

SUPREME COURT OF NEVADA

Candelaria v. Kelly

139 Nev., Advance Opinion 36 (2023) · No. 83859 · Decided September 14, 2023

SUMMARY

The Nevada Supreme Court held that Obergefell v. Hodges applies retroactively to require Nevada courts to recognize a same-sex marriage licensed and performed in California in 2008, despite Nevada's prior prohibition on recognizing such marriages. The court declined to backdate the marriage to 1991 or 1992 for property-division purposes because Nevada does not recognize common-law marriage and Obergefell does not require judicially creating a marriage before solemnization. The court affirmed the divorce decree characterizing the disputed premarital assets as the respondent's separate property.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Chief Justice Stiglich; Justice Cadish; Justice Pickering; Justice Herndon; Justice Parraguirre
JURISDICTION	Nevada
DECIDED	September 14, 2023
DOCKET	83859
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a divorce decree concerning the characterization and division of property.
STANDARD OF REVIEW	The disposition of community property is reviewed for abuse of discretion; interpretation of caselaw and statutes is reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Richard L. Candelaria v. Michael Edward Kelly

TOPICS

- divorce
- community property
- marriage
- remedies
- family law procedure

PRACTICE AREAS

- family law
- divorce
- community property
- constitutional law
- remedies

QUESTIONS PRESENTED

1. Whether *Obergefell v. Hodges* requires Nevada to recognize retroactively a same-sex marriage lawfully performed in another state before Nevada recognized such marriages.
2. Whether *Obergefell* requires Nevada courts to backdate a same-sex marriage to a date before the parties solemnized their union.
3. Whether the Supreme Court of Nevada should adopt a but-for, factor-based equitable test to backdate a marriage despite Nevada's statutory ban on common-law marriage.

HOLDINGS

1. *Obergefell v. Hodges* applies retroactively to require Nevada courts to recognize a same-sex marriage lawfully licensed and performed in another state before Nevada recognized same-sex marriages. Accordingly, Nevada must recognize the parties' 2008 California marriage.
2. *Obergefell* does not require Nevada courts to backdate a same-sex marriage to a date before the parties solemnized their union.
3. The court declined to adopt a factor-based but-for test that would backdate the parties' marriage, because doing so would effectively create a judicial exception to Nevada's statutory ban on common-law marriage and the appellant had not shown equitable authority to deviate from the statute absent a constitutional challenge.

KEY QUOTATIONS

“Therefore, we conclude that the effective date of a marriage will not predate the solemnized marriage itself for property division purposes in a divorce, even if a party asserts that the couple would have married earlier but for the later-held-to-be-unconstitutional ban on marriage between same-sex couples.” (13)

“Obergefell applies retroactively so that Nevada courts must recognize same-sex marriages licensed and performed out of state before Nevada's ban on recognizing same-sex marriages was overturned.” (13)

“Obergefell, however, does not require this court to backdate a marriage before the couple solemnized their union.” (13)

FACTUAL BACKGROUND

Richard Candelaria and Michael Kelly began dating in 1991, moved in together later that year, and exchanged rings in 1992. They married in California in 2008, after California legalized same-sex marriage. In their divorce, Candelaria argued that the marriage should be deemed to have begun in 1991 or 1992 because the couple would have married earlier but for Nevada's same-sex-marriage ban, which would have made certain assets community property. Kelly disputed that he considered himself married before 2008, and the district court treated the disputed assets as his separate property.

PROCEDURAL HISTORY

The Eighth Judicial District Court, Family Division, conducted a bench trial and determined that the parties' marriage began in 2008, when they married in California. It characterized a 401(k) account and employment-

related stock acquired before 2008 as the respondent's separate property and rejected the appellant's request to backdate the marriage to 1991 or 1992. The appellant appealed; the Supreme Court of Nevada affirmed.

DISPOSITION

affirmed

CASES CITED

- Kogod v. Cioffi-Kogod, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019)
- Liu v. Christopher Homes, LLC, 130 Nev. 147, 151, 321 P.3d 875, 877 (2014)
- Zohar v. Zbiegien, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014)
- Latta v. Otter, 771 F.3d 456, 476-77 (9th Cir. 2014)
- Obergefell v. Hodges, 576 U.S. 644, 665, 670, 675-76, 681 (2015)
- Harper v. Va. Dep't of Taxation, 509 U.S. 86, 94, 97 (1993)
- LaFleur v. Pyfer, 479 P.3d 869, 874, 882 (Colo. 2021)
- In re J.K.N.A., 454 P.3d 642, 649 (Mont. 2019)
- LaFrance v. Cline, No. 76161, 2020 WL 7663476, at *2 (Nev. Dec. 23, 2020)
- Gilman v. Gilman, 114 Nev. 416, 421 n.1, 956 P.2d 761, 764 n.1 (1998)
- Watson v. Watson, 95 Nev. 495, 496, 596 P.2d 507, 507 (1979)
- Schuett v. FedEx Corp., 119 F. Supp. 3d 1155, 1158, 1160-62 (N.D. Cal. 2016)
- Phillip Morris USA, Inc. v. Rintoul, 342 So. 3d 656, 665-66 (Fla. Dist. Ct. App. 2022)
- In re Estate of Leyton, 22 N.Y.S.3d 422, 423 (App. Div. 2016)
- Anderson v. S.D. Ret. Sys., 924 N.W.2d 146, 150 (S.D. 2019)
- Charron v. Amaral, 889 N.E.2d 946, 950-53 (Mass. 2008)
- In re Madrone, 350 P.3d 495, 496, 501-02 (Or. Ct. App. 2015)
- In re Marriage of Winegard, 278 N.W.2d 505, 510 (Iowa 1979)
- In re Estate of Hunsaker, 968 P.2d 281, 285 (Mont. 1998)
- Beazer Homes Nev., Inc. v. Eighth Jud. Dist. Ct., 120 Nev. 575, 578 n.4, 97 P.3d 1132, 1134 n.4 (2004)
- Holiday Ret. Corp. v. State, Div. of Indus. Relations, 128 Nev. 150, 154, 274 P.3d 759, 761 (2012)
- Schmanski v. Schmanski, 115 Nev. 247, 250, 984 P.2d 752, 755 (1999)
- Mueller v. Tepler, 95 A.3d 1011, 1029-30 (Conn. 2014)
- Rainey v. Sutton, 362 P.3d 217, 218-21 (Okla. 2015)
- Pueblo v. Haas, N.W.2d (Mich. July 24, 2023)
- Ely v. Saul, 572 F. Supp. 3d 751, 759-61 (D. Ariz. 2020)
- Thornton v. Comm'r Soc. Sec., 570 F. Supp. 3d 1010, 1018 (W.D. Wash. 2020)