

I JUST WANT TO GET MARRIED

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February, 2018

In 2009, Billy Smith (not his real name) fell in love with Glenda Jacks (not her real name). Unfortunately for Billy, in April of 2010, he was determined to be partially incapacitated in a guardianship proceeding due to a head related trauma when he was involved in a traffic accident. The trial court appointed a limited guardian to manage Billy's property but allowed him to continue to maintain his personal affairs. Thus, Billy's property rights under the guardianship laws were being managed by a guardian; however, Billy maintained his personal rights. Glenda and Billy's love for each other fostered and in 2011 they decided to get married which led them on a 6-year odyssey which ultimately ended up being decided by Florida's Supreme Court. The Court determined the validity of the marriage and gave us the means of reasoning the effectiveness of various forms of marriage.

The problem Billy and Glenda encountered is contained in Florida's statute §744.3215 which states if the right to contract is delegated to a guardian, then the ward must seek court approval of the marriage. Remember that Billy's rights to property had been delegated to the guardian. Contracting is considered a part of the rights contained in a person's property and marriage is considered a contract. Thus, the guardian under §744.3215, Fla. Stat. would need to seek court approval and obtain it for Billy and Glenda's marriage to be "legally valid." Contrary to §744.3215, Fla Stat., Billy did maintain the right to marry as part of the rights he maintained under his person. Sadly for Billy, the guardian held the trump card on granting the marriage. Glenda and Billy requested the guardian to seek court approval, the guardian refused and so the 6 year odyssey through Florida Court system begins.

Billy and Glenda got married, even though the guardian told them that they could not. Billy argued that he had the right to marry, but the guardian retorted that it required court approval. In 2013, the guardian filed a petition with the trial court to annul the marriage asserting that it was "void" because no pre-approval from the court had occurred. At the same time Glenda asked the court to ratify the marriage. Ultimately, the court denied Glenda's request for ratification and approved the guardian's request stating §744.3215, Fla. Stat. does not contemplate the right to ratify or prove an existing marriage and because no pre-approval had been obtained the marriage is void and incapable of ratification (or so it seemed). The trial court, in essence, annulled the marriage. This decision did not sit well with Glenda and she appealed to the Fourth District Court of Appeal.

Glenda's argument with the Fourth District Court of Appeal centered around §744.3215, Fla. Stat., by claiming neither statute nor the trial court's order explicitly required prior court approval and as such the marriage could be ratified by obtaining approval after the marriage had occurred. The Fourth District Court of Appeal stated that a valid marriage entered into by a person who has had his right to contract removed, must first ask the court to approve his or her right to marry. Because there was no pre-approval sought or obtained, the Fourth District Court of Appeal concluded that the marriage is void. It would seem that Glenda is done challenging, but not so fast; Glenda is not happy with the results and presents the Supreme Court of Florida

with the certified question of whether the failure to obtain court approval prior to marrying pursuant to §744.3215, Fla. Stat., renders a person's marriage void or voidable. The difference being; under "void" it never happened versus "voidable" meaning it is recognized but still has no legal effect until ratified. The Supreme Court stated that the marriage was neither void or voidable because §744.3215, Fla. Stat., does not take those terms into consideration. The legislature's intention was whether a marriage like Billy and Glenda's has any legal effect and whether such marriage can become valid subsequent to the marriage ceremony. Glenda's arguments seem to be making some headway, but it's not over yet.

The Supreme Court's opinion goes on to state under §744.3215, Fla. Stat., a person's right to marry is contingent upon court approval which is contrary to the trial and Fourth District Court of Appeal's ruling. The Supreme Court determined that because the right to marry is contingent upon court approval, seeking court approval following a marriage ceremony is within the rights contemplated by the legislature. In essence, court approval to marry is not a condition that must be obtained prior to marriage. That leaves a marriage entered into by a person such as Billy who has his contract rights delegated to a guardian and who does not obtain court approval viewed as invalid and not effective for purposes of being legal; however, it can be ratified which is the big "aha" here.

So what's the take away from Billy and Glenda's six year odyssey: 1. Billy and Glenda did not need to seek court approval prior to getting married (remember Billy had sustained that right as part of his person rights); 2) Billy and Glenda could seek court approval ratifying their marriage after the marriage ceremony; and, 3) Without court ratification, Billy and Glenda's marriage can continue until challenged such as the right to use asset protection mechanisms under Fla. Law such as "husband and wife." The same problem which occurred with same sex marriages before their validity was recognized as a married couple.

Ultimately, the court's concern was to give a trial court the discretion to assess the risk of abuse and exploitation before an alleged spouse acquires any rights resulting from marriage while continuing to uphold the fundamental right each citizen has to marry to the greatest extent possible. In Billy's case this would be completed by allowing marriages like his and Glenda's to be ratified. So, what about Glenda; Glenda's argument that the marriage was ratified was defeated, but, she also won the war with a favorable ruling that she and Billy were not foreclosed from ever having their marriage ratified.

And so it goes, the story of Billy and Glenda and their six year odyssey of just wanting to get married.

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