
Appendix 10

FAMILY LAW PROJECT WORKSHEETS

FAMILY LAW PROJECT WORKSHOP

2ND ANNUAL

INTERNATIONAL CONFERENCE ON TRANSGENDER LAW AND EMPLOYMENT POLICY

Discussion Hypotheticals

MARRIAGE. Luci is a male-to-female post-op transsexual. She has fallen in love with Desi and they want to get married. She has fully disclosed to him her gender history and he is totally accepting. What stumbling blocks might be in their way getting the state's blessing on their union?

Would your answer be different if Luci were a non-op or a pre-op?

DIVORCE. Gertrude and Alex have been married for seven years. Alex decides that he wants to transition, begins hormone reassignment therapy, and legally changes his name to Alice. Alice and Gertrude remain happily cohabitating. Alice is contemplating sex reassignment surgery. How can they prevent having their marriage automatically dissolved?

PROPERTY DIVISION. Bert is a female-to-male non-op and transitioned over fifteen years ago. Eight years ago, he obtained a marriage license and married Loni, who knew all the details. They lived together as husband and wife for eight years in a community property jurisdiction until Loni decided she wanted out of the marriage. She moved and filed an action to declare the marriage void because both parties were biological females and, therefore, the marriage was prohibited by statute. Her theory was that if there was no marriage, there was no community property and all the stuff would be hers. Is she right? What arguments should Bert make?

CUSTODY. Woody and Mia are married and have three children. Mia finally follows her dream, begins living as Mike, and Woody immediately sues for divorce and custody of all three children. What could Mike's best friend, Senator Sam Spade, do to help Mike in his fight?

VISITATION. Bill and Hillary have been divorced for two years. They are the parents of Chelsea and Socks, who are 12 and 7 years old. Both children live with Hillary, and Bill has standard visitation privileges. Hillary learned from Chelsea that Bill is cross-dressing. Alarmed by this information, she brings an action to limit Bill's visitation. What can/should Bill do?

Would your answer change if Bill was a male-to-female post-op?

Chapter 2. Validity of Marriage

Subchapter

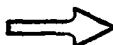
- A. General Provisions. §§ 2.01-2.03
- B. Void Marriages. §§ 2.21-2.24
- C. Voidable Marriages. §§ 2.41-2.48

Subchapter A General Provisions

- § 2.01 State Policy [amended 1993]
- § 2.02 Fraud, Mistake, or Illegality in Obtaining License
- § 2.03 Ceremony Conducted by Unauthorized Person

§ 2.01. State Policy

In order to promote the public health and welfare and to provide the necessary records, this code prescribes detailed and specific rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide for an orderly determination of parentage [legitimacy] and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless strong reasons exist for holding it void or voidable. Therefore, every marriage entered into in this state is considered valid unless it is expressly made void by this chapter or unless it is expressly made voidable by this chapter and is annulled as provided by this chapter. When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes it until one who asserts the validity of a prior marriage proves its validity.



History: Enacted by 61st Legis (1969) ch 888 § 1, eff Jan 1, 1970. 1993 amendment: Amended by 73rd Legis, Reg Sess (1993), eff Sept 1, 1993. HB 724 provides that this section applies "to a pending paternity proceeding without regard to whether the proceeding was commenced before, on, or after the effective date"

Comment

This section declares that a marriage is valid unless made void by this chapter, a long standing rule in American law. More importantly, when there are two or more marriages alleged, the most recent marriage is presumed valid unless the person challenging validity proves the continued existence of a prior marriage.



Leading Cases

- Davis v Davis (1975, Tex) 521 SW2d 603 (landmark case affirming presumption that last marriage is considered valid)
- Texas Employers' Ins. Ass'n v Elder (1955) 155 Tex 27, 282 SW2d 371 (common law marriage upheld in absence of evidence upholding earlier common law marriage)
- Loera v. Loera, 815 S.W.2d 910 (Tex. App.—Corpus Christi 1991) (presumption of validity of latest marriage, plus 7-year absence, overcomes proof of undissolved first marriage)
- Bolash v Heid (1987, Tex App San Antonio) 733 SW2d 698 (trial court finding of common law marriage reversed for insufficient evidence)

§ 2.02. Fraud, Mistake, or Illegality in Obtaining License

Except as otherwise provided by this chapter, the validity of a marriage is not affected by any fraud, mistake, or illegality that occurred in obtaining the marriage license.

History: Enacted by 61st Legis (1969) ch 888 § 1, eff Jan 1, 1970.

Comment

Buttressing the presumption that every marriage is valid, even serious defects in obtaining the marriage license do not affect the validity of the marriage.

Collateral References

Texas Family Law Service, Ch. 39: Ceremonial Marriages; Ch. 42: Void and Voidable Marriages (Bancroft-Whitney 1988)

A BILL TO BE ENTITLED

AN ACT

relating to a change of name and sex for a transsexual person.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

SECTION 1. Subchapter 8, Chapter 32, Family Code, is amended by adding Section 32.26 to read as follows:

Sec 32.26. CHANGE OF NAME AND SEX FOR A TRANSSEXUAL ADULT

(a) Definitions:

- (1) Sex: A person's identity along a continuum of role types with male and female at the polar extremes.
- (2) Role type: A set of beliefs, behaviors and appearances.
- (3) Male: A role type which a particular culture associates with individuals anatomically structured for contributing reproductive cells to another person.
- (4) Female: A role type which a particular culture associates with individuals anatomically structured for receiving reproductive cells from another person.
- (5) Gender: The culturally assigned characteristics of a continuum of role types ranging from male to female, with such characteristics including behaviors and sexual anatomy, and being labelled masculine and feminine at the polar extremes.
- (6) Transsexual: One who is planning to change, or has already changed, one's gender to better match one's sex — to change one's body to better match one's brain — and to accomplish that change by either long-term, irreversible hormonal alteration or in combination with surgical alteration.

(b) In disposing of petitions for a change of name for a transsexual adult filed under this subchapter, a court shall order a change of name for a petitioner when the petition is accompanied by the verified statement of a physician licensed in this state that the petitioner is a transsexual adult.

(c) A court that orders a change of name for a petitioner who is a transsexual adult shall simultaneously

order, for the benefit of the Department of Public Safety which may need to locate petitioner during any transitional period, said Department of Public Safety to immediately effect a legal recognition of a change of sex designation on licenses and identification documents.

(d) A court that orders a change of name for a petitioner who is a transsexual adult shall order the Department of Health, that upon said Department of Health's receipt of a verified statement of a physician licensed in this state that the petitioner has completed the transsexual alteration, to effect a legal recognition of a change in sex designation amending the birth certificate as provided under Sec. 192.011 of the Texas Health and Safety Code.

SECTION 2. This Act takes effect _____, 19_____.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three separate days in each house be suspended, and this rule is hereby suspended.

* Drafted by Phyllis Randolph Frye