

STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

Patricia Martinez,

Plaintiff,

vs.

Index #05/00433

Monroe Community College, the Trustees
of Monroe Community College, and Monroe
Community College Director of Human
Resources Sherry Ralston, in her individual
and official capacity,

Defendants.

Supreme Court, County of Monroe, Special Term
July 13, 2006

Appearances:

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Monroe County Department of Law
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DECISION & JUDGMENT

GALLOWAY, J. :

The motion of defendants for summary judgment is granted, and the cross motion of plaintiff for summary judgment is denied; and defendants are granted judgment declaring that defendants did not violate plaintiff's civil rights under the Equal Protection Clause of the New York State Constitution, or Executive Law § 296, and that plaintiff's marriage in Ontario, Canada is not entitled to comity in New York State.

I. FACTS

Plaintiff has been an employee of defendant Monroe Community College (“MCC”) since 1994, and has been in a long-term, committed, same-sex relationship with Lisa Ann Golden since 2000. The couple traveled to Vermont and entered into a civil union on July 5, 2001. On July 5, 2004, they were married in Ontario, Canada. On July 7, 2004, plaintiff wrote a letter to MCC’s Director of Human Resources, defendant Sherry Ralston, including her marriage license from the Province of Ontario, and asking that Lisa Ann Golden be added to her health insurance, as other spouses of employees were added. When plaintiff did not receive a response, she wrote another letter, dated November 11, 2004, indicating her intent to enroll her “spouse” for health benefits by the open enrollment deadline.

Plaintiff’s health care benefits, whatever they may be, are established through a process of negotiation and agreement between her union and her employer (the County of Monroe). Through and including 2005, the collective bargaining agreement in effect for plaintiff’s bargaining unit did not mention providing health insurance for the spouses of employees. At her deposition, Ralston testified that although the term “spouse” was not present in the collective bargaining agreement with respect to health insurance benefits, by past practice, MCC did in fact extend health care coverage to employees’ spouses. She further testified that a different collective bargaining agreement, i.e., the one governing the employment terms for faculty members of MCC, did provide for domestic partner health insurance.

On November 24, 2004, Ralston wrote a letter to plaintiff, denying her request for spousal health care benefits. Ralston wrote, “Your request creates a matter of first impression at the college and is part of an emerging legal issue in the country. We have carefully researched the

matter. Under our analysis, MCC is not required to provide benefits to Ms. Golden.” At her deposition, Ralston indicated her belief that MCC’s policy of extending health benefits to an employee’s spouse implied that the spouse was of the opposite sex of the employee, and that she would not have offered the benefits to a same-sex “spouse” in the absence of an express contractual provision.

II. PLAINTIFF’S CONTENTIONS

Plaintiff commenced this action on January 13, 2005, and later served a first amended complaint on February 8, 2005. Her amended complaint states that she “seeks nothing more than an order requiring governmental employers, like MCC, to adopt fair and equitable health care policies that will allow individuals in similar same-sex relationships to take on the rights and responsibilities that all other New Yorkers in solemnized relationships have or may seek without constraint.” For her first cause of action, plaintiff alleges defendants “have willfully violated plaintiff’s civil rights, as guaranteed by the State of New York pursuant to its Constitution, and the case law of New York.” For her second cause of action, plaintiff alleges that defendants have violated Executive Law § 296, which is part of New York State’s Human Rights Law. This section provides that it is illegal for an employer to discriminate against any individual with respect to terms or conditions of employment on account of, inter alia, sexual orientation. She grounds these claims on defendants’ refusal to recognize Golden as her “spouse” on the basis of their civil union in Vermont and marriage in Canada. Subsequently, plaintiff’s union did in fact negotiate a collective bargaining agreement which included domestic partner health insurance, effective January 1, 2006. Defendants’ counsel indicates that plaintiff enrolled in the program, and thus Lisa Ann Golden is now receiving health insurance through plaintiff’s employment with

MCC.

