

"THE TIMES THEY ARE A-CHANGIN' "

By K. Dean Kantaras

THE FLORIDA LEGISLATURE has deprived certain individuals of virtually all rights in family law matters. I say "virtually all" because, when Florida needs these individuals to care for children, the State finds that they are perfectly suitable and capable of acting as foster parents. However, these same individuals by statute in Florida, may not marry, may not be issued a marriage license, and may not adopt a child. You are probably wondering who these people are. They are usually referred to as LGBT or Lesbian, Gay, Bisexual, Transgender.

Florida's public policy, as expressed by the legislature, couldn't be clearer. LGBT rights are so repugnant to the State of Florida that there are not one, but three separate statutes making homosexual and transgender persons incapable of marrying. One statute makes any such marriage void – they are treated as if they never existed. Another statute prohibits county judges and clerks of court from issuing marriage licenses to a couple unless they give the issuing authority an affidavit that one is a male and the other is a female. Another statute prohibits marriage between persons of the same sex. That statute specifically says that those marriages "are not recognized for any purpose in this state."

Not only do these statutes impinge upon the rights of Florida citizens, it also prohibits the recognition in Florida of the rights of those who entered into a relationship in a state or foreign country where those relationships are legal. So if a homosexual couple married in a state where such marriages are legal and they then adopted a child, after moving to Florida, neither of those relationships would be recognized by the State. As a result, they cannot seek a divorce or settle their property or support obligations



K. Dean Kantaras, Esq.

because the marriage isn't recognized. Since they would not be recognized as the parents of their child, the court cannot settle custody and support rights.

In view of the public policy declarations of the legislature, the Florida courts when faced with these issues are beginning to recognize the family law rights of LGBTs. On the other hand, there is some case law which upholds the statutes.

In a case decided in 2004, the Second District Court of Appeal (the appellate court for the area that includes Pinellas County) held that a postoperative female to male was not a male and therefore could not legally marry another female. The couple had been issued a marriage license and were married. However, when marital discord occurred and a Judgment of Dissolution of marriage was entered by the trial court, the Judgment was reversed by the Court of Appeals.

The Florida Supreme Court has not ruled on this case. Yet, in another case decided in the Fifth District Court of Appeal (the

Daytona Beach area), the court held that under the statute dealing with parental rights of egg donors, the consents involved cannot be constitutionally withdrawn. The parties are homosexual women, and they agreed to have a child with each having full parental rights. They received reproductive rights assistance. One of them was infertile, so ova was taken from the fertile partner, artificially inseminated and implanted in the infertile partner, and a child was born. Then, the parties separated, and the child lived with the birth mother, while the biological mother made support payments.

In that case, the court held that denying the biological mother rights to the child would deprive her of her constitutional equal protection rights. It also held that an unwed biological mother has the same rights as an unwed biological father. Significantly, that court held that the biological connection between parent and child cannot be thwarted by passage of a statute. However, only time will tell what other courts will say about these issues. ■■■

EDITOR'S NOTE: K. Dean Kantaras is an attorney limiting his practice to family law matters, including custody, related appeals and immigration. He is a member of the bar of the Supreme Court of the United States, The Florida Bar, and Clearwater Bar Association Family Law Section. Mr. Kantaras is Board Certified by The Florida Bar in Marital and Family Law. He is "A" rated by Martindale-Hubbell, which is the highest rating a lawyer can obtain. His offices are located at 3531 Palm Harbor Boulevard in Palm Harbor, 1014 U.S. Highway 19 North, Suite 110 in Holiday and 1930 East Bay Drive in Largo. He can be reached at (727) 781-0000, fax: (727) 938-3939 and emailed at kdk@kalawgroup.com.