

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF

PROBATE DIVISION

FRANK C. BANGOR a/k/a
FRANCIS C. BANGOR,

File No.: 502014CP001857XXXXMB

Deceased.

Division: IB

ORDER ON AMENDED PETITION FOR ADMINISTRATION

This Matter came before the Court for hearing on July 15, 2014, on the Amended Petition for Administration filed by W. Jason Simpson. The Court has reviewed the court file, considered the Petitioner's Memorandum of Law, supplemental authorities and heard argument of counsel.

FACTS

The facts are undisputed. The decedent, Frank C. Bangor ("Mr. Bangor"), died a resident of Pennsylvania on March 15, 2014. Mr. Bangor owned real property in Palm Beach County, thus necessitating an ancillary administration of his Estate in Florida. Mr. Bangor left a Will dated January 31, 2005, which leaves his entire Estate to the Petitioner, W. Jason Simpson ("Mr. Simpson"), and names Mr. Simpson to act as Personal Representative. The Will has been admitted to probate in Pennsylvania, and Mr. Simpson has been appointed Executor there. Mr. Simpson is a resident of Pennsylvania.

Mr. Bangor and Mr. Simpson were legally married in the State of Delaware on October 23, 2013, and a certified copy of their Certification of Marriage has been filed with this Court. Mr. Simpson has petitioned for appointment as Mr. Bangor's Personal Representative in Florida.

PETITIONER'S ARGUMENT

Mr. Simpson argued in his Amended Petition that he is entitled to preference in appointment as Personal Representative because he was so designated in Article VII of the decedent's Last Will and Testament. Furthermore, Mr. Bangor provided in his Will (Article II

C) for Mr. Simpson to handle the real property he owned at the time of his death, including the real property in Florida.

In the Amended Petition, Mr. Simpson further states that Florida recognizes the validity of a marriage contracted outside Florida if the marriage is valid in the place where it is contracted. Florida gives full faith and credit to a marriage contracted in another State, if validly entered into according to that State's laws.¹

He argues that the "Marriage Laws": Article I, Section 27, of the Florida Constitution, and Florida Statutes Section 741.212 violate the Due Process and Equal Protection rights of the Petitioner under the Fourteenth Amendment to the United States Constitution.

Furthermore, Article I, Section 27, of the Florida Constitution, and Florida Statutes Section 741.212 violate the Full Faith and Credit Clause of Article IV, Section 1, of the United States Constitution.

In addition, he argues Article I, Section 27, of the Florida Constitution, and Florida Statutes Section 741.212 violate the Right of Access to the Courts of Mr. Simpson under Article 1, Section 21, of the Florida Constitution.²

Because the Amended Petition for Administration challenges the constitutionality of provisions of Florida law, Mr. Simpson properly gave notice of the challenge to the Florida Attorney General, Pamela Jo Bondi, pursuant to Florida Statutes Section 86.091. The Attorney General has not filed any response or an objection to the Amended Petition and did not attend the hearing.

¹ However, neither the Amended Petition nor the Memorandum of Law and supplemental authorities submitted did not provide the Court with any case law to support the statement regarding Full Faith and Credit.

² Mr. Simpson fails to provide any case law authority of how the State of Florida violated his access to the Courts.

THE LAW

As a non-resident of the State of Florida, Mr. Simpson may only be appointed Personal Representative if he qualifies under Florida Statutes Section 733.304. Mr. Simpson has sought to qualify under Section 733.304(3) Florida Statutes, as Mr. Bangor's surviving spouse. Section 733.304(3) provides as follows: “(3) A person who is not domiciled in the state cannot qualify as personal representative unless the person is... A spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person.”

Because Mr. Bangor and Mr. Simpson were in a same-sex marriage, this Court must consider the effect of Article I, Section 27, of the Florida Constitution, and Florida Statutes Section 741.212, in ruling upon the Amended Petition. These laws, which will collectively be referred to as “Florida's Marriage Laws”, state that Florida does not recognize, *for any purpose*, a same-sex marriage. (Emphasis added)

Article I, Section 27 of the Florida Constitution states:

Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.³

Florida Statutes Section 741.212 spells out the prohibition in greater detail:

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

³ While the right to vote is a benchmark of a democracy, it is also the judiciary's responsibility to examine the constitutionality of the laws of this State when they are called into question. See Marbury v. Madison, 5 U.S. 137 (1803).

