

STATE OF NORTH CAROLINA

DURHAM County

Case No. 4CV01396

In The General Court Of Justice
District Court Division

Name and Address Of Plaintiff 1
RICHARD CORBETT MULLINAX, JR.

2004 MAR 22 AM 11:10

DOMESTIC

Not a domestic Case but General Civil

Name and Address Of Plaintiff 2
PERRY RICHARD PIKE

BY

INITIAL FILING

SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

VERSUS

Name Of Defendant 1
Willie Covington, Durham County Register of Deeds

Summons Submitted
 Yes No

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Cheri C. Patrick
The Law Office of Cheri C. Patrick
100 E. Parrish Street, Suite 400
Durham NC 27701

Case took set for hearing by TC A

Name Of Defendant 2

Summons Submitted
 Yes No

Attorney Bar No.
26598

Initial Appearance in Case

Change of Address

Counsel for
 All Plaintiffs All Defendants Only (parties represented)

Name Of Firm
The Law Office of Cheri Patrick

Tax ID No.

Telephone No.
919-956-7171

FAX No.

919-956-7833

Jury Demanded in Pleading? No Yes

TYPE OF PLEADING

CLAIMS FOR RELIEF FOR:

(Check all that apply)

- Amended Answer/Reply (AMND-Response)
- Amended Complaint (AMND)
- Answer/Reply (ANSW-Response)
- Complaint (COMP)
- Confession of Judgment (CNFJ)
- Counterclaim vs. (CTCL)
 - All Plaintiffs
 - Only (List on Back)
- Crossclaim vs. (List on Back) (CRSS)
- Extended Time For Answer (MEOT - Response)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Other: (specify)

(Check all that apply)

- Alimony (ALIM)
- Annulment (ANUL)
- Child Support (CSUP)
- Custody (CUST)
- Divorce (DIVR)
- Divorce From Bed and Board (DIVB)
- Domestic Violence (DOME)
- Equitable Distribution (EQUD)
- Medical Coverage (MEDC)
- Paternity (PATR)
- Possession of Personal Property (POPP)
- Post Separation Support (PSSU)
- Reimbursement For Public Assistance (RPPA)
- Visitation (VIST)
- Other: (specify)

Declaratory Judgment re: Marriage License

Date
March 22, 2004

Signature Of Attorney/Party

Cheri C. Patrick

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1

AOC-CV-750, Rev. 10/01
2001 Adiminstrative Office of the Courts

(Over)

*not a domestic case but General Civil
TC A do set court date*

6. N.C.G.S. § 51-8 sets forth the circumstances under which the Register of Deeds shall issue a marriage license to applicants. The statute states:

“Every register of deeds shall (emphasis added), upon proper application, issue a license for the marriage of any two persons who are able to answer the questions regarding age, marital status, and intention to marry, and based on the answers, the register of deeds determines the persons are authorized to be married in accordance with the laws of this State.”

7. N.C.G.S. § 51-2 establishes an exclusive listing of those who are authorized to be married, and it states:

“(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden.

(a1) Persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for the marriage, only after there shall have been filed with the register of deeds a written consent to the marriage, said consent having been signed by the appropriate person as follow: (1) by a parent having full or joint legal custody of the underage party; or (2) by a person, agency or institution having legal custody or serving as a guardian of the underage party. Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(b) Persons over 14 years of age and under 16 years of age may marry as provided in G.S. 51-2.1.

(b1) It shall be unlawful for any person under 14 years of age to marry.

(c) When a license to marry is procured by any person under 18 years of age by fraud or misrepresentation, a parent of the underage party, a person, agency, or institution having legal custody or serving as a guardian of the underage party, or a guardian ad litem appointed to represent the underage party pursuant to G.S. 51-2.1(b) is a proper party to bring an action to annul the marriage.”

8. Pursuant to the aforementioned statute, only person who are already married or who do not meet the age requirements are not authorized to marry. There is no requirement that persons seeking to marry be of opposite gender, nor is there a requirement that the register of deeds determine the gender of applicants for a marriage license.
9. Plaintiffs are not currently married and are over the age of 18, and therefore meet the exclusive requirements of those who are authorized to marry under N.C.G.S. 51-2. As Plaintiffs are able to answer the questions regarding age, marital status and intention to marry, the Register of Deeds, pursuant to N.C.G.S. 51-8, is required to issue a license for their marriage.
10. On March 22, 2004, Plaintiffs presented themselves to Defendant in his capacity as Register of Deeds and requested a marriage license. They were prepared and able to answer questions related to age, marital status and intention to marry, and to present any documents necessary

to establish their answers to those questions. Defendant refused to issue a license to them.

