

Many Travesties Verified Just Today

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Abstract

We are approaching the 35th anniversary of a momentous court decision. In honor of that anniversary, I thought I'd post for your reading pleasure and intellectual nourishment: M.T., PLAINTIFF-RESPONDENT, v. J.T., DEFENDANT-APPELLANT Superior Court of New Jersey, Appellate Division 355 A.2d 204 October 14, 1975, Submitted March 22, 1976, Decided Mr. Charles L. Bertini, attorney [...]

Article

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M.T., PLAINTIFF-RESPONDENT, v. J.T., DEFENDANT-APPELLANT

Superior Court of New Jersey, Appellate Division

355 A.2d 204

October 14, 1975, Submitted

March 22, 1976, Decided

Mr. Charles L. Bertini, attorney for appellant.

Mr. Joseph S. Conte, attorney for respondent.

Opinion by: Handler

This appeal presents the portentous problem of how to tell the sex of a person for marital purposes. Involved is a post-operative transsexual, born a male but now claiming to be a female.

The case started inauspiciously enough when plaintiff M.T. filed a simple complaint in the Juvenile and Domestic Relations Court for support and maintenance. The legal issue sharpened dramatically when defendant J.T. interposed the defense that M.T. was a male and that their marriage was void. Following a hearing the trial judge determined that plaintiff was a female and that defendant was her husband, and there being no fraud, ordered defendant to pay plaintiff \$ 50-a-week support. Notice of appeal was then filed by defendant.

A careful recapitulation of the testimony is appropriate. M.T. testified that she was born a male. While she knew that she had male sexual organs she did not know whether she also had female organs. As a youngster she did not participate in sports and at an early age became very interested in boys. At the age of 14 she began dressing in a feminine manner and later began dating men. She had no real

adjustment to make because throughout her life she had always felt that she was a female.

Plaintiff first met defendant in 1964 and told him about her feelings about being a woman. Sometime after that she began to live with defendant. In 1970 she started to go to Dr. Charles L. Ihlenfeld to discuss the possibility of having an operation so that she could “be physically a woman.” In 1971, upon the doctor’s advice, she went to a surgeon who agreed to operate. In May of that year she underwent surgery for the removal of male sex organs and construction of a vagina. Defendant paid for the operation. Plaintiff then applied to the State of New York to have her birth certificate changed.

On August 11, 1972, over a year after the operation, plaintiff and defendant went through a ceremonial marriage in New York State and then moved to Hackensack. They lived as husband and wife and had intercourse. Defendant supported plaintiff for over two years when, in October 1974, he left their home. He has not supported plaintiff since.

Dr. Ihlenfeld, plaintiff’s medical doctor with a specialty in gender identity, was accepted as an expert in the field of medicine and transsexualism. A transsexual, in the opinion of this expert, was “a person who discovers sometime, usually very early in life, that there is a great discrepancy between the physical genital anatomy and the person’s sense of self-identity as a male or as a female. * * * [T]he transsexual is one who has a conflict between physical anatomy and psychological identity or psychological sex.” Usually sexual anatomy was “normal” but for some reason transsexuals did not see themselves as members of the sex their anatomy seemed to indicate. According to Dr. Ihlenfeld, there are different theories to explain the origin of that conflict. There was, however, “very little disagreement” on the fact that gender identity generally is established “very, very firmly, almost immediately, by the age of 3 to 4 years.” He defined gender identity as “a sense, a total sense of self as being masculine or female * * *”; it “pervades one’s entire concept of one’s place in life, of one’s place in society and in point of fact the actual facts of the anatomy are really secondary * * *.”

The doctor first saw and examined plaintiff in September 1970 and took a medical history from her. She told him that she had always felt like a woman and was living like a woman. She wanted sex reassignment surgery as well as treatments and hormones so that she could end the conflict she was feeling, “confronted with a male body,” in order to live her life completely as the woman she thought herself to be. Dr. Ihlenfeld diagnosed her as a transsexual. He knew of no way to alter her sense of her own feminine gender identity in order to agree with her male body, and the only treatment available to her was to alter the body to conform with her sense of psyche gender identity. That regimen consisted of hormone treatment and sex reassignment surgery. Dr. Ihlenfeld recommended such an operation and treated plaintiff both before and after it.

The examination of plaintiff before the operation showed that she had a penis, scrotum and testicles. After the operation she did not have those organs but had a vagina and labia which were “adequate for sexual intercourse” and could function as any female vagina, that is, for “traditional penile/vaginal intercourse.” The “artificial vagina” constructed by such surgery was a cavity, the walls of which are lined initially by the skin of the penis, often later taking on the characteristics of normal vaginal mucosa; the vagina, though at a somewhat different angle, was not really different from a natural vagina in size, capacity and “the feeling of the walls around it.” Plaintiff had no uterus or cervix, but her vagina had a “good cosmetic appearance” and was “the same as a normal female vagina after a hysterectomy.” Dr. Ihlenfeld had seen plaintiff since the operation and she never complained to him

that she had difficulty having intercourse. So far as he knew, no one had tested plaintiff to find out what chromosomes she had. He knew that plaintiff had had silicone injections in her breasts; he had treated her continuously with female hormones to demasculinize her body and to feminize it at the same time. In the doctor's opinion plaintiff was a female; he no longer considered plaintiff to be a male since she could not function as a male sexually either for purposes of "recreation or procreation."