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

The Fourteenth Amendment to the United States Constitution states, in pertinent part, that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor 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.

U.S. CONST., amend. XIV, § 1.

In addition, "all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States." *Whitney v. California*, 274 U.S. 357, 373 (1927) (Brandeis, J., concurring).

EQUAL PROTECTION

The Fourteenth Amendment to the United States Constitution provides that "*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor 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.*" U.S. Const., amend. XIV, § 1 (emphasis added).

Although the law has long recognized that marriage and domestic relations are matters generally left to the states, see *Ex parte Burrus*, 136 U.S. 586, 593-94, 10 S.Ct. 850, 34 L.Ed. 500 (1890), the restrictions imposed on marriage must nonetheless comply with the United States Constitution. *Loving v. Commonwealth of Virginia*, 388 U.S. at 12, 87 S.Ct. 1817 (statute

limiting marriage to same-race couples violated equal protection and due process)...*Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 at 983 (2013).

The Equal Protection clause "commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting U.S. CONST., amend. XIV., § 1).

In order to survive strict scrutiny, the government must show that a law is "narrowly tailored" towards furthering a "compelling [governmental] interest." *Reno v. Flores*, 507 U.S. 292 at 302. Laws targeting quasi-suspect groups receive intermediate scrutiny, which requires the government to show that the classification is "substantially related" to an "important governmental objective." See *United States v. Virginia*, 518 U.S. 515, 524 (1996). This decision, though, is not made in defiance of the great people of Florida or the Florida Legislature, but in compliance with the United States Constitution and Supreme Court precedent. Moreover, even if no heightened level of scrutiny is applied to Florida's marriage recognition bans, they still fail to pass constitutional muster.

"Even in the ordinary equal protection case calling for the most deferential of standards, [the Court] insist[s] on knowing the relation between the classification adopted and the object to the attained." *Romer v. Evans*, 517 U.S. 620 at 632, 116 S.Ct. 1620. "[S]ome objectives...are not legitimate state interests" and, even when a law is justified by an ostensibly legitimate purpose, "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Tex.*, 473 U.S. at 446-47, 105 S.Ct. 3249. "Rational basis review, while deferential, is not 'toothless.'" *Peoples Rights Org., Inc. v. City of Columbus*, 152 F.3d 522, 532 (6th Cir.1998) (citing *Mathews v. Lucas*, 427 U.S. 495, 510, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976)).

At the most basic level, by requiring that classifications be justified by an independent and legitimate purpose, the Equal Protection Clause prohibits classifications from being drawn for "the purpose of disadvantaging the group burdened by the law." *Romer*, 517 U.S. at 633, 116 S.Ct. 1620; *Obergefell* at 992.

UNITED STATES V. WINDSOR

On June 26, 2013, the United States Supreme Court issued its landmark opinion in *United States v. Windsor*, 133 S. Ct. 2675 (2013). *Windsor* held that Section 3 of the Federal Defense of Marriage Act, which defined marriage as a union between one man and one woman, was unconstitutional. In so ruling, the Supreme Court held that

DOMA seeks to injure the very class New York seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government. See U.S. Const., Amdt. 5. The Constitution's guarantee of equality "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group.

...the principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage. This requires the Court to hold, as it now does, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution.

...The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.

Windsor, 133 S. Ct. at 2693, 2695-96. (internal citations omitted)

This *Windsor* decision is not unprecedented. As noted in *Obergefell*, at 984, the Court relied upon its equal protection analysis from a 1996 case holding that an amendment to a state constitution, ostensibly merely prohibiting any special protections for gay people, in truth violated the Equal Protection Clause under even a rational basis analysis. *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996).

Since the *Windsor* decision, courts throughout the country have been asked to consider

the continued validity of laws banning same-sex marriage. A lawsuit seeking a declaration that Florida's Marriage Laws are facially unconstitutional under *Windsor* is pending in Florida before the United States District Court for the Northern District of Florida, see *James Brenner, et al. v. Rick Scott, et al.*, 4:14-cv-00107-RH-CAS. On August 4, 2014, a Circuit Court Judge in Broward County, in *In Re the Marriage of Heather Brassner and Megan E. Lade*, Case No. 13-012058, declared Article I, Section 27 of Florida's Constitution in Florida Statute Section 741.212 unconstitutional and void and unenforceable. On July 25, 2014, a Circuit Court in Miami-Dade County, in *Pareto v. Ruvin*, Case No. 2014-1661-CA-01, issued an order that Article I, Section 27 of Florida's Constitution is void and unenforceable and Section 741.212 Florida Statutes is also void and unenforceable except for those portions denying State recognition of valid same-sex marriages in other jurisdictions.⁴ This Court is also aware of a Monroe County Circuit Court's order issued July 17, 2014 declaring Article I, Section 27 of the Florida Constitution (on its face) and Florida Statutes § 741.04(1) unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

