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(A.C. 22253)
P.S.C.

GLEN ROSENGARTEN : SUPREME COURT

vs.

PETER DOWNES : August 15, 2002

AUG 15 2002

PETITION FOR CERTIFICATION

Pursuant to Practice Book § 84-1, the Plaintiff, Glen Rosengarten, petitions this Court for certification to appeal the decision of the Appellate Court, 71 Conn. App. 372, which affirmed the order of the trial court (Shay, J.) dismissing this action for lack of subject matter jurisdiction.

I. QUESTION PRESENTED:

Did the Appellate Court properly conclude that the Superior Court lacks jurisdiction to dissolve a civil union?

II. BASES FOR CERTIFICATION

The question of whether the Superior Court can dissolve a civil union presents a question of great public importance. Furthermore, the Appellate Court has decided the question in a manner that probably conflicts with applicable decisions of this Court.

III. STATEMENT OF THE CASE

The Plaintiff filed a complaint in the Superior Court, alleging that the parties had entered into a civil union¹ in Vermont, that the civil union had broken down irretrievably, and that the Plaintiff had resided in Connecticut for at least one year before commencing the action.² 71 Conn. App. at 374-75. The Plaintiff sought a dissolution of the civil union

¹ Civil unions provide same-sex couples the same rights and responsibilities of marriage that are available under Vermont law. Vt. Stat. Ann. tit. 15, § 1201(a). They are the legislative response to *Baker v. State*, 744 A.2d 864 (Vt. 1999), which held that denying same-sex couples the right to marry violated the common-benefits clause of the Vermont Constitution.

² The Defendant was served with process by certified mail pursuant to an order of notice. 71 Conn. App. at 373-74. The Defendant has not appeared in this action in either the trial court or the Appellate Court. *Id.* at 374.

and “[s]uch other and further relief to which the Plaintiff may be entitled in law or equity.” *Id.* at 375. The trial court (Shay, J.) dismissed the action *sua sponte*, holding that “[t]here is no subject matter jurisdiction under [Conn. Gen. Stat.] § 46b-1.” *Id.*

In an articulation, the trial court noted that “the traditional notion of what constitutes a family (and logically, what should be treated as a family relations matter) has evolved over time.” (Mem. Dec. 3/4/02 (citing, *inter alia*, *Laspina-Williams v. Laspina Williams*, 40 Conn. Supp. 165, 170 (1999) (involving visitation rights for the non-custodial parent of a same-sex couple).) Nevertheless, the court concluded that “[m]atters such as this which implicate significant issues of public policy are more properly within the domain of the legislature . . . [and] [a]s such, the legislature of a sister state cannot, in effect, make such a determination for the people of Connecticut.” *Id.* The court also cited Conn. Gen. Stat. § 45a-727a(4) and the so-called Defense of Marriage Act (DOMA), 28 U.S.C. § 1738C.

The Appellate Court affirmed, holding that because a civil union was not a marriage or a matter of family relations as defined in the Practice Book, the trial court lacked subject matter jurisdiction under Conn. Gen. Stat. § 46b-1. Specifically, the Appellate Court held that a civil union is not a family relations matter for purposes of § 46b-1(17) because that section was intended to collect matters that had previously been divided between the Court of Common Pleas and the Superior Court. *Id.* at 303. The Appellate Court also held that Conn. Gen. Stat. §§ 45a-727b and 46a-81r do not “endorse or authorize, respectively, civil unions or any other relationship between unmarried persons.” *Id.* The court further concluded that common-law principles and public policy do not support recognition of civil unions. *Id.* at 387-89. Citing an article by the Congressional Research Service, the court also rejected the argument that the Full Faith and Credit Clause, U.S. Const., Art. IV, § 1, requires recognition of civil unions formed in Vermont. *Id.* at 385-86. Finally, the court rejected the argument that *Boland v. Catalano*, 202 Conn. 333 (1987), supports recognition of civil unions in Connecticut, in part because the complaint does not expressly state a contract claim. *Id.* at 393-94.

