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If Being Married Is the Goal, Beware the "Symbolic Resort" Wedding in Mexico

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Verdict

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Sometimes it's all about the way you ask a question. Could the answer be anything but "no" when the court says the question posed by a marriage validity case is:

> Whether the Legislature, when it enacted [New York's marriage license statute] more than one hundred years ago, could have ever conceived of, let alone intended for, the statute being used to validate a license-less marriage supposedly solemnized in what can only be described as a 'pseudo-Jewish' wedding ceremony conducted at a Mexican beach resort by a New York dentist who became a Universal Life Church minister on the internet solely for the purpose of performing weddings for friends and relatives?

In ***Ponorovskaya v. Stecklow*** **(http://law.justia.com/cases/new-york/other-courts/2014/2014-ny-slip-op-24140.html)** , a New York judge struck another blow for the make-your-own weddings that have become so popular. But this case involves a number of family law issues, woven together in law-school-hypothetical fashion.

The Wedding

Anya, a clothing designer, and Wylie, a lawyer, began dating in 2004. In 2009, while on vacation in Tulum, Mexico, they decided to marry. They returned to the same spot the following year for a destination wedding. In thank you notes sent to guests after the event, the couple recalled that "100 friends and family joined us for ten days in February 2010" and "lounged on the beach, shared steak sandwiches and lunch tables, and made memories that will last a lifetime."

Beyond the lounging and sandwiches, the event involved a wedding of sorts. It drew on some Jewish traditions—a chuppah, certain Hebrew prayers, and the breaking of a glass—but was not conducted by a rabbi. The officiant was Wylie's cousin, a New York dentist, who was ordained online as a Universal Life Church minister. He couldn't remember how or when he completed the ordination process, but told guests during the ceremony: "I am an ordained minister—this will be a legal union." (Anya's lawyer later produced a certificate from the ULC showing that the dentist was a minister in good standing.)

Before heading to Tulum for the wedding, the couple filled out forms provided by the resort about their planned

nuptials. On the question about "type of ceremony," which gave a choice between (A) Civil and (B) Religious/symbolic, the couple crossed out "civil" and "religious" and wrote in all caps "SYMBOLIC" next to choice (B). The resort materials went on to detail legal requirements for civil marriage in Mexico, including the statement that "a religious ceremony is not legally valid," and in order for a marriage to be valid, "the judge must perform ceremony." The parties disagreed about who knew what about the legalities of the ceremony. Anya said she never read these materials, and focused instead on the catering and making sure all the attendants dressed in white. According to her, only Wylie knew that there was a difference between a symbolic and a legal wedding, and he made the choice to go for the symbolic one.

The Lawsuit: No Divorce Unless There Was a Marriage

This case arose when Anya filed for divorce. Wylie moved to dismiss her complaint on the theory that because their marriage was never validly celebrated, the court did not have the power to decree a divorce. Now one might in some cases be happy to learn that a divorce is not necessary, but Anya sought a divorce—and the process of dividing property that accompanies it—because she had agreed at one point to remove her name from the title to their Manhattan co-op apartment, but she wants to prevent him from evicting her and claim her share of its high value.

The case revolves around a simple question: is the couple legally married or not? The court answers the question by considering the relevance of the facts that (i) the couple never got a marriage license; (ii) the ceremony was performed by an internet-ordained minister; (iii) the marriage was not valid under applicable Mexican law; and (iv) at least one of the parties had no good faith expectation that the marriage was legally binding.

New York Marriage Law

For a marriage that takes place in New York, a number of formalities must be observed. The couple must present themselves in person to apply for a license, wait 24 hours before proceeding to marry, and have the marriage solemnized by a recognized secular or religious officiant.

There are nuances, however, to these seemingly straightforward formalities. For example, although the requirements are all phrased as mandatory, **Section 25 (http://law.justia.com/codes/new-york/2013/dom/article-3/25/)** of the New York Domestic Relations Code includes the following language: "Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age . . . ." And, as a further wrinkle, there are several cases in which New York courts have held that marriages solemnized by an Internet-ordained minister are not valid. (These cases are discussed **here (http://verdict.justia.com/2011/11/01/can-universal-life-church-ministers-officiate-at-weddings-in-some-states-the-answer-is-no)** , **here (http://verdict.justia.com/2011/11/21/can-laypersons-ordained-online-as-universal-life-church-ministers-or-the-like-officiate-at-weddings)** , and **here (http://verdict.justia.com/2013/05/14/a-difference-of-opinion)** .)

For marriages that take place elsewhere, the general rule is that marriages that are valid where celebrated are valid everywhere, and marriages that are void where celebrated are void everywhere. New York has taken a very broad of view of this rule, validating virtually every out-of-state marriage regardless of whether New York would have permitted the marriage to be celebrated in the first instance. This approach led state courts to give effect to marriages by same-sex couples from other jurisdictions years before the New York legislature adopted its own marriage equality law.

The Heart of the Matter: Does New York or Mexican Law Apply?

Wylie's argument, in short, is that because their marriage was not validly celebrated in Mexico—they followed none of the requirements of marriage law in the State of Quintana Roo, where the ceremony took place—it should therefore not be given effect in New York.

Anya concedes that the marriage was not validly celebrated in Mexico, although she suggests that she was led to believe it was. But, she argues, if the marriage was valid under New York law in the first instance, then it doesn't matter where it was actually celebrated. And although they did not acquire a marriage license, she points to the

language of Section 25 stating that such an omission does not have any effect on the validity of the marriage.

