

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 502015DR001070NB FI

IN RE: The Matter of

SONYA LYNN GOSSARD,

Petitioner,

and

MARY COLLEEN BURNS,

Respondent.

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TRANSCRIPT OF PROCEEDINGS
(Pages 1 - 39)

DATE TAKEN: Wednesday, September 9, 2015
TIME: 9:32 a.m. - 10:08 a.m.
PLACE: North County Courthouse
3188 PGA Boulevard
Palm Beach Gardens, Florida
BEFORE: HONORABLE KRISTA MARX

This cause came on to be heard at the time and

place aforesaid, when and where the following proceedings were stenographically reported by:

LISA D. HANGER, RPR, CRR, FPR

2

1 APPEARANCES:

2 On behalf of the Petitioner:

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14 BY: THEODORE C. MILOCH, II, ESQUIRE

15

16 ALSO PRESENT: Sonya Lynn Gossard
Mary Colleen Burns

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19 spirit of the law, I follow the letter of the
20 law. So I don't want anybody to feel that this
21 is personal in any way, because as I read
22 through some of the filings in this case, I
23 think that that's the impression of some of you.

24 So the issue is simply this: Because I've
25 got a busy morning, I'm going to give each of

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1 you 15 minutes of whether or not the Court has
2 jurisdiction of a civil union. Clearly, our
3 statute does not provide for that, as our
4 statute says the Court may dissolve marriages.

5 Now, what I'm going to ask you to address,
6 sir, is this: The Court dissolves, for example,
7 common law marriages that have been contracted
8 for in jurisdictions where it is legal for a
9 common law marriage to occur. So certainly, if
10 somebody had a common law marriage in Florida,
11 this Court would not dissolve it, as it is not
12 legal in the State of Florida.

13 So I think, you know, a good argument here
14 is that it is substantially the same; that a
15 civil union is substantially the same; however,

16 you know, an argument was made in some of the
17 pleadings that you filed indicating that
18 Virginia had since said that civil unions are
19 the equivalent of marriage. From my reading of
20 everything that's been presented to the Court,
21 that is not true. If in fact they had done so,
22 why not abolish the civil union statute and just
23 have the dissolution statute say parties may
24 dissolve marriages or civil unions? So I don't
25 find that they are exactly the same thing, as

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1 was represented to me in some of the pleadings.
2 So, Ms. Newman, from your perspective, the
3 problem is simply this: Our statute, our
4 legislature -- and whether they catch up now
5 that the United States Supreme Court has ruled
6 on this issue or not, I don't know. I don't
7 know when the legislature's going to do that.
8 They seem to be moving slow on most issues that
9 are presented up there. So whether or not
10 they're going to say that circuit court judges
11 have jurisdictions of civil unions -- because
12 they aren't marriages, they're recognized
13 differently in different states -- or not, we

14 know this: They haven't thus far.

15 So your best argument is going to be full
16 faith and credit and comity to Virginia. And
17 then, sir, I'll hear from you with regard to
18 whether or not I should extend my reading of the
19 statute to say that a civil union is
20 substantially the same.

21 So I'll hear from Ms. Newman.

22 MS. NEWMAN: May it please the Court, my
23 co-counsel, Nancy Brodzki, is going to argue
24 before the Court -- or present the argument to
25 the Court this morning, but I do want the Court

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1 to understand that we were told by your judicial
2 assistant that we had an hour. We have noticed
3 the hearing -- she asked us to notice it. We
4 noticed it for an hour. We were under the
5 impression that we had a half an hour to present
6 our --

7 THE COURT: Well, I think everybody -- That
8 may be.

9 MS. NEWMAN: So we structured our
10 presentation --

11 THE COURT: Be that as it may, I think
12 we're all very well versed on what the topics
13 are, and -- It is for an hour. I stand
14 corrected.

15 You may proceed, ma'am. Good morning.

16 MS. BRODZKI: Good morning, Your Honor.
17 Does the Court prefer me to stand here?

18 THE COURT: Wherever you're comfortable is
19 perfectly fine with me.

20 MS. BRODZKI: Okay. Then I'm going to
21 stand here and --

22 THE COURT: I'm going to ask that you not
23 reiterate everything that was written. What I'm
24 hoping you'll do is expand on that, because I
25 spent a good deal of time on this issue, and I

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1 really don't like it when people come in and
2 read their pleadings to me.

