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NY Appeals Court Recognizes Canadian Marriage

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BY ARTHUR S. LEONARD | In a straightforward ruling of great potential significance, a unanimous five-judge panel of the New York Appellate Division, 4th Department, an intermediate-level court with jurisdiction over appeals from the westernmost counties of the state, ruled on February 1 that a lesbian couple who married in Canada in 2004 were entitled to legal recognition of that marriage by Rochester's Monroe Community College (MCC).

Patricia Martinez, the plaintiff, is an MCC employee. Martinez and her partner, Lisa Ann Golden, were married on July 5, 2004, in Ontario, after that province's courts determined that same-sex couples are entitled to marry. Canada's Parliament in 2005 passed a statute ratifying that court's ruling and similar ones from several other provinces.

> *A unanimous five-judge panel of the New York Appellate Division, 4th Department ruled on February 1 that a lesbian couple who married in Canada in 2004 were entitled to legal recognition.*

Two days after their marriage, Martinez applied to MCC for spousal health care benefits for Golden, and after several months passed was turned down. In 2006, MCC extended domestic partner benefits to Golden under a new college policy, but the school still does not formally recognize the two women as married.

Martinez sued, claiming that failure to recognize her marriage violated the New York State Constitution's equal protection requirement and the state Human Rights Law's prohibition of sexual orientation discrimination in employment. Justice Harold L. Galloway of State Supreme Court in Monroe County granted the school's motion for summary judgment, finding that the marriage was not entitled to New York State recognition.

Writing for the unanimous panel, Justice Erin Peradotto explained, "For well over a century, New York has recognized marriages solemnized outside of New York unless they fall into two categories of exception: (1) marriage, the recognition of which is prohibited by the 'positive law' of New York and (2) marriages involving incest or polygamy, both of which fall within the prohibitions of 'natural law.'" Citing a ruling by the state's highest court, the Court of Appeals, the appellate panel found that as long as a marriage is entered into legally in another jurisdiction and is not precluded by the two exceptions, "it is to be recognized as such in the courts of this State."

Peradotto pointed out that New York "has not enacted any statute specifically forbidding the recognition of same-sex marriages performed elsewhere," so the "positive law" disqualification does not apply. Nor does the incest, polygamy, and 'natural law' prohibition, since that exception has been interpreted to apply to marriages "offensive to the public sense of morality to a degree regarded generally with abhorrence," the judge wrote.

"That cannot be said here," she concluded, a matter-of-fact assertion likely astonishing to same-sex marriage opponents who rely on traditional religiously based morality. The court did not address the tradition argument directly.

Instead, Peradotto took up the other potential stumbling block – the Court of Appeals' 2006 decision in Hernandez v. Robles, which held that same-sex couples do not have a right to marry under either the state's marriage stature or the New York Constitution's due process or equal protection provisions.

Peradotto's opinion rejected the college's contention that Hernandez provides a public policy basis for refusing to recognize the Martinez-Golden marriage.

Hernandez, Peradotto wrote, "instead holds merely that the New York State Constitution does not compel recognition of same-sex marriages solemnized in New York. The Court of Appeals noted that the Legislature may enact legislation recognizing same-sex marriages and, in our view, the Court of Appeals thereby indicated that the recognition of plaintiff's marriage is not against the public policy of New York. It is also worth noting that, unlike the overwhelming majority of states, New York has not chosen, pursuant to the federal Defense of Marriage Act, to enact legislation denying full faith and credit to same-sex marriages validly solemnized in another state."

Peradotto noted that the Legislature could move to prohibit recognition of same-sex marriages from other states, but until it does so, "such marriages are entitled to recognition in New York."

Peradotto also noted that since MCC would recognize a Canadian opposite-sex marriage but not one involving a same-sex couple, the college's policy violated the ban on sexual orientation discrimination in the state Human Rights Law.

MCC argued as well that having instituted a domestic partner benefit program in 2006, the lawsuit was moot, but the court pointed out that Martinez and Golden were entitled to compensation for any injury incurred during 2004 and 2005 due to the college's failure to recognize their marriage.

The court directed that the trial court issue an order declaring that the Martinez-Golden marriage is "entitled to recognition in New York."

Martinez is represented in the case by Rochester attorney Jeffrey Wicks. New York State Attorney General Andrew Cuomo filed an amicus brief in support of Martinez's claim for recognition of her marriage, consistent with the opinion of his office, first expressed under his predecessor, now-Governor Eliot Spitzer, that New York marriage recognition principles would extend to same-sex marriages lawfully contracted elsewhere.

For now, the 4th Department's ruling is a statewide precedent, and will remain so unless contradicted by one of the other appellate departments or reversed by the Court of Appeals. Appeals on this same question are currently pending in the 2nd Department, based in Brooklyn, and the 3rd Department in Albany.