



MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL


2017 ANNUAL CONFERENCE

From Leave it to Beaver to the Modern Family



2017 CLE presentation

Legal vs. Cultural Marriages



- There are no easy answers and there are more and **more** questions everyday.
- The question about how to treat a marriage is more complicated today than ever.
- How should States and local jurisdictions determine whether a marriage is "legal" or "cultural" and should cases be treated differently depending on the answer?
- What about common law marriages or marriages that occurred before *Obergefell v. Hodges*?

Legal History of Marriage

Legal vs. Cultural Marriages



- Marriage, also called matrimony or wedlock, is a socially or ritually recognized union between spouses that establishes rights and obligations between them, between them and their children, and between them and their in-laws.
- See *Haviland, William A.; Prins, Harald E. L.; McBride, Bunny; Walrath, Dana (2011). Cultural Anthropology: The Human Challenge (13th ed.). Cengage Learning. ISBN 978-0-495-81178-7.*

Legal History of Marriage



- In the United States, marriage is considered a binding legal "contract" between parties that bestows rights and obligations.
- Marriage in the United States has historically imposed legal restrictions on parties such as:
 - Age
 - Kinship
 - Race
 - Gender and Same Sex
- Over time, the laws have changed.

U.S. Supreme Court Cases A Brief History of Marriage Cases



Defining Marriage as a Right



- Maynard v. Hill, 125 U.S. 190, 205, 211 (1888): Marriage is “the most important relation in life” and “the foundation of the family and society, without which there would be neither civilization nor progress.”
- Meyer v. Nebraska, 262 U.S. 390, 399 (1923): The right “to marry, establish a home and bring up children” is a central part of liberty protected by the Due Process Clause.
- Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541 (1942): Marriage “one of the basic civil rights of man,” “fundamental to the very existence and survival of the race.”

Defining Marriage as a Right



- Griswold v. Connecticut, 381 U.S. 479, 486 (1965): “We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.”

Defining Marriage as a Right



- Boddie v. Connecticut, 401 U.S. 371, 376, 383 (1971): “[M]arriage involves interests of basic importance to our society” and is “a fundamental human relationship.”
- Cleveland v. Board of Education, 414 U.S. 632, 639-40 (1974): “This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”

Defining Marriage as a Right



- Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) (plurality):
 “[W]hen the government intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.”
- Carey v. Population Services International, 431 U.S. 678, 684-85 (1977):
 “[I]t is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.”

Defining Marriage as a Right



- Zeblocki v. Redhail, 434 U.S. 374, 384 (1978): “[T]he right to marry is of fundamental importance for all individuals.”
- Turney v. Safley, 482 U.S. 78, 95 (1987): “[T]he decision to marry is a fundamental right” and an “expression[] of emotional support and public commitment.”

Defining Marriage as a Right



- Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 851 (1992): “These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”

Defining Marriage as a Right



- MLB v. S.L.J., 519 U.S. 102, 116 (1996): "Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society,' rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect."

Race



- Loving v. Virginia, 388 U.S. 1, 12 (1967), anti-miscegenation laws are unconstitutional. With this ruling, these laws were no longer in effect in the remaining 16 states that still had them.



Same Sex Marriages



- Lawrence v. Texas, 539 U.S. 558, 574 (2003): "[O]ur laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, and education. ... Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do."
- United States v. Windsor, 570 U.S. ____ (2013), Restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to opposite-sex unions, by Section 3 of the Defense of Marriage Act (DOMA), is unconstitutional under the Due Process Clause of the Fifth Amendment.

Same Sex Marriages



- *Obergefell v. Hodges*, 576 U.S. ____ (2015), the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

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Notable Marriage Cases

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Minnesota Cases and Law



- *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971) was the first case in United States history in which a same-sex couple sued over marriage rights. The Minnesota Supreme Court ruled that Minnesota's laws prohibited marriages between same-sex partners and did not violate the federal constitution. The United States Supreme Court denied review for want of a federal question.



