

TRANSADVOCATE

If you live in Texas, YOUR transitioned status is up for appeal

By Cristan Williams

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Abstract

This very important case has been dragging on for a couple of years now and here's the recap: 1.) It all started April, 19 2010 with this: Back in 2010, an intersex person wanted to marry a woman and the El Paso clerk didn't know if it was legal to issue a marriage license because [...]

Article

This very important case has been dragging on for a couple of years now and here's the recap:

1.) It all started April, 19 2010 with this:

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OPINION COMMITTEE



JO ANNE BERNAL
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500 EAST SAN ANTONIO
ROOM 503, COUNTY COURTHOUSE
EL PASO, TEXAS 79901

(915) 546-2050
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April 19, 2010

RQ-0882-GA

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OPEN RECORDS DIVISION

FILE # ML-46443-10
I.D. # 46443

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

CERTIFIED MAIL
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NO. 7009 1680 0001 9160 0857

Re: REQUEST FOR AN OPINION REGARDING MARRIAGE LICENSE
REQUIREMENTS
(CA File #OP-10-075)

Dear General Abbott:

I am seeking your opinion regarding the authority of the El Paso County Clerk to issue a marriage license in the following circumstance.

I. Background

Virgil Eugene Hill, Jr. was born in Oceanside, New York; his birth certificate identifies his sex as male. He subsequently underwent sex change surgery, and on July 2, 1991, Judge Richard B. White, of the District Court of the State of Washington and for the County of Spokane, issued an Order, changing the name of Virgil Eugene Hill, Jr. to Sabrina Jeanne Hill (hereafter "Hill") for all intents and purposes. In February of this year, Sabrina J. Hill sought a marriage license from the County Clerk of the County of El

Figure 1. ElPaso

Back in 2010, an intersex person wanted to marry a woman and the El Paso clerk didn't know if it was legal to issue a marriage license because this person had initially been sexed male, but had genital reconstructive surgery and had proof of her intersex status. So, the El Paso clerk wrote to the Texas Attorney General Greg Abbott, asking him to issue an opinion on whether El Paso should recognize the transitioned status of people who have "sex change surgery." And yeah, I'm talking about that Abbott - the same guy who's about to sue every-fucking-body to preserve his religious right to discriminate against queer people.

This is really important:

If Abbott issues the opinion that the government of the State of Texas won't recognise the transitioned status of people who have a "sex change surgery" - intersex or trans, such a legal opinion

may very well ruin the lives of a lot of Texans. Think about what such a position could mean for everything from State-issued ID to restroom access.

2.) Nikki Araguz's husband, Thomas Araguz died while fighting a fire on July 3, 2010.

Nikki was quietly grieving the loss of her husband when Thomas' ex-wife contacted the press to inform everyone that Nikki was trans and the day after Nikki's husband was buried, asked the court to nullify the marriage demanding that any death benefit that might be due a public servant's widow be put into a trust that the ex could control. The trust would allow the ex-wife to buy things like a new house, cars, furniture, electronics, vacations, etc.

Upon hearing of the case brought against Araguz, Gregg Abbott declared that he would issue his opinion concerning the transitioned status of people who have a "sex change surgery" pending the outcome of the Nikki's case. Please reread the previous sentence because it will impact your life in the coming years. Abbott is going to use the outcome of this case to inform his opinion.

The ex hired a couple of ethically challenged lawyers who immediately went on the offensive. They claimed that Thomas was clueless that Nikki was trans (BTW, Nikki and Thomas would come to my trans clinic together) and this played really well in the press. The ex's lawyers also claimed that Nikki has stolen a truck that had belonged to Thomas after his death.

3.) The negative press explodes.

It comes out that Nikki had, in the past been arrested (but never convicted) of drug offenses. The Houston Chronicle writes an editorial noting that Nikki had stolen a truck and doesn't mention the fact that the truck was Nikki's, that the in-laws had, in fact taken it and that the court ordered the in-laws to return it to Nikki. People believed that Nikki bamboozled her husband into marrying her and that they lived together while she was pre-op and that Thomas never knew. Most people believed it was possible. When it came to light that Thomas knew, the narrative became that Nikki hated Thomas and they were inches away from being divorced:



Figure 2. chron1

Talk of divorce

In a phone interview, Longoria, a renal technologist who lives in Wharton, described her son's marriage as troubled nearly from the start, with police having to be called out on occasion to break up fights. The couple weren't living together when Thomas died, although Nikki says they weren't formally separated.

