

Case Tests Limits of Right to Marry

By Thomas F. Coleman
Los Angeles Daily Journal / Feb. 1, 2018

Throughout California's history as a state, same-sex couples were excluded from the statutory right to marry. State law always declared that marriage is a personal contract between "a man and a woman."

Then in May 2008, the California Supreme Court issued a landmark ruling declaring that the gender restriction in the statute violated the California Constitution. *In re Marriage Cases*, 43 Cal.4th 757. In the months that followed this historic court decision, scores of same sex couples entered into legal marriages in California. Then came Proposition 8 – an initiative that sought to restrict marriage to opposite-sex couples. The initiative was approved and in November 2008, legal marriage was again defined as a contract between a man and a woman.

Fast forward to 2013. Same-sex marriage litigation arising out of California and elsewhere was the basis of rulings by the U.S. Supreme Court. *Hollingsworth v. Perry*, 133 S.Ct. 2652, and *United States v. Windsor*, 133 S.Ct. 2675. The nation's highest court declared that regardless of the gender of the parties, two consenting adults had a federal constitutional right to marry. The floodgates opened and in the years since this Supreme Court ruling was handed down, thousands of same-sex couples throughout the country, including California, have exercised their constitutional right to marry – a freedom the court found inherent in the concept of liberty and in the promise of equal protection embedded in the 14th Amendment.

The freedom to marry, however, is not unlimited. No constitutional right is. The state may impose reasonable restrictions on a fundamental constitutional right so long as there is a compelling need to do so and the restriction is implemented in the least restrictive manner.

Since its inception, the right to marry has had statutory limitations. Marriages that are bigamous or incestuous are void. Other types of marriages are voidable.

Now that same-sex marriage is legal in California, gay couples must adhere to the same rules that have applied to opposite-sex couples in terms of prerequisites for entering into a valid marriage.

In 2014, the California Legislature amended Family Code Section 300 to read: "Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary." The requirements of "consent" and that the parties are "capable of making that contract" have been part of California's marriage laws since their inception.

On Feb. 9, a Riverside County Superior Court judge will be asked to test the limits of same-sex couples to marry in California. The case involves Ryan, a young man in his mid-20s who has serious intellectual and developmental disabilities. *In re The Conservatorship of Morris*, MCP1100783.

Four years ago, Ryan married a man who was nearly twice his age in a marriage ceremony that one government investigator found disturbing. At the time of the marriage, Ryan was under an order of conservatorship. Ryan's new spouse subsequently became his conservator. As a result of the marriage, Ryan lost all of his federal benefits under SSI and Medi-Cal – benefits that were never replaced with sufficient income from his new husband.

Ryan's twin brother and his aunt are asking the court to declare the marriage invalid due to Ryan's lack of capacity to enter into this contract and because he



was subject to undue influence by his fiancé and his former conservator. The case requires the court to weigh the facts for and against Ryan's right to marry, to weigh the facts for and against his need for protection from abuse and exploitation, and then decide whether a just result would be to affirm or invalidate the marriage.

To be sure, Ryan and all adults with intellectual and developmental disabilities have constitutional and statutory rights. Those rights are not diminished simply because they have disabilities. Among the rights specified in the Lanterman Act is "a right to make choices in their lives" as well as "a right to be free from harm" including from abuse or neglect.

The relatives of Ryan are alleging that he has been a victim of abuse and neglect. As for neglect, they cite his current living conditions – the mobile home of his in-laws where violence is a recurring problem. As for abuse, they point to the "sham marriage" – a ceremony that was video taped and which appears on YouTube. The video shows that Ryan had to be continually coached to repeat the vows and coaxed to put a ring on the finger of his fiancé. It also reveals that at one point in the process, Ryan thought the ceremony was a baptism. An investigator for the Public Guardian who watched the video concluded that Ryan clearly did not give legal consent to the marriage and undoubtedly lacked the capacity to marry.

The California Probate Code specifies that the fact a person is under an order of conservatorship does not, in and of itself, deprive him or her of the right to marry. However, that code also allows for relatives of a conservatee to ask a court to invalidate the marriage on the ground that purported consent was not valid or that the person lacked the capacity to consent due to serious mental disabilities. That is what Ryan's brother and aunt are asking the court to do.

The fact that Ryan reportedly has the mental capacity of a 5-year-old would not, in and of itself, preclude him from having the capacity to consent to marriage. Nor would his diagnoses of cerebral palsy, intellectual disability, schizophrenia, attention deficit/hyperactivity disorder, behavior disorder, and epilepsy. Nor would the fact that he is "emotionally fragile" or substantially unable to resist undue influence.

The evaluation of a medical doctor documenting that he has the following conditions would also not necessarily preclude him from having the capacity to consent to marriage or actually consenting to marriage: disorientation as to time and place; short-term and long-term memory deficits; major impairment in his ability to reason using abstract concepts; and unwanted compulsive thoughts and behaviors – all of which were constant problems which did not significantly vary in frequency, severity or duration.

This information, however, helps to explain his demonstrated functional deficits, including his actions on the video of the marriage ceremony.

The court has a variety of options to insure that many important legal issues are properly addressed – options that can be exercised before it even calls the matter for a formal hearing. The judge can refer the matter to a court investigator to gather more facts about Ryan's ability to consent to marriage and whether he truly understood the consequences of a decision to marry. A guardian ad litem could be appointed to seek an evaluation by a capacity assessment professional about these issues. The matter could be referred to Adult Protective Services to determine whether Ryan is a victim of abuse or neglect caused by his conservator or household members. A referral could also be made to the district attorney to investigate whether any criminal activity occurred when Ryan was coached through a marriage ceremony that he clearly did not understand and which had serious financial consequences to him.

This may be a case of first impression in the California courts – a case involving the right of people with developmental disabilities to marry as well as the right not to be pressured into marriage through undue influence. The court should take whatever steps are necessary to ensure that it reaches a just result. ♦♦♦

Thomas F. Coleman is legal director of Spectrum Institute – an advocacy organization promoting freedoms and appropriate protections for people with intellectual and developmental disabilities. He may be reached by email at tomcoleman@spectruminstitute.org