3 MS. BRODZKI: I assure the Court -- If I
4 may approach, these are all the cases that we
5 cite (indicating). I assure the Court I am not
6 reiterating our motion. What I gave --

7 THE COURT: Were these the ones that were
8 already provided, ma'am?

9 MS. BRODZKI: Maybe some of them. I don't
10 know if all of them are, but in an abundance of
11 caution, I wanted the Court to have every case
12 that I might refer to during my presentation.

13 THE COURT: Thank you.

14 MS. BRODZKI: May it please the Court, the
15 Respondent's asserting that this case must be
16 dismissed because the Court lacks jurisdiction
17 to dissolve a civil union. As the Court stated,
18 the statute does not reference the words "civil
19 union."

20 Essentially, they're arguing that because
21 the statute refers to "marriage," we'll put
22 quotes around everything, as is subject, civil
23 unions are not covered by Chapter 61, and
24 therefore, no Court in the State of Florida can
25 take jurisdiction over the civil union in order

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1 to dissolve it.

2 Respondent also seems to be of the opinion
3 -- and there is a secondary issue here -- that
4 the Court lacks subject matter jurisdiction over
5 the custody, parenting and support of the minor

6 child of these parties.

7 I want to point out one error in
8 Respondent's motion. Respondent has stated that
9 in the Brassner vs. Lade case in Broward County
10 before Judge Cohen, which I argued, that the
11 State of Florida did not argue against
12 jurisdiction. That is false. The State of
13 Florida did request and was granted --

14 THE COURT: All right. Well, we don't need
15 to spend a lot of time on what those other two
16 circuit court judges did, so...

17 MS. BRODZKI: Well, I just want to point
18 out that the Court shouldn't think that this
19 case was not vigorously argued or presented by
20 the State of Florida in the Brassner case,
21 because the Brassner case was also a civil union
22 from Vermont.

23 THE COURT: Didn't that predate the Supreme
24 Court ruling? So that circuit court judge down
25 there conducted a hearing and obviously had a

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1 different view of things than me, because if I'm
2 not mistaken, that judge ruled on the civil
3 union before we even had the United States

4 Supreme Court ruling; is that correct?

5 MS. BRODZKI: In Obergefell, yes.

6 THE COURT: Okay.

7 MS. BRODZKI: But not Windsor and not the
8 Sixth -- Seventh Circuit --

9 THE COURT: As I said, let's not spend a
10 lot of time on what other circuit judges did.

11 MS. BRODZKI: Well, the Circuit Court of
12 Appeals of the Seventh Circuit had already
13 ruled, and that's a federal court that does --
14 whose opinions do carry weight in all of the
15 courts throughout this country, so I'm going to
16 argue --

17 THE COURT: And so argue that, just not
18 with regard to two other circuit judges in the
19 State of Florida --

20 MS. BRODZKI: Again, I just think that --

21 THE COURT: -- prior to the Supreme Court
22 ruling, because frankly, I disagree with that.
23 So --

24 MS. BRODZKI: I understand --

25 THE COURT: -- just to help you tailor your

1 argument.

2 MS. BRODZKI: I understand, Your Honor.

3 Thank you.

4 It is this Court's constitutional and moral
5 imperative to exercise subject matter
6 jurisdiction over these parties and their civil
7 union, as well as their minor child, who they
8 brought into this world jointly as a
9 commissioning couple, even under the laws of the
10 State of Florida.

11 The Court has to take subject matter
12 jurisdiction under the due process, equal
13 protection, full faith and credit, and access to
14 courts, clauses of the Florida Constitution, as
15 well as all of those rights that are enumerated
16 in the United States Constitution and the case
17 law that interprets from the Supreme Court,
18 including access to courts.

19 When reviewing a motion to dismiss for lack
20 of subject matter jurisdiction, the facts must
21 be viewed in the light most favorable to the
22 Petitioner in this case.

23 What is not disputed is that if the parties
24 currently resided in Vermont, the Vermont courts
25 could resolve this matter under Vermont law.

1 Vermont Title 15, chapter 23, sections 1204 and
2 1206, establish civil unions and the dissolution
3 of civil unions.

4 THE COURT: I agree. I agree. Don't spend
5 any time on that. I totally agree. If they
6 lived in Virginia, this would not be a problem,
7 they could dissolve the civil union up there,
8 like Vermont.

9 MS. BRODZKI: And just like Florida and
10 every other state in the United States, Vermont
11 has a residency requirement for purposes of
12 dissolution. If dissolution is contested, the
13 petitioning party has to have been a resident of
14 Vermont for a year.

