

Same-sex couple asks Nebraska court to allow divorce

By [NICHOLAS BERGIN / Lincoln Journal Star](#)

A Raymond woman who married her longtime, same-sex partner in Iowa in 2009 is now petitioning the Nebraska Supreme Court to be allowed to divorce.

The issue of same-sex divorce has only recently begun to crop up. A total of 17 states now recognize same-sex marriage, but Nebraska is not one of them.

“It only makes sense. People who were married when it (same-sex marriage) became legalized in Iowa ... now they’re at a stage where some people don’t want to be married anymore,” said Jennifer Gaughan of Legal Aid of Nebraska, which provides free legal service to low-income people.

Nebraskans voted overwhelmingly in 2000 to pass the Defense of Marriage Act, which amended the state’s constitution to define marriage as between a man and a woman.

In the handful of same-sex divorce cases filed in Nebraska, judges have said they can’t dissolve a marriage that state law doesn’t recognize in the first place.

Before they tied the knot, Margie and Bonnie Nichols had lived in the same home for more than a decade. They exchanged rings in a 1996 civil union and brought a child into the world together in 2003, according to court documents.

But like so many romantic partnerships, it didn’t last. While they no longer live together, their marriage remains. Lancaster County District Judge Stephanie Stacy in August dismissed their divorce case, rejecting arguments that the court could grant the divorce without recognizing the marriage.

“A finding that the marriage is irretrievably broken — by its very nature — cannot be made without recognizing the marriage itself, and it stretches logic and common sense to conclude otherwise,” Stacy wrote in her order.

The case currently is before the state Court of Appeals, but Bonnie Nichols’ attorney, Megan Mikolajczyk of Omaha-based Domina Law Group, has petitioned to get it kicked up to the state Supreme Court.

Getting married in Iowa requires little more than \$35, a witness and a judge. But to file for divorce in most states requires that you first live there for at least a year.

Mikolajczyk said the Nichols’ case is about fundamental rights, access to court and being able to get out of the legal dual-status created for same-sex couples.

ACLU of Nebraska and Legal Aid of Nebraska on Thursday chimed in, filing friend of the court briefs in support of the appeal. Nebraska Attorney General Jon Bruning's office filed a brief asking that Stacy's ruling be upheld.

Bruning's office argued the constitutionality of Nebraska's same-sex marriage law shouldn't be considered and said divorce isn't a right.

"Bonnie cites no authority for the proposition that divorce is a fundamental right or a privilege and immunity guaranteed by the federal constitution. This is because there is no authority for such a proposition," the Attorney General's Office wrote.

ACLU and Legal Aid argued divorce could be handled without delving into the constitutionality of Nebraska's prohibition of same-sex marriage, and that not letting courts hear these cases violates the due process and equal protection clauses of the U.S. Constitution.

For Margie and Bonnie Nichols, the inability to get divorced raises a number of potential problems and liabilities related to filing federal taxes, being responsible for each other's debt, Social Security income and other retirement benefits. Mikolajczyk said an annulment doesn't offer the same legal protections as a divorce, nor does it address issues of alimony or property division.

The women cannot remarry, even to someone of the opposite sex. Doing so without a divorce would run afoul of bigamy laws, which come with criminal penalties.

"They want to terminate this contract just as anyone else in our state has the right to dissolve their marriage," Mikolajczyk said. "They both would like the opportunity to move on with their lives, and you can't really do that if other states and the federal government perceive them as still married."

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