

Children's Law Center of Indiana



Dissolution of Marriage

12/20/2013

In **Davis v. Summers**, 1 N.E.3d 184 (Ind. Ct. App. 2013), the Court held that a validly contracted marriage between a man and a woman does not automatically become void when one of the parties has his or her birth certificate amended to indicate a change of gender. The Court reversed the trial court's decision, and remanded the matter for further proceedings.

Davis will be referred to as "Father" in this summary, even though Davis now identifies as female, since Davis contributed the paternal DNA that resulted in the child. Mother and Father had one child together. Father was diagnosed with gender dysphoria, a disorder which causes people to identify with a gender that is contrary to the sex with which they were born. In May 2005, Father filed a petition to change his name from David Summers to Melanie Davis, and requested that the gender on his birth certificate be changed from male to female. The trial court granted the name change in September 2005, but did not grant the birth certificate change until an amended order, issued in October 2008. The parties remained married until they separated in 2008. In October 2012, Father filed a petition for dissolution of marriage, and the trial court approved the parties' agreed provisional order in January 2013, which granted Father custody of the child and required Mother to pay child support. In March 2013, the trial court issued a sua sponte order which provided that the marriage between Mother and Father became void in October 2008, when the order changing Father's sex on the birth certificate from male to female was issued. In issuing this order, the trial court noted that IC 31-11-1-1 prohibits marriages between persons of the same sex, and that such marriages are void in Indiana even if the marriage was lawful where it was solemnized; that common law marriages are prohibited in Indiana according to IC 31-1-6-1; and that the trial court lacked the jurisdiction to dissolve a marriage that did not exist. Father appealed.

The Court determined that this issue would be reviewed under a de novo standard, since the interpretation of a statute is a question of pure law. *Id.* at 187. The Court cited City of N. Vernon v. Jennings Nw. Reg'l Utils., 829 N.E.2d 1, 4-5 (Ind. 2005), which states in part "[t]he first step in interpreting a statute is to determine whether the Legislature has spoken clearly and unambiguously on the point in question... Clear and unambiguous statutes leave no room for judicial construction. However when a statute is susceptible to more than one interpretation it is deemed ambiguous and thus open to judicial construction... our primary goal of statutory construction is to determine, give effect to, and implement the intent of the Legislature. To effectuate legislative intent, we read the sections of an act together in order that no part is

rendered meaningless if it can be harmonized with the remainder of the statute... we do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.” Davis at 187.

The Court held that the statute prohibiting same-sex marriages did not apply to this case because Mother and Father did not enter into a same-sex marriage in Indiana or any other state. Id. at 188. The Court noted that the statute at issue was subsection (b) of IC 31-11-1-1, and that the question to be answered was what effect subsection (b) had on Mother’s and Father’s marriage years after it had been validly entered into by Mother and Father. Id. The Court determined that, as required by City of North Vernon, subsection (b) had to be read in the context of the rest of the statute, and in the context of other Indiana statutes governing marriage. Id. IC 31-11-1-1(b) provides that “[a] marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it was solemnized.” The Court agreed with Father that IC 31-11-1-1(a) prevents the marriage of persons of the same sex from being considered as married in Indiana, and that IC 31-11-1-1(b) provides that “a marriage between those of the same sex is invalid in Indiana even if it was solemnized in a state where same-sex marriages are permitted but does not automatically void a marriage that was initially valid in Indiana simply because one of the parties to the marriage has changed his or her gender.” Id.

The Court also held that this particular marriage, where parties of the opposite sex lawfully entered into marriage in Indiana but during the marriage, one of the parties changed genders, is not listed among those marriages declared void under Indiana law; the Court held that since this particular situation was not listed as a void marriage, it would be improper to interpret the statute to say that it was void. Id. at 189. IC 31-11-8 is titled “Void Marriages”, and clearly addresses marriages that are considered to be void under Indiana law. Id. at 188. The Court examined the statutes in this chapter, and determined that there was nothing in this chapter that declared that “a marriage that was valid when it was entered into becomes void when one of the parties to that marriage has since changed his or her gender.” Id. at 189. By declaring this particular situation to also be a void marriage, the trial court essentially added this type of marriage to the list of void marriages found at IC 31-11-8. Id. The Court opined that to add a type of void marriage to IC 31-11-8 that was not previously listed by the Indiana Legislature was “beyond the purview of our constitutional authority.” Id.

Lastly, the Court noted that the Indiana General Assembly could not have intended to allow a legitimate child, born to a legally marriage man and woman, to become an illegitimate child, without the protection afforded to the child by Indiana’s dissolution statutes with regard to parenting time and child support. Id. at 189. The Court opined that concluding that the marriage somehow became void when Father’s gender changed on the birth certificate would permit Father to abandon the child, and agreed with Father that it could adversely affect Father’s parental rights and relationship with the child. Id.