

Changing Landscape Of Same-Sex Couple's Inheritance Rights

Law360, New York (August 20, 2012, 1:17 PM ET) -- A surprising decision in Minnesota recently highlights the importance of companies and professional firms staying current on the developing law of same-sex inheritance rights.

On Aug. 1, 2012, a Minnesota state district court ruled that a partner in a same-sex marriage may receive full spousal inheritance rights under Minnesota's intestacy statutes despite the fact that same-sex marriages are not lawful in Minnesota.

In a trailblazing decision, the Hennepin County Probate Court Division (Fourth Judicial District) determined that Minnesota's statutory intestacy laws govern the inheritance rights of the surviving spouse of a same-sex marriage in the same manner as they have governed the inheritance rights of men and women lawfully married in the state of Minnesota for decades. In re: the Estate of Thomas Proehl, no. 27-PA-PR-12-260 (Aug. 1, 2012).

The court noted that this case is "unlike any that has come before Minnesota's probate court." A same-sex couple, legally married in California on Oct. 29, 2008 — prior to the passage of Proposition 8 — had been in a committed relationship for 24 years. Living in Minnesota on April 5, 2011, one partner to their marriage died suddenly and unexpectedly — and without a will.

While most of the decedent's assets passed to his partner via joint tenancy and by virtue of beneficiary designations, some of the assets, specifically a life insurance policy with no named beneficiary and the decedent's individual ING Direct USA account, were titled solely in the decedent's name.

After unsuccessfully attempting to gain access to these assets, the surviving partner filed a petition for formal adjudication of intestacy, determination of heirs and formal appointment of personal representative. The petition was unopposed.

In Minnesota, as in most states, when a person dies without a will, the intestacy statutes govern how, and to whom, his or her probate assets are distributed. For a married couple with no children, generally, the surviving spouse is entitled to 100 percent of the deceased spouse's probate estate.

How does this statute apply to same-sex couples in a state that prohibits marital unions between same-sex couples? The answer may lie in multifaceted analyses and may vary from state to state — and even from couple to couple.

The core of the answer would seem to lie in whether or not same-sex marriages are legally recognized within the state of domicile. Federal and state Defense of Marriage Acts typically provide the answer to that question.

On Sept. 21, 1996, President Bill Clinton signed into law the federal Defense of Marriage Act, which defined marriage as the legal union of one man and one woman. Subsequently, many states, including Minnesota, enacted state versions of this act.

In 1997, Minnesota enacted the Minnesota Defense of Marriage Act (Mn-DOMA), which states that same-sex marriages entered into under the laws of another state are "void" in Minnesota and any "contractual rights granted by virtue of the marriage or its termination are unenforceable." Minn. Stat. § 517.03(b)(2011).

The Hennepin County Probate Court Division was faced, then, with determining whether, in a state where marriage between same-sex couples is prohibited, a surviving spouse in a same-sex marriage, recognized under the laws of one state but "void" in Minnesota, can still be afforded the benefits of the intestacy laws in Minnesota. And the court determined that the surviving spouse does, in fact, receive these inheritance benefits.

In reaching this conclusion, the court analyzed the legislative history of Mn-DOMA, the language of DOMA statutes in other states, and case law from the late 1940s and early 1950s in other jurisdictions where courts allowed the surviving spouse to inherit the deceased spouse's property under the intestacy statutes even though the couple's marriage was void under state law.

The court determined that Mn-DOMA was limited to prohibiting only "contractual rights" and not all rights of same-sex couples. Therefore, the court concluded that Mn-DOMA did not prohibit application of the state's statutory rights, including rights under the Minnesota Probate Code.

The court further concluded that it was the intent of the decedent that his partner inherit, that a core purpose of the Probate Code is to effectuate the intent of the decedent and that permitting inheritance under Minnesota's intestacy laws did not violate the public policy behind the Mn-DOMA.

Because the petition was unopposed, it is unlikely to be appealed. Without an appeal, the precedential value of this ruling is significantly limited. It is not clear to what extent this decision turns on the specific facts of this case, this decision being the only decision of its nature in Minnesota.

Would there have been a different outcome had the couple not been lawfully married under the laws of another jurisdiction? Would another result occur if the couple had lived apart for long intervals during their relationship or if the petition had been contested?

This November may bring still more to bear on this question when the citizens of Minnesota will be asked to vote on a proposed constitutional amendment that would make only a union of one man and one woman valid or recognized as a marriage in Minnesota.

What This Means for Businesses and Other Professionals

Because this case is unlikely to be appealed, it may take some time for the appellate courts in Minnesota to review this issue.

Further, given the groundbreaking nature of this decision, we anticipate that other states will look to its analytical framework and reasoning to guide their own examination of similar statutes within their jurisdictions. This means that those whose work may be impacted by state intestacy laws must stay abreast of developments in court.

For example, a number of employee life insurance policies and retirement plans default to “heirs-at-law” in the absence of a valid beneficiary designation. “Heirs-at-law” has just taken a new meaning in Hennepin County, Minn.

Must a spouse in a same-sex marriage consent to the other spouse designating a third party as primary beneficiary of his or her 401(K)? Does a decision of this nature apply to create a marital interest in real property even in states where same-sex marriages are prohibited? How are antenuptial and postnuptial contracts impacted by these types of rulings?

In Minnesota, for example, postnuptial contracts are recognized between “[s]pouses who are legally married under the laws of this state ...” Minn. Stat. § 519.11, subd. 1a (2011). And this right is arguably a “contractual right,” which the Minnesota court decided was prohibited by Mn-DOMA.

The law in this area will continue to evolve for years to come and likely will take on many nuances. It is important to stay current on court decisions that may not, at first blush, appear to impact your business or professional work.

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