IV. CONCISE ARGUMENT

Whether a Connecticut court may dissolve a Vermont civil union presents a question that potentially affects hundreds of same-sex couples in Connecticut and is thus of great public importance.³ The Appellate Court decided the question in a manner inconsistent with this Court's decisions regarding jurisdiction over claims arising under foreign law. In searching for authority that would permit the Superior Court to hear the Plaintiff's dissolution claim, the lower courts began with the erroneous presumption that the court lacked jurisdiction unless it could be shown otherwise. To the contrary, as a court of unlimited jurisdiction, the Superior Court has the power to adjudicate claims arising under foreign law unless doing so contravenes a strong public policy. Because Connecticut does not have a strong public policy against dissolving a civil union, the lower courts erroneously concluded that the Superior Court lacks jurisdiction to adjudicate this claim.

The Superior Court is a "constitutional court of unlimited jurisdiction." *State v. Stallings*, 151 Conn. 272, 278 (1966). As such, a specific Practice Book rule or statute is not necessary to confer jurisdiction over specific claims. Rather, the court has jurisdiction unless otherwise restrained by a specific law or public policy. Indeed, in determining jurisdictional questions, "there is a presumption in favor of subject matter jurisdiction." *Williams v. Commission on Human Rts. & Opportunities*, 257 Conn. 258, 266 (2002). Consequently, the lower courts should have determined whether some law or policy deprived the court of jurisdiction, rather than having required a showing in favor of jurisdiction. The open courts clause of the Connecticut Constitution, Art. First, § 10, further buttresses the presumption in favor of jurisdiction.

It is not necessary for Connecticut to have its own civil union statute in order to

³ Data from the 2000 Census shows that over 7,500 couples self-identified as same-sex domestic partners in Connecticut. See OLR Research Report, 2000 Census Figures—Same-Sex Partner Households in Connecticut, Feb. 6, 2002. (App. at A26.) It is likely that the actual number of same-sex couples is higher, assuming that not all such couples chose to reveal their status to the government. It is further likely that some of these couples have entered into civil unions and that some of these relationships will fail.

adjudicate the parties' claims, which arise under Vermont law, because the Superior Court has jurisdiction to enforce claims under foreign statutes. This Court has previously held that

[i]t is a well settled principle that, unless the law of another jurisdiction or rights arising thereunder *contravene* our public policy or violate our *positive laws*, a plaintiff may enforce in this state any legal right of action which he may have whether it arises under our own law or that of another jurisdiction.

Adamsen v. Adamsen, 151 Conn. 172, 176 (1963) (emphasis added). Connecticut will not enforce rights that injure "public rights" or the "interests of our citizens." *Reilly v. Pepe Co.*, 108 Conn. 436, 445 (1928). However, "[i]n this state we take a broad view of the extent to which our courts should go in the enforcement of individual rights arising under the statutes of another state." *Lapinski v. Copacino*, 131 Conn. 119, 124 (1944). Thus, because dissolving a civil union does not contravene Connecticut's public policy or violate some specific positive law, the Superior Court has jurisdiction over this claim.

The evidence of a public policy contravening a claim arising under foreign law must be strong. For example, that Connecticut has a conflicting statute does not necessarily mean that a Connecticut court lacks jurisdiction to enforce another state's statute. E.g., *Stattery v. Hartford-Connecticut Trust Co.*, 115 Conn. 163 (1932) (permitting a son adopted in Michigan to inherit through intestacy from his natural father in Connecticut, even though such inheritance would not be permitted for children adopted in Connecticut). This Court observed that

[d]issimilar provisions are to be expected, but even if a foreign law gives a right which ours does not, or bases the right upon a different theory of justice, it in no way establishes that we are right and the foreign State wrong. We are not at liberty to refuse the enforcement of the foreign law in order to suit our own view of what is fair and right under the stated circumstances. *Our courts do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal.*

Id. at 167 (emphasis added; citations and internal quotations omitted).

