

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

FILED
WILLIAMSON COUNTY
CLERK & MASTER
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George Grant, Larry Tomczak, Lyndon Allen, Tim McCorkle, and Deborah Deaver

Plaintiffs,

v.

44859

Elaine Anderson, Clerk of Williamson County

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Introduction

1. Plaintiffs George Grant, Larry Tomczak, and Lyndon Allen (hereinafter sometimes referred to as "Minister Plaintiffs") bring this action to determine the proper construction of TENN. CODE ANN. § 36-3-103 and TENN. CODE ANN. § 36-3-104 and whether the criminal sanctions of TENN. CODE ANN. 36-3-303 and TENN. CODE ANN. § 36-3-305 apply to them. Minister Plaintiffs, along with Plaintiffs, Tim McCorkle and Deborah Deaver (hereinafter sometimes referred to separately as "Citizen Plaintiffs"), also bring this action to determine whether their rights under Article 1, Sections 5, 8 and 23 of the Tennessee Constitution, Article II, Sections 1, 2 and 17 of the Tennessee Constitution, and Article VII, Section 1 of the Tennessee Constitution have been violated by the issuance of marriage licenses since the decision of the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. ___ (No. 14-556, 2015 WL 2473451 (June 26, 2015)) (hereinafter "Obergefell") on June 26, 2015. In particular all Plaintiffs seek a declaration that those provisions of the Tennessee law relative to the licensing of marriages are no longer valid and enforceable since the *Obergefell* decision and that the continued issuance of marriage licenses under those circumstances violates their aforesaid rights under the Tennessee Constitution.

Parties

2. Plaintiff George Grant is a resident of Williamson County, Tennessee, is over 18 years of age, and was first ordained as a pastor in the Southern Baptist Convention on July 11, 1976. He transferred into the Association for Reformation Churches on September 9, 1984 and to the

Presbyterian Church in America on May 22, 1988. He transferred into the Nashville Presbytery of the Presbyterian Church in America on February 23, 2003. He is the minister of a church within the Presbyterian Church of America that is located in Franklin, Tennessee.

3. Plaintiff Larry Tomczak is a resident of Williamson County, Tennessee, is over 18 years of age, and was first ordained to the ministry according to the criteria set forth in the third Chapter of book of First Timothy and in the book of Titus in the Holy Bible by Covenant Life Church, which was part of a network of churches associated with the People of Destiny International/Sovereign Grace Ministries and has been involved in church-planting and other Christian ministries for approximately forty years. Plaintiff Tomczak has ministered in churches in Williamson County, Tennessee and currently ministers as part of the ministry team at a church located in Williamson County, Tennessee.

4. Lyndon Allen is a resident of Williamson County, is over 18 years of age and is a graduate of Biola University in La Mirada, CA with a Degree in Organizational Leadership (Industrial Psychology) with an emphasis in Biblical Studies and Apologetics. Since 2003, Plaintiff Allen has been a lay minister and teacher, specializing in pastoral marriage counseling. He also currently serves as the minister of a church located in Davidson County, Tennessee.

5. Minister Plaintiffs Grant, Tomczak, and Allen each have the “care of souls” as stated in TENN. CODE ANN. § 36-3-301(a)(1) and are “ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs ... provide for such ordination or designation by a considered, deliberate, and responsible act” as required by TENN. CODE ANN. § 36-3-301(a)(2).

6. Minister Plaintiffs Grant, Tomczak, and Allen are thus authorized under TENN. CODE ANN. § 36-3-301(a)(1) to “solemnize the rite of matrimony” in any county of the state. Plaintiffs Grant, Tomczak, and Allen have officiated or solemnized marriages in Tennessee in the past and, as ministers, may be asked to officiate marriages in the future, which they would be willing to do consistent with their ministerial beliefs and responsibilities. Plaintiff Grant has officiated or solemnized a marriage ceremony since *Obergefell*.

7. Plaintiffs McCorkle and Deaver are residents and taxpayers of Williamson County, Tennessee, and are registered to vote in Tennessee.