15 THE COURT: Okay.

16 MS. BRODZKI: Only if the parties executed
17 a full settlement agreement can the civil union
18 be dissolved without one party becoming a
19 Vermont resident. These parties do not have a
20 settlement agreement.

21 So what is it that confers subject matter
22 jurisdiction to this Court over a civil union?
23 It's the full faith and credit clause of the

24 United States and Florida's Constitution, which
25 provides, quote: Full faith and credit shall be

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1 given in each state to the public acts, records
2 and judicial proceedings of every other state.
3 This clause requires each state to recognize the
4 statutes, the laws and the judgments of other
5 states --

6 THE COURT: But you'd agree that it's
7 discretionary?

8 MS. BRODZKI: No. It says "shall." That's
9 not discretionary.

10 THE COURT: Well, I don't think that that's
11 true. Full faith and credit is not given in
12 every instance to every statute in other states
13 where the law isn't recognized in Florida.

14 MS. BRODZKI: No, only when the law is
15 repugnant to the public policy of the State of
16 Florida, and I'm going to cite case law right
17 now that tells the Court.

18 In Trauger vs. A.J. Spagnol Lumber, which
19 is a Florida Supreme Court case which cited a
20 Morris vs. Jones United States Supreme Court

21 case that states --

22 THE COURT: I'm just going to stop you for
23 a minute.

24 I want you to address that, because, you
25 know, really, I think they have a pretty strong

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1 argument for full faith and credit and comity
2 here, because, you know, clearly, our statute
3 doesn't recognize civil unions -- and I've read
4 the case law already, so I don't really need for
5 it to be reiterated to me -- unless it's
6 repugnant.

7 So I mean, you know, I disagree that the
8 Court always has to give full faith and credit.
9 I don't think that that's what the law is. But
10 I think that --

11 I'm sorry, your last name is...

12 MS. BRODZKI: Brodzki.

13 THE COURT: Brodzki.

14 Ms. Brodzki makes a good point, and the
15 case law certainly suggests that, that it has to
16 be repugnant.

17 So what would be your best argument as
18 to -- Because here's what I'm concerned with:

19 There has to be access to the court somewhere.
20 They don't have six months residency in Vermont,
21 so, you know, they've got to have access to the
22 courts. And, you know, clearly, we don't
23 recognize civil unions, but why isn't it, in
24 your -- I mean, it's very similar. So tell me
25 why it would be repugnant for this Court to take

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1 jurisdiction.

2 MR. MILOCH: Understood, Your Honor.

3 Ted Miloch on behalf of Respondent, Colleen
4 Burns.

5 Your Honor, I understand exactly where the
6 argument is going and where the question comes
7 from. And if we reverse it, you know, we --
8 While the Court has acknowledged that full faith
9 and credit, as well as comity, is one of
10 discretion for the Court, and the Court's
11 discretion is led by the public policy of the
12 state in which the Court sits.

13 And what is the public policy of Florida?
14 What do we know about the public policy of
15 Florida? We know that the Court never

16 recognized -- or, excuse me -- the state has
17 never recognized civil unions. Civil unions are
18 not --

19 THE COURT: Well, the Court never
20 recognized same sex marriage, and so now the
21 United States Supreme Court has ruled on that.
22 And, Mr. Miloch, you know, prior to that, I
23 don't care what these other circuit court judges
24 did, because I don't think that it was
25 appropriate to take jurisdiction, and you would

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1 have had a much better argument then.

2 But here's what I want you to address: How
3 are civil unions not the substantial equivalent
4 of a marriage? I mean --

5 MR. MILOCH: Well, as set forth in our
6 brief, Your Honor, I mean, as outlined under
7 Vermont law, we have a civil union and we
8 have --

9 THE COURT: Definitely.

10 MR. MILOCH: -- marriages. They're two
11 distinct legal status, which --

12 THE COURT: But aren't they sort of
13 substantially equivalent?

14 MR. MILOCH: There's been an argument set
15 forth in that.

16 There are two distinct legal status. Why
17 Vermont, after they legalized marriage amongst
18 persons of the same sex, why didn't they just go
19 back and abolish civil unions? I don't know.
20 They did. They're both on the books.

21 THE COURT: Well, if they had, then
22 certainly their argument would be stronger, that
23 it's the same exact thing. Because that's what
24 I was led to believe initially, but upon further
25 probing, that isn't true; they didn't abolish

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1 civil unions. So I think they are two distinct
2 statutory creatures up there for sure.

