

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SASHA BALLEEN, et al.,
Petitioners,

v.

No. 481 M.D. 2013

MICHAEL WOLF, SECRETARY OF
HEALTH OF THE
COMMONWEALTH OF
PENNSYLVANIA,
Respondent.

STIPULATION OF SETTLEMENT AND DISMISSAL

Pursuant to Pa. R.A.P. 1973(a), Petitioners and Respondent, the Pennsylvania Secretary of Health, consent to dismiss the above-captioned matter without prejudice based on the following agreement and representations:

WHEREAS, Petitioners brought this lawsuit seeking (1) a declaration that provisions of Pennsylvania's Marriage Law that prohibit the licensing and recognition of same-sex marriages, 23 Pa.C.S. §§ 1102, 1704, are unconstitutional; and (2) further seeking a declaration that the marriages of Petitioners that were performed based upon marriage licenses issued to them in July, August, or September 2013 by D. Bruce Hanes, Clerk of the Orphans' Court of Montgomery County ("Clerk"), and thereafter certified with his office, are legally valid; and

WHEREAS, Respondent, the Secretary of Health of the Commonwealth of Pennsylvania, has taken the position that Hanes did not have the legal authority in 2013 to issue marriage licenses to same-sex couples, *see Dep't of Health v. Hanes*, 78 A.3d 676 (Pa. Cmwlth. 2013); and

WHEREAS, on May 20, 2014, the United States District Court for the Middle District of Pennsylvania, in *Whitewood v. Wolf*, No. 13-cv-1861, 2014 WL 2058105 (M.D. Pa. May 20, 2014), declared that the provisions of Pennsylvania's Marriage Law that prohibit the licensing and recognition of same-sex marriages violate the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution; and

WHEREAS, the Secretary of Health (a defendant in *Whitewood v. Wolf*) did not appeal the order of the district court in *Whitewood* and is performing his official powers and duties in accordance with the district court's order; and

WHEREAS, notwithstanding the decision in *Whitewood*, the Secretary of Health maintains that Commonwealth Court's decision in *Dep't of Health v. Hanes*, 78 A.3d 676 (Pa. Cmwlth. 2013), was legally correct, and the Secretary states expressly that his agreement to this Stipulation of Settlement and Dismissal in no manner whatsoever is intended to diminish or otherwise affect positions taken by the Department of Health in *Dep't of Health v. Hanes* or the Department's

continuing support of the Opinion and Order entered by Commonwealth Court in that case; and

WHEREAS, Petitioners and Respondent desire to avoid further litigation, and to fully and finally resolve all claims and disputes between them as presented in the above-captioned action.

NOW, THEREFORE, in consideration of the mutual promises and releases contained herein, the receipt of which is hereby acknowledged, the Parties intending to be legally bound hereby, agree as follows:

(a) The Secretary of Health agrees—subject to the approval of Commonwealth Court—that the Department of Health will regard Petitioners (as listed in Exhibit 1 hereto) to be legally married under the laws of the Commonwealth of Pennsylvania from and after May 20, 2014—the date of the declaratory order entered in *Whitewood v. Wolf*.

(b) Each Petitioner agrees to evidence his or her acceptance and endorsement of this Stipulation through signature as shown in the attached Exhibit 2.

(c) The parties hereto agree to present this Stipulation of Settlement and Dismissal to Commonwealth Court for its consideration and approval.

(d) Upon approval of the Court, the Department of Health will transmit the fully executed Stipulation of Settlement and Dismissal to the Clerk of the

Orphans' Court of Montgomery County, together with instructions that he make the same a part of the official records of his office and conform his records and reporting of Petitioners' marriages accordingly.

(e) Specifically, the parties hereto agree that the records of the Clerk shall reflect that Petitioners are deemed to be married under the laws of Pennsylvania effective on and after May 20, 2014, without regard to the date on which the Clerk issued a marriage license to any Petitioner, the date on which the marriage of any Petitioner was performed, and the date on which a certificate of marriage was filed with the Clerk.

(f) In the event that the Clerk shall refuse or fail to act in accordance with this Stipulation of Settlement and Dismissal, this Stipulation of Settlement and Dismissal shall be suspended, and shall be of no force and effect, unless and until the Clerk conforms the records of his office as aforesaid.

(g) All parties shall bear their own costs, including attorneys' fees.

/s/Robert C. Heim

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Attorneys for Petitioners

Dated: September 16, 2014

SO ORDERED this 30th day of September, 2014.

/s/Joel L. Frank

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Attorneys for Respondent Wolf

By the Court:

Don Pellegrini
, P.J.

Certified from the Record

SEP 30 2014

And Order Exit