Connecticut courts have refused to enforce non-penal claims under foreign law only where a criminal or civil statute expressly prohibited recognition of the right. For example,

this Court refused to enforce a gambling debt arising from a contract validly made in Rhode Island on a horse race because Connecticut had long criminalized such activity. *Ciampittiello v. Campitello*, 134 Conn. 51, 55-57 (1947). Similarly, in *Singh v. Singh*, 213 Conn. 637 (1990), and *Catalano v. Catalano*, 148 Conn. 288 (1961), this Court held that uncle-niece marriages were void under Connecticut law even if they were valid in the jurisdictions where they were celebrated. Such marriages are expressly prohibited by Conn. Gen. Stat. § 46b-21 and are criminal under Conn. Gen. Stat. § 53a-191. Thus, the parties could not enforce rights that arose from those marriages through Connecticut courts. Even criminal statutes, however, do not always demonstrate an “ancient and deeply rooted public policy of this state” that deprives the court of jurisdiction over the claim. See, *Santoro v. Osman*, 149 Conn. 9, 12 (1961) (enforcing note executed in New York at an interest rate that would have been usurious under Connecticut law).

Connecticut has no statute that expressly prohibits a court from dissolving a civil union. Cf., Ga. Code Ann. § 19-3-3.1(b) (stating that Georgia courts “shall have no jurisdiction whatsoever under any circumstances to grant a divorce” or other rights that arise from a marriage between couples of the same sex). Thus, dissolving this civil union would violate no positive law of this state.

Similarly, dissolving a civil union would not contravene public policy. Even though Connecticut does not have its own civil unions scheme and does not issue marriage licenses to same-sex couples, the lack of the ability to *form* such relationships *in Connecticut* does not evince a strong public policy as to the dissolution of civil unions formed elsewhere. A review of the statutes concerning the rights of gay, lesbian, and bisexual persons demonstrates either neutrality with regard to dissolving civil unions or a policy that would favor—not disfavor—the exercise of jurisdiction.

Connecticut has long taken a progressive view of the civil rights of gay, lesbian, and bisexual persons. The legislature repealed Connecticut’s sodomy statute in 1969. Conn. Gen. Stat. § 53-216; PA 69-828, § 214. In 1990, the legislature enacted hate-crimes

legislation that criminalized intimidation on the basis of sexual orientation and other classes. Conn. Gen. Stat. § 53a-181b, superceded by §§ 53a-181j through 53a-181l. In 1991, the legislature enacted the Gay Rights Law, Conn. Gen. Stat. §§ 46a-81a through 46a-81r, which prohibits discrimination on the basis of sexual orientation in housing, public accommodations, employment, and other areas. In 2000, the legislature overruled this Court's holding in *In re Baby Z*, 247 Conn. 474 (1999) (en banc), and established a statutory co-parent adoption scheme that permits both members of a same-sex couple to adopt a child. P.A. 00-228, codified at Conn. Gen. Stat. §§ 45a-724(a)(3), 45a-727(a)(3)(D), 45a-727a, & 45a-727b.

Although both the Gay Rights Law and the Co-Parent Adoption Law contain disclaimers for purposes of statutory construction, these disclaimers do not establish a strong public policy against adjudicating claims for the dissolution of a civil union. Section 46a-81r provides, in relevant part, that nothing in the Gay Rights Law "shall be deemed or construed (1) to mean that the state of Connecticut condones homosexuality or bisexuality or any equivalent lifestyle . . . [and] . . . (4) to authorize the recognition of or right of marriage between persons of the same sex" These statements of official neutrality in no way suggest that dissolving a civil union violates public policy. Moreover, this section cannot be read as a condemnation of same-sex relationships because it is irrational to protect the civil rights of people whose relationships violate public policy. "In construing a statute, common sense must be used, and courts will assume that the legislature intended to accomplish a reasonable and rational result." *King v. Board of Educ.*, 203 Conn. 324, 332-33 (1987) (citations and internal quotations omitted). Ultimately, the most that rationally can be said about § 46a-81r is that the Gay Rights Law says nothing about official recognition of same-sex relationships one way or the other, but merely indicates neutrality on the subject.