11. Defendant asserts that a marriage between two persons of the same gender is not valid in North Carolina, pursuant to N.C.G.S. § 51-1.2, and therefore he is prohibited from issuing a marriage license to Plaintiffs.
12. There is no requirement that the Register of Deeds determine that a valid, non-void, nor non-voidable marriage will ensue before he can issue a marriage license. The only qualifications for issuance of a marriage license are as set forth hereinabove, quoted from N.C.G.S. § 51-8, to be read *in pari materia* with N.C.G.S. § 51.17, and with definitions provided in N.C.G.S. § 51-2. Plaintiffs meet all of the requirements for issuance of a marriage license, and Defendant is obligated to issue a license to marry to them upon their application.
13. N.C.G.S. § 51-17 penalizes the Register of Deeds if he knowingly issues a license for marriage to any two persons to whom there is a lawful impediment to marry, specifically a failure to meet the age requirements set forth in the statutes.
14. Statutes declaring certain marriages invalid (51-1.2) or void or voidable (51-3) require a determination that a marriage is in violation of one or both of these statutes. The possibility that a marriage between Plaintiffs (or any other couple, same gender or opposite gender) would later be declared invalid or void is not a lawful impediment to the act of marriage. In fact, only after a marriage license has been issued, a marriage has occurred and the parties seek to assert the rights or obligations of their marital status can the issue of validity or voidability of the marriage be determined.. The only lawful impediment to marriage is lack of capacity to marry, as set forth in N.C.G.S. 51-2.


15. This Court is not being asked to determine the validity or constitutionality of any statute or law which might invalidate a marriage. The only issue before this court is whether Plaintiffs' meet the clearly established criteria for obtaining a marriage license, and if so, whether Defendant must comply with the law and issue a license to them.
16. Plaintiffs are not currently married, are over the age of 18, and there exists no lawful impediment that prohibits the Register of Deeds from issuing a marriage license to them. The Register of Deeds is required to issue a marriage license to Plaintiffs, and this Court should order him to perform his obligations under N.C.G.S. § 51-8.

WHEREFORE, Plaintiff respectfully prays to the Court as follows:

1. That this verified Complaint be allowed as an affidavit in support of the Plaintiffs' claims, and that said Complaint be taken as an affidavit upon which to base all orders of the Court.
2. That Plaintiffs be found to have met all of the requirements for issuance of a marriage license, and that Defendant's failure and refusal to issue said license to them upon proper application is in violation of the laws related to marriage licenses.
3. That Defendant be ordered to comply with the law and issue a marriage license to Plaintiffs and others who meet the requirements, regardless of their gender.
4. For such other and further relief as this Court deems just and proper.

This the 22nd day of March, 2004.


THE LAW OFFICE OF CHERI C. PATRICK

By 

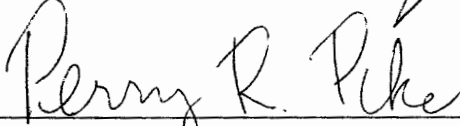
Cheri C. Patrick
Attorney for Plaintiffs
100 E. Parrish Street, Suite 400
Durham, NC 27701
(919) 956-7171
State Bar No. 26598

VERIFICATION

We, the undersigned, being first duly sworn, depose and say that we have read the foregoing Complaint, and know the contents thereof, that the same is true of our own knowledge, save and except those matters and things therein stated upon information and belief and, as to those, we believe them to be true.

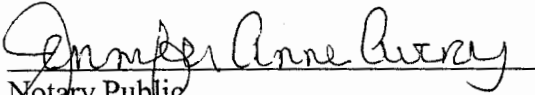


RICHARD CORBETT MULLINAX, Jr., Plaintiff

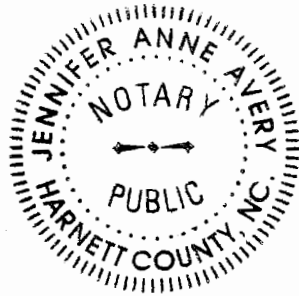


PERRY RICHARD PIKE, Plaintiff

Sworn to and subscribed before me
this 22 day of March, 2004.



Notary Public



My Commission expires: 5-15-05

STATE OF NORTH CAROLINA

Durham County

File No.

4CV 01393

In The General Court Of Justice

District Superior Court Division

Name Of Plaintiff

Richard Mullinax & Perry Pike

Address

City, State, Zip

2004 MAR 22 AM 11:10

CIVIL SUMMONS

Alias And Pluries Summons

VERSUS

BY

G.S. 1A-1, Rules 3,4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

Name Of Defendant

Willie Covington, Durham County Register of Deeds

To Each Of The Defendant(s) Named Below:

Name And Mailing Address Of Defendant 1

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or the plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to this plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address of Plaintiff's Attorney (if none, Address of Plaintiff)

Cheri C. Patrick
The Law Office of Cheri C. Patrick
100 E. Parrish Street, Suite 400
Durham NC 27701

Date Issued

3-22-04

Time Issued

11:10

AM PM

Signature

Billie D Hop

Deputy CSC Assistant CSC Clerk of Superior Court

ENDORSEMENT

This summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount is in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.