8. All Plaintiffs are also an appropriate representative of a class of persons who wish to preserve the blessings of liberty to themselves and their posterity by requiring their governmental representatives to adhere to the requirements of the written Constitution of Tennessee in all respects where it is not in conflict with the requirements of the Constitution of the United States and the laws and treaties validly enacted pursuant thereto.

9. Minister Plaintiffs are also appropriate representatives of the class of persons who desire to marry or have, since June 26, 2015 married, under Tennessee laws under the common law doctrine of *jus tertii*.

10. Defendant Elaine Anderson is the County Clerk of Williamson County, Tennessee, who is required by the Tennessee General Assembly to administer the statutory provisions of TENN. CODE ANN. § 36-3-103 and § 36-3-104.

Jurisdiction and Venue

11. This Court has jurisdiction over the subject matter of this action pursuant to TENN CODE ANN. § 16-11-101 and § 16-11-102 and the Declaratory Judgment Act, TENN. CODE ANN. § 29-14-101, *et seq.*

12. Venue in this Court is proper pursuant to TENN. CODE ANN. § 20-4-101 because the defendant is a resident of Williamson County and the cause of action arose, in part, in Williamson County and all the plaintiffs are residents of Williamson County and Minister Plaintiffs are authorized by law to solemnize marriages in Williamson County and other counties across Tennessee.

Applicable Facts and Law

13. Plaintiffs repeat and incorporate by reference all of the above allegations of the complaint as though fully set forth herein.

14. Tennessee is a common law state, but the right to marry under the common law was abrogated by statute at the time Tennessee became a state and the abrogation of the common law right to marriage has continued since then by virtue of the requirements of TENN. CODE ANN. § 36-3-103(a) and TENN. CODE ANN. § 36-3-305.

15. TENN. CODE ANN. § 36-3-103(a) provides that “[b]efore being joined in marriage, the parties shall present to the minister ... a license under the hand of a county clerk in this state, directed to such minister or officer, authorizing the solemnization of a marriage between the parties. Such license shall be valid for thirty (30) days from its issuance by the clerk.”

16. According to TENN. CODE ANN. § 36-3-103(a) it is the “license under the hand of a county clerk in this state, directed to such minister or officer, [that] authorize[s] the solemnization of a marriage between the parties.”

17. Pursuant to TENN. CODE ANN. § 36-3-303 those “who solemnize[] the rite of matrimony shall endorse on the license the fact and time of the marriage, and sign the license, and return it to the county clerk within three (3) days from the date of marriage. Every person who fails to make such return of the license commits a Class C misdemeanor.”

18. TENN. CODE ANN. § 36-3-305 provides that “[a]ny such minister or officer who knowingly joins together in matrimony two (2) persons not capable thereof commits a Class C misdemeanor and shall also forfeit and pay the sum of five hundred dollars (\$500), to be recovered by action of debt, for the use of the person suing.”

19. The precursor to TENN. CODE ANN. § 36-3-305 can be traced back to Section 5 of Chapter 7 of the North Carolina Acts of 1778, which stated, “That if any minister or justice of the peace shall knowingly join together in matrimony any two persons, in any way or manner other than by this act directed, he shall forfeit and pay for every such offence the sum of fifty pounds lawful money of this state; to be recovered by action of debt, in any court of record having cognizance thereof, one half to him that shall sue for the same, and the other half to be applied by the court to the use of the county where such forfeiture ariseth; and be also liable to an action of damage to the party grieved.”

20. TENN. CODE ANN. § 36-3-306 provides that “[f]ailure to comply with the requirements of 36-3-104 -- 36-3-107, 36-3-109 -- 36-3-111 shall not affect the validity of any marriage consummated by ceremony”; however, TENN. CODE ANN. § 36-3-306 does not except TENN. CODE ANN. § 36-3-103 which requires a license “before” a minister is authorized to solemnize a marriage.

21. The County Clerk is a position established by Article VII, Section 1 of the Constitution of the State of Tennessee, which provides that a County Clerk’s “duties shall be prescribed by the General Assembly.”

22. By virtue of the state’s Constitution, the County Clerk has no lawful authority to issue any license for any purpose except as prescribed by statutes lawfully enacted by the General Assembly.