Longoria said that shortly before her son's death, the couple fought so badly that both decided they'd had enough. Longoria said Nikki printed out some kind of divorce form from the Internet and she and Thomas signed it.

Figure 3. chron2

Ex wife claims a divorce was just about to happen, press gobbles it up

When it turned out the the two had been writing each other love letters and had signed a lease agreement together shortly before Thomas' death...

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1. **PARTIES:** The parties to this lease are:
the owner of the Property, Landlord, BERNARD SVATEK; and
Tenant(s): NIKKI PAIGE ARAGUZ + HUSBAND THOMAS ARAGUZ III

2. **PROPERTY:** Landlord leases to Tenant the following real property:
Address: 2109 HWY. 60 SOUTH WHARTON, TX 77460
legally described as: .48 AC. + .12 AC. RANDAL JONES V2 LGE., A-36
in WHARTON County, Texas, together with the following non-real-property items:
The real property and the non-real-property are collectively called the "Property".

3. **TERM:**
A. **Primary Term:** The primary term of this lease begins and ends as follows:
Commencement Date: JUNE 1, 2010 Expiration Date: JUNE 1, 2011
B. **Delay of Occupancy:** Tenant must occupy the Property within 5 days after the Commencement Date. If Tenant is unable to occupy the Property by the 5th day after the Commencement Date because of construction on the Property or a prior tenant's holding over of the Property, Tenant may terminate this lease by giving written notice to Landlord before the Property becomes available to be occupied by Tenant, and Landlord will refund to Tenant the security deposit and any rent paid. Landlord will abate rent on a daily basis for a delay caused by construction or a prior tenant's holding over. This paragraph does not apply to any delay in occupancy caused by cleaning, repairs, or make-ready items.

4. **AUTOMATIC RENEWAL AND NOTICE OF TERMINATION:**
A. This lease automatically renews on a month-to-month basis unless Landlord or Tenant provides the other party written notice of termination not less than: (Check only one box.)
☒ (1) 30 days before the Expiration Date.
☐ (2) _____ days before the Expiration Date.
B. If this lease automatically renews on a month-to-month basis, it will continue to renew on a month-to-month basis until either party provides written notice of termination to the other party and the notice of termination will be effective: (Check only one box.)
☒ (1) on the last day of the month following the month in which the notice is given. Landlord is not obligated to prorate rent even if Tenant surrenders the Property before the termination date.
☐ (2) on the date designated in the notice but not sooner than 30 days after the notice is given and, if necessary, rent will be prorated on a daily basis.

FAR-2001) 1-1-10 Tenants: NIKKI PA & Landlord or Landlord's Representative: BL Page 1 of 14
oldwell Banker The Ron Brown Company 2505 N. Navarro Victoria, TX 77901
home: 361 575-1446 fax: 361 575-8427 Jay Schwanek
Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48020 www.zipLogix.com

Figure 4. lease

... the focus then - finally - turned to Texas law.

The ex's lawyers claimed that 'Texas law' barred people like Nikki from getting married. They cited the Texas constitutional ban on gay marriage and a 1999 non-binding appellate ruling that asserted that at the moment of birth, the creator of the universe comes down from where he lives to bestow an immutable binary gender upon each Texas baby:

The deeper philosophical (and now legal) question is: can a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth?
- Chief Justice Phil Hardberger, *Littleton v Prange*, 1999

However, it turned out that the Texas Constitution says absolutely nothing about people who have a "sex change surgery." Furthermore, it turns out that the Texas Legislature passed a law recognizing

that people who have a “sex change” can, in fact, be issued a marriage license.

After it turned out that in 2009, the Texas Legislature passed a law which copied the wording from a Georgia “sex change” statute (and BTW, Georgia uses that statute to recognize post-transition sex), the argument then became that Nikki wasn’t postsurgical when they were married and thus, the marriage is null as per the 2009 Texas law and Nikki’s lawyers... agreed!

However, in Texas, one must hold yourself out to be married for only 24 hours to have a fully legal marriage (called an informal or common-law marriage). When Nikki was post-op, she and Thomas met all Texas requirements for a common-law marriage which carries all the same rights, privileges and responsibilities of a formal marriage.

