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## Same-Sex Divorces and Dissolutions: Split in Ohio Decisions

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Recent trial level decisions as to whether Ohio courts have subject matter jurisdiction to grant divorces or dissolutions to same-sex couples married in other jurisdictions reveal a split among counties.

On August 9, 2013, a Hancock County Court granted a divorce to Amy Jo Essinger-Mason and Kristi Jo Essinger-Mason.<sup>1</sup> In this case, the two women had married in New York State in 2012. After the filing of a divorce action, counsel for Kristi Jo Essinger-Mason filed a memorandum in support of jurisdiction, arguing that an order filed in *Obergefell et al. v. Kasich*<sup>2</sup> held that Ohio law was clear that a marriage solemnized outside of Ohio is valid in Ohio if it is valid where solemnized. In *Obergefell* two males, James Obergefell and John Arthur, had been married in Maryland. Mr. Arthur, at the time of the order, was dying of amyotrophic lateral sclerosis (ALS), and the action was brought because the Ohio death record would show Mr. Arthur's marital status as "unmarried" under Ohio law. The action sought to record Mr. Obergefell as his "surviving spouse." Employing a Fourteenth Amendment equal protection analysis and citing the decision of the United States Supreme Court in *U. S. v. Windsor*,<sup>3</sup> the U.S. District Court granted a restraining order directing the Ohio Registrar of death certificates to not accept for recording any death certificate which did not record Mr. Arthur's status as "married" and/or did not record Mr. Obergefell as his "surviving spouse." The U. S. District Court also cited precedent in which Ohio courts had recognized foreign decrees which varied from Ohio law on marriages between first cousins and minors. Apparently the Hancock County Court applied the *Obergefell* reasoning to the jurisdictional question, for the Essinger-Masons were granted their divorce.

A contrary result was obtained, however, in Franklin County in the dissolution of a Canadian marriage between Laura Thompson and Evangeline Roller.<sup>4</sup> The Court terminated their dissolution petition on August 22, 2012 for lack of jurisdiction on the basis that same-sex marriages have no legal effect in Ohio.<sup>5</sup> A private judge, however, in two Franklin County filings, had earlier granted a divorce on March 15, 2012 to two men married in New York<sup>6</sup> and a decree of dissolution of marriage on August 10, 2012 to two men married in Iowa.<sup>7</sup>

Obviously, this jurisdictional question is still in flux, although the U.S. Supreme Court's June 2013 decision holding parts of the federal Defense of Marriage Act (DOMA) unconstitutional for purposes of federal law may impact future decisions.

## Footnotes

<sup>1</sup> Case No. 2013-DR-0158.

<sup>2</sup> *Case 1:13-cv-501 (D.C. Southern District, Ohio, Western Division, Doc. #13, filed 07/22/13)*.

<sup>3</sup> *U.S. v. Windsor*, 133 S. Ct. 2675 (2013).

<sup>4</sup> Case No. 12 DR 002934.

<sup>5</sup> Columbus Dispatch, August 24, 2012.

6 *Baize v. Wissman*, Franklin County Case No. 12 DR 000275.

7 In the Matter of Oleksandr Dzhembaz and Oleksandr Volkov, Franklin County Case No. 12 DR 002762.

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