Similarly, the Co-Parent Adoption Law contains two statements relating to marriage. First, the legislature found that "the *current* public policy of the state of Connecticut is now

limited to a *marriage* between a man and a woman.” § 45a-727a(4) (emphasis added). This section is merely the legislature’s observation as to the present state of the law concerning marriage and further recognizes that this public policy is subject to change. It says nothing about civil unions, although the legislature clearly knew of their existence. See § 45a-727b.

The other disclaimer also fails to show a strong public policy against dissolving a civil union. Section 45a-727b provides that nothing in the Co-Parent Adoption Law

shall be construed to establish or constitute an endorsement of *any public policy* with respect to marriage, civil union or any other form of relation between unmarried persons or with respect to any civil rights of or between such persons other than their rights and responsibilities to a child who is a subject of an adoption as provided for in sections 45a-724 and 45a-727.

(Emphasis added.) Again this is a statement of neutrality, specifically prohibiting any inference for or against civil unions on the basis of this statute. Moreover, this provision cannot constitute a condemnation of same-sex relationships in general because such condemnation would be inconsistent with the purpose of the Act to permit the formation of families with two parents of the same sex.

Furthermore, the Appellate Court’s reliance on the discussions of *Baker* and the history of civil unions in Vermont in the legislative history of the Co-Parent Adoption Law is misplaced.⁴ The Amendment that Senator Smith referred to as a DOMA and that Senator Williams stated was superfluous would have amended Conn. Gen. Stat. § 46b-24 to make the language gender specific and would restricted marriage ceremonies to heterosexual couples. 2000 LCO 5291. (App. at A32.) The focus of the discussion therefore was not whether the Co-Parent Adoption Law would require Connecticut to recognize civil unions from other states, but whether a court could use the Act as a tool for creating civil unions *in Connecticut*.

The recent passage of P.A. 02-105 demonstrates a public policy of affording some

⁴ The Vermont Supreme Court based its decision in *Baker*, in part, on Vermont’s earlier passage of statute permitting same-sex couples to adopt. 744 A.2d at 884-86.

rights to same-sex couples and undermines any conclusion that a strong public policy exists against recognizing civil unions for the purpose of dissolving them. The act provides that any adult may designate another adult “to make certain decisions on behalf of the maker of such document and have certain rights and obligations with respect to the maker of such document” These rights and obligations relate to medical emergencies, hospital visitation, end-of-life decisions, and the status of the designated person as a crime victim. P.A. 02-105, §§ 3 through 15.

Although the act does not require the maker and designee to be persons of the same sex, Rep. Michael Lawlor, the chief sponsor of the legislation, testified that the bill emerged out of the debate on civil unions and same-sex marriage, see 2002 H.D. 5001, 5002, as a way of addressing some of the concerns expressed by same-sex couples. “[W]e thought we could address immediately without getting into the very controversial issue of same sex relationships. To sort of act as a placeholder as we continue to deliberate the bigger more fundamental long term issue of the legal status of same sex relationships.” 45 H. Proc., Pt. 9, at 2640 (2002 Sess.) This legislative history shows that the public policy towards same-sex relationships is far from hostile, but instead favorable to a limited degree, even if the policy towards more comprehensive recognition of these relationships is undetermined.

Section 16 of the act and the floor debate in the Senate confirm this point. Section 16 mandates that the Judiciary Committee engage in a study to “deliberate the public policy reasons to *permit or prohibit* the marriage or civil unions of two persons of the same sex.” (Emphasis added.) The fact that the legislature discerned a need to study the issue and specifically rejected an amendment that would delete § 16, see 45 S. Proc., Pt. 8, at 2471-76 (2002 Sess.), indicates the lack of a strong public policy against same sex relationships.