The ex-wife’s lawyers then claimed that in the 2009 Texas Legislative law, the term “sex change” means that it’s just proof that no sex has changed:

"The statute in 2009 clearly trumps a case law from a lower level appellate court in 1999," said Nikki Araguz's attorney, Phyllis Randolph Frye.

Ellis said the new provision says nothing about allowing people to legally change their gender but simply lets a person present a court order for a sex change or name change for identification purposes to obtain a marriage license - such as if Nikki Araguz, born a male, wanted to marry a woman.

Nikki Araguz's legal stance is "insufficient" to invalidate the Texas Constitution, said attorney Edward Burwell, who represents Thomas Araguz's ex-wife, the two boys' mother.

"You are what you are born," Burwell said at a news conference. To suggest otherwise based on one new provision of the state's family code, he said, "is a bit of a stretch."

Figure 5. derp

Houston Chronicle, August 3, 2010 - Texas Constitution says nothing about “sex change”

... and that her sex should therefore be determined by Nikki’s original California birth certificate....

Which is here:

STATE OF CALIFORNIA CERTIFICATION OF VITAL RECORD										
STATE OF CALIFORNIA DEPARTMENT OF PUBLIC HEALTH										
1 05 1975 124682		CERTIFICATE OF LIVE BIRTH STATE OF CALIFORNIA USE BLACK INK ONLY				1 1975 27 001891				
STATE FILE NUMBER						LOCAL REGISTRATION NUMBER				
THIS CHILD	1A. NAME OF CHILD - FIRST	1B. MIDDLE		1C. LAST						
	Nikki		Paige		Purdue					
SEX	2. SEX	3A. THIS BIRTH SINGLE, TWIN, ETC.		3B. IF MULTIPLE, THIS CHILD 1ST, 2ND, ETC.		4A. DATE OF BIRTH - MM/DD/YYYY		4B. HOUR - 24 HOUR CLOCK TIME		
	Female	Single		***		06/04/1975		2225		
PLACE OF BIRTH	5A. PLACE OF BIRTH - NAME OF HOSPITAL OR FACILITY			5B. STREET ADDRESS - STREET AND NUMBER OR LOCATION						
	Community Hospital			W. R. Holman Highway						
CITY	5C. CITY			5D. COUNTY						
	Carmel			Monterey						
FATHER	6A. NAME OF FATHER - FIRST		6B. MIDDLE		6C. LAST		7. BIRTHPLACE - STATE/COUNTRY		8. DATE OF BIRTH - MM/DD/YYYY	
	Christin		Wayne		Purdue		KS		11/12/1954	
MOTHER	9A. NAME OF MOTHER - FIRST		9B. MIDDLE		9C. LAST - BIRTH NAME		10. BIRTHPLACE - STATE/COUNTRY		11. DATE OF BIRTH - MM/DD/YYYY	
	Sheri		Lynn		Taylor		OH		02/21/1955	
INFORMATION AND CERTIFICATION	12. CERTIFY THAT I HAVE REVIEWED THE SOURCES INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE				13A. PARENT OR OTHER INFORMANT - SIGNATURE		13B. RELATIONSHIP TO CHILD		13C. DATE SIGNED - MM/DD/YYYY	
					Sheri L. Purdue		Mother		06/06/1975	
	14. CERTIFY THAT THIS CHILD WAS BORN ALIVE AT THE DATE, HOUR, AND PLACE SIGNED				15A. ATTENDANT/CERTIFIER - SIGNATURE AND DEGREE OR TITLE		15B. LICENSE NUMBER		15C. DATE SIGNED - MM/DD/YYYY	
					H. L. Compton, MD		C 25900		06/09/1975	
LOCAL REGISTRATION	16. TYPED NAME, TITLE, AND MAILING ADDRESS OF ATTENDANT				17. TYPED NAME AND TITLE OF CLERK IF OTHER THAN ATTENDANT					
	Monterey, CA				***					
18A. DATE OF DEATH - MM/DD/YYYY		18B. STATE FILE NO. - STATE USE ONLY		18C. LOCAL REGISTRANT - SIGNATURE		18D. DATE ACCEPTED FOR REGISTRATION - MM/DD/YYYY				
				Robert J. Bowersox, MD		06/18/1975				

Figure 6. birthcert

Original - NOT AMENDED - Birth Certificate of Nikki Araguz

Unfortunately for the ex-wife, California views the change of gender of a transsexual or intersex person as a clerical error - absolutely no different than if Nikki's mother's name or place of birth been misspelled. There is no amended birth certificate. The State of California asserts that Nikki was female on the original birth certificate.