In her motion papers, plaintiff does not argue that her civil union with Lisa Ann Golden in Vermont should be recognized as a marriage in New York, but concentrates exclusively on the issue of whether the Canadian marriage is entitled to comity, perhaps in recognition of the fact that a civil union is expressly different than the concept of traditional marriage. *See Langan v St. Vincent's Hosp.*, 25 AD3d 90, *appeal dismissed* 6 NY3d 890. Accordingly, any claims by plaintiff based on the civil union are deemed abandoned, and were, in any event, without merit.

III. NO CONTRACTUAL ENTITLEMENT

First, it is emphasized that the current collective bargaining agreement between plaintiff and MCC was amended to provide health insurance benefits for domestic partners, effective in 2006. Prior to the amendment, the collective bargaining agreement was silent on the issue of whether the "spouse" of a covered employee was also entitled to health care coverage, and did not provide for domestic partner insurance. By virtue of the amendment, the parties agreed to make available in 2006 those benefits which they had not agreed to make available prior to 2006.

The plaintiff here would have the court amend the terms of the prior agreement to make available benefits which the contracting parties had not intended or agreed to be made available. It is irrelevant that a different bargaining unit and MCC contracted for these benefits in a wholly separate collective bargaining agreement. The court has no authority to re-write, modify or amend an unambiguous lawful contract expressing the parties' intent and agreement. Finally, plaintiff's prior collective bargaining agreement not only clearly lacks any specific provision affording health care benefits for her partner, but there is no contractual language on that issue which could be viewed as ambiguous so as to require judicial interpretation. Indeed, the fact that

the prior agreement neither specifies nor suggests such a provision when at least one other bargaining agreement did so, and further, the fact that the contracting parties' subsequent agreement was negotiated so as to specifically include such benefits, would support the conclusion that the parties to the prior collective bargaining agreement did not intend to include such benefits.

IV. UNEQUAL PROTECTION ISSUE

Although plaintiff had no contractual right to health care coverage for Lisa Ann Golden, MCC did in fact provide health care coverage to "spouses" of employees. Plaintiff asserts that MCC's failure to recognize her Canadian marriage to Golden, while it would presumably recognize such a marriage between opposite-sex couples, violates the Equal Protection Clause of New York State Constitution. That argument, however, was substantively rejected by the New York Court of Appeals, in a decision handed down on July 6, 2006, which held that New York's limitation of the right to marry to opposite-sex couples does not violate New York's Equal Protection Clause. *See Hernandez v Robles*, __NY2d__, 2006 WL 1835429 (July 6, 2006). The Court applied the rational basis test to reach this conclusion, finding that "there are rational grounds on which the Legislature could choose to restrict marriage to couples of opposite sex", and that the issue was one for the Legislature to decide. Thus, defendants were not obligated under the Equal Protection Clause to recognize plaintiff's marriage and provide Lisa Ann Golden with health insurance benefits as plaintiff's "spouse".

V. EXECUTIVE LAW ISSUE

The second legal theory advanced by plaintiff is that defendants discriminated against her

in her conditions of employment on the basis of her sexual orientation, in violation of New York's Human Rights Law, particularly Executive Law § 296(1)(a). She contends that an opposite-sex couple married in Canada would be recognized as married in New York State, while a same-sex couple married in Canada would not, which constitutes discrimination based on sexual orientation. However, a disparate treatment claim cannot be sustained because defendants did not treat plaintiff differently on the basis of this classification, but rather, treated her as they would any unmarried person. As the defendants correctly note in their papers the legislative history accompanying the statute adding sexual orientation as a protected class clearly indicates that the Legislature expressly did not intend to create any right to marry. Furthermore, as recently held by the Court of Appeals, current New York policy does not authorize or recognize same-sex marriage. This policy is not on its face in violation of the Human Rights Law. "[T]he Domestic Relations Law is facially neutral; individuals who seek marriage licenses are not queried concerning their sexual orientation and are not precluded from marrying if they are not heterosexual. Regardless of sexual orientation, any person can marry a person of the opposite sex." *Id.* (Graffeo, J., concurring); see *Hoy v Mercado*, 266 AD2d 803, 804. The Court of Appeals acknowledged that the "legislation does confer advantages on the basis of sexual preference", specifically, as the case here, "[t]hose who prefer relationships with people of the opposite sex and those who prefer relationships with people of the same sex are not treated alike, since only opposite-sex relationships may gain the status and benefits associated with marriage." *Hernandez, supra*. However, the Court emphasized that although the legislation had a disparate impact on gays and lesbians, "the Legislature did not craft the marriage laws for the purpose of disadvantaging gays and lesbians", and thus, there was no discriminatory intent behind this

