Daniel Hernandez v Victor Robles, No. 86

Sylvia Samuels v The New York State Department of Health, No. 87

In the Matter of Elissa Kane v John Marsolais, No. 88

Jason Seymour v Julie Holcomb, No. 89

R. S. SMITH, J.:

We hold that the New York Constitution does not compel recognition of marriages between members of the same sex. Whether such marriages should be recognized is a question to be addressed by the Legislature.

Facts and Procedural History

Plaintiffs and petitioners (hereafter plaintiffs) are the members of 44 same-sex couples. Each couple tried unsuccessfully to obtain a marriage license. Plaintiffs then began these four lawsuits, seeking declaratory judgments that the restriction of marriage to opposite-sex couples is invalid under

the State Constitution. Defendants and respondents (hereafter defendants) are the license-issuing authorities of New York City, Albany and Ithaca; the State Department of Health, which instructs local authorities about the issuance of marriage licenses; and the State itself. In Hernandez v Robles, Supreme Court granted summary judgment in plaintiffs' favor; the Appellate Division reversed. In Samuels v New York State Department of Health, Matter of Kane v Marsolais and Seymour v Holcomb, Supreme Court granted summary judgment in defendants' favor, and the Appellate Division affirmed. We now affirm the orders of the Appellate Division.

Discussion

I

All the parties to these cases now acknowledge, implicitly or explicitly, that the Domestic Relations Law limits marriage to opposite-sex couples. Some amici, however, suggest that the statute can be read to permit same-sex marriage, thus mooting the constitutional issues. We find this suggestion untenable.

Articles 2 and 3 of the Domestic Relations Law, which govern marriage, nowhere say in so many words that only people of different sexes may marry each other, but that was the universal understanding when Articles 2 and 3 were adopted in 1909, an understanding reflected in several statutes. Domestic Relations Law § 12 provides that "the parties must solemnly declare . . . that they take each other as husband and wife." Domestic

Relations Law § 15 (a) requires town and city clerks to obtain specified information from "the groom" and "the bride." Domestic Relations Law § 5 prohibits certain marriages as incestuous, specifying opposite-sex combinations (brother and sister, uncle and niece, aunt and nephew), but not same-sex combinations. Domestic Relations Law § 50 says that the property of "a married woman . . . shall not be subject to her husband's control."

New York's statutory law clearly limits marriage to opposite-sex couples. The more serious question is whether that limitation is consistent with the New York Constitution.

II

New York is one of many states in which supporters of same-sex marriage have asserted it as a state constitutional right. Several other state courts have decided such cases, under various state constitutional provisions and with divergent results (e.g., Goodridge v Department of Public Health, 440 Mass 309, 798 NE2d 941 [2003] [excluding same-sex couples from marriage violates Massachusetts Constitution]; Standhardt v Superior Court, 206 Ariz 276, 77 P3d 451 [Ariz Ct App 2004] [constitutional right to marry under Arizona Constitution does not encompass marriage to same-sex partner]; Morrison v Sadler, 821 NE2d 15 [Ind 2005] [Indiana Constitution does not require judicial recognition of same-sex marriage]; Lewis v Harris, 378 NJ Super 168, 875 A2d 259 [2005] [limitation of marriage to members of opposite sex does not violate New Jersey Constitution]; Baehr v Lewin, 74 Haw 530, 852 P2d 44 [1993]

[refusal of marriage licenses to couples of the same sex subject to strict scrutiny under Hawaii Constitution]; Baker v State, 170 Vt 194, 744 A2d 864 [1999] [denial to same-sex couples of benefits and protections afforded to married people violates Vermont Constitution]). Here, plaintiffs claim that, by limiting marriage to opposite-sex couples, the New York Domestic Relations Law violates two provisions of the State Constitution: the Due Process Clause (Article I, § 6: "No person shall be deprived of life, liberty or property without due process of law") and the Equal Protection Clause (Article I, § 11: "No person shall be denied the equal protection of the laws of this State or any subdivision thereof").

We approach plaintiffs' claims by first considering, in section III below, whether the challenged limitation can be defended as a rational legislative decision. The answer to this question, as we show in section IV below, is critical at every stage of the due process and equal protection analysis.

III

It is undisputed that the benefits of marriage are many. The diligence of counsel has identified 316 such benefits in New York law, of which it is enough to summarize some of the most important: Married people receive significant tax advantages, rights in probate and intestacy proceedings, rights to support from their spouses both during the marriage and after it is dissolved, and rights to be treated as family members in obtaining insurance coverage and making health care decisions.

Beyond this, they receive the symbolic benefit, or moral satisfaction, of seeing their relationships recognized by the State.

The critical question is whether a rational legislature could decide that these benefits should be given to members of opposite-sex couples, but not same-sex couples. The question is not, we emphasize, whether the Legislature must or should continue to limit marriage in this way; of course the Legislature may (subject to the effect of the Federal Defense of Marriage Act, Pub L 104-199, 110 Stat 2419) extend marriage or some or all of its benefits to same-sex couples. We conclude, however, that there are at least two grounds that rationally support the limitation on marriage that the Legislature has enacted. Others have been advanced, but we will discuss only these two, both of which are derived from the undisputed assumption that marriage is important to the welfare of children.

First, the Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships. Heterosexual intercourse has a natural tendency to lead to the birth of children; homosexual intercourse does not. Despite the advances of science, it remains true that the vast majority of children are born as a result of a sexual relationship between a man and a woman, and the Legislature could find that this will continue to be true. The Legislature could also find that such relationships are all too often casual or

temporary. It could find that an important function of marriage is to create more stability and permanence in the relationships that cause children to be born. It thus could choose to offer an inducement -- in the form of marriage and its attendant benefits -- to opposite-sex couples who make a solemn, long-term commitment to each other.

