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Same-Sex Marriage Recognized as Valid in Non-Recognition State for Purposes of Interpreting the Bankruptcy Code

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As a result of two Federal trial court decisions issued May 19, 2014 and May 20, 2014, Oregon and Pennsylvania became the 18th and 19th states where gay and lesbian couples can legally marry. In these decisions, U.S. District Court Judges held that because the prohibitions on same sex marriage in Oregon and Pennsylvania discriminate without a compelling state interest on the basis of sexual orientation, the laws violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

These rulings are the 12th and 13th federal trial court rulings since last summer's U.S. Supreme Court ruling in United States v. Windsor, in which the Court held the federal Defense of Marriage Act's ("DOMA") provision barring federal recognition of lawful same-sex marriages to be unconstitutional. Despite the growing trend to permit same-sex marriage, there are still many states in which gay and lesbian couples are barred from marrying. Naturally, this split in the law poses legal issues when lawfully married same-sex couples cross state lines and are seek certain federal benefits in "non-recognition" states.

U.S. v. Windsor

The Supreme Court in the Windsor case invalidated Section 3 of DOMA which limited the definition of "marriage" for all purposes of federal law defined for all federal law purposes "marriage" as a legal union between a man and woman only, and "spouse" as a person of the opposite sex who was a husband or a wife. These definitions apply to well over 1,000 federal statutes and regulations relating to spouses and marriages including, the federal, tax, immigration and bankruptcy statutes. The Windsor decision is undoubtedly a groundbreaking and historic decision for our country and our society. But as a practical matter, it created a quandary because not all states recognize same-sex marriage and same-sex spouses. Any lawfully married same-sex couple that relocates to a state that doesn't recognize same-sex marriage faces uncertainty about which federal benefits they will be entitled to receive if the entitlement depends upon an individual occupying the status of "spouse." As a result of the ambiguity created by the Windsor case, federal law practitioners are now speculating about what a court in a non-recognition state may do when called upon to interpret what "spouse" and "marriage" mean for purposes of applying federal law in a non-recognition state.

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In re Matson

Ten months following the Windsor decision, the U.S. Bankruptcy Court in the Eastern District of Wisconsin was confronted with the issue of whether debtors who were legally married in Iowa but resided in Wisconsin are "spouses" in Wisconsin for purposes of the requirement in the Bankruptcy Code that a joint case can only be filed by an individual and an individual's "spouse." In re Matson, 2014 WL 1678989 (Bankr. E.D. Wis. 2014).

The issue arose in Matson because Section 2 of DOMA, which provides that "no state shall be required to give effect to any public act, record, or judicial proceeding respecting a relationship between persons of the same sex," remains valid notwithstanding the holding in the Windsor case. This section was not at issue in Windsor because the dispute arose in a state that recognized same-sex marriage in another jurisdiction. Consequently, Section 2 of DOMA creates the uncertainty of interstate recognition of same-sex marriages in non-recognition states in various contexts, such as the bankruptcy filing by the debtors in Matson.

Interestingly, the Bankruptcy Court's analysis of what constitutes a "spouse" for bankruptcy purposes did not involve an equal protection or substantive due process analysis. Rather, the court found this issue to be more appropriately a routine matter of choice of law principles. The court explained that because Wisconsin doesn't recognize a valid same-sex marriage performed in another state, which is a legal position allowable under Section 2 of DOMA, Wisconsin wasn't required to treat the debtor couple as married in any way.

However, the court also concluded that although Section 2 of DOMA applies to states, it does not apply to federal courts. As the Bankruptcy Code is silent as to which state law to apply when determining the validity of a party's marriage, the court found that it is well-settled law that the validity of a marriage is governed by the law of the place where it was celebrated. Citing recent Internal Revenue Service and immigration rulings, the court noted that the federal government generally has relied on the "place of celebration" rule to determine who is married.

Following the "place of celebration" rule, the court held that when interpreting the Bankruptcy Code, the Iowa out-of-state marriage must be recognized as valid in Wisconsin even notwithstanding Wisconsin's ban on same-sex marriage and notwithstanding Section 2 of DOMA. The court explained that even if Wisconsin wasn't required to recognize the debtors' marriage because it conflicts with current Wisconsin state law, it is required under the Full Faith and Credit Clause of the U.S. Constitution to recognize and apply Iowa's same-sex marriage law for purposes of federal law. Since the debtor couple was lawfully married in Iowa, and because Windsor invalidated DOMA's requirement that legal construction of the word "spouse" for purposes of defining federally conferred benefits refer only to opposite-sex couples, the court deemed the debtor couple "spouses" for purposes of the Bankruptcy Code. Accordingly, the bankruptcy court held that the couple did satisfy the Bankruptcy Code's requirement that a joint bankruptcy case may only be filed by an individual and the individual's "spouse."

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Because Connecticut recognizes same-sex marriage, the issue in Matson will never arise in a Connecticut bankruptcy court. Nevertheless, the decision is important because all federal law practitioners now have some insight into how a federal court in a non-recognition state might treat their same-sex clients who lawfully married in a recognition state, but are contemplating relocation to a non-recognition state.

Matson is not binding on courts in non-recognition states. But, it reached the type of fair result that the LGBT community and its supporters hope courts will follow. As United States District Court Judge Michael McShane so eloquently stated in his May 19th decision invalidating Oregon's ban on same-sex marriage:

"I believe that if we can look for a moment past gender and sexuality, we can see in these plaintiffs nothing more or less than our own families. Families who we would expect our Constitution to protect, if not exalt, in equal measure. With discernment we see not shadows lurking in closets or the stereotypes of what was once believed; rather, we see families committed to the common purpose of love, devotion, and service to the greater community. ...Where will this all lead? I know that many suggest we are going down a slippery slope that will have no moral boundaries. To those who truly harbor such fears, can only say this: Let us look less to the sky to see what might fall; rather, let us look to each other and rise."

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