

August 21, 2014

PRACTICE FOCUS / FAMILY LAW

Preventing same-sex couples from divorcing is unjust

Commentary by Bonnie Sockel-Stone

In March, a Hillsborough circuit judge refused to grant the joint request of a gay couple to ratify a marital settlement agreement and dissolve their marriage.



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Florida Statute §741.22 prohibits courts from recognizing valid marriages in other states or countries of same-sex couples and prohibits the courts from considering

any "claim arising from such marriage or relationship," despite the fact that Florida law recognizes valid marriages in other states and countries, even common-law marriages.

Unfortunately, Florida Statute §741.22 deprives same-sex couples from the ability to dissolve their marriages, the ability to have their marital assets and liabilities equitably distributed and the ability to obtain spousal support even when the jurisdictional requirements are met.

The same-sex couple filed an appeal with the Second District Court of Appeal and requested immediate resolution by the Florida Supreme Court, which was denied.

Recently, Broward Circuit Judge Dale Ross ruled Florida's gay marriage ban is unconstitutional in regards to the Petition for Dissolution of Marriage action filed by a gay woman married in Vermont but who now resides in Florida and met the Florida subject matter jurisdictional requirements.

Ross stayed his order to give the state of Florida time to appeal. Now that circuit court judges in Monroe, Miami-Dade and Broward counties have ruled that the gay marriage ban is unconstitutional, there is hope these rulings will be ultimately affirmed by the Florida Supreme Court, and gay couples will be able to divorce as well as get married.

Not only is it incredibly unfair for people to be unable to get divorced and move on with their lives, but without the ability to file a petition for dissolution action and avail oneself of Chapter 61 of Florida Statutes, which provides for an equitable distribution of marital assets and liabilities and spousal support, a devastating financial loss can occur.

HYPOTHETICAL

Consider the following situation:



Spouse A and Spouse B were married in Vermont, where gay marriage is legal. Spouse A and Spouse B have jointly adopted a child. Sometime after the marriage, Spouse A's employer relocates to Florida and Spouse A and Spouse B move to Florida so Spouse A can keep her job. Spouse B is able to find a job in Florida, but for less money than she earned in Vermont. Spouse A's employer has a very generous retirement match program so Spouse A and Spouse B make a decision that Spouse A will make a large contribution every month to her retirement program and a greater portion of Spouse B's earnings will be used to pay the mortgage, property taxes, insurance and other expenses on the parties' marital home. In addition, the marital home, which was purchased during the marriage with

funds earned by both parties during the marriage, is only in Spouse A's name.

A few years after the parties move to Florida, Spouse B loses her job and a decision is made that Spouse B will not work and be a stay-at-home mom. Spouse B stays at home for five years and a large portion of her savings is depleted during this period and she incurs credit card debt. Spouse B decides to go back to work but is unable to get a job. Shortly thereafter, the parties decide to divorce. Unfortunately, they are unable to come to an agreement.

If Florida does not recognize their Vermont marriage and prohibits their divorce, Spouse B could end up in a terrible financial position since the retirement account and marital home are in Spouse A's name, her savings account was depleted when she was not work-

ing, the credit card debt is in her name and if she is not married, she is not entitled to spousal support.

If this couple is able to divorce in Florida, it will not matter that the retirement account and marital home are in Spouse A's name and the credit card debt is in Spouse B's name. Florida Statute §61.075 provides that assets acquired during the marriage using marital funds are considered marital regardless how titled and should be equally divided and marital liabilities should be equally divided. In addition, Spouse B will most likely be entitled to spousal support if she has a need and Spouse A has the ability to pay.

Certainly, justice is not served by preventing same-sex couples from getting divorced.

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