23. In *United States v. Windsor*, 570 U.S. ____ (2013), the United States Supreme Court said that the rights of those whom they purport to marry is determined by state law including the laws of the state of Tennessee

24. On June 26, 2015, the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. ____ (No. 14-556, 2015 WL 2473451 (June 26, 2015)), opined that notions of substantive due process and equal protection under the Fourteenth Amendment to the U.S. Constitution give same-sex couples the “right to marry in all States” and forbade “a State to refuse to recognize a lawful

same-sex marriage performed in another State on the ground of its same-sex character.”

25. In *Obergefell v. Hodges*, the United States Supreme Court said “state laws ... are ... held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.”

26. TENN. CODE ANN. § 36-3-103(a) requires that a valid license be issued “before” a marriage can be solemnized by Minister plaintiffs.

27. TENN. CODE ANN. § 36-3-104 provides, among other things, that “[n]o county clerk or deputy clerk shall issue a marriage license until the applicants make an application in writing, stating the names, ages, addresses and social security numbers of both the proposed male and female contracting parties”

28. The express statutory requirement that the applicants for a marriage license be a “male and female” and that there be a valid license “before” marriage can be solemnized “exclude[s] same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.”

29. The Tennessee Supreme Court, in *State of Tennessee v. Crank*, No. E2012-01189-SC-R11-CD, filed February 13, 2015, said even the “legislative endorsement of elision ‘does not automatically make it applicable to every situation; however, when a conclusion can be reached that the legislature would have enacted the act in question with the unconstitutional portion omitted, then elision of the unconstitutional portion is appropriate.’ (internal citations omitted),” citing TENN. CODE ANN. 1-3-110.

30. The provision of TENN. CODE ANN. § 36-3-104(a) requiring that the applicants for a marriage license be a “male and female” was adopted by Public Chapter 241 of the Public Acts of 1995 of the Tennessee General Assembly.

31. The state of Tennessee has had its own statutory law prohibiting and criminalizing various types of sexual relations between two people of the same sex from 1829 until the Court of Appeals of Tennessee, Western Division, in the case of *Campbell v. Sundquist*, filed January 26, 1996, ruled that the Homosexual Practices Act, TENN. CODE ANN. 39-13-510, was constitutionally unenforceable.

32. TENN. CODE ANN. § 39-3-113, which was passed by the Tennessee General Assembly on April 25, 1996, and was signed into law by Governor Don Sundquist on May 15, 1996, provided, in pertinent part, that that “the public policy of this state that the historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract in this state in order to provide the unique and exclusive rights and privileges to marriage” and “The legal union in matrimony of only one (1) man and one (1) woman shall be the only recognized marriage in this state.”

33. The provisions of TENN. CODE ANN. § 36-3-103, which requires a license before a marriage can be solemnized by Minister plaintiffs and of TENN. CODE ANN. § 36-3-104, which requires that an application for a license contain certain information about “the proposed male and female contracting parties,” were both enacted during a time when sexual relations between two people of the same sex was a criminal offense.

34. All marriage statutes regarding marriage licenses preceding the current statutes were enacted at a time when sexual relations between two people of the same sex was a criminal offense.

35. No statute lawfully adopted by any General Assembly has ever authorized a County Clerk to issue a marriage license to any two persons other than one man and one woman.

36. Neither the County Clerks nor the U.S. Supreme Court nor the Governor of Tennessee have any inherent authority to interpret a statute to mean what it was never intended to mean and have no inherent legislative authority to “amend” the plain language of a statute.

37. Accordingly, because TENN. CODE ANN. § 36-3-103 and §36-3-104 would not have been enacted without the language limiting marriage to a man and a woman, the doctrine of elision cannot save the statute from being held invalid.

Cause of Action

38. A controversy exists because Minister Plaintiffs are uncertain if the criminal sanction in TENN. CODE ANN. § 36-3-303 continues to apply to them, because if the licensing laws for marriage are no longer valid and enforceable after June 26, 2015, there may be no valid license for them to “endorse ... and sign” and “return” to the defendant, and they are also uncertain as to whether they can be compelled by any persons to “return” such a license issued after that date.

