

TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

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SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

FILED FEB 05 2015 

LYNN K. McDONALD
CLERK OF COURT

In re the Marriage of

Amanda Gustafson

Petitioner,

and

Court File No. 803-14

James Van Nguyen,

Respondent.

MEMORANDUM OPINION AND ORDER

Summary

The Petitioner, Amanda Gustafson, who is a member of the Shakopee Mdewakanton Sioux Community ("the Shakopee Community") asserts that, when she married the Respondent James Nguyen on June 13, 2015 in Las Vegas, Nevada, that marriage ceremony was a legal nullity because, on that date, Ms. Gustafson was subject to a Conservatorship of Person under the Shakopee Community's Amended Conservatorship Ordinance, Ordinance No. 03-11-08-016 ("the Conservatorship Ordinance"), and because neither her Conservator nor this Court formally approved the marriage.

Ms. Gustafson's contention is before us because, although Mr. Nguyen denies that we have jurisdiction to dissolve the parties' marriage¹, both parties agree that interpretation of the effect of the Conservatorship Ordinance on Ms. Gustafson's legal power to marry is properly the function of this Court.

Having carefully reviewed the very considerable volume of materials filed by each party, we hold that a person who is the subject of a Conservatorship of Person under the Conservatorship Ordinance does not lose the right to marry unless that right has been explicitly restricted, in advance, by an Order of this

¹ Mr. Nguyen asserts that the parties do not meet the residency requirement, set forth in Chapter III, section 1 of the Shakopee Community's Domestic Relations Code, which is a jurisdictional prerequisite to commencement and maintaining a marriage dissolution proceeding in this Court.

Court. And because our Court had placed no such restriction on Ms. Gustafson, her right to marry was not affected by her Conservatorship.

We note, however, that questions of fact and law, relating to undue influence, may exist and may affect both the validity of the parties' marriage and the validity of certain real property transfers that were made, by Ms. Gustafson, a few minutes before the marriage ceremony took place. We make no ruling today either with respect to our jurisdiction to hear Ms. Gustafson's marriage dissolution petition, or – if we do have such jurisdiction –on any question relating to undue influence or duress. We merely note that, given the materials we see in the file, those questions may exist.

Factual Background

In April, 2014, during a time that the parties apparently were living together in California, the Shakopee Community filed a petition in this Court, under the Conservatorship Ordinance, asking that the Court appoint both Conservators of Person and Conservators of Estate for Ms. Gustafson because, the Petition alleged (and Ms. Gustafson conceded) that she was using heroin and was pregnant².

Mr. Nguyen was likely the person who contacted the Shakopee Community and sought the conservatorships; he is identified in the Petition as Ms. Gustafson's fiancé; and he participated in two of the hearings that the Court held.

The Court granted the Petition on April 2, 2014, and appointed Co-Conservators of Person and Co-Conservators of Estate for Ms. Gustafson.³ Thereafter, the Court held a status hearing on May 14, 2014, to obtain updated information about Ms. Gustafson's condition. Both Ms. Gustafson and Mr. Nguyen participated, by telephone from California. The Court was informed that Ms. Gustafson, was engaged in in-patient drug treatment, and was compliant with her Conservators' directions. Ms. Gustafson was notably profane on the subject of the Conservatorships, insisting that they be dismissed because there was no reason for their existence. Mr. Nguyen, on the other hand, supported the continued existence of the Conservatorships, and sharply contradicted Ms. Gustafson's assertions that she had used heroin "only once".

During the hearing, the Court was told, by the participating Co-Conservator of Ms. Gustafson's Estate, that in that Conservator's view Ms. Gustafson was entirely capable of handling her financial affairs – that prior to the Court's April 2 Order she had been competently managing her money and her property and that she in all likelihood could and would continue to do so if the Conservatorship of Estate

² We will take judicial notice of the pleadings and transcripts filed in that proceeding, In re the Conservatorship of Amanda Gail Gustafson, Shakopee Mdewakanton Sioux Community Court File No. 618-08.

³ See Conservatorship Ordinance. As a government service to Community members Conservators are appointed by the court consistent with this Ordinance. These Conservators are full time employees of the government and whose sole duty and responsibility is to care for either the estate or the person or both.

were terminated. Consequently, the Court ended the Conservatorship of Ms. Gustafson's Estate on May 14.

But the Conservator of Person who had been dealing with Ms. Gustafson expressed the view that that Conservatorship should continue until Ms. Gustafson's baby was born, to ensure that there was no drug-use relapse and that the baby was born healthy. Therefore, over Ms. Gustafson's vigorous objections, the Court did not terminate the Conservatorship of Ms. Gustafson's Person.