Minnesota Cases and Law



- "Marriage, so far as its validity in law is concerned, is a civil contract between two persons to which the consent of the parties, capable in law of contracting, is essential"



Minn. Stat. 517.01 (August 1, 2013)

Minnesota Cases and Law



- Religious exemption allows organizations to refuse to perform civil marriages in violation of their beliefs. Minn. Stat. 517.201, subd. 1



Minnesota Cases and Law



- When necessary to implement rights and responsibilities of spouses or parents in a same sex marriage, "including those laws that establish parentage presumptions," gender-specific terminology "must be construed in a neutral manner to refer to a person of either gender." Minn. Stat. 517.201, subd. 2.

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Marriage Perspectives


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Marriage Perspectives



- Types of Marriages
 - Common
 - Cultural
- Legal Status of Marriage
- Legal Analysis
- Development of A Policy
 - Current Status

Types of Marriage



- Civil: A marriage performed, recorded and recognized by a government official. This marriage can be performed by the State or a religious official.
- Religious: A marriage performed by a religious official that can be recorded as a legal marriage or can be solely a ceremony (ie. cultural).

Minnesota Marriage Statute



- Persons Authorized to Perform Marriages
- License
- Solemnization
- Witnesses
- Lawfully able to enter into Marriage

Types of Marriages



- Voidable Marriage: A marriage that can be canceled at the option of one of the parties. Or a marriage that is valid until declared invalid. The laws regarding invalidation of a marriage varies from State to State.
 - May be null and void if a party takes action
 - For example - no consent, intoxication, duress
- Void Marriage: A void marriage is a marriage that is on its face unlawful and therefore legally has no effect, whether or not one of the parties challenges the marriage.
- There are many other types of marriage too!

Unique Types of Marriage



- Common Law: Legal marriage that is recognized in some states, without the couple having formally registered their relation via a civil or religious marriage.

Common Law Marriage



Cultural Marriage



- **Cultural:** A marriage ceremony that is based upon the culture of the couple and may or may not be a legal marriage depending on the Country's specific marriage laws.

Cultural Marriage



- A marriage according to cultural/customary law of a particular social group, may or may not be recognized by the state.
- Marriages (formal or cultural) that take place in another country **AND** are recognized as marriages, are recognized marriages in the United States.
 - However, cultural marriages that take place within the United States are not legally recognized marriages.

Cultural Marriage



- Of the marriages we discussed, cultural marriages **both in and outside** the United States provide the most challenge to the IV-D agencies and child support professionals.

Ramsey County Changes



- Ramsey County was confronted with cultural traditions that didn't fit neatly into our existing legal framework.
- The most common examples we experience are cultural marriages from the re-settlement of Hmong families in Minnesota.
 - Ramsey County has the second highest population of Hmong population in the U.S.
 - Ramsey and Hennepin Counties have the most concentration of Somali refugees and immigrants in the U.S.

Who Are Hmong People?



- Most Hmong in Minnesota and the United States are originally from China, Laos or Thailand.
- Hmong are an ethnic minority group, no "Hmong Country."
- The Vietnam War the political/historical factor is what which led the Hmong to come to Minnesota/Unites States.
 - The first large wave of refugees arrived after 1975, post-Vietnam War.
 - The second large wave of refugees came from Wat Tham Krabok camp from Thailand in 2005.

Who Are Hmong People?



- Upon resettlement to the United States, Hmong immigrants achieved refugee status both because of their war efforts for the United States as well as their need to escape the communist regime in Laos.
- Total U.S. population: 260,073.
- States with the largest Hmong population include:
 - California (91,224)
 - Minnesota (66,181)
 - Wisconsin (49,240)
 - North Carolina (10,864)
- Minnesota has the second highest population by number, but the highest population by concentration.



