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: SUPERIOR COURT

GLEN ROSENGARTEN

: JUDICIAL DISTRICT OF
STAMFORD/NORWALK

VS.

: AT STAMFORD

PETER DOWNES

 **FILE COPY**

: MARCH 4, 2002

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MEMORANDUM OF DECISION

The parties to the above matter, a same-sex couple, entered into a "civil union" at Essex, Vermont, on December 31, 2000. The plaintiff seeks to dissolve same on the grounds of irretrievable breakdown, and he has filed a complaint dated July 11, 2001, returnable to the Superior Court for the Judicial District of Stamford/Norwalk on July 31, 2001. He has denominated it as a family relations matter and has used the code "F 00." The court, pursuant to Practice Book § 25-14, *sua sponte* dismissed the matter on August 8, 2001, citing lack of subject matter jurisdiction under General Statutes § 46b-1. A notice of this decision was given by JDNO.

The jurisdiction or power to entertain family relations matters is found in General Statutes § 46b-1. While a Superior Court has broad equitable powers in dealing with family relations matters, a proceeding to dissolve a marriage (along with its myriad collateral issues such as alimony, custody, and property division) is one *in rem*. Litvaitis v. Litvaitis, 162 Conn. 540, 545, 295 A.2d 519 (1972); Fernandez v. Fernandez, 208 Conn. 329, 333, 545 A.2d 1036 (1988), cert. denied, 493 U.S. 958, 110 S. Ct. 376, 107 L.E.2d 361 (1989). The statute in question makes no reference to the

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Law Offices of Gary I. Cohen
Peter Downes
Clerk, Stamford/Norwalk J.D.
bjm

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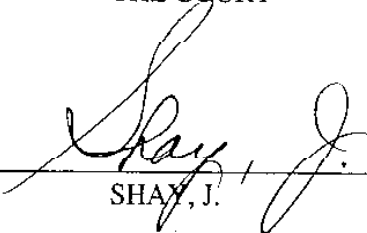
term “civil union” as coming within its ambit. From the earliest days of the Connecticut Colony, when all divorces were granted or denied by legislative action, to the enactment of the first divorce statute conferring upon the courts the power to terminate a marriage, the definition of marriage and the power to enter into and sunder same has been part of an evolutionary process, the forward progress of which has been at a pace set by the legislature. Granted, the traditional notion of what constitutes a family (and logically, what should be treated as a family relations matter) has evolved over time. Michaud v. Wawruck, 209 Conn. 407, 415, 551 A.2d 738 (1988) (genetic birth mother’s rights vis a vis adoptive parents); Laspina-Williams v. Laspina-Williams, 46 Conn. Sup. 165, 170, 742 A.2d 840 (1999) (same sex couple, visitation rights of non-custodial partner). However, the scope of this court’s powers are necessarily limited to the statutes as currently enacted by the legislature and set forth in General Statutes § 46b-1, as well as the rules of practice as enacted by the judges of the Superior Court pursuant to that statute. General Statutes § 46b-1 (17) and Practice Book § 25-1. Since the dissolution of a civil union is not a family relations matter as set forth in either the statute or the Practice Book, this court is not empowered with “plenary and general subject matter” jurisdiction over such a relationship, much less the ability to exercise its broad statutory equitable powers. Amodio v. Amodio, 247 Conn. 724, 727-729, 724 A.2d 1084 (1999); Rosenfeld v. Rosenfeld, 61 Conn. App. 112, 115-117, 762 A.2d 511 (2000).

The issue of subject matter jurisdiction may be raised at any time, even *sua sponte* by the court. A party cannot confer subject matter jurisdiction on the court. Savage v. Aronson, 214 Conn. 256, 263, 571 A.2d 696 (1990). Where there is no subject matter jurisdiction, the court must dismiss the case. Practice Book § 25-14.

The concept of separation of powers among the three branches is an essential element of the bedrock upon which our system of government functions and endures. Matters such as this which implicate significant issues of public policy are more properly within the domain of the legislature, the duly elected representatives of the people.¹ As such, the legislature of a sister state cannot, in effect, make such a determination for the people of Connecticut. Defense of Marriage Act, 28 U.S.C. §1738C.² See also, Litvaitis, supra, 162 Conn. 545 (public policy re foreign divorce decree). There should be an opportunity for a full and fair debate and deliberation by that body. In so doing, we ensure the greatest degree of consensus and consistency in this area.

Accordingly, pursuant to Practice Book § 25-14, IT IS HEREBY ORDERED that the complaint is DISMISSED for want of subject matter jurisdiction under General Statutes § 46b-1.

THE COURT



SHAY, J.

1. See General Statutes § 45a-727a (4). "It is further found that the current public policy of the state of Connecticut is limited to a marriage between a man and a woman." (P.A. 00-228, entitled "State policy re best interests of child; public policy re marriage.")

2. Title 28 of the United States Code, § 1738C, provides: "No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other state, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage, under the law of such other state, territory, possession, or tribe, or a right or claim arising from such relationship."

APPELLATE COURT
STATE OF CONNECTICUT

AC 22253

GLEN ROSENGARTEN

v.

PETER DOWNES

FEBRUARY 25, 2002

ORDER

PURSUANT TO PRACTICE BOOK § 60-2(1), THIS CASE IS REMANDED TO THE TRIAL COURT WITH DIRECTION TO ARTICULATE, IN A WRITTEN MEMORANDUM OF DECISION, ITS REASONS FOR DISMISSING THIS MATTER FOR LACK OF SUBJECT MATTER JURISDICTION. SEE § PRACTICE BOOK § 64-1. IT IS FURTHER ORDERED THAT THE MEMORANDUM OF DECISION BE FILED ON OR BEFORE MARCH 22, 2002. THIS APPEAL, OVER WHICH WE RETAIN JURISDICTION, HAS BEEN ASSIGNED FOR ORAL ARGUMENT ON MARCH 28, 2002.

BY THE COURT,


ASSISTANT CLERK-APPELLATE

NOTICE SENT: FEBRUARY 26, 2002
LAW OFFICES OF GARY I. COHEN
HON. MICHAEL E. SHAY
CLERK, SUPERIOR COURT, STAMFORD/NORWALK, FA01 185103

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HARTFORD, CT 06106
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