The Judicial Branch, through its administrative functions, has also recognized the existence of same-sex relationships. An OLR Research Report notes that the Judicial

Department has recently initiated a pretrial mediation program to help same-sex couples and unmarried heterosexual couples who are ending a relationship and have disputes regarding the division of property. OLR Research Report, Use of Family Court Mediation Services by Unmarried Couples, Feb. 7, 2002. (App. at A31.) Presumably, if Connecticut had a strong public policy against same-sex relationships, the courts would not lend assistance in the property disputes that arise when such relationships end.

In concluding that Connecticut public policy did not support jurisdiction to dissolve civil unions, the Appellate Court cited the observation in *Maynard v. Hill*, 125 U.S. 190, 205 (1888), that marriage creates “the most important relation in life” and has always been subject to regulation by the legislature. 71 Conn. App. at 388 n.8. The legal and philosophical truth of this statement does not represent a strong public policy basis to deny jurisdiction to dissolve civil unions for two reasons. First, dissolving the parties’ civil union will not affect any of the myriad rights and responsibilities of marriage for any couple in Connecticut. Nor does it affect the scope of the state’s authority to decide who may marry. See *Tyma v. Montgomery County*, 801 A.2d 148 (Md. Ct. App. 2002) (rejecting a claim that the county’s domestic-partner act infringed on the state’s right to regulate marriage).

Second, to the extent that civil unions are disfavored, it is not inconsistent with such a policy to dissolve a relationship that allegedly offends public policy. See *Fattibene v. Fattibene*, 183 Conn. 433, 437 (1981) (“The Superior Court has authority to annul a marriage performed in another state if the marriage would have been invalid in that state or violates a strong public policy of this state.”) If the court has jurisdiction to annul a marriage that is void for public policy, it should have jurisdiction to dissolve a civil union. Ultimately, although the public policy regarding the status of civil unions may not be crystal clear, there is certainly no “fundamental principle of justice, some prevalent conception of good morals, [or] some deep-rooted tradition . . . ,” *Slattery*, 115 Conn. at 167, that dissolving a civil union would violate.

The lack of a Practice Book rule regarding civil unions enacted pursuant to Conn.

Gen. Stat. § 46b-1(17) also does not evince a strong public policy against dissolving a civil union. The legislative history makes it clear that this provision was merely intended to create a family docket in the Superior Court. This language was originally enacted in 1959. P.A. 59-531. During the floor debates, Senator Scanlon stated that the bill “purports to set up within the Superior Court a separate docket which will handle nothing but family matters.” 8 S. Proc., Pt. 5, at 1985 (1959 Sess.) Moreover, § 46b-2 provides that a case on the family docket may be transferred to the criminal or civil docket if the trial court judge deems it appropriate to do so. Thus, § 46b-1 does not define the jurisdiction of the Superior Court, it merely defines the family docket.

To the extent that § 46b-1 addresses the court’s authority to act, the language makes it clear that subdivision (17) was a catch-all provision intended to include any family relations matter that may have been overlooked, or more likely, given the exhaustive laundry list of subjects in the first 16 subdivisions, an area that had not occurred to anyone at the time. Civil unions certainly are consistent with the evolving definition of family relations matters, at least for purposes of their dissolution. See *Roth v. Weston*, 259 Conn. 202, 221 (2002) (acknowledging that the nature of a relationship with a child, although not necessary a biological connection, may establish standing for purposes of seeking visitation rights under Conn. Gen. Stat. § 46b-59).

Lastly, the Superior Court clearly has jurisdiction to adjudicate contract claims. *Boland v. Catalano*, 202 Conn. 333 (1987). To the extent that a civil union creates a contract under Vermont law, the Superior Court has jurisdiction to adjudicate the ending of the contract. If a civil union is a contract, the allegation that the parties entered into a civil union should suffice for pleading purposes.

Because dissolving a civil union would not contravene public policy or violate a positive law, the lower courts erred in concluding that the Superior Court lacks jurisdiction to hear this matter. Accordingly, this Court should grant certification to decide this important question of first impression.

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