

[Cite as *Cleveland v. Voies*, 2006-Ohio-815.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86317

CITY OF CLEVELAND,	:	
	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
RANDALL VOIES,	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT OF DECISION	:	FEBRUARY 23, 2006
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CHARACTER OF PROCEEDING:	:	Criminal appeal from
	:	Cleveland Municipal Court
	:	Case No. 2005 CRB 002653

JUDGMENT	:	REVERSED AND REMANDED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

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MICHAEL J. CORRIGAN, J.:

{¶ 1} The city of Cleveland (the "city") appeals the decision of the municipal court dismissing the charge of domestic violence against appellee, Randall Voies ("Voies.") In dismissing the charge, the municipal court found Ohio's domestic violence statute, R.C. 2919.25, to be unconstitutional in light of Article XV, Section 11 of the Ohio Constitution, commonly referred to as the "Marriage Amendment" or "Issue 1." For the reasons explained in this court's opinion in *State v. Burk*, Cuyahoga App. No. 86162, 2005-Ohio-6727, we hold that Ohio's domestic violence statute is constitutional and coexists in harmony with Article XV, Section 11 of the Ohio Constitution. Indeed, there is unanimous agreement

among the fifth, seventh, ninth, and twelfth appellate districts, which have been asked to address this issue, that Article XV, Section 11 of the Ohio Constitution does not render R.C. 2919.25 unconstitutional. See, e.g., *State v. Newell*, Stark App. No. 2004CA00264, 2005-Ohio-2848, ¶43; *State v. Rexroad*, Columbiana App. Nos. 05 CO 36, 05 CO 52, 2005-Ohio-6790, ¶35; *State v. Nixon*, Summit App. No. 22667, 2006-Ohio-72, ¶¶13-16; *State v. Carswell*, Warren App. No. CA2005-04-047, 2005-Ohio-6547, ¶¶20-21. Thus, the municipal court's decision granting Voies' motion to dismiss is reversed, Voies' original charge of domestic violence is reinstated, and the case is remanded to the municipal court for further proceedings.

Judgment reversed and remanded.

This cause is reversed and remanded for proceedings consistent with this opinion.

It is, therefore, ordered that said appellant recover of said appellee its costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN  
JUDGE

CHRISTINE T. McMONAGLE, J., CONCURS.

MARY EILEEN KILBANE, P.J., DISSENTS  
WITH SEPARATE OPINION.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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COUNTY OF CUYAHOGA  
NO. 86317

CITY OF CLEVELAND,  
Plaintiff-Appellant

-VS-

RANDALL VOIES,  
Defendant-Appellee

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D I S S E N T I N G  
O P I N I O N

DATE: FEBRUARY 23, 2006

MARY EILEEN KILBANE, P.J., DISSENTING:

{¶ 2} I respectfully dissent from the majority opinion and hereby write to affirm the trial court's decision to dismiss the charge of domestic violence against Randall Voies ("Voies"). I find that Ohio's domestic violence statute and Article XV, Section 11 of the Ohio Constitution are irreconcilable, thereby rendering R.C. 2919.25 unconstitutional as applied to unmarried cohabitants.

{¶ 3} In its second sentence, Article XV, Section 11 forbids Ohio and its subdivisions from creating or recognizing any "legal status" that "intends to approximate the design, qualities, significance or effect of marriage." *State v. Burk*, Cuyahoga App. No. 86162 2005-Ohio-6727. However, I find that Ohio's domestic violence statute, R.C. 2919.25, grants legal status to unmarried cohabitants that approximates "the design, qualities, significance or effect of marriage."

{¶ 4} Cohabiting between unmarried individuals, which includes familial and financial responsibilities as well as consortium, "approximates the design, qualities, significance or effect of marriage." Cohabiting with another creates a relationship that grants legal status to unmarried cohabitants, a relationship Article XV, Section 11 expressly prohibits. The State of Ohio cannot prohibit recognizing any "legal status" that "approximates the design of marriage" while at the same time retain the ability

to create a special status for the purposes of a domestic violence prosecution.

{¶ 5} Based on this dichotomy of logic, I find that Article XV, Section 11 and R.C. 2919.25 are incompatible.