This is a completely different process than what Texas has in place. In Texas, trans and intersex people can have an amended birth certificate. This means that there are two certificates: the original which remains on file and carries legal status as well as the new amended certificate.

So, through some - as of yet, undisclosed method - the ex-wife who worked in Nikki's medical clinic somehow got a copy of the voided California birth certificate from Nikki's medical records and submitted it to the court.

4.) May 26, 2011 - The Wharton Court

The long and short of it is that the small-town Republican judge pretended that the badly photocopied version of Nikki's voided birth certificate - a copy that the State of California does not recognize - has the same legal standing as an original Texas birth certificate and that the original California birth

certificate should be viewed as if it were an amended Texas birth certificate. The judge issued a one-page judgement and refused to acknowledge or respond to any legal argument made by Nikki's legal team.

5.) July 6, 2011 - The Wharton Court II

A motion was made to void Judge Clapp's May 26th ruling. Neither the judge nor the ex-wife's lawyers addressed the affirmative arguments made by Nikki Araguz which is a violation of Texas law. When this was brought to the judge's attention, he called a recess because he never even bothered to read the motion Nikki's lawyers had submitted. Judge Clapp then came back to court and asserted that it didn't matter that he didn't follow Texas procedural law when he made his verdict because he would have arrived at the same decision anyway. Furthermore, because he knew that no matter what, he would still arrive at the same decision, Judge Clapp said having another trial that comports with Texas law would just be a waste of his time.

6.) September 13, 2013 - Nikki Attempts to Get a Marriage License, Harris County, Texas

During the last year, Nikki met a man, the two of them fell in love and a few months ago, her boyfriend asked Nikki to marry him by having a plane spell out, "MARRY ME NIKKI ARAGUZ I LOVE U" in the sky:



Figure 7. marry

She said yes.

Last Friday, Nikki and her fiancé went to the Harris County Clerk's office to get a marriage license. Remember, Texas Family Code § 2.005(b)(8) states that a marriage license can be issued for a valid marriage if someone shows proof of a "sex change."

She was denied a marriage license.

Harris County Clerk Stan Stanart, after conferring with the Harris County Attorney, denied her marriage license application citing the Texas Constitution - which, in fact, says nothing about people who have a "sex change."

Trans lawyer and writer for the TransAdvocate.com, Katrina Rose made the following points about the

fallacious reasoning behind the actions of the Harris County clerk:

- 1.) *There is nothing in Texas statutory law that says the original birth certificate prevails.*
- 2.) *The 1999 court decision which purports to say that (a) was never binding precedent outside of the San Antonio appellate district but most importantly (b) was superseded by the 2009 'proof of sex change' statute (whose language was copied from a Georgia statute, and Georgia *does* recognize post-transition sex, so that language damn well does refer to post-transition sex, not birth sex.)*
- 3.) *The 2005 [Texas] constitutional amendment defines "marriage," not "male" and "female."*

7.) September 18, 2013 - The 13th District Court of Appeals, Corpus Christi, Texas

Nikki's lawyers filed an appeal (read appeal here) to the mostly Democratic 3-panel court of appeals. This coming Wednesday, the court will hear the arguments.

Judge Phyllis Frye and I will be traveling to the court together and I hope to have an update on this case for you this Wednesday afternoon.

If Nikki were to lose (which I don't think is likely), she will appeal to the full 5-panel court of appeals. If the the ex-wife's side loses, she can also appeal the 5-panel court. Either way, I think the full 5-judge panel will side with Nikki and the ex will appeal to the Texas Supreme Court. The Texas Supreme Court is led by an anti-gay advocate and will rule against her. After that is the Supreme Court... and I think that's where this case will eventually land.

Should this go to the US Supreme Court (which is likely, IMHO) the implications of this case will affect each trans person in the US.

This is an important case that will, at the very least, define the way trans and intersex people are able to function as citizens in Texas. More probable, this case will define the validity of the transitioned status of trans and intersex people throughout the US.

Oh, and just so you know, the ex's attorney, Ed Burwell was banned from practicing law in the state of Texas for ethical violations.

Suggested citation

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