Hmong People in Minnesota



- Family oriented community.
- The most recent U.S. Census indicates average age of a Hmong person living in Minnesota is 19 years old.
- Half of the Hmong population in Minnesota were born in the United States.
- An estimated 26% of the Hmong population live below the federal poverty guidelines in Minnesota.
- Large families are still valued in the Hmong culture in Minnesota.
 - Source: U.S. 2010 census



The wall hanging depicts Hmong families living in Thai refugee camps, following the rise of communism in Laos and the Vietnam War. Story blankets recorded Hmong culture and history.

Hmong Marriages



▪ The traditional Hmong wedding ceremony involves ceremonies in both the bride and groom's families to ensure there are witnesses to the union of the couple. Traditionally, the wife becomes part of the husband's spiritual household.



Ramsey County Approach



- To determine whether to pursue an **establishment action or a paternity action:**
 - The County must obtain and assess the available documentation regarding the reported marriage, or any other evidence that shows whether the government where the reported marriage occurred recognized the marriage as a legal marriage before the child was born or not.

Ramsey County Approach



- We looked to existing statutes, case law and public policy:
 - International – how to recognize whether the marriage was “legal”
 - Minn. Stat. §517A
 - Ma v. Ma, Minn. Ct. App. (1992)
 - Ramsey County v. Yee Lee, Minn. Ct. App. (2009)
 - Yang v. Fang, Minn. Ct. App. (2015) (unpublished)
 - State of Minnesota Policy – explained there needs to be a recognized and filed valid marriage

Ramsey County Approach



- Legal starting point:
 - Rule when marriages take place outside the U.S.
 - The general rule is that things done in one sovereignty in pursuance of the laws of that sovereignty are regarded as valid and binding everywhere.”
 - 16 Am. Jr.2d Conflict of Laws section 9, at 21 (1998)

Ramsey County Approach



- Most countries and states have a set of requirements that must be met for a marriage to be legally binding and recognized.
- Where a government is unstable or non-existent (a current example is Somalia), marriages performed according to local or religious custom are recognized as binding agreements and are valid because the parties cannot avail themselves to the government for recognition of the marriage.

Exceptions to Starting Point



- **Exceptions:** If the cultural marriage occurred in a country that does not recognize the marriage, Ramsey County may not be able to recognize the cultural marriage either, and will likely initiate a paternity action.
 - **Example:** Refugees culturally married in Thai refugee camps - the Thai government does not recognize these marriages so Ramsey County initiates a paternity action.
 - See Cultural Marriage policy and chart for other examples and documentation that RCAO could use to establish support based on the marriage.

Ramsey County Approach



- Our caseload has Hmong families that:
 - Were married outside of the United States in an area with no government, or with a government that did not recognize their marriages
 - Were married under the laws of the United States but had children prior to that marriage
 - Were married in Hmong Cultural traditions but never made the marriage "legal" in the U.S.

Ramsey County Approach



- Ramsey County had family members question why they should pay child support when they were culturally married.
- Hmong leaders questioning the "unfair" treatment.

Lee Adoption Case



- What happened in Ramsey County v. Lee?
 - Ramsey County had a case that was interpreted to apply to cultural marriage. It was a case involving a cultural adoption.
 - We didn't have a system to verify (adoptions) marriages that took place outside the United States

Ramsey County v. Yee Lee 770 N.W. 2d 572 (Minn. Ct. App. 2009)

Ramsey County Policy




- As a result of Lee, Ramsey County decided to create a formal policy. The first iteration of the policy was perhaps reactionary to this case.
- Ramsey County decided to initiate paternity cases for all cases where the parties could not prove with paperwork that there was a legal or legally recognized cultural marriage in another country.
- Ramsey County has a genetic testing policy for any case for which we initiate a paternity action.
- Problems occurred – some members of the bench questioned our marriage policy and our genetic testing policy.

Ramsey County Policy




- In some cases, it is not clear whether the marriage is legally recognized or not. In those cases, two questions can help determine that issue:
 - Whether the country or state where the marriage occurred legally recognizes the cultural marriage, and
 - Whether that country has a functioning or stable government (i.e. there are laws relating to marriage and there is a government that can recognize the marriage).