3 MR. MILOCH: And then we go back to the
4 public policy of the State of Florida, which,
5 A, decided not to recognize civil unions. For
6 15 years they were on the books in other states.
7 We decided not to recognize them.

8 Number two, if you take a look at the
9 status of the United States, there's only
10 approximately 13 or 14 states that ever

11 recognized civil unions.

12 Your Honor, as set forth in the -- in my
13 case in the Stufflebeam case, the Stufflebeam
14 case outlines, from the Third DCA, it
15 acknowledged that it was the public policy of
16 the State of Florida not to recognize same sex
17 marriages; thus, civil unions.

18 While the Supreme Court has changed the
19 landscape with Obergefell, like you said, the
20 legislature hasn't caught up. Like you said,
21 it's not for Your Honor to legislate from the
22 bench and create the law.

23 THE COURT: Which I find repugnant to
24 legislate from the bench.

25 But we still get back to this: I mean, so,

17

1 Mr. Miloch, are you really saying -- because it
2 does change everything, the United States
3 Supreme Court ruling. And, you know, Florida
4 legislature -- I divorce people who had a
5 marriage -- a same sex marriage in another
6 state. I grant divorces, because I can dissolve
7 marriages, just as I would -- So here's what I
8 want you to address:

6 give this Court jurisdiction, you're given
7 jurisdiction over, quote, marriages.

8 THE COURT: I know.

9 MR. MILOCH: It's a narrow definition.
10 It is what it is. It's a marriage in another
11 state. If it's common law, they come here, the
12 courts have determined that you have
13 jurisdiction over marriages.

14 THE COURT: And I can only dissolve what I
15 determine to have validly -- when you've been
16 validly married in another state.

17 MR. MILOCH: Absolutely.

18 THE COURT: So, I mean, isn't it semantics
19 that you're just saying --

20 MR. MILOCH: Your Honor --

21 THE COURT: -- "civil union" isn't the same
22 word as "marriage"?

23 MR. MILOCH: Your Honor, it may be
24 semantics, but that is the law. That is what
25 you have to follow. That is Vermont law.

19

1 Vermont has civil unions. Vermont has
2 marriages. If these two people wanted to
3 consummate their civil union into a marriage and

4 they did that, we wouldn't be making this
5 argument today.

6 Your Honor, I'd like to provide to the
7 Court --

8 THE COURT: Tell me again why it's
9 repugnant.

10 MR. MILOCH: It's repugnant because the
11 public policy, as recognized in *Stufflebeam*, the
12 State of Florida doesn't recognize it. Why it's
13 repugnant? I have no idea. People have
14 different viewpoints. And it's recognized in
15 *Stufflebeam* that the viewpoint of the public
16 policy of the majority of the citizens of the
17 state did not accept civil unions.

18 THE COURT: Let me ask you this: Do you
19 think it's repugnant that I dissolve same sex
20 marriages from other states?

21 MR. MILOCH: You have jurisdictional
22 authority under the statute to dissolve a common
23 law marriage or a same sex marriage.

24 THE COURT: But under the Florida
25 Constitution, only between a man and a woman.

1 So that hasn't been amended by our legislators,
2 so...

3 MR. MILOCH: But the Supreme Court says you
4 have to now recognize those marriages. The
5 Supreme Court didn't go recognize civil unions,
6 despite the fact that the civil unions were on
7 the book for 15 years.

8 THE COURT: It most assuredly did not.

9 MR. MILOCH: And had they, we would be --
10 our job would be much easier. However, it is
11 not.

12 And again, you cannot legislate from the
13 bench. And as recognized by a Connecticut Court
14 in Rosengarten vs. Downs, a case very similar
15 where the Respondent made the argument on a
16 motion to dismiss that the trial court, which is
17 called the Supreme Court in Connecticut, that
18 the trial court did not have jurisdiction. They
19 made a significant analysis under Connecticut
20 law, because under the Connecticut statutes, it
21 gives the courts broader discretion than the
22 little term, "marriage." And even though there
23 was more room for a Petitioner to argue under a
24 Connecticut law, that same court made a
25 determination that it does not have jurisdiction

1 based on the limited jurisdiction as outlined by
2 the legislature.

3 Your hands are tied by the legislature.
4 It's not a marriage. You must dismiss the case.

5 May I approach?

6 MS. BRODZKI: May I respond, Your Honor?

7 THE COURT: You may, but I really don't
8 want the basics --

9 MS. BRODZKI: I wanted to --

10 THE COURT: -- which you've been doing thus
11 far. And I know we've all immersed ourselves on
12 this issue, so I don't need the basics.