Thereafter, on June 19, 2014, the parties participated in a marriage ceremony in Las Vegas, Nevada. Ms. Gustafson has said this, with respect to that ceremony, in an affidavit filed in the instant proceedings:

14. Things settled down again at this point. I was still sober and my pregnancy was progressing. I was feeling better about my relationship with James and how we were getting along. On June 19, 2014, James and I drove to Las Vegas and got married. Even though our relationship was still rocky, and I did not like how controlling James could be, I wanted to try and make it work for our baby. I wanted my baby to have a father who helped to raise her and be a part of her life. I married James without notifying Kim Goetzinger, my guardian in the conservatorship matter. I also married James without the support of my family. I felt I was making the right decision because I was six months pregnant with James' child and was clean from drugs since my release from treatment in April.⁴ I am now asking the Court to void my marriage to James as I now realize this was an imprudent decision and I understand it was a violation of the terms of the conservatorship over my person.

15. On the day we were married, James arranged to have a notary at the courthouse and made me sign quit claim deeds transferring title to my real property located in Prior Lake and in Sherman Oaks, California into both of our names. James told me he would sign a deed giving me back sole ownership of my properties once I paid him for some work he financed for my home located in the Wilds. I was crying and upset because we were just minutes from getting married and I didn't know what to do. This was not how I pictured my wedding day. I signed both deeds and transferred the properties into both our names because I was afraid of what would happen if I didn't. James was threatening me, I was literally about to get married, pregnant, and trying to stay clean. I really felt I had no option but to go forward with the marriage. Attached as Exhibit C⁵ is a copy of a g-mail request from James asking for the deeds to be drafted. This request was made on May 16, 2014, prior to my even marrying James -- something that shows that he had long had a plan to take my property from me and to marry me for despicable reasons.

Notwithstanding the foregoing, Ms. Gustafson and Mr. Nguyen continued to live together; and at some point following the marriage ceremony they moved to Minnesota, where Ms. Gustafson gave birth to a healthy baby on September 11, 2014.

⁴ We believe this date to be in error, because all parties in the May 14, 2014 hearing affirmed that Ms. Gustafson was in treatment at that time.

On September 29, 2014, the Court held another hearing, during which the Conservators of Ms. Gustafson's Person recommended that the Court terminate that Conservatorship, in light of the healthy birth and Ms. Gustafson's apparent continued sobriety. Neither Ms. Gustafson nor Mr. Nguyen participated in that hearing, and neither filed any written objections or comments, although they each had received notice of the hearing. At the hearing's conclusion, the Court terminated the Conservatorship, for the reasons that had been forwarded by the Conservator.

Discussion

1. The Effect of the Conservatorship Ordinance on Ms. Gustafson's right to marry.

In the United States, the right to marry is fundamental. *Loving v. Virginia*, 388 U.S. 1 (1967). Therefore, the appointment of a conservator of person generally has been held to not render the conservatee incompetent to exercise the right to marry. 52 Am. Jur. 2d *Marriage* § 25. Even if one party to a marriage suffers from mental illness, the marriage contract generally is to be valid "as long as the understanding and reason remain so far unaffected and unclouded that the afflicted person is cognizant of the nature and obligations of a contract entered into." *Lewis v. Lewis*, 46 N.W. 323, 323 (Minn. 1890); see also *Dunphy v. Dunphy*, 119 P. 512, 513 (Cal. 1911); 52 Am. Jur. 2d *Marriage* § 22.

It is true that, under extreme circumstances, a conservatee can be legally prohibited from contracting marriage, but in those circumstances the prohibition must have been explicitly stated, and must be based on specific evidentiary findings made by the pertinent court. See e.g., *In re Guardianship of O'Brien*, 847 N.W.2d 710 (Minn. App. 2014).

Within the Shakopee Community, the Conservatorship Ordinance does not, in our view, change these general rules. Section 7 of the Conservatorship Ordinance simply says this about the powers of a Conservator of Person:

A conservator of the person shall take or provide for the custody of the person of the Conservatee and shall be required to care for the health, safety and welfare of such Conservatee and provide for the person's education and medical care as needed or appropriate.

And when Ms. Gustafson's Conservatorship of Person was created, the Shakopee Community's Petition did not seek an order restricting Ms. Gustafson's right to marry. (Indeed, the Petition affirmatively noted Ms. Gustafson's engagement to Mr. Nguyen and, as noted above, Mr. Nguyen participated, without objection, in subsequent proceedings before the Court.) The Petition simply asked that the Court grant Ms. Gustafson's Co-Conservators of Person the powers to –

- a. Take or provide for the custody of the person of the Conservatee; and
- b. Provide the required care for Amanda Gail Gustafson's health, safety and welfare; and
- c. To [sic] provide for Amanda Gail Gustafson's medical care, as needed and appropriate.

Emergency *Ex Parte* Petition to Reopen Conservatorship of Person and Conservatorship of Estate and Appointment of Co-Conservators of Person and Co-Conservators of Estate, *In Re the Conservatorship of Amanda Gail Gustafson*, at ¶15 (filed April 2, 2014).