The Legislature could find that this rationale for marriage does not apply with comparable force to same-sex couples. These couples can become parents by adoption, or by artificial insemination or other technological marvels, but they do not become parents as a result of accident or impulse. The Legislature could find that unstable relationships between people of the opposite sex present a greater danger that children will be born into or grow up in unstable homes than is the case with same-sex couples, and thus that promoting stability in opposite-sex relationships will help children more. This is one reason why the Legislature could rationally offer the benefits of marriage to opposite-sex couples only.

There is a second reason: The Legislature could rationally believe that it is better, other things being equal, for children to grow up with both a mother and a father. Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like. It is obvious that there are exceptions to this general rule -- some children who never know their fathers, or their mothers, do far better than some who grow

up with parents of both sexes -- but the Legislature could find that the general rule will usually hold.

Plaintiffs, and amici supporting them, argue that the proposition asserted is simply untrue: that a home with two parents of different sexes has no advantage, from the point of view of raising children, over a home with two parents of the same sex. Perhaps they are right, but the Legislature could rationally think otherwise.

To support their argument, plaintiffs and amici supporting them refer to social science literature reporting studies of same-sex parents and their children. Some opponents of same-sex marriage criticize these studies, but we need not consider the criticism, for the studies on their face do not establish beyond doubt that children fare equally well in same-sex and opposite-sex households. What they show, at most, is that rather limited observation has detected no marked differences. More definitive results could hardly be expected, for until recently few children have been raised in same-sex households, and there has not been enough time to study the long-term results of such child-rearing.

Plaintiffs seem to assume that they have demonstrated the irrationality of the view that opposite-sex marriages offer advantages to children by showing there is no scientific evidence to support it. Even assuming no such evidence exists, this reasoning is flawed. In the absence of conclusive scientific evidence, the Legislature could rationally proceed on the common-

sense premise that children will do best with a mother and father in the home. (See Goodridge, 798 NE2d at 979-980 [Sosman, J., dissenting].) And a legislature proceeding on that premise could rationally decide to offer a special inducement, the legal recognition of marriage, to encourage the formation of opposite-sex households.

In sum, there are rational grounds on which the Legislature could choose to restrict marriage to couples of opposite sex. Plaintiffs have not persuaded us that this long-accepted restriction is a wholly irrational one, based solely on ignorance and prejudice against homosexuals. This is the question on which these cases turn. If we were convinced that the restriction plaintiffs attack were founded on nothing but prejudice -- if we agreed with the plaintiffs that it is comparable to the restriction in Loving v Virginia (388 US 1 [1967]), a prohibition on interracial marriage that was plainly "designed to maintain White Supremacy" (id. at 11) -- we would hold it invalid, no matter how long its history. As the dissent points out, a long and shameful history of racism lay behind the kind of statute invalidated in Loving.

But the historical background of Loving is different from the history underlying this case. Racism has been recognized for centuries -- at first by a few people, and later by many more -- as a revolting moral evil. This country fought a civil war to eliminate racism's worst manifestation, slavery, and passed three constitutional amendments to eliminate that curse

and its vestiges. Loving was part of the civil rights revolution of the 1950's and 1960's, the triumph of a cause for which many heroes and many ordinary people had struggled since our nation began.

It is true that there has been serious injustice in the treatment of homosexuals also, a wrong that has been widely recognized only in the relatively recent past, and one our Legislature tried to address when it enacted the Sexual Orientation Non-Discrimination Act four years ago (L 2002, ch 2). But the traditional definition of marriage is not merely a by-product of historical injustice. Its history is of a different kind.

The idea that same-sex marriage is even possible is a relatively new one. Until a few decades ago, it was an accepted truth for almost everyone who ever lived, in any society in which marriage existed, that there could be marriages only between participants of different sex. A court should not lightly conclude that everyone who held this belief was irrational, ignorant or bigoted. We do not so conclude.

IV

Our conclusion that there is a rational basis for limiting marriage to opposite-sex couples leads us to hold that that limitation is valid under the New York Due Process and Equal Protection Clauses, and that any expansion of the traditional definition of marriage should come from the Legislature.

This Court is the final authority as to the meaning of

the New York Constitution. This does not mean, of course, that we ignore the United States Supreme Court's interpretations of similarly worded clauses of the Federal Constitution. The governing principle is that our Constitution cannot afford less protection to our citizens than the Federal Constitution does, but it can give more (People v P.J. Video, Inc., 68 NY2d 296, 302 [1986]). We have at times found our Due Process Clause to be more protective of rights than its federal counterpart, usually in cases involving the rights of criminal defendants (e.g., People v LaValle, 3 NY3d 88 [2004]) or prisoners (e.g., Cooper v Morin, 49 NY2d 69 [1979]). In general, we have used the same analytical framework as the Supreme Court in considering due process cases, though our analysis may lead to different results. By contrast, we have held that our Equal Protection Clause "is no broader in coverage than the federal provision" (Under 21 v City of New York, 65 NY2d 344, 360 n 6 [1985]).

We find no inconsistency that is significant in this case between our due process and equal protection decisions and the Supreme Court's. No precedent answers for us the question we face today; we reject defendants' argument that the Supreme Court's ruling without opinion in Baker v Nelson (409 US 810 [1972]) bars us from considering plaintiffs' equal protection claims. But both New York and Federal decisions guide us in applying the Due Process and Equal Protection Clauses.

A. Due Process

In deciding the validity of legislation under the Due