

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

FAMILY COURT

Margaret Chambers

:

v.

:

F.C. P06-0340

:

Cassandra Ormiston

:

:

DECISION

JEREMIAH, C.J.; The matter before the court is a remand from the Rhode Island Supreme Court to this court for further proceedings consistent with an order issued on January 17, 2007.

TRAVEL

On December 14, 2006, this court certified a question to the Rhode Island Supreme Court pursuant to G.L. 1956 § 9-24-27 and Rule 72 of the Family Court Rules of Procedure for Domestic Relations. On January 17, 2007, the Supreme Court remanded the matter for further proceedings consistent with said remand. More particularly, the Supreme Court directed that the following questions of fact be addressed:

- Was a Massachusetts marriage license [sometimes referred to in that state as a Certificate of Marriage] issued to the parties?
- Where was each of the parties domiciled at the time that they applied for a Massachusetts marriage license?
- Did each of the parties reside in Rhode Island at the time of the application for a Massachusetts marriage license? If so, for how long had each resided in Rhode Island?
- What residence address did each of the parties give upon applying for the Massachusetts marriage license?

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- If a Massachusetts marriage license was in fact issued to the parties, did a solemnization thereafter occur? If so, where, when, and by whom was the marriage solemnized?
- Did each of the parties reside in Rhode Island at the time of the solemnization, if such solemnization occurred?
- Was the fully completed marriage license, including the certification of solemnization, if such solemnization occurred, thereafter returned to the appropriate governmental office? If so, to which office was it returned?
- Have either or both of the parties ceased to reside in Rhode Island at any time after the solemnization, if such solemnization occurred?
- Have the domicile and residence requirements set forth in G.L. 1956 § 15-5-12 been satisfied?

In addition to the questions of facts, the Supreme Court further directed that, based on the findings of fact, to determine in the first instance (1) whether or not the instant case presents an actual case or controversy (and, if not, how this case should proceed); (2) whether or not the Full Faith and Credit Clause of the United States Constitution is relevant to the instant case; and (3) whether or not the Defense of Marriage Act, 28 U.S.C. § 1738C (2000), is pertinent to the instant case.

Lastly, the Supreme Court directed this court to reword the original question that was certified.

On February 9, 2007, a hearing was conducted wherein the parties offered testimony, various exhibits and memoranda of law. More particularly, the parties submitted affidavits sworn under oath and a certified copy of a Certificate of Marriage from Massachusetts.

Based upon said hearing and in connection with the Supreme Court's directive the court makes the following findings:

#### **FINDINGS OF FACT**

1. A Massachusetts Certificate of Marriage was issued to the parties on May 26, 2004;

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2. The parties were domiciled inhabitants of the State of Rhode Island at the time of the application for a Massachusetts Certificate of Marriage;
3. The parties resided in Rhode Island for approximately two (2) years prior to making application for a Massachusetts Certificate of Marriage;
4. The parties gave a residence of 24 Everett Avenue, Providence, Rhode Island, in their application for a Massachusetts Certificate of Marriage;
5. The Certificate of Marriage from Massachusetts was issued and solemnization did occur;
6. The marriage solemnization occurred on May 26, 2004 at One Government Center, Fall River, Massachusetts by Carol A. Valcourt;
7. The parties resided at 24 Everett Avenue in Providence, Rhode Island at the time of the solemnization;
8. The fully completed certificate of Marriage and Certificate of Solemnization was returned to the Registry of Vital Records and Statistics of the Department of Public Health for Massachusetts;
9. Neither party has ceased to reside within the State of Rhode Island at any time after the solemnization of the marriage;
10. The Plaintiff and the Defendant have both been domiciled inhabitants and resided in the State of Rhode Island for at least one year next before their complaint and counterclaim for divorce were filed;
11. The domicile and residency requirements set forth in G.L. 1956 § 15-5-12 have been satisfied.

#### **ACTUAL CASE OR CONTROVERSY**

The basic inquiry in determining justiciability of a case or controversy is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests, with a definite and concrete dispute, and not one that is hypothetical or abstract. 32A Am. Jur. 2d *Federal Courts* §674; Rhode Island Ophthalmologic Society v. Cannon, 317 A.2d 130 (R.I. 1974)(Litigation will be confined to those appropriate situations where the litigant's concern with the subject matter evidences a real adverseness). Based upon the pleadings, exhibits and affidavits

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proffered, the court is satisfied that the instant action is an actual case in controversy.

