

ALYSHA ROMERO

PETITIONER

vs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

REBECCA ROMERO

RESPONDENT

This matter comes before the Court on Petitioner’s motion to enter a Decree of Dissolution incorporating the terms of the parties’ Property Settlement Agreement as an Order of this Court. The Court makes the following Findings of Fact and Conclusions of Law.

Alysha Romero (hereafter sometimes referred to as the “Petitioner”) and Rebecca Romero (hereafter sometimes referred to as the “Respondent”) were married on December 10, 2009 in Boston, Suffolk County, Massachusetts, where the marriage is so registered. They moved to Kentucky in 2011 in order to be closer to Respondent’s family. At the time of the filing of this action, Petitioner was employed as an Administrative Assistant at the University of Louisville, Department of Diagnostic Radiology. Respondent, who entered her appearance in this case through the filing of a Response, was a student who sustained a disability during her service in the military forces of the United States of America. Petitioner was an actual and continuous resident of the Commonwealth of Kentucky for longer than 180 days next preceding the filing of the petition.

The parties separated on September 6, 2013, and they have lived separate and apart since the date of their separation. The marriage of the parties is irretrievably broken. There were no children born of the marriage, and

Petitioner is not pregnant at this time. The parties have entered into a written Property Settlement Agreement (“Agreement”). The Court has reviewed this Agreement and finds that it is not unconscionable. The conciliation provisions of KRS 403.170 do not apply. Respondent has requested the restoration of her maiden name of Rebecca Fritsch.

The parties to this action are a same-sex married couple who seek to be released from the bonds of their marriage which they legally forged in the Commonwealth of Massachusetts.

Chapter 403 of the Kentucky Revised Statutes – DISSOLUTION OF MARRIAGE; CHILD CUSTODY - provides that “This chapter shall be liberally construed and applied to promote its underlying purposes, which are to... Promote the amicable settlement of disputes that have arisen between parties to a marriage; [and] ...Mitigate the potential harm to spouses ... caused by the process of legal dissolution of marriage; ...” KRS 403.110 (2)(3).

The Bill of Rights of the Kentucky Constitution (Bill of Rights”) provides that “All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties. ... Third: The right of seeking and pursuing their safety and happiness. ... Fifth: The right of acquiring and protecting property.” Kentucky Constitution Section 1.

The Bill of Rights further provides that: "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." Kentucky Constitution Section 2.

The Bill of Rights further provides that: "All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services; ..." Kentucky Constitution Section 3.

The Bill of Rights further provides that "... everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws to the contrary to this Constitution shall be void." Kentucky Constitution Section 26.

The Interstate Commerce Clause of the Constitution of the United States ("Constitution") provides the "The Congress shall have the Power... To regulate Commerce ... among the several States..." Constitution, Article I, Section 8.

The Constitution provides that "No State shall ... pass any Bill ... or Law impairing the Obligation of Contracts" Constitution, Article I, Section 10.

The Constitution provides that: " Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. ..." Constitution, Article IV, Section 1.

The Bill of Rights of the Constitution provides that "No person shall ... be deprived of life, liberty or property, without due process of law;..." Constitution, Amendment V.

The Bill of Rights of the 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 any person within its jurisdiction the equal protection of the laws." Constitution, Amendment XIV, Section 1.

The right to marry has been recognized by the Supreme Court of the United States ("Supreme Court") as a fundamental right situated within the due process right to liberty. "Marriage is one of the 'basic civil rights of man' fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1,12 (1967).

In 1996 the United States Congress enacted the Defense of Marriage Act, (hereinafter referred to as "DOMA") 110 Stat. 2419. And 28 U.S.C. s1738C, Section 3 of DOMA defined "marriage" as being limited to a "legal union between one man and one woman" for purposes of all federal statutes and other regulations or directives.

In the wake of the enactment of DOMA in 1998 KRS 402.045 was enacted. It provides that: (1) A marriage between members of the same sex which occurs in another jurisdiction shall be void in Kentucky. (2) Any rights granted by virtue of the marriage, or its termination, shall be unenforceable in Kentucky Courts.

In 2013 the Supreme Court struck down Section 3 of DOMA in *United States v. Windsor* 133 S. Ct. 2675 (2013). The Court found that by treating same-sex married couples differently than opposite-sex married couples, Section 3 of

DOMA “violate[d] basic due process and equal protection principles applicable to the Federal Government.” Windsor, 133 S. Ct. at 2693. The Supreme Court affirmed that even such areas as marriage, traditionally reserved to the states, are subjected to constitutional scrutiny and “must respect the constitutional rights of persons.” Windsor, 133 S. Ct. at 2691 (citing Loving).

The Kentucky Court of Appeals has held in Pinkhasov v. Petocz, 331 S.W.3d 285 (Ky. App. 2011) that “It is well-settled in Kentucky that there must be a marriage in fact, and common-law marriages are not recognized as valid.” The Court went on to affirm that “Kentucky courts will enforce rights and obligations relative to a common-law marriage where that relationship was “entered upon in a State where it is valid.” Pinkhasov, p.296 citing Brown’s Adm’r v. Brown, 215 S.W.2d 971, 975 (1948).