Plaintiff also produced Charles Annicello, a psychologist who worked at the gender identity clinic of the Johns Hopkins University Hospital. He was qualified as an expert in transsexualism. This witness demonstrated through slides the various methods by which scientists define whether a person is male or female. The witness said that transsexualism represented only one sexual variant although it was not known whether its cause was chromosomal, gonadal or hormonal. Annicello expressed the opinion that if a person had a female psychic gender and underwent a sex reassignment operation, that person would be considered female although no person is "absolutely" male or female.

Dr. Richard M. Samuels, a Ph.D. with a specialty in behavioral therapy and sexual dysfunctions, testified as an expert in psychology as it related to transsexualism. His definition of a transsexual was essentially the same as that given by the prior experts: "someone whose physical anatomy does not correspond to their [sic] sense of being, to their [sic] sense of gender." He also acknowledged that it was not known what caused that condition but he believed that it was probably a combination of neurological, chromosomal and environmental factors. Some psychological changes are noted following a sex reassignment operation. Thus, a transsexual was often depressed pre-operatively, but after the operation he or she lived a "fuller and richer life" and was better able to overcome obstacles in employment, housing, social security and welfare benefits; a sense of satisfaction and relief was felt since the body was now in line with the psyche. For Dr. Samuels the most important factor in determining whether a person should have a sex reassignment operation was how consistently the patient lived in the chosen gender role. A sex reassignment operation did not determine a person's gender. After a transsexual underwent a sex reassignment operation to remove male organs, Dr. Samuels would characterize that person as a female.

Defendant called as an expert witness Dr. T, a medical doctor who was defendant's adoptive father. Over plaintiff's objection he was allowed to testify as an expert. Dr. T classified sex at birth according to sexual anatomy. He described a female as "a person who has female organs in an anatomical sense, who has a vagina and a uterus and ovaries or at least has had them." The witness had heard all of the prior testimony and he said that in his opinion plaintiff was still a male because she did not have female organs. He did believe, however, that transsexuals existed and that they were people who had "the mental and emotional reactions of the opposite sex." On cross-examination Dr. T reiterated that it was the anatomy alone which determined the real sex of an individual and that gender in contrast to sex was not a significant factor. Although he was "very sympathetic to any male person" who had "the emotional and mental reactions of a female," since he knew that it was "very annoying," he still did not believe that that was determinative.

The trial judge made careful findings of fact on this evidential record. He accepted the testimony concerning M.T.'s personal and medical history as related by her and her doctor. He noted that defendant knew of her condition and cooperated in her sex reassignment surgery. The parties married in New York and subsequently consummated their marriage by engaging in sexual intercourse. The judge

also found that defendant later deserted plaintiff and failed to support her.

Drawing from the opinions of the experts the judge defined a transsexual as “an individual anatomically of one sex who firmly believes he belongs to the other sex.” He enumerated the seven factors considered generally relevant to the determination of sex. According to the judge, a preoperative transsexual would appropriately be classified according to his anatomical sex. After a successful sex reassignment operation, however, “psychological sex and anatomical sex become consistent as to outward appearances.” The judge ruled that plaintiff was of the female psychic gender all her life and that her anatomical change through surgery required the conclusion that she was a female at the time of the marriage ceremony. He stated:

“It is the opinion of the court that if the psychological choice of a person is medically sound, not a mere whim, and irreversible sex reassignment surgery has been performed, society has no right to prohibit the transsexual from leading a normal life. Are we to look upon this person as an exhibit in a circus side show? What harm has said person done to society? The entire area of transsexualism is repugnant to the nature of many persons within our society. However, this should not govern the legal acceptance of a fact. * * *”

We are urged to confront, as did an English court, *Corbett v. Corbett*, 2 W.L.R. 1306, 2 All E.R. 33 (P.D.A. 1970), the issue of whether the marriage between a male and a postoperative transsexual, who has surgically changed her external sexual anatomy from male to female, is to be regarded as a lawful marriage between a man and a woman.

We need not do so.

