1-2021

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The Supreme Court of Nevada unanimously ruled on December 23 that the U.S. Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015), must be applied retroactively in determining the commencement date of the marital "community" for purposes of dividing assets in a divorce, but such constitutionally-demanded retroactivity extends only to marriages, not to civil unions. *LaFrance v. Cline*, 2020 WL 7663476, 2020 Nev. Unpub. LEXIS 1209.

Mary Elizabeth LaFrance and Gail Cline, Nevada residents, went to Vermont to have a civil union ceremony in 2000, returning home to Nevada. In 2003, when same-sex marriage became available in Canada, they went there and got married, then returned to their home in Nevada. In 2014, they decided to break up their marriage and filed for judicial dissolution. That was the year that a lawsuit brought marriage equality to Nevada, in *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014). Nevada is a community property state, and it became necessary for the trial court to decide what property and assets were part of the "community" for purposes of division of assets. Responding to LaFrance's argument as of 2018 when the Clark County 8th Judicial District Court had to decide, Judge Mathew Harter concluded that pursuant to *Obergefell* he should find that the community came into effect when the parties entered into their civil union in 2000, and divided property accordingly. LaFrance appealed, contending that for purposes of Nevada law, their marital community didn't come into effect until the *Latta* decision in 2014.

The Nevada Supreme Court decided that both parties were incorrect. Under Nevada law as of the time the petition for dissolution was filed, a civil union from Vermont *could* be recognized for these purposes but only if the parties had registered their civil union as a domestic partnership with the Nevada Secretary of State, and these women had not done so. Thus, the court held in an opinion by Chief Justice Kristina Pickering, Judge Harter erred in dating the community from 2000.

On the other hand, the court ruled, the 2003 Canadian marriage should be deemed the date when the community was formed. Even though it was not recognized in Nevada *at that time*, the court found that it must be retroactively recognized pursuant to *Obergefell*.

"In 2015, before the parties' divorce was finalized, the United States Supreme Court decided *Obergefell*," wrote Chief Justice Pickering. "The Court in *Obergefell* held that 'the right to marry is a fundamental right,' and that each state must 'recognize a lawful same-sex marriage performed in another State.' Although the Supreme Court has not opined on the retroactive effects of its *Obergefell* holding, the Supreme Court has 'recognized a general rule of retrospective effect for [its] constitutional decisions,'" citing *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 94 (1993). Since the parties' divorce was not finalized until after *Obergefell* was decided, the court concluded that "the Supreme Court's constitutional decision in *Obergefell*, requiring states to recognize same-sex marriages, applies retroactively to the parties' 2003 Canadian marriage." Thus, 2003 is the commencement date for the marital community.

LaFrance protested that this was unfair, arguing that she and Cline had been operating all those years under the assumption that they did not have any legal rights as a couple in Nevada throughout the period of their Canadian marriage. (Recall that *Latta* was not decided until the year they initiated their divorce proceedings, the year prior to *Obergefell*.) No matter, said the court. "Nevada must credit the parties' marriage as having taken place in 2003 and apply the same terms and conditions as accorded to opposite-sex spouses. These conditions include a presumption that any property acquired during the marriage is community property, NRS 123.220, and an opportunity for spouses to rebut this presumption by showing by clear and certain proof that specific property is separate."

Thus, the property division issue was remanded to Judge Harter "to apply community property principles, including tracing, to the parties' property acquired after their 2003 Canadian marriage."

Justice Abbi Silver recused herself from the case voluntarily. The version of the opinion issued on Westlaw and Lexis as of the end of December did not list counsel for the parties. ■