to be only two cases where there had been a gender change out of state and a marriage thereafter in Louisiana. In both cases the existence of a birth certificate was not an issue).

When asked hypothetically if Petitioner had a valid California birth certificate showing that he was male, Professor Carroll testified that it would still have been unlikely that Louisiana would have recognized the new birth certificate for marriage purposes because of the state's policy against same sex marriage.

When asked about the effect of the California judgment which changed Petitioner's gender to male, Professor Carroll opined that, without the changed birth certificate as well, Louisiana would not have gotten to the question of whether it would recognize that judgment for purposes of marriage. She did not believe that a California judgment of gender change could be used in lieu of a birth certificate for the issuance of a marriage license.

When asked a hypothetical about the situation where there had been a valid, opposite sex marriage and then one of the parties had a gender change, what effect that would have on

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the validity of the marriage, Professor Carroll testified that, under Louisiana law, it is not clear what would happen.

On cross-examination Professor Carroll noted that there are only three substantive requirements for a marriage (free consent, a ceremony and the absence of legal impediment) although there are many procedural requirements. She acknowledged that, if the only defect is a procedural defect which is technical, that would not invalidate the marriage. She also acknowledged that, if there is such a procedural defect, the consequences would fall to the officiant, who could receive civil sanctions.

When asked about Louisiana Civil Code, Section 40:62, addressing gender change, Professor Carroll noted that this statute has been a part of Louisiana law since 1968; however, she was not able to find a history of its legislative intent. She had seen new articles published around the time of the enactment of the statute, which suggested that it could be used for marriage purposes.

Attorney Frank Tranchina also testified as an expert for Respondent. Mr. Tranchina has been an attorney for 35 years and is licensed both in Louisiana and California, although he testified that he has primarily practiced in Louisiana. He was Board Certified as a family law specialist in Louisiana in 1990 and continues to practice matrimonial law in Louisiana. He was qualified by this court as an expert in Louisiana matrimonial law.

Mr. Tranchina agreed with Professor Carroll that, in his opinion, the marriage would be deemed an "absolute nullity" under Louisiana law as it existed in 2003. He believed that the only method of avoiding the prohibition against same sex marriage if one has had gender reassignment is pursuant to Louisiana Civil Code, Section 40:62, although, on cross-examination, Mr. Tranchina acknowledged that this section only applies to those who were born in Louisiana.

Mr. Tranchina testified that Louisiana Revised Statute 9:225 requires a birth certificate so that a clerk of court doesn't have to make any judgment call about the gender of the parties seeking a marriage license. He testified that, if not born in Louisiana, an out of state certified copy of a birth certificate could be used or the applicant could apply to the court to waive the birth certificate requirement if the birth certificate was unavailable.

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Mr. Tranchina opined that the 1998 California judgment changing Petitioner's gender to male would be given full faith and credit for some limited purposes in Louisiana, such as general identification, but not for marriage. On cross-examination Mr. Tranchina testified that Louisiana does not have a public policy against gender change but that it does have a public policy of only recognizing marriage between a man and a woman. He noted that, in the Carter v. Carter case, there was no issue regarding the out of state birth certificate and that the Louisiana court did give full faith and credit to the Georgia gender change.

Analysis:

The burden of proof in this case is that of a preponderance of evidence (Evidence Code, Section 115). In that this is Respondent's motion, she has the burden to prove, "as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that [s]he is asserting." (Evidence Code, Section 500).

The Court believes that any analysis of the issue of the validity of the parties' marriage must begin with the concept of "full faith and credit." In this case the State of California had entered a judgment determining Petitioner to be male in 1998. By the testimony of Professor Carroll and Mr. Tranchina, although not requested to do so, he believed the State of Louisiana might give partial faith and credit to this judgment but not full faith and credit. The testimony indicated that the California judgment might be considered for purposes of identification, obtaining a Louisiana driver's license, draft eligibility or which prison to send somebody, but might not be given credit for purposes of marriage. The Court heard no testimony that a Louisiana resident who had a gender reassignment and sought a new birth certificate pursuant to Louisiana law would not thereafter be able to marry a person of the opposite sex. A review of that statute, on its face, contains no such prohibition.

Both Professor Carroll and Mr. Tranchina testified that the crux of their conclusion that the marriage was an absolute nullity was the absence of a birth certificate for Petitioner demonstrating he was male as of the date of the marriage. There is no evidence that Petitioner could not have obtained a birth certificate identifying him as male prior to the

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date of marriage in that he had the judgment allowing him to do so, had submitted the papers to his attorney for that to be done and that, but for the failure of the attorney to file the papers, it would have been done. In fact, based on that same judgment, a new birth certificate which could have been obtained in 1998 was eventually obtained in 2006. If, as Professor Carroll speculated, Louisiana would not have issued the parties a marriage license in 2003 for lack of Petitioner's revised birth certificate, even though no birth certificate was requested of either party, had Petitioner sought to marry a man in Louisiana, with a California judgment finding that Petitioner was also a man, would Louisiana issued such a license? It seems unlikely in that all agree that Louisiana had, in 2003, a public policy against same sex marriage as it does today.

Under Louisiana Civil Code, Article 87, a valid marriage in Louisiana requires the absence of legal impediment, a marriage ceremony and the free consent of the parties to take each other as husband and wife, expressed at the ceremony. In this case the only question as to the validity is whether there was such a legal impediment. The only possible impediment to this marriage would be that Petitioner was, at the time of the marriage, a woman. Based on the judgment issued by the California court in 1998, it had been legally established that Petitioner was not a woman, but a man. The failure of a clerk of court to request a birth certificate at the time of the issuance of the marriage license is a technical defect not affecting the validity of the marriage. Had the clerk requested a birth certificate, based on the evidence presented, Petitioner could have obtained one prior to the marriage, as he already had a judgment granting him the right to have done so as far back as December 1998.

Respondent bears the burden to prove the invalidity of the marriage. The Court finds that Respondent has failed to meet the burden of proof by a preponderance of the evidence.

On this basis the Court finds that the parties' marriage is valid.

Putative Spouse Theory:

Although not required to get to this issue, the Court notes the following:

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Family Code, Section 2251, provides:

(a) If a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall:

(1) Declare the party or parties to have the status of a putative spouse.

(2) If the division of property is in issue, divide, in accordance with Division 7 (commencing with Section 2500), that property acquired during the union which would have been community property or quasi-community property if the union had not been void or voidable. This property is known as "quasi-marital property".

(b) If the court expressly reserves jurisdiction, it may make the property division at a time after the judgment. (Ad Stats 1992, C 162)

In this case the clear testimony of both parties was that they intended to be legally married, they believed themselves to be legally married, they obtained a marriage license in advance of their wedding, they had prepared and signed a document in advance of their marriage ceremony which was intended to serve as a premarital agreement, and they voluntarily participated in a wedding ceremony.

The Court makes the following findings and orders:

Respondent's request to quash the Petition on grounds of the invalidity of the marriage is denied. Counsel for Petitioner is ordered to prepare an Order After Hearing consistent with the above and submit it to counsel for Respondent for approval as to form and content. A fully-executed Order After Hearing shall be submitted within 30 days of the date of mailing of this minute order.

CERTIFICATE OF SERVICE: I, the above named clerk for the above named Court, do hereby certify that I am not a party within this action and that on this date I caused to be served upon counsel for the parties, this minute order in an enclosed and sealed envelope delivered to the mailroom of the Pasadena Superior Court for mailing by the United States Postal Service upon counsel of record as follows: