

Marriage Law Digest

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JULY 2008 CASE SUMMARIES

William C. Duncan, Editor

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O'DARLING V. O'DARLING

2008 OK 71

Supreme Court of Oklahoma

July 1, 2008

<http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=451913>

A same-sex couple married in Canada and petitioned for divorce in Oklahoma a few years later. Without knowing the marriage involved a same-sex couple, the trial court granted a divorce, which was vacated when that information was made known to the court.

The Oklahoma Supreme Court held the trial judge was within his discretion to vacate the order but should have given notice to the parties of the intention to vacate. The court thus ordered a hearing to allow the parties to present reasons the divorce should not be vacated.

GRIFFITHS V. TAYLOR

2008 WL 2745130

Superior Court of Connecticut, Judicial

District of Waterbury

June 13, 2008

Two men in a New York domestic partnership entered a surrogacy agreement with a woman who agreed to carry two donor eggs, each inseminated by one of the men. They sought to have both of their names placed on the child's birth certificate in Connecticut and the surrogate sought to have a court declare that she was not the mother. The state responded that only a biological or adoptive parent can be included on the birth certificate.

The court said the legislative history of Connecticut law made clear that courts have authority to “enter a judgment on the validity of a gestational agreement and that where there is a valid gestational agreement, the court may then order the Department of Health to issue a replacement birth certificate with the names of the intended parents on it.” Against the state’s insistence that there be a showing of biological paternity or adoption, the court says previous decisions have allowed a new birth certificate with the names of two men who acquired a child through surrogacy. The court concluded: “In this era of evolving reproductive technology and intent based parenthood, our laws must acknowledge these realities and not simply cling to genetic connections as preconditions to being placed on a birth certificate.”

Misha Isaak, “What’s In a Name?”: *Civil Unions and the Constitutional Significance of “Marriage”* 10 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 607 (2008). Argues that the term “marriage” has constitutional significance and its deprivation violates the constitution.

RECENT LAW REVIEW ARTICLES

J. Herbie Dfinzo & Ruth C. Stern, *The Winding Road from Form to Function: A Brief History of Contemporary Marriage* 21 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAW 1 (2008). Traces the 20th century history of the family as manifest in practice and in legal changes.

Mark Strasser, *The Future of Marriage* 21 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAW 87 (2008). Projects an increased diversity among the various states on the benefits extended to nonmarital couples as well as state definitions of marriage.

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