[Cite as *Cecchini v. Cecchini,* 2010-Ohio-533.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GAETANO M. CECCHINI

Plaintiff-Appellant

-vs-

JENNIFER CECCHINI

Defendant-Appellee

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 2009CA00030

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2007CV02159
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 16, 2010

APPEARANCES:

For Plaintiff-Appellant

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Hoffman, P.J.

{¶1} Plaintiff-appellant Gaetano M. Cecchini appeals the January 26, 2009 Findings of Fact and Conclusion of Law entered by the Stark County Court of Common Pleas, which found Appellant and defendant-appellee Jennifer Cecchini to be husband and wife.

STATEMENT OF THE CASE AND FACTS

{¶2} Appellant filed a Complaint, seeking a declaration his marriage to Appellee was void ab initio. After Appellee filed an Answer, both parties filed motions for summary judgment, which were overruled by the trial court.

{¶3} A bench trial ensued on December 4, 2008. The facts were largely undisputed.

{¶4} On October 7, 1994, Appellant and Appellee were issued a marriage license by the Stark County Probate Court. Their marriage application stated City of Canton Mayor Richard Watkins was expected to solemnize the wedding.

{¶5} The following day, Mayor Watkins performed the parties' wedding ceremony in Summit County, Ohio. Shortly thereafter, the parties departed for their honeymoon in Italy, returning to the United States on October 20, 1994.

{¶6} In the interim, on October 12, 1994, Mayor Watkins filed a Return of Marriage Certificate with the Stark County Probate Court, confirming the marriage of the parties occurred on October 8, 1994. Mayor Watkins had informed the parties on October 8, 1994, they would have to meet back in Canton to repeat the "I do's" to formally legalize the marriage.

{¶7} A second marriage ceremony was performed in a restaurant in Stark County, Ohio. The date of this second ceremony is in dispute. Appellant claims it occurred on October 19, 1995 (more than a full year later), while Appellee and Mayor Watkins testified the second ceremony occurred in October of 1994.[1] The trial court did not issue a finding of fact regarding the disputed date.

{¶8} Appellant further testified from October 8, 1994, until sometime in 2007, he believed he was in fact married to Appellee. Three children were born to the parties during the purported marriage. Appellant vacated the marital residence in 2007, after a domestic dispute. Plaintiff admitted he initiated the instant Complaint because he was unable to locate a prenuptial agreement allegedly executed by the parties.

{¶9} The trial court determined the marriage between the parties "…is voidable and not void, and that Gaetano M. Cecchini and Jennifer Cecchini are husband and wife." (Findings of Fact and Conclusion of Law at p. 12.) It is from that determination Appellant prosecutes this appeal, assigning as error:

{¶10} "I. THE TRIAL COURT ERRED IN FINDING THE MARRIAGE OF GAETANO CECCHINI AND JENNIFER CECCHINI WHICH WAS SOLEMNIZED IN VIOLATION OF OHIO REVISED CODE §3101.08 VOIDABLE AND NOT VOID AB INITIO."

{¶11} We begin by addressing the standard of review to be applied in this case. Appellant contends the case presents an issue of law subject to de novo review. Appellee responds the granting or denying of declaratory relief is a matter of judicial

[1] The trial court specifically stated it did not consider Mayor Watkins's statement concerning the re-affirmation ceremony.

discretion and appellate review requires affirmation in the absence of an abuse of discretion by the trial court.

{¶12} Upon our review of the trial court's entry, we find the trial court based its decision by applying the constitutional and statutory law as well as the common law to the undisputed facts. In such regard, we shall consider our review similar to that utilized in reviewing criminal motions to suppress; i.e., a de novo application of the law to the undisputed facts. Had the ultimate ruling of the trial court depended upon resolution of a disputed fact (for example the date of the second ceremony), the more deferential standard of review would be appropriate. Under the unique facts of this case, because the trial court appears to have reached its conclusion as a matter of law, we choose to review the matter de novo.[2]

{¶13} Our analysis necessarily begins with R.C. 3101.08 "Who may solemnize [marriage]". That statute provides, in pertinent part:

{¶14} "…the mayor of a municipal corporation in any county in which such municipal corporation wholly or partly lies…may join together as husband and wife any persons who are not prohibited by law from being joined in marriage."