The stated purpose of the Commonwealth’s dissolution of marriage statutes, which are expressly to be “liberally construed”, include promoting amicable settlements of disputes between parties to a marriage and mitigating potential harm to spouses. All married couples need and deserve the benefit of those positive, necessary and much-needed purposes and protections.

The Commonwealth’s Bill of Rights provides that all people are free, equal and endowed with the inalienable right to enjoy and defend their lives and liberties, to pursue their safety and happiness and to acquire and protect their property. Someone who is denied the right to legally dissolve their legally entered into and irretrievably broken marriage is effectively denied these rights guaranteed by the Kentucky Constitution.

The Constitution of Kentucky prohibits the exercise of absolute and arbitrary power over the lives and property even if that exercise is approved of by the largest majority. These parties are not seeking to marry in the Commonwealth. They were lawfully married under the laws of the Commonwealth of Massachusetts. To require them to relocate to a different state in order to obtain a divorce would constitute an arbitrary exercise of power prohibited by the Kentucky Constitution.

The Bill of Rights of the Kentucky Constitution recognizes and provides that all persons are equal. That includes same-sex couples. It also provides that there shall be no grant of separate privileges to any set of people. To permit legally-married heterosexual couples to dissolve their marriages and deny legally-married same-sex couples the right to dissolve their marriages constitutes the grant of separate privileges to legally-married heterosexual couples in violation of the Bill of Rights of the Kentucky Constitution.

The Bill of Rights of the Kentucky Constitution provides that safeguards provided in the Bill of Rights of the Kentucky Constitution are forever inviolate and all laws to the contrary to the Kentucky Constitution are void.

The Interstate Commerce Clause of the Constitution reserves to the United States Congress the right to regulate interstate commerce. To deny legally married same-sex couples the right to live in the Commonwealth and obtain a divorce is an impermissible de facto regulation of interstate commerce in today's highly mobile society when the Commonwealth is working hard to entice

new businesses and people relocate to the Commonwealth in order to improve the Commonwealth's economy and create jobs in the Commonwealth.

To the extent the Commonwealth prevents legally married same-sex couples from obtaining a divorce in the Commonwealth it has enacted law which impairs the Obligation of contracts – namely the marriage contract – in violation of Article I, Section 10 of the Constitution. It has also refused to give full faith and credit to the public acts, records and judicial proceedings of the Commonwealth of Massachusetts in violation of Article IV, Section 1 of the Constitution. It has also deprived legally married same-sex couples of the enjoyment of life, liberty and their property rights without due process of law in violation of the Fifth Amendment to the Constitution.

The Supreme Court struck down the Commonwealth of Virginia's miscegenation laws which prevented interracial couples from getting married. In Loving v. Virginia, cited above, the Court held marriage to be a basic human civil right fundamental to "existence and survival". Making and enforcing law which deny legally married same-sex couples the right to divorce abridges their privileges as citizens of the United States, and it constitutes a State deprivation of their life, liberty and property as well as a denial of their equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

Recently the Supreme Court struck down the provisions of Section 3 of DOMA, which defined "marriage" as being limited to a legal union between one man and one woman", in United States v. Windsor, cited above, and held that treating same-sex married couples differently than opposite-sex married couples

violated both the due process and equal protection clauses of the Constitution. The Kentucky Court of Appeals in Pinkhasov, , cited above, affirmed that Kentucky courts would enforce the marriage rights of a common law married couple who were lawfully married in another state despite the fact that common law marriages were not recognized as valid in Kentucky. The parties to this action were legally married in another state. To not recognize their marriage or permit them to divorce in the Commonwealth while enforcing the rights and obligations of a common law marriage entered into in a state where common law marriage is legal clearly constitutes a denial of equal protection guaranteed by the Kentucky Constitution and the Constitution of the United States, as well as an exercise of arbitrary power over lives, liberty and property prohibited by the Kentucky Constitution.

The law is not static. It evolves as society evolves. The provisions of the Kentucky Constitution and its Bill of Rights, the Constitution of the United States and its Bill of Rights, the expressed purposes of the Commonwealth's Dissolution of Marriage Chapter, and the holdings of the US Supreme Court in Loving v. Virginia, and United States v Windsor, as set out above, provide a legal basis for the dissolution of the lawful marriage of Alysha Romero and Rebecca Romero in the Commonwealth of Kentucky in 2014.

CERTIFIED COPY OF RECORD
OF JEFFERSON FAMILY COURT

DAVID L. NICHOLSON, CLERK
DAVID L. NICHOLSON, CLERK
BY [Signature] D.C.

[Signature]
JUDGE JOSEPH W. O'REILLY
Jefferson Circuit Court
Family Division Seven (7)

12.29.14

Date

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NOE FCM TO ALL PARTIES

ENTERED IN COURT DAVID L. NICHOLSON, CLERK DEC 29 2014 BY <u>[Signature]</u> DEPUTY CLERK

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