Likewise, the Order entered by the Court, granting the Petition, did not speak to the power of Ms. Gustafson to marry. Rather, because the gravamen of the Petition concerned Ms. Gustafson's drug use and her pregnancy, the Court directed that "the Co-Conservators of Person shall take or provide for the custody of the person of the Conservatee and shall be required to care for the health, safety and welfare of such [sic] Conservatee and provide for her education and medical care as needed or appropriate". Emergency *Ex Parte* Order to Reopen Conservatorship of Person and Conservatorship of Estate and Appointment of Co-Conservators of Person and Co-Conservators of Estate, *In Re the Conservatorship of Amanda Gail Gustafson*, at ¶5 (filed April 2, 2014). Thereafter, on April 3, 2014, the Court entered an Order directing that her Co-Conservators of Person place Ms. Gustafson in a drug treatment facility, and ordering her to abstain from the use of all non-prescribed drugs. Order for Placement, *In Re the Conservatorship of Amanda Gail Gustafson*, at ¶¶3a – 3d (filed April 3, 2014). At no time, from June 13, 2014 through September, 2014, did either Ms. Gustafson or her Conservators object to the parties' marriage or initiate proceedings under section 18 of the Conservatorship Ordinance, which provides:

Upon request of the Conservatee or Conservator, the Court may define the effect of a designation of incompetency of [sic] incapacity on other rights and privileges of the Conservatee.

Under these circumstances, we hold that Ms. Gustafson's Constitutional right to marry was unaffected by her Conservatorship of Person.

2. Other questions concerning the validity of the parties' marriage, and of the real property conveyances that Ms. Gustafson signed immediately before her marriage.

We note that a number of the allegations made by Ms. Gustafson in the materials before us appear to invoke the doctrine of "undue influence" – a doctrine that, if applicable, can void contracts, including, presumably, marriage contracts. As matters now stand, we are unable to determine whether we have jurisdiction to hear Ms. Gustafson's claim. But we note that the undue influence doctrine exists not only in Minnesota and in the common law of the Shakopee Community, but also in the law of the State of California, where the parties appear to have been residing on June 13, 2014. See Cal. Civ. Code §1575 (West) and Cal. Civ. Code § 1575 (West); *Myerchin v. Family Benefits, Inc.*, 76 Cal. Rptr. 3d 816, 828 (Cal. 2008), *disapproved of on other grounds by Vill. Northridge Homeowners Ass' v. State Farm Fire & Cas. Co.*, 237 P.3d 598 (Cal. 2010). The doctrine also exists in Nevada, where the parties' wedding ceremony took place, and where Ms. Gustafson's real estate conveyances were signed. See *Ross v.*

Giacomo, 635 P.2d 298, 302 (Nev. 1981), *abrogated by on other grounds by Winston Products Co. v. DeBoer*, 134 P.3d 726 (Nev. 2006).

We also note that in California there is a default presumption to the effect that a premarital agreement is not entered into voluntarily unless both parties have the opportunity to be represented by counsel. Cal. Fam. Code § 1615; *In re Marriage of Cadwell-Faso & Faso*, 119 Cal. Rptr. 3d 818, 824 (Cal. Ct.0 App. 2011) (describing enactment of statute in 2001). Likewise, in Minnesota a statute pertaining to antenuptial contracts requires that “(a) there is a full and fair disclosure of the earnings and property of each party, and (b) the parties have had an opportunity to consult with legal counsel of their own choice”, Minn. Stat. Ann. § 519.11 (West) (although the Minnesota Supreme Court has said that representation by counsel is *not* a requirement, in spite of the statute, but merely a factor to consider. *In re Estate of Kinney*, 733 N.W.2d 118, 125 [Minn. 2007]). Nevada, too, has a statute that renders premarital agreements unenforceable if the contract was not entered into voluntarily. Nev. Rev. Stat. Ann. §123A.808 (West).

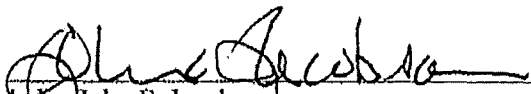
We make these observations because we think it is vital for the parties to understand that, although the existence of Ms. Gustafson’s Conservatorship did not invalidate either her marriage or the property conveyances that were signed a few minutes before the marriage ceremony, still the facts that surround the marriage and the conveyances may create questions about the validity of each.

Whether this Court has jurisdiction to consider such questions, of course, given the history of the parties’ residence and the requirements of the Shakopee Domestic Relations Code, is not clear; and that is the question that we must next resolve. The Court therefore will convene a scheduling conference with counsel to discuss the manner in which we should proceed to decide our jurisdiction.

Order

For the foregoing reasons, the Petitioner’s motion to have her marriage to the Respondent annulled is **DENIED**.

February 5, 2015


Judge John E. Jacobson


Judge Henry M. Buffalo, Jr.

Judge Terry Mason Moore

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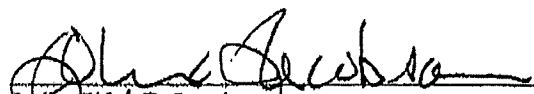
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