LEGAL ARGUMENT

The Amended Petition for Administration squarely raises the issue of the constitutionality of "Florida's Marriage Laws" "as applied" to Mr. Simpson's ability to qualify as Personal Representative. Mr. Simpson contends he should be recognized as Mr. Bangor's surviving spouse, and that Article I, Section 27, of the Florida Constitution, and Florida Statutes Section 741.212, are unconstitutional "as applied" to him under the facts of this case. The Petitioner specifically indicated that this case is not a "facial" challenge to the constitutionality of the Marriage Laws. It is only an "as applied" challenge on the issue of the qualification of a non-

⁴ The Miami Dade Court noted that the excepted subsections were not challenged in that case but the Court stated that their validity is under review in the Northern Federal District Court of Florida.

resident, same-sex spouse to serve as a personal representative under Section 733.304(3) of the Florida Probate Code. This order is strictly limited to the facts of this case.

Because Article I, Section 27, of the Florida Constitution and Florida Statutes Section 741.212 are unconstitutional “as applied”, they may not be enforced against Mr. Simpson, and Mr. Simpson has the right and entitlement to serve as Personal Representative. See *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013)(finding that Ohio laws banning recognition of same-sex marriage were unconstitutional as applied).

Federal Courts in thirteen different states have all held that state laws prohibiting the recognition of same-sex marriages are now unconstitutional after *Windsor*. See *Kitchen v. Herbert*, 2014 WL 2868044 (10th Cir. Jun. 24, 2014); *Wolf v. Walker*, 2014 WL 2558444 (W.D. Wisc. June 6, 2014); *Baskin v. Bogan*, 2014 WL 1814064 (S.D. Indiana May 8, 2014); *Latta v. Otter*, 2014 WL 1909999 (D. Idaho May 13, 2014); *Whitewood v. Wolf*, 2014 WL 2058105 (M.D. Pa. May 20, 2014); *Geiger v. Kitzhaber*, 2014 WL 2054264 (D. Oregon May 19, 2014); *Deboer v. Snyder*, 973 F. Supp. 2d 757 (E.D. Mich. 2014); *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. 2014); *DeLeon v. Perry*, 975 F. Supp. 2d 632 (W.D. Tex. 2014); *Bourke v. Beshear*, 2014 WL 556729 (W.D. Kentucky Feb. 12, 2014); *Tanco v. Haslam*, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014); *Bishop v. U.S.*, 962 F. Supp. 2d 1252 (N.D. Okla. Jan. 14, 2014); *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013). The Court finds these lengthy and well-reasoned opinions to be persuasive.

The Court notes that in *Whitewood v. Wolf*, cited above, the ban on same-sex marriage in the Decedent's domiciliary state of Pennsylvania was overturned, thus fully recognizing Mr. Simpson's status as Mr. Bangor's surviving spouse under Pennsylvania law.

There must be a rational relationship “between the classification adopted and the object to be attained.” *Romer v. Evans*, 517 U.S. at 632-33. By requiring that a classification bear a

rational relationship to an independent and legitimate legislative end, [courts] ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." *Id.* at 633. Interests based on tradition or moral disapproval of a group do not suffice, as they simply restate the classification without providing an independent justification. *Lawrence v. Texas*, 539 U.S. at 577-78, 583.

The State of Florida has not offered, and this Court cannot find, any compelling state interest in denying the Decedent's choice for his Personal Representative to serve in the State of Florida. This Court routinely appoints non-resident surviving spouses as Personal Representatives without inquiry into the nature of their marriage. While the Courts cited above have considered and rejected many policy reasons proffered to support the ban on same-sex marriage, those reasons have no application to this Estate. Indeed, Florida's Marriage Laws unconstitutionally impair Mr. Bangor's right to choose his Personal Representative, and Mr. Simpson's right to so act, not because of who they *are* married to, but only because of who they *were* married to, prior to Mr. Bangor's death. There is no justification in denying Mr. Simpson the privilege of acting as the fiduciary, based solely on the gender and sexual orientation of his now-deceased spouse. "The Marriage Laws" unnecessarily discriminate against this "spouse", who is recognized by other States as a "spouse", to act as a fiduciary. Clearly, it was Mr. Bangor's intent that Mr. Simpson serve as his Personal Representative and inherit all of his property.