13 MS. BRODZKI: I wanted to --

14 THE COURT: I want to get back to this: I
15 think your best argument is comity of full faith
16 and credit. But really, I truly am -- I don't
17 do this as a judge. I don't legislate from the
18 bench, and I don't say I think our legislature
19 will catch up. And so what I want to spend the
20 time on is still access to the courts, because I
21 find this very perplexing, this argument.

22 So go ahead.

23 MS. BRODZKI: If the Court will allow me,

24 first of all, this is an intermediate appellate
25 court from the State of Connecticut. It has

22

1 no -- It shows nothing for this Court. It's not
2 even the Connecticut Supreme Court.

3 The Massachusetts Supreme Court that topped
4 the head court of the entire state, the first
5 state to recognize same sex marriage, in the
6 Elia vs. Elia-Warnken case, which I know the
7 Court has, says that if you don't dissolve a
8 civil union, you are now not free to remarry.
9 Your remarriage is void ab initio as bigamy.
10 That's a case that this Court should be governed
11 by.

12 The case that he cited from 2014, the
13 Stufflebeam case, that's overruled by
14 Obergefell, and it's overruled by Brenner vs.
15 Scott, which was decided in Florida by a federal
16 judge in this state.

17 Same sex marriage is now the law of Florida
18 and the law of the United States.

19 Common law marriage does not require a
20 state license, it isn't even a creature of

21 legislatures in the states in which they exist.
22 They're creatures of common law. They derive
23 from England. They're as old as dirt. And yet
24 Florida has a statute which expressly prohibits
25 common law marriages in Florida. There is no

23

1 statute that expressly prohibits civil unions in
2 the State of Florida. It's not there.

3 The constitutional provision, Article I,
4 Section 27, of the Florida Constitution, has
5 also been declared unconstitutional by
6 Brenner vs. Scott, federal judge, Northern
7 District of Florida and the United States
8 Supreme Court.

9 THE COURT: I know. I know.

10 MS. BRODZKI: So there is no -- There is no
11 public policy enunciated at all that says it's
12 repugnant to the State of Florida to recognize
13 civil unions. It's silent. When the state
14 finds something repugnant, they're not silent on
15 it. They put it in their statutes. It's
16 repugnant in this state to let an eight-year-old
17 girl to get married; it's in the statutes. It's
18 repugnant for family members, mothers and sons,

19 sisters and brothers, to marry in the State of
20 Florida. It's repugnant. There's nothing in
21 the statutes that says that two people, who in
22 good faith went to another state and entered
23 into a legal relationship that is sanctioned by
24 statute in that other state, is repugnant in the
25 State of Florida.

24

1 THE COURT: Okay. I'm going to stop you
2 again, because I really want to get back to
3 this.

4 I mean, so really, what you're hanging your
5 hat on is this: Because a civil union certainly
6 takes more steps and more contractual agreement
7 than a common law marriage, but we recognize
8 that, so are you just saying because the magic
9 word "marriage" isn't there, and instead, the
10 word "union" is?

11 MR. MILOCH: Your Honor --

12 THE COURT: Because really, I mean, they
13 make a very good point that --

14 MR. MILOCH: I --

15 THE COURT: How is it not the substantial

16 equivalent of a marriage?

17 MR. MILOCH: Your Honor, Vermont has two
18 different statutes, they're different, they're
19 distinct. You have to recognize that.

20 THE COURT: But aren't they substantially
21 equivalent?

22 MR. MILOCH: They do give each other --
23 They do give the respective spouses rights under
24 the law. Are the rights similar? Sure. I'm
25 not going to deny that.

25

1 However, just in rebuttal, I'd like to draw
2 the attention -- the Court's attention to the
3 provision in *Stufflebeam*, as quoted in our brief
4 where it says, specifically, Florida has
5 evidenced a strong public policy against the
6 recognition of same sex marriages, including,
7 most recently, a supermajority vote of its
8 citizens.

9 I am not --

10 THE COURT: Well, too bad for Florida.

11 MR. MILOCH: But I'm not citing *Stufflebeam*
12 for the proposition that same sex marriages are
13 illegal. I'm citing *Stufflebeam* as evidence to

14 this Court from the Third DCA that acknowledges
15 that that's the public policy. That is up --
16 That's how the public feels. There's no civil
17 union statute. The legislature didn't
18 legislate. You can't.