39. A second controversy exists because, after *Obergefell*, Minister Plaintiffs are uncertain if the two persons presenting a license to them for marriage are to be considered “not capable” of being “join[ed] together in matrimony,” because the two persons have no valid marriage license by which Minister Plaintiffs are authorized to solemnize their marriage, thereby subjecting them to the various sanctions of TENN. CODE ANN. § 36-3-305.

40. A third controversy exists because, after *Obergefell*, Minister Plaintiffs do not know if they are subject to the sanctions of TENN. CODE ANN § 36-3-305 if they simply officiate a marriage ceremony according to the religious doctrines governing their ministry.

41. A fourth controversy exists because, after *Obergefell*, Minister Plaintiffs are uncertain if the marriage ceremonies they perform actually “solemnize” a marriage as the provisions of TENN. CODE ANN. § 36-3-306 appear to apply only to non-compliance with technical aspects of the

statutes therein referred to but do not apply to TENN. CODE ANN. § 36-3-103, which requires a license “before” the Minister Plaintiffs are “authorized” to solemnize a marriage, and no license may have been validly issued in accordance with TENN. CODE ANN. § 36-3-103 and TENN. CODE ANN. § 36-3-104.

42. A fifth controversy exists because, if Tennessee’s statutory marriage laws are invalid and unenforceable, then Minister Plaintiffs do not know if marriage ceremonies they officiate according to the religious precepts governing their ministry constitute a marriage under common law and what they should tell the parties whom Minister Plaintiffs may be asked to “marry” regarding the legal effect of the ceremonies they officiate.

43. A sixth controversy exists because the issuance of marriage licenses without a statute by the General Assembly prescribing the duties of the Defendant after and in light of the decision in *Obergefell* denies the Minister Plaintiffs and Citizen Plaintiffs of their right of suffrage under Article I, Section 5 of the Tennessee Constitution and their liberties and privileges under Article 1, Section 8 of the Tennessee Constitution inasmuch as they have been deprived of their right to “indirectly vote” on the laws prescribing the duties of the County Clerk because the members of the General Assembly are the only branch of civil government authorized under Article II, Sections 1 and 2 of the Tennessee constitution to prescribe the duties of the Defendant,

44. A seventh controversy exists because the issuance of marriage licenses in the absence of a statute by the General Assembly prescribing the duties of the Defendant after and in light of the decision in *Obergefell* deprives the Minister Plaintiffs and Citizen Plaintiffs of their right to know in advance what the laws of the state of Tennessee are or will be in accordance with and as envisioned by Article II, Section 17 of the Tennessee Constitution which provides, in pertinent part, that “No bill shall become law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

45. A eighth controversy exists because the issuance of marriage licenses in the absence of a statute by the General Assembly prescribing the duties of the Defendant after and in light of the decision in *Obergefell* deprives Minister Plaintiffs and Citizen Plaintiffs of their right to “instruct [their] representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address of remonstrance” relative to the “duties” to be “prescribed [for the County Clerk] by the General Assembly” in violation of Article I, Section 23 and Article VII, Section 1, respectively, of the Tennessee Constitution.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

1. Declaring that TENN. CODE ANN. § 36-3-103(a) and (c)(1) and § 36-3-104 are invalid and unenforceable.
2. Declaring that the criminal sanction under TENN. CODE ANN. § 36-3-303 is unenforceable if Minister Plaintiffs do not sign or endorse a marriage license issued by the defendant or return it to the defendant.
3. Declaring that the criminal sanction and monetary penalty or judgment provided for under TENN. CODE ANN. § 36-3-305 do not apply to Minister Plaintiffs if they officiate marriage ceremonies according to the religious doctrines governing their ministry and that such constitute a marriage at common law.
4. Declaring that the issuance of marriage licenses after June 26, 2015 violates the rights of Minister Plaintiffs and Citizen Plaintiffs under Article 1, Sections 5, 8 and 23 of the Tennessee Constitution, Article II, Sections 1, 2 and 17 of the Tennessee Constitution, and Article VII, Section 1 of the Tennessee Constitution.
5. Enjoining defendant County Clerk, Elaine Anderson, from issuing marriage licenses.
6. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,



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