Nothing in this Estate will be contested. This Estate would have been opened as a routine matter on this Court's *ex parte* calendar but for their same-sex marriage. There is no rational basis to apply those laws to the facts of this case. Same-sex couples are entitled to respect, dignity and protection as any other spouse requesting to be a Personal Representative.

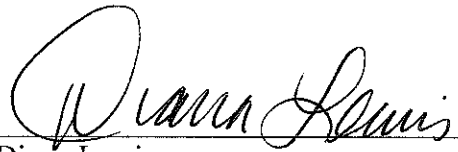
ACCORDINGLY, it is ORDERED and ADJUDGED as follows:

1. Article I, Section 27, of the Florida Constitution, and Florida Statutes Section 741.212 are unconstitutional “as applied” in this Estate under the Fifth Amendment to the United States Constitution, as applied to the State of Florida under the Fourteenth Amendment to the United States Constitution.

2. The Court's holding is strictly limited to the facts before it, and the narrow issue of the qualification of a non-resident, surviving same-sex spouse to serve as a Florida Personal Representative under Florida Statutes Section 733.304(3).

3. The Court will enter a separate Order Admitting the Will of the Decedent to Probate, and Appointing W. Jason Simpson as Personal Representative, and thereafter, Letters of Administration.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida on this 5
day of August, 2014.


Diana Lewis
Circuit Judge

Copies:

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

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PROBATE DIVISION

FRANK C. BANGOR a/k/a
FRANCIS C. BANGOR,

File No.: 502014CP001857XXXXMB

Deceased.

Division: IB

ANCILLARY LETTERS OF ADMINISTRATION

TO ALL WHOM IT MAY CONCERN:

WHEREAS, FRANK C. BANGOR a/k/a FRANCIS C. BANGOR, a resident of the State of Pennsylvania, died on March 15, 2014, owning assets in the State of Florida, and

WHEREAS, W. JASON SIMPSON has been appointed Personal Representative of the Estate of the Decedent and has performed all acts prerequisite to issuance of Ancillary Letters of Administration in the Estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare W. JASON SIMPSON duly qualified under the Laws of the State of Florida to act as Personal Representative of the Estate of FRANK C. BANGOR a/k/a FRANCIS C. BANGOR, deceased, with full power to administer the Estate according to law; to ask, demand, sue for, recover and receive the property of the Decedent; to pay the debts of the Decedent as far as the assets of the Estate will permit and the law directs; and to make distribution of the Estate according to law.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida on this 5
day of August, 2014.



Diana Lewis
Circuit Judge

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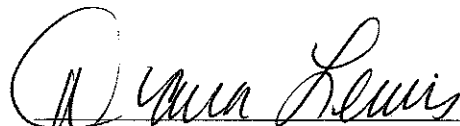
**ORDER ADMITTING WILL OF NONRESIDENT TO PROBATE AND
APPOINTING PERSONAL REPRESENTATIVE**

On the Petition of W. Jason Simpson for administration of the Florida Estate of Frank C. Bangor a/k/a Francis C. Bangor, deceased, the court finding that the domiciliary personal representative is the petitioner herein, and it appearing to the court from the petition and from the authenticated transcript of the domiciliary proceedings filed herein that the authenticated copy of the probated will of the decedent complies with Florida law and is entitled to probate in this state, and that W. Jason Simpson, who is the surviving spouse of the decedent, is entitled to appointment and is qualified under the laws of the State of Florida to serve as personal representative by reason of his nomination in the decedent's will and his relationship to decedent, it is

ADJUDGED that the authenticated copy of the will is admitted to probate according to law as and for the last will of the decedent, and it is further,

ADJUDGED that W. Jason Simpson is appointed personal representative of the Florida estate of the decedent and that upon taking the prescribed oath, filing a designation of resident agent and acceptance, and entering into bond in the sum of \$ 0, Ancillary Letters of Administration shall be issued.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida on this 5 day of August, 2014.


Diana Lewis
Circuit Judge

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