19 We go to the Supreme Court case,
20 McGowan vs. McGowan (phonetic) -- Florida
21 Supreme Court case. "It is well established
22 that the power to grant a divorce is statutory
23 and not a common law power."

24 We've heard a lot of argument from
25 Petitioner that it's common law, common law,

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1 common law. If we take a look at the Florida
2 Supreme Court cases cited in our brief, and we
3 have a number of them, including Ryan vs. Ryan,
4 "The authority to regulate marriages and
5 correspondingly to provide for their
6 dissolutions is vested in the legislature."

7 THE COURT: I know. And as I said, this --
8 This is what I want to know though:

9 Okay. So what's your answer then? And so
10 people who have had civil unions who can't

11 establish residency except for anywhere in the
12 State of Florida, is it your position they
13 should be denied access to the courts?

14 MR. MILOCH: Your Honor, it's their -- They
15 went up to Vermont to get the marriage. They
16 can go to Vermont --

17 THE COURT: No, they can't.

18 MR. MILOCH: Yes, they can.

19 THE COURT: Well, they'd have to go up
20 there and camp out for six months, right? So
21 your resolution would be that they got to go up
22 there and establish residency before they can
23 dissolve their civil union?

24 MR. MILOCH: Your Honor, they must comply
25 with the applicable law. If the applicable law

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1 does not give them the remedy where they're at,
2 they must go where they can get their remedy.
3 We did not force these two people to go get a
4 civil union up in Vermont. If they want to get
5 that Vermont civil union dissolved, that Court
6 has jurisdiction over the dissolution of the
7 civil union.

8 THE COURT: So that's your answer to access

9 to the courts is that they would have to go to
10 the state where the civil union was contracted
11 for and establish residency there before it
12 could get dissolved?

13 MR. MILOCH: Well, put it this way: Or
14 they can go to any other state that provides
15 jurisdiction over civil union to their courts.

16 THE COURT: All right. Now I want to get
17 to this.

18 So whether or not -- Because I got to tell
19 you, it really goes against my grain to add
20 civil union to the dissolution statute, but I'm
21 not -- I'm finding this redundant to the
22 arguments that are being made.

23 But I want to know this: So I think it's
24 repugnant that these individuals would be denied
25 access to the courts. So tell me your second

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1 argument.

2 MS. BRODZKI: Okay. Access to courts.

3 Now, granted the Brandon-Thomas case was
4 about a marriage. We're going to tell you that
5 there are no appellate opinions to give this

6 Court any guidance regarding civil unions in the
7 State of Florida. And the Court's made it clear
8 that the Court doesn't want to hear about other
9 circuit judges' opinions, and I respect that,
10 and I --

11 THE COURT: They're not --

12 MS. BRODZKI: -- respect that. So in --

13 THE COURT: -- binding on this Court.

14 MS. BRODZKI: The Court is not bound by
15 what another trial court decides, and I
16 understand that.

17 But in Brandon-Thomas, the Second District
18 Court of Appeals said something that is really
19 important regarding access to courts that's
20 applicable to this case. And the quote is:
21 "The practical impact of the trial court's order
22 is that a validly" -- we'll call them a civilly
23 united couple -- "albeit of the same sex, cannot
24 access a Florida court to undo their marriage."
25 -- or, I would argue, their civil union -- "The

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1 couple's financial affairs remain intertwined.
2 Their joint assets, if any, are not easily
3 transferred."

4 THE COURT: Okay. Let me stop you,
5 because, you know, again, marriages are
6 different from civil unions. And that's not the
7 question I'm asking you.

8 MS. BRODZKI: I'm trying to --

9 THE COURT: What I'm asking, more
10 perplexing in particular, is that there's a
11 child involved here, so there's obviously strong
12 public policy that the Court --

13 MS. BRODZKI: I'm trying to get there,
14 Your Honor.

15 THE COURT: I know, but you're just --
16 Honestly, I don't want to hear about the court
17 said "marriages," because I've already told you,
18 I recognize --

19 MS. BRODZKI: How about this, Your Honor --

20 THE COURT: -- it dissolves same sex
21 marriages from other jurisdictions.

22 MS. BRODZKI: How about this part of the
23 quote: "The trial court's order impedes the
24 flow of assets and capital; particularly
25 significant, the welfare and stability of a

1 child parented by this couple remains in limbo.
2 The fact that a child is involved implicates
3 Florida's strong public policy to protect
4 children by determining custody matters in
5 accordance with the best interests of the child.
6 Our decision today protects the parties' rights
7 of access to the courts for dissolution."