Ramsey County Policy

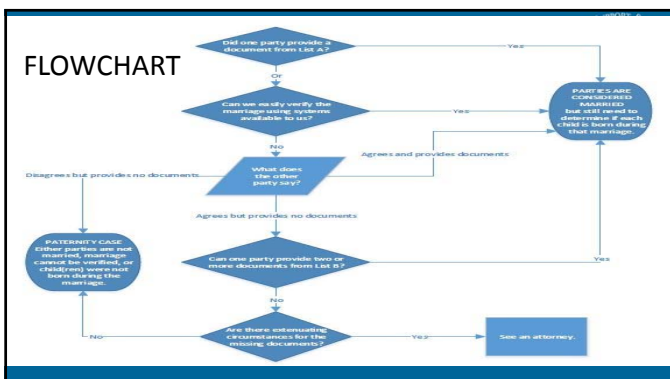


- We needed to find a consistent and fair way to analyze the facts when they fall outside a typical type of case:
 - People present themselves in the office or in court
 - Interviews
 - Do they have paperwork to verify marriage?
 - Level of Proof

Ramsey County Policy




- Development of the Ramsey County Policy:
 - Steps and timeline
 - Drafts - Multiple!
 - Focus groups - stakeholders
 - What could signify a marriage?
 - Facebook post? Well, no!
 - The policy was born
 - Stakeholder discussion
 - Other counties by drawing parallels to their immigrant populations



<p>LIST A: PRIMA FACIE EVIDENCE OF MARRIAGE</p> <ul style="list-style-type: none"> - US jurisdiction marriage certificate - US jurisdiction divorce decree - Marriage certificate from a stable, US-recognized country - Marriage registration or other documents from a common law marriage state 	<p>LIST B: ALTERNATIVE DOCUMENTS</p> <ul style="list-style-type: none"> - Paternity affidavit (signed & notarized) where a party claims to be/have been married - Marriage certificate from a non-recognized or non-stable government - UN Household registration document - US Department of State, Department of Population, Refugee, Department of Homeland Security - Joint federal US tax statements, married and filed separately - Common law marriage documents (from a common law marriage state that does not require registration) - Husband's non-paternity statement - Birth records - Documents from an Immigrant and Refugee Service Agency involved in the US resettlement efforts - Affidavit(s) (signed & notarized) from BOTH parties saying they are married (use only if married outside of US or in common law marriage state)
<p>OTHER SYSTEMS</p> <ul style="list-style-type: none"> - MOMS - Financial Worker (generally, supporting documents from the worker will be required/requested) - MNCIS - Other state's public vital records site 	<p>Notes:</p> <ul style="list-style-type: none"> - If both parties agree that they are/were married (or culturally married) in a common law state that does not require registration of common law marriages, ask for other supporting documentation such as: an Elder Statement; insurance, pension or retirement policy; SSA records; death certificate; or, do an AccuSearch to look for common addresses, etc. - Even if there is evidence that no verification was done before the other parent's name was added to the birth record, the county will do an establishment action if both parties say that they were married to each other when the child was born.


2015 Minnesota Decision

- The Minnesota Court of Appeals reversed a district court decision that had recognized a "cultural marriage ceremony" performed in Thailand because there was no evidence that the marriage was legally valid in Thailand.
 - The Court of Appeals held that, to have a valid foreign marriage recognized in Minnesota, the marriage must have been valid in the place where it was performed, here Thailand.
 - Yang v. Fang, 2015 WL 1880314 (Minn. Ct. App. , Apr. 27, 2015).



Other "Fixes"

- Change in federal policy? Recognize the United States authority to have final say if parties are married?
- Recognize that people from certain parts of the world are fleeing persecution and have no documents to support a claim of marriage.



Complications



- Paternity cases on "unmarried" elderly Hmong couples?
- Court recognition of marriage if divorce is finalized.

Audience Participation



- In Conclusion...
- Questions?
 - Do you have any curious scenarios to share?

Presenters



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Will Ramsey County Pursue a PATERNITY or ESTABLISHMENT Action?

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