{¶15} It is agreed no part of the City of Canton lies within Summit County, Ohio. Accordingly, the trial court's Conclusion of Law No. 5, holding the parties' wedding ceremony on October 8, 1994, in Summit County, was improperly solemnized by Mayor Watkins, is legally correct.

[2] We caution future litigants from citing our choice in this case as precedent.

{¶16} The issue, as properly recognized by the trial court, then becomes does the lack of territorial jurisdiction of Mayor Watkins render the purported marriage between the parties void ab initio? We conclude, as did the trial court, it does not.

{¶17} In support of his argument the marriage was void ab initio, Appellant analogizes this matter to cases involving a court acting outside of its jurisdiction, which action was found to be void. We find the analogy tenuous and unpersuasive. We have carefully reviewed the lone Ohio Supreme Court case, *Pratts v. Hurley* (2004), 102 Ohio St.3d, Appellant has cited in support of this argument, and find it inapplicable. The *Pratts* Case deals with the issue of a court's lack of subject matter jurisdiction, not territorial jurisdiction. Territorial jurisdiction is never mentioned in the opinion. In fact, we believe the following language in *Pratts* arguably supports Appellee's position:

{¶18} " ' It is only when the trial court lacks subject matter jurisdiction that its judgment is void; lack of jurisdiction over the particular case merely renders the judgment voidable'." Id., citing *State v. Parker,* 95 Ohio St.3d 524 at ¶22 (Cook, J. dissenting), quoting *State v. Swiger* (1998), 125 Ohio App.3d 456, 462.

{¶19} Appellee also cites *Partin v. Pletcher*, 4th District App. No. 08CA5, 2008-Ohio-6749; and *State ex rel. Smilack v. Bushong* (1952), 93 Ohio App. 201. Nether of these cases address the issue of a trial court's territorial jurisdiction. In *Partin*, the 4th District Court of Appeals found, because the Appellant had not been properly served, the trial court did not acquire jurisdiction over him; therefore, any judgment against him was void. In *Smilack*, the 3rd District Court of Appeals granted habeas corpus in favor of the petitioner, finding the trial court's order ruling the petitioner be examined at a state

psychiatric hospital for observation was void as the trial court was without jurisdiction to make such a commitment.

{¶20} While it is clear the lack of subject matter jurisdiction renders a decision or an act void, it would appear the lack of territorial jurisdiction does not. We find an act done despite the lack of territorial jurisdiction constitutes an error committed during the exercise of jurisdiction rather than one done under a lack of subject-matter jurisdiction.

{¶21} Appellant argues this result (void ab initio) is also supported by R.C. 3101.12(B) which Appellant claims indicates a valid marriage can occur in Ohio "only" if solemnized by a person described in R.C. 3101.08.[3] We have reviewed R.C. 3101.12, and find it does not contain a subsection (B) nor is the word "only" utilized anywhere within that statute. And, while Appellant notes R.C. 3101.09 makes it a fineable offense for someone to attempt to solemnize a marriage if not legally authorized, we find Mayor Watkins was a person legally authorized to solemnize a marriage, albeit only within his territorial jurisdiction. While Appellant properly notes the statute does not endorse the concept of a voidable marriage, we conclude it likewise does not mention or endorse the concept of a void marriage. Its focus is on the person attempting to solemnize the marriage, not the marriage itself.

{¶22} Appellant next argues a recent statutory amendment demonstrates a marriage solemnized in violation of the Ohio Revised Code is void. Appellant references the May 7, 2004 amendment to R.C. 3101.01(C), which states:

{¶23} "* * *

[3] Appellant's Brief at p. 7.

