

Validity of transgender marriage will not be determined in Dallas case

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The validity of transgender marriage will not be tested in court by a dissolving Dallas union since the two parties have agreed to a divorce.

Rebecca Robertson wanted her marriage to James Scott invalidated after 13 years because Scott was born female and same-sex marriages are illegal in Texas.

After a judge declined to issue a summary judgment declaring the marriage void, Robertson planned to pursue the issue before a jury — until she looked at the cost, said her attorney, Tom Nicol.

When Robertson realized that taking the case to court, including a possible appeal, would cost at least \$50,000, she offered to settle the case as a divorce.

“Gender was never an issue for my client,” Nicol said. “It was the continued financial support demanded by Scott that she did not believe was fair.”

The case revolved around the validity of a marriage between a transgender man and a woman, said Eric Gormly, who represented Scott. If valid, the marriage could end in divorce. If not valid, the marriage would be voided.

The agreement to divorce, finalized this week, means “this case is not going to go down in the annals of the state of Texas jurisprudence being one of the landmark cases,” Gormly said.

“At the same time,” he said, “it was significant in that it was the first time we’d gotten to this point.”

Robertson knew Scott’s status when they married, having been supportive when his uterus and breasts were removed.

Scott had also changed his legal identity, obtaining a new birth certificate from his home state of Iowa, showing him to be male.

A court order in Dallas allowed him to change his name and gender for identification purposes such as his driver’s license.

The couple obtained a marriage license and were in Dallas in 1998. When Robertson wanted to end the relationship, Scott, who said he was a househusband, requested alimony.

Robertson, who was the sole breadwinner, did not feel he deserved it, Nicol said.

As her lawyer, he determined that the best way to protect her finances was to try to have the marriage declared void.

But continuing to pursue the long-running litigation concerning the validity of the marriage in court “was going to be costly both financially and emotionally to Robertson,” Nicol said.

“She offered to end the litigation as a divorce and pay a premium if he would agree,” he said.

Gormly said he had hoped to press the issue further to possibly set precedent, but “the client is first priority.” Scott is “glad that he, as a transgender man, was able to get a divorce in the state of Texas,” Gormly said.

Gormly said he was satisfied with the resolution and is certain the issue will surface again.

“There will be other transsexual divorces and partners who try to declare the marriage void,” he said.