### FULL FAITH AND CREDIT

Article IV, section 1 of the United States Constitution reads:

*Full Faith and Credit shall be given in each State to the public Acts, Records<sup>1</sup>, and Judicial Proceedings of every State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.*

The purpose of this clause was to reconcile the desire for diversity among the states with mutual respect for differences of opinion. See, e.g., Johnson v. Muelberger, 340 U.S. 581, 584-85 (1951)(stating that the Full Faith and Credit clause gives states the power over their own courts, but demands that they respect the decisions of courts in other states). The Full Faith and Credit Clause prescribes a rule by which courts, federal and state, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a state than that in which the court is sitting. State of Minnesota v. Northern Securities Co., 194 U.S. 48, 24 S. Ct. 598, 48 L.Ed. 870 (1904). The United States Supreme Court has differentiated the effects of the Full Faith and Credit Clause on judgments as opposed to statutes. Baker v. General Motors Corp., 522 US 222, 139 L. Ed. 2d 580, 118 S. Ct. 657 (1998)(Full Faith and Credit command is exacting with respect to a final judgment). However, the Full Faith and Credit Clause does not compel “a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate”. Franchise Tax Board v. Hyatt, 123 S. Ct. 1683, 155 L. Ed. 2d 702 (U.S. 2003).

It has been recognized by the United States Supreme Court that there are some limitations upon the extent to which a state will be required by the clause to enforce the judgments or acts of another state in contravention of its own statutes or policy. 16B Am. Jur. 2d *Constitutional Law* §982. “Such exception as there may be to this all-inclusive command is one which is implied from the nature of our dual system of government, and

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<sup>1</sup> It shall be predicated that a marriage is an “act” for purposes of the Full Faith and Credit Clause. See also, Brian H. Bix, State of the Union: The State’s Interest in the Marital Status of Their Citizens, 55 U. Miami L. Rev. 1, 25 (2000).

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recognizes that consistently with the full faith and credit clause there may be limits to the extent to which the policy of one state, in many respects sovereign, may be subordinated to the policy of another.” Milwaukee County v. M.E. White Co., 296 U.S. 268, 80 L. Ed. 220, 56 S. Ct 229 (1935). The Full faith and Credit Clause does not require a state to apply another state’s law in violation of its own legitimate public policy. Nevada v. Hall, 440 U.S. 410 59 L. Ed. 2d 416, 99 S. Ct. 1182 (1979); State v. Menard, 888 A. 2d 57 (R.I. 2005)(holding that Rhode Island has no obligation under Full Faith and Credit to apply Arizona criminal law).

The Full Faith and Credit Clause has yet to be applied in a marriage context by the United States Supreme Court<sup>2</sup>. The clause has been applied in other domestic areas. In Williams v. North Carolina, 317 U.S. 287, 63 L. Ed. 279, 63 S. Ct. 201(1942), the United States Supreme Court held that there was no authority that lent support to the view that the Full Faith and Credit Clause compels the courts of one state to subordinate the local policy of that state, as respects its domiciliaries, to the statute of another state. In Pacific Gamble Robinson Co v. Lapp, 622 P. 2d 850 (Wash. 1980), *overrules on other grounds* by Haley v. Highland 12, P. 3d 119 (Wash. 2000), the Washington Supreme Court applied Colorado creditor law distinguishing between a community property state and a non-community property state. In Jewel v. Jewel, 751 A. 2d 735 (R.I. 2000), the Rhode Island Supreme Court held that a Dominican Republic divorce would not enjoy full faith and credit as it violated public policy of Rhode Island. In JH v. RB, 196 A. 2d 447 (R.I. 2002), it was held that full faith and credit applies to a prior judgment of divorce in another state.

Implicit in a Full Faith and Credit analysis is a review of required constitutional mandates involving a foreign state’s application of substantive law. The United States Supreme Court has proscribed an approach when deciding choice of law cases. This approach has been similar under both the Due Process Clause and the Full Faith and Credit Clause. Allstate Insurance Co. v. Hague, 449 U.S. 302, 66 L. Ed. 2d 521, 101 S. Ct. 633 (1981). In Hague, the court held when a state applies substantive law in a constitutionally permissible manner, the state must have a significant contact or

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<sup>2</sup> The court has completed an exhaustive case law review and has not identified any authority dispositive of the issue.

significant aggregation of contacts with the parties or occurrences or transaction, creating state interests, such that choice of its law is neither arbitrary nor unfair. *Id.*

In sum, the Full Faith and Credit Clause is relevant to the instant case.