result. *Id.* (Grafteo, J., concurring). Accordingly, defendants did not violate the Human Rights Law in failing to recognize Lisa Ann Golden as plaintiff's "spouse".

V. COMITY ISSUE

Despite the recent *Hernandez* ruling, plaintiff maintains that her claims have merit because they are based on the principle of comity, rather than any right to marry in New York State. She asserts that New York State is bound to recognize her Canadian marriage as valid, even though it would not be permitted to occur in New York, because there is no specific prohibition on same-sex marriage in New York State. Although not set forth as a distinct cause of action in her amended complaint, it appears that she is seeking international comity.

"Principles of comity permit the voluntary recognition and enforcement of [the official acts as well as] the judicial proceedings of another State [or foreign jurisdiction] * * * provided that a State's own citizens are not unfairly prejudiced thereby, and a State's public policies are not impaired." *Cote-Whitacre v Department of Public Health*, 844 NE2d 623, 642 (Mass. 2006).

Regarding same-sex marriage, by Federal statute effective in September 21, 1996, "[n]o 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 laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship." Defense of Marriage Act, 28 USC § 1738C, as added by Pub L 104-199, 110 US Stat. 2419. In effect, the Federal Government has taken same-sex marriage outside the scope of the Full Faith and Credit Clause, which requires the recognition of public acts, records, and judicial proceedings between States. The legislative history of the Defense of Marriage Act

indicates that its purpose was to defend traditional, heterosexual marriage. *See In re Kandu*, 315 B.R. 123, 133 n. 3 (Bankr. W.D. Wash. 2004). On the Federal level then, it would appear that same-sex marriage is contrary to current national public policy. Plaintiff and Lisa Ann Golden traveled to Ontario, Canada for the express purpose of entering into marriage, but intending to reside in New York.

Pursuant to *Hernandez*, the issue of whether same-sex marriage, or some derivation thereof, should be permitted in New York is a matter of public policy, and currently, the policy in New York State is that same-sex marriage is not authorized or recognized. Inasmuch as the marriage laws of Canada which recognize same-sex marriage are inconsistent with those of New York State, plaintiff's same-sex marriage in Canada is not entitled to comity here. *See Hennefeld v Township of Montclair*, 22 N.J. Tax 166 (2005) (explicitly rejecting plaintiff's argument that her Canadian marriage should be recognized in New Jersey because there was no law specifically declaring same-sex marriage to be against New Jersey's public policy). Essentially, to apply the principle of comity to plaintiff's marriage would be to make an end-run around what the Court of Appeals has declared to be the will of the New York State Legislature, which currently defines marriage as limited to the union of one man and one woman. As neither Federal nor New York policy is consistent with permitting same-sex marriage, it would appear to be contrary to the nature of the principle to afford comity to plaintiff's Canadian marriage.

Now, therefore, upon due consideration it is hereby

ORDERED and ADJUDGED that the motion of defendants for summary judgment is granted and the cross motion of plaintiff for summary judgment is denied; and it is further

ADJUDGED and DECLARED that defendants did not violate plaintiff's civil rights

under the Equal Protection Clause of the New York State Constitution, or Executive Law § 296,
and that plaintiff's marriage in Ontario, Canada is not entitled to international comity in New
York State.

DATED: July 27, 2006
Rochester, New York

HAROLD L. GALLOWAY, J.S.C.