



OLR RESEARCH REPORT

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OLR BACKGROUNDER: EFFECT OF UNDISSOLVED CIVIL UNION ON SUBSEQUENT MARRIAGE

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This backgrounder summarizes *Elia-Warnken v. Elia*, 463 Mass. 29 (2012), the case in which the Massachusetts Supreme Court invalidated a same-sex marriage because one of its celebrants was in an undissolved civil union when the marriage took place.

SUMMARY

In *Elia-Warnken*, the Massachusetts Supreme Court ruled that a person could not simultaneously be bound by a Vermont civil union and a Massachusetts same-sex marriage. The case involved Todd Elia-Warnken who was in an undissolved civil union at the time when he married the defendant, Richard Elia.

The plaintiff argued that the existence of an undissolved civil union rendered the marriage void; the defendant contended that the marriage was valid because, among other things, civil union was not marriage. Thus, being in a civil union and marriage simultaneously did not violate Massachusetts' law and public policy against polygamy.

In arriving at its decision, the court considered:

1. the similarity in both states' efforts to grant same-sex couples the same benefits and responsibilities as they afforded married couples;
2. principles of comity, under which courts generally uphold the validity of marriages legal in the state where they were performed; and
3. how recognizing civil union as the functional equivalent of marriage would affect the state's statutory and public policy rules prohibiting polygamy.

The court ruled that the marriage had no legal effect and had to be treated as if it had never occurred (was void *ab initio*). Consequently, neither spouse had a legal obligation to pay the other alimony or child support or the right to claim an interest in marital property.

FACTS AND TRIAL COURT PROCEEDINGS

In 2009, the plaintiff, Todd Elia-Warnken, sued his spouse, defendant Richard Elia, for divorce. The defendant counterclaimed, seeking a divorce from the plaintiff. The couple had married in Worcester, Massachusetts in 2005.

After learning that the plaintiff was party to an undissolved Vermont civil union when the marriage took place, the defendant filed a motion to dismiss the divorce action, claiming that the existence of the civil union voided the marriage. The defendant contended that the marriage was legal because (1) civil unions and marriages are not the same and (2) Massachusetts' anti-polygamy statute applied to "husbands" and "wives" only and those terms are inapplicable to civil union partners.

These issues had never come up in Massachusetts. The family court judge asked the appeals court to consider and issue a ruling on the unsettled legal questions. The supreme court exercised its authority to transfer the matter and respond to the question itself.

ISSUE

The specific question the family court judge asked was whether a Vermont civil union must be dissolved before either party can enter into a valid marriage in Massachusetts to a third party (*Elia-Warnken*, p. 29).

ANALYSIS AND HOLDING

In answering the judge's question in the affirmative, the court looked at how Massachusetts and Vermont had treated same-sex relationships over the years. It then discussed (1) Massachusetts' public policy and statutory law prohibiting polygamy and (2) principles of comity. It also considered whether its recognition of civil union as the equivalent of marriage rendered the parties' marriage void.

Vermont's and Massachusetts' Favorable Treatment of Same-Sex Relationships

Vermont. In 1999, the Vermont Supreme Court interpreted its constitution as entitling same-sex couples to the same statutory benefits and protections as the state accorded to heterosexual married couples (*Baker v. State*, 170 Vt. 194, 197 (1999)). The *Baker* court gave the legislature the choice of (1) amending the marriage statutes to include same-sex relationships or (2) establishing a parallel domestic partnership or some equivalent alternative.

The legislature adopted the second approach and enacted a civil union statute in 2000. (The plaintiff entered into his civil union in 2003, during the period in which this was the only same-sex relationship accorded legal status.)

In 2009, the legislature enacted a law allowing same-sex couples to marry (Vt. Laws 3 (effective September 1, 2009)). In addition to precluding couples from forming civil unions after its effective date, the act gave those in existing civil unions the option of marrying. It specified that existing civil union laws would remain in full force with respect to those who chose not to marry. Finally, the law barred those who were parties to undissolved civil unions from marrying another partner (*Elia-Warnken*, p. 31, citing Vt. Stat. Ann. tit. 15 §§ 4 and 511).

Massachusetts. In contrast to the Vermont court's determination that the Vermont constitution permitted the legislature to establish a status for same-sex relationships that was parallel and equal to marriages, the Massachusetts Supreme Court, in 2003, interpreted its constitution as requiring the state to allow same-sex couples to marry. The justices rejected the proposition that civil union would be an acceptable marriage alternative because, in their view, any relationship other than marriage would reflect a demonstrable assignment of same-sex, largely homosexual, couples to second-class status (*Goodridge v. Department of Pub. Health*, 440 Mass. 312, 343-344 (2003)); *Opinion of*

the Justices, 440 Mass. 1201, 1207 (2004)). *Goodridge* also required that all statutes dealing with polygamy and incest be construed in a gender-neutral manner (*Id.*, at 343 n. 34).

Application of Massachusetts Anti-Polygamy Law

The *Elia-Warnken* court then analyzed the state's law prohibiting polygamy. By its terms, a marriage is void when either party already has a living wife or husband (Mass. Gen. Laws. ch. 207 § 4). But the *Goodridge* requirement that the terms "husband" and "wife" be interpreted as if they were gender-neutral made them applicable to relationships that did not refer to parties by these terms. The court noted that if substitution of gender-neutral terms, such as "spouse" for "husband" and "wife" made Massachusetts' polygamy statute applicable to the plaintiff's civil union, his marriage to the defendant was void *ab initio*.

Comity

The court relied on principles of comity in making this determination. Courts apply the doctrine in situations in which it is appropriate for them to defer to the laws and policy choices of other jurisdictions. Its use is limited to situations in which the deference will not injure the ruling court's own citizens or contravene its laws or public policies. Principles of comity often arise when courts in one state must decide whether to recognize marriages lawfully performed in others.

Recognizing a Vermont Civil Union. Like most states, Massachusetts courts ordinarily extend recognition to out-of-state marriages under principles of comity, even if the marriages would be prohibited if performed in Massachusetts, unless doing so would violate the state's public policy, including its ban on polygamy (*Elia-Warnken*, at 19, citing *Cote-Whitacre v. Department of Pub. Health*, 446 Mass. 350, 369 (Spina, J., concurring) (2006)).

The Massachusetts court deemed the rules of comity applicable to the issues raised in *Elia-Warnken*. Based on its application of these rules, the court determined that Massachusetts should give Vermont civil unions the same degree of recognition as Vermont afforded their own same-sex marriages. The court pointed to the following in support of this conclusion:

1. both states' approaches were intended to equalize the rights and responsibilities of those in same- and opposite-sex relationships,

2. refusing to grant civil union the same legal status as marriage would perpetuate discrimination against same-sex couples,
3. declining to give equal treatment to civil union and same-sex marriage would conflict with the court's application of comity rules in other cases, and
4. treating civil union and marriage differently would create uncertainty and chaos.

Expounding on the last consideration, the court pointed out that treating civil union and marriage differently would lead to inconsistent legal obligations and allow parties to avoid their obligations. For example, recognizing both the plaintiff's civil union and marriage would give him two legal spouses. This means each could impose the same legal obligations on him, such as claims for spousal or child support and favorable treatment inheritance laws.

Application of Polygamy Statute

The court then determined that the requirement that Massachusetts courts treat civil union as the functional equivalent of marriage mandated its drawing the conclusion that plaintiff's simultaneous involvement in a Vermont civil union and a Massachusetts marriage violated Massachusetts' anti-polygamy statute. Accordingly, it ruled the marriage void.

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