

SUPREME COURT OF VERMONT

Samis v. Samis, 2011 VT 21

22 A.3d 444 (2011) · No. No. 10-031 · Decided January 18, 2011

SUMMARY

The Vermont Supreme Court held that a guardian lacked authority under 14 V.S.A. § 3069 to initiate a divorce proceeding on behalf of an incapacitated ward. The court concluded that the right to seek a divorce is personal and volitional, and that Vermont Rule for Family Proceedings 4(b)(1)(A) could not create substantive authority absent statutory authorization. The court reversed the divorce and did not reach the issues concerning property division and spousal maintenance.

CASE DETAILS

|                       |                                                                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Vermont                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Johnson, J.; Reiber, C.J.; Skoglund, J.; Burgess, J.; Eaton, Supr. J., specially assigned                                                                                                                                 |
| JURISDICTION          | Vermont                                                                                                                                                                                                                   |
| DECIDED               | January 18, 2011                                                                                                                                                                                                          |
| DOCKET                | No. 10-031                                                                                                                                                                                                                |
| DISPOSITION           | reversed                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Husband appealed from the Orleans Family Court's denial of his motion to dismiss a divorce action filed by wife's guardian and from the resulting divorce judgment, property distribution, and spousal-maintenance award. |
| STANDARD OF REVIEW    | A motion-to-dismiss ruling is reviewed by testing the legal sufficiency of the claim; pleaded facts and reasonable inferences are assumed true. Questions of statutory construction are reviewed de novo and plenary.     |
| PRECEDENTIAL VALUE    | Published opinion; binding precedent of the Supreme Court of Vermont.                                                                                                                                                     |
| PARTIES               | Philip Samis v. Catherine S. Samis                                                                                                                                                                                        |

TOPICS

- guardianships
- divorce
- family law procedure
- statutory interpretation
- appellate procedure

## PRACTICE AREAS

family law

guardianships

divorce

appellate procedure

## QUESTIONS PRESENTED

1. Whether a guardian may initiate and maintain a divorce action on behalf of a person under guardianship when the guardianship statute grants authority to commence court actions but does not expressly authorize divorce proceedings.
2. Whether Vermont Rule for Family Proceedings 4(b)(1)(A) independently authorizes a guardian to file a divorce complaint on behalf of an incompetent person.
3. Whether the court needed to reach husband's challenges to the property distribution and spousal-maintenance award after reversing the grant of divorce.

## HOLDINGS

1. A guardian may not initiate a divorce action on behalf of a person under guardianship under the general authority to commence court actions in the ward's name; because the right to end a marriage is strictly personal and volitional, specific statutory authorization is required.
2. A procedural court rule cannot independently authorize a guardian to initiate a divorce when the Legislature has not granted that substantive authority by statute.

## KEY QUOTATIONS

*“Although the rules we create have the force and effect of law, they cannot create substantive rights not created by the Legislature.” (448)*

*“Like the majority of jurisdictions around the country, we continue to conclude that the right to end a marriage through divorce is volitional and personal such that the Legislature did not intend, through a general grant of authority, to permit it to be carried out by a guardian.” (450)*

## FACTUAL BACKGROUND

Catherine Samis and Philip Samis married in 1983 and maintained residences in Vermont and Montreal. After Catherine was diagnosed with dementia and became unable to make decisions in her own interest, her son Gregory Morcroft was appointed her permanent guardian. The guardian filed for divorce on Catherine's behalf, in part because divorce would permit her to seek Social Security benefits on the account of her first husband and address her financial and medical-care needs.

## PROCEDURAL HISTORY

Wife's guardian filed a divorce complaint on her behalf after wife was adjudicated incompetent. The family court denied husband's motion to dismiss, concluding that Vermont Rule for Family Proceedings 4(b)(1)(A) and public policy authorized the guardian to initiate the action. The court subsequently granted a no-fault divorce, distributed property, and awarded spousal maintenance and attorney's fees. The Supreme Court of Vermont

reversed the denial of the motion to dismiss and therefore did not reach the challenges to property division or spousal maintenance.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

The denial of husband's motion to dismiss was reversed. The opinion does not state a separate remand instruction; it indicates that the divorce grant must be reversed and that the guardian may seek support or another appropriate order in the family division.

## CASES CITED

- Powers v. Office of Child Support, 173 Vt. 390, 395, 795 A.2d 1259, 1263 (2002)
- Elkins v. Microsoft Corp., 174 Vt. 328, 330, 817 A.2d 9, 12 (2002)
- State v. Corliss, 145 Vt. 169, 172, 484 A.2d 924, 925 (1984)
- Richardson v. Richardson, 50 Vt. 119, 121-22 (1877)
- Baker v. State, 170 Vt. 194, 220, 744 A.2d 864, 883 (1999)
- Loving v. Virginia, 388 U.S. 1, 12, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967)
- Mohrmann v. Kob, 291 N.Y. 181, 51 N.E.2d 921, 924-25 (1943)
- Murray ex rel. Murray v. Murray, 310 S.C. 336, 426 S.E.2d 781, 783-84 (1993)
- Johnson v. Johnson, 294 Ky. 77, 170 S.W.2d 889, 890 (1943)
- In re Salesky, 157 N.H. 698, 958 A.2d 948, 954-55 (2008)
- Cohn v. Carlisle, 310 Mass. 126, 37 N.E.2d 260, 262 (1941)
- Cowan v. Cowan, 139 Mass. 377, 1 N.E. 152, 152 (1885)
- Garnett v. Garnett, 114 Mass. 379, 380 (1874)
- Ruvalcaba ex rel. Stubblefield v. Ruvalcaba, 174 Ariz. 436, 850 P.2d 674, 679-81 (1993)
- In re Marriage of Gannon, 104 Wash. 2d 121, 702 P.2d 465, 467 (1985)
- Progressive Ins. Co. v. Brown ex rel. Brown, 2008 VT 103, 184 Vt. 388, 966 A.2d 666, ¶ 6
- Vt. Built, Inc. v. Krolick, 2008 VT 131, 185 Vt. 139, 969 A.2d 80, ¶ 10