8 THE COURT: Again, I read it yesterday. So
9 here's my question to you: If the Court were
10 not to dissolve the civil union, how would they
11 get in the door on the child issues?

12 MS. BRODZKI: Simple. Florida's the home
13 state of the child. Whether there's an
14 action --

15 THE COURT: But under UCCJEA, you would
16 argue --

17 MS. BRODZKI: Absolutely.

18 THE COURT: -- that there's jurisdiction of
19 the Court to address at least the child issues?

20 MS. BRODZKI: Completely. And I have an
21 entire argument for that.

22 THE COURT: That's what I want to hear.

23 MS. BRODZKI: Okay. I thought the Court
24 wanted to hear more about access to the courts.
25 Because there is a United States Supreme Court

1 case about access to the courts, and it's called
2 Boddie. If a couple is unable to seek a
3 dissolution, their situation is identical to the
4 couple in Boddie, because they can't obtain a
5 divorce, and if you can't get divorced, you
6 can't get remarried. That's what we learned
7 from the Massachusetts case.

8 And the marriage right is fundamental. The
9 Supreme Court in Obergefell just pronounced that
10 marriage is such a fundamental right that the
11 states can't even deny it to same sex couples.
12 They couldn't deny it to interracial couples,
13 and they can deny it to same sex couples.

14 THE COURT: And they haven't. We're
15 talking about marriage.

16 MS. BRODZKI: The marriage right is
17 fundamental.

18 Failure to dissolve the civil union now
19 deprives my client of the right to remarry.
20 She's a bigamist in every state that recognizes
21 civil unions or that has ever considered the
22 issue.

23 THE COURT: So let me ask you this.

24 MS. BRODZKI: I understand --

25 THE COURT: So you're saying -- Because

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1 some states don't have residency requirements.

2 You don't have to wait --

3 MS. BRODZKI: Every state does.

4 THE COURT: Hang on.

5 Well, I know that they vary. They're not
6 all six months.

7 MS. BRODZKI: Six months is the least,
8 18 months is the most.

9 THE COURT: There are different residency
10 requirements in particular states. And
11 sometimes we have bifurcated proceedings. We
12 have bifurcated proceedings where the divorce is
13 done in one jurisdiction, but the home state of
14 the child takes jurisdiction.

15 That's what I want you to focus your
16 argument on, because that's where I want you to
17 go now.

18 MS. BRODZKI: Okay. But my client is
19 wedlocked, Your Honor. She can't get remarried.

20 Assuming that the Court lacks --

21 THE COURT: Well, that's true, because it
22 could be a bifurcated proceeding, because she
23 could get divorced in the state. I'm not
24 telling you that's the way I'm going.

25 MS. BRODZKI: Okay.

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1 THE COURT: But I want you to spend your
2 time on the home state issue of the child.

3 MS. BRODZKI: Got it. The child issues.

4 THE COURT: And how would they get in the
5 door on that? It's not a paternity action.
6 What would it be?

7 MS. BRODZKI: It is a parentage action.
8 It's absolutely a paternity action, and the
9 Florida Supreme Court has said so in the D.M.T.
10 vs. T.M.H. case.

11 THE COURT: Okay.

12 MS. BRODZKI: And that's the case that
13 applies most particularly, as well as the
14 Vermont statute.

15 This Court does have to give full faith and
16 credit to the fact that Vermont created a civil
17 union. I would argue that it's mandatory,
18 because there's nothing in current Florida law

19 that says civil unions, whether opposite sex or
20 same sex, are repugnant. No one's addressed it.
21 The legislature hasn't addressed it and the
22 courts haven't addressed it, so we cannot infer
23 public policy based on the lack of action. We
24 infer public policy by what the legislature
25 tells us, not by what they're silent on.

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1 The Vermont Statute says, 1204(f), "The
2 rights of parties to a civil union, with respect
3 to a child of whom either becomes the natural
4 parent during the term of the civil union, shall
5 be the same as those of a married couple, with
6 respect to a child of whom either spouse becomes
7 the natural parent during the marriage."

8 And if that were not enough, these parties
9 were a commissioning couple under the laws of
10 the State of Florida.

11 And this is why the Court also has to take
12 jurisdiction:

13 The two parties jointly commissioned as a
14 couple the in vitro fertilization of the
15 Respondent. That resulted in the birth of a

16 minor child who's the subject of these
17 proceedings. The Florida Supreme Court made it
18 crystal clear that the assisted reproductive
19 technology statute, Chapter 742, must be applied
20 to same sex couples as it is applied to opposite
21 sex couples in order to pass constitutional
22 muster.

23 Therefore, under the plain reading of the
24 D.M.T./T.M.H. case, Florida Supreme Court,
25 November 2013, this Court must recognize that

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1 these parties, as a commissioning couple of a
2 minor child, must adjudicate their parental
3 rights and responsibilities.

4 And the Court should note that in the
5 D.M.T./T.M.H. case, after declaring that any
6 application of that statute that denies same sex
7 couples the same rights that an opposite sex
8 couple would have means that the statute is
9 unconstitutional. And the Court has to read the
10 statute in a way that allows it to remain
11 constitutional if it is capable of such a
12 reading.

13 THE COURT: Okay. Let me stop you.

14 MS. BRODZKI: And the Supreme Court says it
15 is.

16 THE COURT: Tell me what your best argument
17 is for how the Court would not, at a minimum,
18 resolve the child issues here. I think
19 Ms. Brodzki makes excellent points.

20 MR. MILOCH: Your Honor, I will concede
21 that Ms. Brodzki makes excellent points;
22 however, unfortunately, that matter was not
23 fully briefed, as it was not my understanding
24 that we'd be addressing that matter today,
25 pursuant to Your Honor's June 19th, 2015 order.

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1 It said, in pertinent part, "The Court currently
2 dissolves marriages from out of state pursuant
3 to the statutory language." And --

4 THE COURT: So you're just telling me you
5 don't have an argument for that? Because I
6 think it was briefed. I certainly read plenty
7 about it. But at least, in the alternative,
8 this is the home state of the child and that the
9 Court -- Again, you know --

10 MR. MILOCH: Your Honor, we will concede --

11 THE COURT: -- in a situation like that,
12 can I deny access to the courts over a child,
13 which nobody could possibly argue would be
14 repugnant?

15 MR. MILOCH: Your Honor, I am not aware, as
16 we sit here today, but I would request the
17 opportunity to brief it, that the Court does not
18 have jurisdiction over the child under the
19 UCCJEA and under the T.M.H. case from the
20 Supreme Court. I would like the opportunity to
21 brief it.

22 THE COURT: Good luck with that.

23 MS. BRODZKI: I will tell the Court, there
24 are no cases that support the other position;
25 none, zero. There are no cases in the State of

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1 Florida that support his position that this
2 Court should not take jurisdiction over a child
3 whose home state is, without question, the State
4 of Florida. There's no dispute that Florida is
5 the home state. The UCCJEA does not require
6 parents to be married. It talks about the
7 child.

8 THE COURT: I know.

9 MR. MILOCH: Right. And, Your Honor, I'll
10 concede that. The only --

11 MS. BRODZKI: Is it not a child?

12 MR. MILOCH: The only issue, if we did hear
13 on child issues, is what law will apply. Will
14 it be Florida, will it be Vermont, when we're
15 determining, for lack of a better term, best
16 interest of the child? And that will be another
17 matter to be briefed.

18 MS. BRODZKI: Your Honor, may I?

19 THE COURT: No, thank you.

20 Listen, I invite you to appeal me. I am
21 going to find that, based on the fact that the
22 United States Supreme Court has recognized same
23 sex marriages, and I believe throughout the
24 State of Florida same sex marriages are being
25 dissolved, I'm going to find that a civil union

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1 is the substantial equivalent and take
2 jurisdiction.

3 It troubles me. It troubles me that I
4 don't like not following the statutory language.
5 It goes against the core principle of this

6 Court, which is that I'm not a legislator. It
7 is not up to me to decide whether we're going to
8 get in line and whether that language will be
9 added or not. And I would invite you to get a
10 DCA opinion on this.

11 All right. You can submit a proposed order
12 within the next five days.

13 MS. BRODZKI: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. MILOCH: Thank you, Your Honor.

16 (Proceedings concluded at 10:08 a.m.)

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1 COURT CERTIFICATE

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STATE OF FLORIDA)

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COUNTY OF PALM BEACH)

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I, LISA D. HANGER, Registered Professional
Court Reporter, Certified Real-Time Reporter, State of
Florida at Large, certify that I was authorized to and
did stenographically report the foregoing proceedings
and that the transcript is a true and complete record
of my stenographic notes.

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Dated this 10th day of September, 2015.

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LISA D. HANGER, RPR, CRR, FPR

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