



Mona Reeder/Staff Photographer

James Scott (left) has hired attorney Eric Gormly as he fights to prevent his wife from voiding their marriage because he was born a woman.

Dallas case may test marriage laws for transgendered people

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James Scott and Rebecca Robertson started married life quietly with a small church wedding.

Thirteen years later, their union is ending — not so quietly. Robertson wants a court to declare the marriage void. Scott prefers a divorce.

The complicating factor: Scott was born a woman, and same-sex marriage is illegal in Texas. How can there be a divorce, Robertson reasoned, when there legally was no marriage?

Last month, a Dallas judge denied Robertson's request for a summary judgment voiding the marriage, setting the stage for a court battle to clarify whether transgendered people can legally marry in Texas.

It's a clarification many don't feel is needed, said Shannon Minter, an attorney with the Transgender Law and Policy Institute in Washington.

"Tens of thousands of transgendered people get married and have no problem ever," said Minter, who counts himself in that category. "That is the practical reality across the country."

But the fight over same-sex marriage has called that reality into question.

Robertson's attorney, Tom Nicol, said he doesn't feel strongly about same-sex marriage, but his client wants the marriage voided and the law should be followed.



Longtime friends Rebecca Robertson and James Scott were married 13 years ago, and Robertson knew her husband had been born a woman, Scott says.

Texas law “requires that marriage only be between a man and a woman,” Nicol said.

“James Scott does not fall into the terms of that statute,” he said, “because their marriage was between a woman and a transsexual man.

“In my view of the statute, we don’t have a provision under the law in Texas that says men or ‘women who want to be men.’”

Nicol has asked Texas Attorney General Greg Abbott to intervene on behalf of the state.

The ability of transgendered people to marry is a “fundamental right,” said Scott’s attorney, Eric Gormly.

If transgendered people can’t marry someone of their original sex or someone opposite of their new sex, they’re being denied that right, he said.

When they married, Rebecca Robertson knew James Scott was born Susan Lowry.

The two became friends after meeting in a church choir in Florida, said Scott, 57.

He had been uncomfortable with his gender since childhood but had not undergone transition. “We were both sopranos,” he said.

Their close friendship eventually turned romantic. Several years later, they broke up but became a couple again after they moved to Dallas and Scott began the gender transition.

Robertson, 54, who declined an interview, was supportive, Scott said. She “went with me to the attorney’s office to have my name and my gender changed ... stood right next to me when I went in for my top surgery,” he said.

Scott has had his uterus and breasts removed and has undergone drug therapy.

Nicol said those actions don’t make him a man in the eyes of Texas.

“He had a mastectomy, which many millions of women have and are no less a woman because of it. And he had a hysterectomy — and women would slap me silly if I said that made them less of a woman,” Nicol said.

But Scott didn’t just have surgery — he changed his legal status.

Scott, who was born in Iowa, obtained a new birth certificate that shows him to be male. He also got a court order in Dallas, changing his name and gender for identification purposes. His driver’s license says he is male, Scott said.

Texas is one of 47 states that allow for gender changes on birth certificates, Minter said. And a law was passed two years ago that provided for court-ordered gender changes to be accepted for marriage license issuance — though sponsors say now that was not their intent.

When Scott showed his driver's license to a Dallas County clerk, he and Robertson were granted a marriage license.

Scott can have all the documents he wants, Nicol said, but according to a 1999 court decision from a San Antonio appellate court, chromosomes trump documents and surgery.

In that case, a transgendered widow, Christie Littleton, tried to sue her late husband's doctor for malpractice. But she wasn't allowed to do so because the marriage was declared invalid.

Her female anatomy was "all man-made," the judge wrote. "The body that Christie inhabits is a male body in all aspects other than what the physicians have supplied."

Nicol said the Littleton decision spells out that, "under the laws of the state of Texas, you cannot choose your sex. God does that. ... And a man and a woman who are created man and woman are the only ones who can get married."

Gormly points out that the Littleton decision is not binding in Dallas and that the issue has not made it to the state's highest appellate court.

But the decision was cited recently by a Wharton judge who declared the marriage of Nikki Araguz void. Araguz was trying to collect death benefits after her firefighter husband was killed on duty when her husband's mother sought to have the marriage invalidated because Araguz was born male.

If Robertson simply agrees to a divorce, the Dallas case will not test the marriage laws, both sides agree.

But Nicol said Robertson is unwilling to divorce because she feels Scott took advantage of her when he did not work or take care of the house.

Scott, who suffers from scoliosis and other health issues, said he was a house husband during their marriage. Court filings include their joint income tax returns. Today, he is disabled and unemployed and wants alimony from Robertson, who works in the medical field, according to her attorney.

Spousal support, or maintenance as it is called in Texas, is limited but is allowed for in marriages lasting more than 10 years. A divorce would also require dividing property.

How the case goes forward depends on the attorney general's office, which did not return calls for comment.

Scott said he has reluctantly become the local face of the transgender marriage issue.

The attempt to have the marriage voided was "a slap in the face after 20 some odd years and all the money that I spent transitioning to be who I am," he said.

"I'm not a second-class citizen," he said. "I am a person, and like anybody else, I should have rights."

Nicol said Robertson would agree Scott is not a second-class citizen.

"No woman is a second-class citizen," Nicol said.

Other Texas cases involving transgender marriage:

CHRISTIE AND JONATHAN LITTLETON

Lee Cavazos was born a male, but changed his name in 1977 to Christie and underwent a series of surgeries between 1979 and 1980. In 1989, she married Jonathan Littleton in Kentucky. After his death in 1996, Christie Littleton tried to sue Jonathan Littleton's doctor for malpractice. The doctor said she had no right to sue because she was not a surviving spouse.

The outcome: In 1999, Christie Littleton was ruled a male by Texas' 4th Court of Appeals in San Antonio, making the marriage invalid.

JENNIFER AND ANDREW MIRELES

Jennifer Jack and Andrew Mireles, who was born a female, divorced in Harris County in 2005. Jack later filed to have the divorce decree set aside and vacated because she said she didn't learn until after the divorce that her husband was born a female.

The outcome: In 2008, a judge granted the request. Andrew Mireles sued and, in 2009, an appellate court in Houston upheld the original ruling.

NIKKI AND THOMAS ARAGUZ

Justin Purdue was born a male but dressed like a girl in high school, where she became known as Nikki. She married firefighter Thomas Araguz in 2008 and had surgery after the wedding. The firefighter was killed in 2010. His mother sued to have the marriage declared invalid because they were both male and claimed her son did not know about his wife's gender until after the wedding. The mother wanted Thomas Araguz's sons from a previous marriage to collect \$600,000 in death benefits. His first wife asked for a summary judgment to hasten the process.

The outcome: A judge in Wharton declared the marriage void earlier this year. The case is being appealed.

SABRINA HILL AND THERESE BUR

Sabrina Hill was allegedly born with both male and female organs. Her parents opted to raise her as a male, naming her Virgil, which is reflected on her original birth certificate. She underwent surgery to become a female in 1991. Hill applied for a marriage license in 2010 with Therese Bur, presenting the original birth certificate that listed her as a male, a court-ordered name change and her driver's license, which identified her as a female. The El Paso county attorney asked Attorney General Greg Abbott for an opinion on whether the license should be issued.

The outcome: Abbott declined to issue an opinion, citing the Araguz case, then pending.

SOURCE: Dallas Morning News research