The court began its analysis by noting the general view that "a marriage's validity is a determination best left to the jurisdiction where the marriage took place" on the theory that that jurisdiction has the greatest stake in the marriages contracted therein.

However, in one relatively recent case, an appellate court in New York applied New York law to determine the validity of a marriage that was solemnized across the Hudson River in New Jersey. In that case, ***Matter of Farraj*** **(http://law.justia.com/cases/new-york/appellate-division-second-department/2010/2010-03445.html)** (2010), the couple, who lived in New York, wanted an Islamic marriage ceremony. Islamic law requires that a wedding take place at the home of the bride's oldest male relative, which, in this case, was a brother in New Jersey. An Imam (Islamic clergyman) came from New York with the couple to the ceremony, and the entire wedding party returned to New York immediately afterwards for a reception. The marriage was not valid in New Jersey, which, unlike New York, deems marriages without a license invalid from the outset. The court thus applied New York law, under which the absence of a marriage license is not fatal, to validate the marriage and allow the wife to collect from her husband's estate after he died.

The court in this case, *Ponorovskaya v. Stecklow*, distinguished *Farraj*, however, and ruled that the marriage was not valid. First, the court focused on the reason for going out of the jurisdiction to marry. In *Farraj*, the couple was following religious mandates, with all of the appropriate formalities, and made every effort to keep their wedding tied to New York. Anya and Wylie, in contrast, went to Mexico for nostalgic reasons only—they had gotten engaged there—and for the fun of a destination resort wedding. And, as the court observed, "once there [they] did not make any attempt to follow the local laws." Instead, they "availed themselves of the facilities, services and hospitality of Mexico to hold a destination wedding and then completely disregarded the rules and customs of the host country."

Second, the court noted that the couple in *Farraj* presented good evidence of their marriage; the Islamic marriage certificate provided a "reliable and lasting record of the purported marriage." Anya and Wylie, however, had no certificate of marriage, nor a document of any kind to prove the ceremony took place. "The only record of the wedding is a video," the court noted, "submitted as an exhibit to plaintiff's opposition papers. Although it vividly depicts the ceremony—with the participants and guests dressed in white, the couple taking their vows, the palm trees swaying, the white sand glistening, and the Black Eyed Peas' 'I've Got a Feeling" playing on the soundtrack—one wonders how a video could ever serve as the type of 'formal record' that the Surrogate's Court found to exist in Farraj."

Third, the court here refused to conclude that the couple had "justified expectations" in a legally binding marriage. In *Farraj*, the couple held themselves out as husband and wife at every pass. Anya and Wylie were inconsistent in their presentation to the public. While they told a co-op board they were married, and Wylie stated in a legal proceeding that Anya was his wife, they filed separate tax returns, claiming a status that would have been illegal if they were legally married. Due in part to a rule that one cannot take a position in litigation that is different from representations on one's tax return, the court concluded that they had no justifiable expectation that their marriage would be treated as valid. Wylie knew, having read the resort guidelines, that their marriage was invalid under Mexican law. And Anya should have known, since she at least flipped past those pages en route to the catering guidelines.

Finally, the nature of the wedding ceremony in *Farraj* was serious and deserving of respect in a way that Anya's and Wylie's was not. The *Farraj* couple was married by a religious officiant, clearly authorized by both New York and New Jersey law to solemnize weddings. Anya and Wylie, in contrast, utilized the services of a dentist who became a minister for the sole purpose of marrying friends and family. As mentioned above, New York courts have been wary of such ministers because the New York code provides a relatively strict definition of "religion" and "minister" that a ULC minister doesn't meet. (The same problem arises, the court pointed out, with ministers ordained by the Church of the Flying Spaghetti Monster or the Church of the Latter Day Dude, dedicated to the philosophy of the protagonist in *The Big Lebowski*.) In the end, the court did not decide whether the ULC dentist-minister was qualified to preside over the wedding, since it had so many other flaws.

The marriage cannot be given effect under New York law because it was not valid where celebrated. The dentist was "not an officer of the Civil Registry, the only officiant permitted to legally marry anybody in Quintana Roo, Mexico."

For this court, some of the discomfort clearly arose from the interplay of two potentially loose requirements—the required-but-unnecessary marriage license (a statute the judge deemed an "anachronism" that had outlived its usefulness) and the unofficial officiant. If the couple had acquired a marriage license, the court might have been more inclined to overlook questions about the officiant. And if the couple had used a clearly authorized officiant, the court might have been more inclined to overlook the lack of a license. But with neither formality clearly satisfied, the court saw no reason to go out on a limb to protect a marriage that the participants themselves did not seem to take very seriously.

Conclusion

For this couple, no valid marriage means no divorce. And no divorce means Anya must file a separate lawsuit to make a claim on the apartment, perhaps under the statute that allows for the recovery of property transferred in anticipation of marriage. But this case is a lesson to modern couples who view marriage as an entirely personal and customizable arrangement. As the judge noted in this opinion, although there are several cases in New York holding that marriages solemnized by ULC ministers are invalid, 11 of the 34 weddings in last Sunday's New York Times were performed by ministers of that type (not all in New York, however). Marriage is, at core, a legal act. And like any other legal act, the rules are best followed.

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