### **DEFENSE OF MARRIAGE ACT**

28 U.S.C. § 1738C reads:

*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 laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.*

This statute has been referred to as the Defense of Marriage Act<sup>3</sup> ("DOMA"). The effect this statute has upon the present instance is minimal at best. In Wilson v. Ake, 354 F. Supp. 2d 1298 (M.D. Fla. 2005), a federal district court in Florida determined that DOMA is an example of Congress exercising its powers under the Full Faith and Credit Clause to determine the effect that, "any public act, record, or judicial proceeding from any other State, territory, possession or tribe respecting a relationship between persons of the same sex that is treated as a marriage" has on the other states. *Id.* at 1303. This statute merely says that states are not bound by such acts, but may make such a determination to be bound, once the appropriate choice of law and Full Faith and Credit analysis is conducted. See, e.g., Smelt v. County of Orange, 447 F. 3d 673 (9<sup>th</sup> Cir. 2006). For example, many states have enacted their own mini-DOMA statutes to clearly outline the state's marriage policy. *Florida Statutes* § 741.212 reads:

*(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationship between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, or any other jurisdiction, either*

<sup>3</sup> ("DOMA") has also been referred to as encompassing 1 U.S.C. § 7, which reads, "[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or wife." This section clearly is applicable to only the federal government.

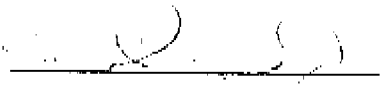
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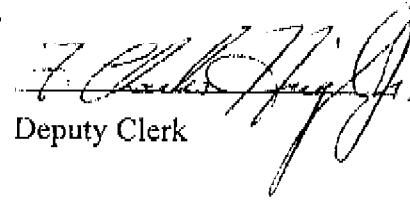
*domestic or foreign, or any other place or location, are not recognized for any purpose in this state.*

The effect of state DOMA statutes clarifies the jurisdictional policy regarding the subject matter. Rhode Island has no such statute and, therefore, the effect 28 U.S.C. 1738C has is nominal.

In addition, the Family Court is clarifying the question previously certified to read as follows:

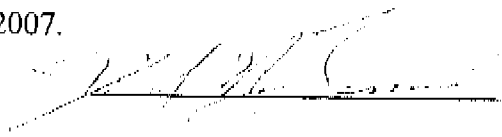
**May the Family Court properly recognize, for the purpose of entertaining a divorce petition, the marriage of two persons of the same sex who were purportedly married in another state?**

  
\_\_\_\_\_  
Jeremiah S. Jeremiah, Jr.  
Chief Judge  
Rhode Island Family Court  
Dated:

  
\_\_\_\_\_  
Deputy Clerk  
Dated:

**CERTIFICATION**

I, David M. Tassoni certify that I have mailed a true and accurate copy of the decision to the attorneys of record at their usual place of business via U.S. regular mail on February 21, 2007.

  
\_\_\_\_\_  
David M. Tassoni

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STATE OF RHODE ISLAND  
PROVIDENCE, SC.

MARGARET R. CHAMBERS

V.

CASSANDRA B. ORMISTON

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DATE	2-8-07
EXHIBIT	PIH 1
PRINCIPAL SUPERVISORY CLERK	

F.C. NO. P06-2583

FAMILY COURT

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JILL A. LEFEBVRE  
PRINCIPAL SUPERVISORY CLERK

AFFIDAVIT

I, Margaret R. Chambers under oath hereby deposes and states as follows:


1. A marriage license/a Certificate of Marriage was issued to my spouse and I by the Department of Public Health, Registry of Vital Records and Statistics in the Commonwealth of Massachusetts. This Certificate of Marriage was issued on May 26, 2004.
2. I was a domiciled inhabitant and resident of the State of Rhode Island at the time that I applied for the Certificate of Marriage in Massachusetts.
3. Both Cassandra B. Ormiston and myself resided here in the State of Rhode Island for a period of approximately two years prior to applying for the Massachusetts Certificate of Marriage.
4. Upon applying for the Certificate of Marriage in the State of Massachusetts Cassandra B. Ormiston and myself resided at 24 Everett Avenue, Providence, Rhode Island 02906.
5. The solemnization took place in the City Hall in Fall River, Massachusetts after the Certificate of Marriage was issued. Upon information and belief the person who performed the ceremony was Carol A. Valcourt, a Justice of the Peace.
6. Cassandra B. Ormiston and I lived in the State of Rhode Island at the time of solemnization.
7. The fully complete marriage license/Certificate of Marriage including the Certificate of Solemnization was maintained at all times in the City Hall in Fall River, Massachusetts.
8. I have continued to reside in the State of Rhode Island at all times subsequent to the solemnization of my marriage.

9. I have fulfilled all domicile and resident requirements set forth in R.I.G.L. 1956 Section 15-5-12.

  
Margaret R. Chambers

State of Rhode Island  
County of Providence

SUBSCRIBED and SWORN to before me this 5 day of February, 2007.

  
Notary Public  
My Commission Expires: 11/7/07