The Reverberating Effects of Obergefell in Family Courts

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Recommended Citation
Thomas, Tracy, "The Reverberating Effects of Obergefell in Family Courts" (2016). Con Law Center Articles and Publications. 8.
http://ideaexchange.uakron.edu/conlawakronpubs/8
THE REVERBERATING EFFECTS
OF OBERGEFELL
IN FAMILY COURTS

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WHAT OBERGEFELL SAID

• Same-sex marriage must be *authorized* by state
• Same-sex marriage must be *recognized* by state
• Due process + Equal Protection grounds
• Importance of dignity
• Contexts: death certificate, adoption, military
THE IMPORTANCE OF LANGUAGE

• Change to OH Supreme Court Rules
• Adopt gender-neutral terms in own decisions
• “Construe as gender-neutral”
  – e.g. maternity actions under “paternity”
  – e.g. “husband” means “partner”
COMPLIANCE

• Recalcitrance – clerks and wedding vendors
• Exceptions? Puerto Rico? Tribal?
• Judicial Solemnization
• Pastor Protection Act
RETROACTIVITY

• When applies?
  – Date of SCOTUS Decision June 26, 2015
    • Federally recognized June 26, 2013  Windsor
• Q: What if did not civilly marry?
DIVORCE

• Jurisdiction for Same-Sex Divorce
  – OH SCT remands courts denial of jdx
  – “in light of Obergefell” must recognize external M
  – Some trial courts quietly granting

• Qs of When Married for Property and Assets
  – ORC. § 3105.171 alternative “during marriage”
  – ALI §6.03 Domestic Partners for Property
PARENTAGE

- Marital Presumption
- Assisted Reproduction
- Birth Certificates
- Second Parents
- Adoption
PROBATE

- “Surviving Spouse” for Elective Share
- Revocation of “former spouse” as executor
- Wrongful death settlements to spouse via intestacy laws
OTHER FAMILY ISSUES

• DOMESTIC VIOLENCE
• IMMIGRATION
• HEALTH CARE
• PENSIONS/BENEFITS – “surviving spouse”
• BANKRUPTCY
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Website: http://www.uakron.edu/law/ccl/

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Fall Conference – Gender & Judging The U.S. Feminist Judgments Project: Rewriting Constitutional Law

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BIBLIOGRAPHY
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By Professor Tracy A. Thomas
The University of Akron School of Law
June 1, 2016

Rules and Guidance

“Gender Specific Terms Replaced in Ohio Supreme Court Rules, Forms,” CourtNewsOhio, Mar. 16, 2016, at http://www.courtnewsohio.gov/happening/2016/genderTerms_031416.asp#.V07yi_krLrc

O.R.C. § 1.31 Gender Specific and Gender Neutral Language


  § 2.03 Definition of Parent
  § 2.18 Allocation of Parenting Responsibility
  § 6.03 Determination of Domestic Partners

Cases

US Supreme Court:

Obergefell v. Hodges, 135 S.Ct. 2584 (June 26, 2015)


Ohio:


Beer v. Beer-Sudbrink, 143 Ohio St.3d 1413 (July 22, 2015), remanding in light of Obergefell, No. 2015-0334 (Ohio App. 1st Dist) (dismissing appeal of denial of jurisdiction over same-sex divorce holding proper avenue is writ to compel trial court jurisdiction)

Chevalier v. Estate v. Barnhart, 803 F.3d 789 (6th Cir. 2015 (Ohio)) (same-sex marital partner not limited by domestic relations exception to federal jurisdiction and pending Canadian divorce and may bring claims for loan repayment and constructive trust in federal court)
Other:


_Chatterjee v. King_, 280 P.3d 283 (N.M. 2012) (granting parental status to second parent under UPA and equitable parent principles)

_Conover v. Conover_, 120 A.3d 874 (Md. App. 2015) (denying parental status of de facto, parent by estoppel, or by ART statute to second parent who had married biological mother 5 months after child’s birth), _cert. granted_, Dec. 18, 2015.

_Hard v. AG Alabama_, 2016 WL 1579015 (11th Cir. Apr. 20, 2016) (upholding wrongful death settlement to partner as surviving spouse)

_In re Estate of Leyton_, 135 A.D.3d 418 (NY App. 2016) (denying revocation of appointment of executor under “former spouse” law because did not retroactively recognize pre-marriage equality commitment ceremony as legally valid marriage)

_In re P.L.L.-R_, 876 N.W.2d 147 (Wis. App. 2015) (dismissing joint adoption petition by biological mother and same-sex partner, finding was declaratory action challenging constitutionality of artificial insemination statute and required service to Attorney General)

_In re Villaverde_, 540 B.R. 431 (C.D. Cal. 2015) (same-sex partners registered as domestic partners not “spouses” entitled to joint petition in bankruptcy)

_Kolailot v. McKennett_, 2015 WL 9257953 (Mich. App. 2015) (second parent had no standing to seek custody because equitable parent doctrine not applicable where parties did not marry [even though state did not legalize same-sex marriage at the time])

_Matter of Kelly S v. Farah M._ (NY App. Apr. 2016) (granting parental status to second parent in same-sex marriage to see visitation)

_McGaw v. McGaw_, 468 S.W.3d 435 (Mo. App. 2015) (denying unmarried second partner parental status under _in loco parentis_, limiting her to third-party rights)

_Ramey v. Sutton_, 362 P.2d 217 (OK 2015) (granting unmarried same-sex partner standing as parent by estoppel to petition for custody and visitation)

_Russell v. Basik_, 178 So.3d 55 (Fla. App. 2015) (denying same-sex partner parental rights as equitable parent)

_Schuett v. FedEx Corp.,_ 119 F.Supp.3d 1155 (N.D. Cal. 2016) (retroactively recognizing same-sex ceremony (without license) as legal marriage for purposes of status as “surviving spouse” under pension and ERISA law)
Stankevich v. Milliron, 2015 WL 7304483 (Mich. App. 2015) (extending equitable parent doctrine to recognize parental standing of same-sex partner who had married biological mother)

Torres v. Rhoades, ___F.R.D.___, 2016 WL 1312167 (W.D. Wis. Apr. 4, 2016) (certifying class of all same-sex parents by assisted insemination for case challenging state’s refusal to list same-sex parents on birth certificates)

Secondary Sources

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G.M. Filiako, After Obergefell: How the Supreme Court’s Same-Sex Marriage Ruling Has Affected Other Areas of the Law, ABA Journal, June 1, 2016, at http://www.abajournal.com/mobile/mag_article/after_obergefell_how_the_supreme_court_ruling_on_same_sex_marriage_has_affe


Tracy A. Thomas, Same-Sex Divorce, 5 California Cir. 218 (2014)