{¶24} "The recognition or extension by the state of the specific statutory benefits of a legal marriage to non-marital relationships between persons of the same sex or different sexes is against the strong public policy of the state. Any public act, record, or judicial proceeding of this state that extends the specific statutory benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes is void ab initio."

{¶25} Appellant fails to reference the fact R.C. 3101.01(C) begins with the following declaration of public policy:

{¶26} "Any marriage between persons of the same sex is against the strong public policy of this state. Any marriage between persons of the same sex shall have no legal force or effect in this state and, if attempted to be entered into in this state, is void ab initio and shall not be recognized by this state."

{¶27} In Section 3(C) of H.B. 272, the Defense of Marriage Act, the General Assembly declared its intent not to make substantive changes in the law of this state that is in effect on the day prior to the effective date of the act with respect to the validity of marriages heretofore occurring within this State.

{¶28} While we agree with Appellant R.C. 3101.01(C)(3) also prohibits recognition of non-marital relationships between persons of different sexes, thus reaffirming abolition of common law marriages in Ohio, we believe the same refers to non-solemnized marriages where a marriage license was never issued. We do not believe it extends to an attempted solemnized marriage performed after issuance of a marriage license from being legally recognized as constituting a marital relationship existing before the enactment of the statute.

{¶29} In much the same vain, Appellant cites to the Ohio Constitution, Article XV, Section 11, amended by the electorate on November 2, 2004. It provides: "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage."

{¶30} While we agree with Appellee the constitutional amendment to Article XV, Section 11 of the Ohio Constitution reemphasizes the ban on common-law marriages, we find Appellant's interpretation of the second sentence of the amendment to be overly broad. We do not find it prohibits recognition of a duly licensed, attempted solemnized marriage between unmarried individuals.

{¶31} Appellant asserts the trial court also improperly relied upon *Dodrill v. Dodrill*, 2004-Ohio-2225. In *Dodrill*, a minister licensed from Bishop Storms performed a wedding ceremony, however, the minister had failed to obtain a second license from the Ohio Secretary of State. We agree with Appellant the defect in *Dodrill* was different from the one here. Nonetheless, we find the *Dodrill* court's analysis and rationale useful, as did the trial court. It should be noted *Dodrill* was decided on April 28, 2004, before either the effective date of the amendment to R.C. 3101.01(C), or the constitutional amendment to Article XV, Section 11.[4] Accordingly, it was recognized common law in existence prior to either of the two aforementioned events.

[4] The holding in *Dodrill* was cited with approval in *Rihan v. Rihan*, 2006-Ohio-2671, decided after both the amendment to R.C. 3101.01(C) and Ohio Constitution Article XV, Section 11.

{¶32} The *Dodrill* Court relied upon, in part, the Ohio Supreme Court's pronouncement in *Mazzolini v. Mazzolini* (1958), 168 Ohio St. 357. Therein, the Ohio Supreme Court held: "The policy of the law is to sustain marriages, where they are not incestuous, polygamous, shocking to good morals, unalterably opposed to a well defined public policy, or prohibited." Id. at 358. The *Dodrill* court concluded the purported marriage at issue therein did not violate R.C. 3101.08, because the marriage did not violate the public policy of the State of Ohio. As did the trial court, we also find recognizing the marriage between the parties herein does not violate Ohio public policy. Their marriage was neither "incestuous, polygamous, nor shocking to good morals". It was not "unalterably opposed to a well defined public policy, or prohibited".

{¶33} Appellant's assignment of error is overruled.

{¶34} The judgment of the Stark county Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GAETANO M. CECCHINI	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JENNIFER CECCHINI	:	
	:	
Defendant-Appellee	:	Case No. 2009CA00030

For the reasons stated in our accompanying Opinion, the judgment of the Stark County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY