

Foreign Same-Sex Marriages May Be Granted Divorce MD

By

In a decision issued on May 18, 2012 (*Port v. Cowan*), Maryland's highest court, the Court of Appeals, held that Maryland courts must grant a divorce to two people of the same sex who were validly married in another jurisdiction and who otherwise meet the criteria for divorce under Maryland law. Since many states still fail to recognize out-of-jurisdiction same-sex marriages, it will be interesting to see if Maryland (at least temporarily) becomes a legal haven for same-sex couples seeking a divorce.

At the trial level in the *Port* case, the circuit court judge held that while the parties met all of the other technicalities required for the granting of a divorce, recognition of the alleged marriage would be contrary to the public policy of Maryland. As a result, he denied the parties' joint request for the grant of a divorce. Both parties filed appeals of the trial court decision and Maryland's Court of Appeals - which typically only takes on cases that address issues of public policy - elected to hear the case, bypassing the usual appeals path through the State's intermediate appellate court, The Court of Special Appeals. As various circuit courts throughout Maryland have split as to whether to grant divorces to same-sex couples validly married in other states, this issue was ripe for a statewide policy determination by the highest court in order that recognition of same-sex marriage would not vary on a county-by-county basis.

Unlike the overwhelming majority of cases in which the parties on appeal have two divergent agendas, the parties in this case were united in seeking the very same relief, namely, that the state of Maryland recognize their valid California-issued marriage and grant them a divorce. They were joined in support at the appellate level by the filing of briefs by several legal organizations.

In reaching its historic decision, the Court of Appeals applied the common law doctrine of "comity," the long-applied principal through which courts give effect to the laws and judicial decisions of another state or jurisdiction, not as a matter of obligation, but out of deference and respect. As the Court of Appeals noted, Maryland courts generally will honor foreign marriages as long as the marriage was valid in the jurisdiction where performed. The two exceptions to the rule are: (1) the foreign marriage may not be "repugnant" to Maryland public policy; and (2) it may not be prohibited expressly by the General Assembly.

The Court of Appeals concluded that the parties' same sex-marriage was not repugnant to Maryland public policy, and in so concluding, noted that the bar in meeting the repugnancy standard is intentionally set very high. The Court also noted that no statutory authority in Maryland expressly forbids valid-where-formed foreign same sex-marriages. In its analysis, the Court of Appeals noted that a number of states with comity principles and relevant domestic marriages laws similar to those of Maryland have recognized foreign same-sex marriages for purposes of their domestic laws (e.g., Wyoming, New York and New Mexico).