

IN THE CHANCERY COURT FOR KNOXVILLE COUNTY, TENNESSEE

JOHN DOE)	
)	
Plaintiff)	No. 00000
)	
vs)	
)	
JANE DOE)	
)	
Defendant)	

**PLAINTIFF’S REPLY TO DEFENDANT’S MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF’S MOTION TO DECLARE MARRIAGE
VOID AB INITIO**

Plaintiff John Doe (“Plaintiff”), by and through undersigned counsel, now files this Reply to Defendant Jane Doe’s (“Defendant”) 11/30/07 Memorandum of Law in Opposition to Plaintiff’s Motion to Declare Marriage Void *Ab Initio* (“Memorandum of Law”) in the above-captioned case. For the reasons set forth below, Plaintiff submits that the parties’ Florida marriage offends the public policy of the State of Tennessee, and thus should not be recognized as a valid marriage by this Court.

LAW AND ARGUMENT

**a. The parties’ marriage offends the public policy
of the State of Tennessee**

1. At the outset, Defendant does not seriously contest Plaintiff’s assertions that (i) the parties’ Florida marriage was bigamous, *i.e.*, Defendant was still married to her former husband at the time she married Plaintiff, and that, (ii) under Florida law, bigamous marriages are void *ab initio*. **Reese v. Reese, 192 So.2d 1, 2 (Fla. 1966)**. Instead, Defendant asserts that

The marriage remains valid in Florida pursuant to the affirmative defense of “marriage by estoppel”, whereby a party may be estopped from asserting the existence of a bigamous marriage if it would be inequitable for the party to do so. **Wright v. Wright, 778 So.2d 352, 354 (Fla. App. 2d DCA 2001).**

2. Under Florida law, the issue of “[w]hether an estoppel defense applies depends upon the facts of the case.” **Wright v. Wright, supra, 778 So.2d at 354.** At this time, the factual record is incomplete, and thus does not support a determination that Plaintiff is estopped as a matter of law from asserting the existence of a bigamous/void marriage. Nonetheless, for purposes of determining the enforceability of the parties’ marriage in Tennessee, Plaintiff will assume *arguendo* that the parties’ Florida marriage is valid pursuant to the “marriage by estoppel” defense.

3. Defendant correctly states the “well settled law” that marriages entered into and valid under the laws of other states will be recognized as valid in Tennessee, unless such recognition would offend the public policy of this State. **See Pennegar v. State, 10 S.W. 305, 306 (Tenn. 1889)**(“[t]he well-being of society, as it concerns the relation of the sexes, the legitimacy of offspring, and the disposition of property, alike demands that one state or nation shall recognize the validity of marriage had in other states or nations, according to the laws of the latter *unless some positive statute or pronounced public policy of the particular state demands otherwise*”). The issue, therefore, is whether the parties’ bigamous marriage - which Florida recognizes as valid under the “marriage by estoppel” doctrine - would nonetheless offend the public policy of the State of Tennessee.

4. In **Guzman v. Alvares, 205 S.W.3d 375 (Tenn. 2006)**, the Tennessee Supreme Court specifically prohibited the application of the “marriage by estoppel” defense to

bigamous/void marriages in Tennessee. After reviewing relevant statutory provisions and case authority supporting this result, the **Guzman** Court explained that its decision was ultimately grounded upon public policy considerations:

The application of marriage by estoppel to a void, bigamous marriage under these circumstances would result in the court's recognition of a void marriage that the parties cannot ratify. Furthermore, application of the doctrine would contravene Tennessee Code Annotated sections 36-3-102 and 36-3-306 *and the public policy of this state* by condoning the bigamous marriage.

Guzman v. Alvares, supra, 205 S.W.3d at 381.

5. It is clear from the above-cited language that the **Guzman** Court's curtailment of the "marriage by estoppel" defense is "expressive of settled public policy regarding public morals or good order in society[.]" **Rhodes v. McAfee, 457 S.W.2d 522, 524 (Tenn. 1970)**. As such, application of this defense to bigamous/void marriages in violation of such settled public policy is plainly prohibited in Tennessee, "regardless of whether the marriage is solemnized in Tennessee or in another state where the marriage would be valid." **Id.**

6. For these reasons, Plaintiff asserts that Defendant's attempt to validate the parties' bigamous/void marriage under the "marriage by estoppel" defense offends the public policy of the State of Tennessee, and thus this Court "must adjudge the marriage void here, as *contra bonos mores*"¹. **Pennegar v. State, supra, 10 S.W. at 307.**

¹ Defendant also asserts that "our statutes evidence public policy which seeks to punish or penalize [only] those who **knowingly** enter into bigamous marriages." **See Defendant's Memorandum of Law, at P. 9.** Such reasoning, however, is specifically contradicted both by (i) Tennessee's civil anti-bigamy statute which contains no *mens rea* requirement, **Tenn. Code Ann. 36-3-102** ("[a] second marriage cannot be contracted before the dissolution of the first"), and (ii) the Supreme Court's **Guzman** ruling. **See Guzman v. Alvares, supra, 205 S.W.3d at 380-381** ("[w]hen one of the parties to the purported marriage seeks to invoke the doctrine of marriage by estoppel in a case against the other party to the marriage, this Court has refused to apply the doctrine when the parties entered into a bigamous marriage, *regardless of either party's knowledge of the impediment*").

b. Mass. Ann. Laws 207, Section 6 has no extraterritorial force and thus is inapplicable to this action

7. Defendant also asserts that any defect in the parties' Florida marriage was cured once the parties became residents of Massachusetts. In support of this argument, Defendant cites **Mass. Ann. Laws 207, Section 6**, which states as follows:

If a person, during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract with due legal ceremony and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, that the former marriage had been annulled by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to the former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment, and the issue of such subsequent marriage shall be considered as the legitimate issue of both parents.

8. Under Massachusetts law, however, **Mass. Ann. Laws 207, Section 6** has no extra-territorial force, and thus is inapplicable if the parties to the marriage are nonresidents of Massachusetts at the time the legal impediment to the marriage is removed. **Commonwealth v. Stevens, 82 N.E. 33, 35 (Mass. 1907)**. In this case, by Defendant's own admission, the legal impediment to the parties' marriage was removed when Defendant's divorce became finalized on or about December 5, 1990, *while the parties were still residents of Florida*. See **Defendant's Memorandum of Law, at p. 2; 8**. Moreover, by Defendant's own admission, the parties did not even relocate to Massachusetts until "some time [in] 1995[.]" **Id.**

9. Because "the parties were not within the jurisdiction of the statute when by its terms the time came for it to take effect", **Commonwealth v. Stevens, supra, 82 N.E. at 35**, "[m]anifestly the statute could not apply." **Id.**

CONCLUSION

For the above-mentioned reasons, Plaintiff submits that the parties' Florida marriage offends Tennessee public policy, and thus should not be recognized as a valid marriage by this Court.

Respectfully submitted this the _____ day of December, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing document has been served upon the following counsel or party to the litigation to which it pertains:

either by hand delivery of copy thereof to the offices of said counsel or party, or by mailing a copy to said counsel or party in a properly addressed and stamped envelope regularly deposited in the United States Mail.

This the _____ day of December, 2007.

John Smith