The fundamental premise in this case that a lawful marriage requires the performance of a ceremonial marriage of two persons of the opposite sex, a male and a female. This understanding of a valid marriage is almost universal. Annotation, “Marriage Between Persons of Same Sex,” 63 A.L.R. 3d 1199 (1975). In the matrimonial field the heterosexual union is usually regarded as the only one entitled to legal recognition and public sanction. 52 Am. Jur. 2d, Marriage, § 1 at 865; e.g. *Singer v. Hara*, 11 Wash. App. 247, 522 P. 2d 1187 (App. Ct. 1974); *B. v. B.*, 78 Misc. 2d 112, 355 N.Y.S. 2d 712 (Sup. Ct. 1974); *Jones v. Hallahan*, 501 S.W. 2d 588 (Ky. Ct. App. 1973); *Baker v. Nelson*, 291 Minn. 310, 191 N.W. 2d 185 (Sup. Ct. 1971), app. diss. 409 U.S. 810, 93 S. Ct. 37, 34 L. Ed. 2d 65 (1972).

However, we cannot ignore that we are approaching the two hundredth anniversary of our nation’s independence. See Dec. of Independence. This nation was founded on freedom, not restriction. We hold this to be a truth which long ago should have been acknowledged as self-evident: there is no rational reason why any government which affords beneficial legal standing to the status of two-person marriage should not allow access to such beneficial legal standing by two persons who happen to be of the same sex so long as such persons are otherwise competent to enter into a marital contract.

The court below determined that plaintiff at the time of her marriage was a female and that defendant, a man, became her lawful husband, obligated to support her as his wife - but only because they were two people of opposite sexes. Though the trial court took evidence on the question of plaintiff’s sex and we referenced it herein for informational purposes, we feel that we need not address it substantively and explicitly state that we offer no opinion on the question. In fact, we presume that no court will ever need to address it. With the sexual distinction in marriage removed, any remaining matters of legal sex

distinction will likely be trifles of the sort that mature adults can work out among themselves without invoking the machinations of the government.

Defendant's basic and continuing contention is that the marriage between him and plaintiff was a nullity because plaintiff was a male at the time of the ceremony. Because we find Plaintiff's sex to be irrelevant, we disagree with Defendant's position regarding the validity of the marriage. Therefore, while we affirm the decision of the trial court as to the validity of the marriage, we do so on different grounds.

As a curious sidenote, when M.T. and her counsel were in the courthouse to pick up a copy of the opinion in her case, M.T. found herself in need of the use of a toilet. She went into the ladies' room to use the toilet facilities for their intended purpose.

J.T. and his counsel happened to be at the courthouse at the same time to pick up a copy of the opinion. J.T. saw M.T. enter the ladies' room. Immediately, he informed a police officer that a man had entered a women's restroom.

Upon exiting the ladies' room, M.T. was stopped by the police officer. J.T. and his counsel aided the officer in his investigation of the situation by showing him a copy of the M.T. v. J.T. opinion - eagerly pointing to the portion of the opinion which, while validiting the marriage and J.T.'s alimony obligation, left M.T.'s male legal status as the status quo. The officer was reported to have said, as he was handcuffing M.T., "Just because two guys can get married doesn't mean that one of 'em can use the ladies' room."

M.T. was taken to jail, housed with male prisoners and was found dead the next morning. Official cause of death was head trauma, though the coroner noted that the body showed evidence of "extreme" sexual assault.

Of course, the above is not the opinion handed down by Judge Handler and the Appellate Division on March 22, 1976 - and the events listed in the curious sidenote did not occur either.

Beyond the fact that the real M.T. v. J.T. opinion was subsequently affirmed by the New Jersey Supreme Court, I'm unaware of what became of either M.T. or J.T. after March 22, 1976 (though her attorney later became a judge.)

Yes, the above is not the opinion handed down by Judge Handler and the Appellate Division on March 22, 1976. Instead, the Appellate Division recognized that M.T. was female for purposes of marriage, thereby recognizing the reality of change of sex in New Jersey law...

three decades before gays and lesbians would convince New Jersey's courts to issue an opinion that prodded the state's legislature to establish civil unions.

But, if what I presented here was the opinion that one will find at page 204 of Volume 355 of the Atlantic Reporter, 2nd Series, and was what New Jersey law became on March 22, 1976, even without the tragedy of the curious sidenote who would it have been a victory for?

M.T.? She would have gotten her alimony - but the M.T. who cashed the alimony checks would have been recognized by the state of New Jersey as a man.

Transsexuals in general? See previous paragraph.

Gays? Well, lets see....

Who all among you believe that an M.T. v. J.T. as depicted above - establishing gay marriage in New Jersey in time for America's Bicentennial - would have caused that state's gays and lesbians to be more likely to have included trans people in the gay rights law that they secured passage of in the early 1990s?

In your hearts and minds, you know what the answer is.

I encourage all of you out there who are in Maryland and who will be at the legislature today to re-read this post, to print it out and to bring it with you to the statehouse. Don't let an 'old line' get wrapped around your neck yet again.

[Cross-posted at ENDABlog]

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