Property and Support Claims for Same-sex Couples in Nevada after *Obergefell*

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Legal background and issue

By 1996, the federal government and several states (including Nevada) had enacted Defense of Marriage Acts ("DOMAs") prohibiting recognition of any same-sex marriage. In 2000, Vermont became the first state to provide legal recognition to same-sex relationships in the form of civil unions. In 2003, Ontario, Canada was among the first places to legalize same-sex marriage. Nevada recognized civil unions as of 2009, but required those entered into elsewhere to be registered here to get legal effect.

Nevada's DOMA was overturned in *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014). The Supreme Court of the United States struck down all such laws in *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584; 192 L. Ed. 2d 609 (2015).

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LaFrance v. Cline

Mary and Gail both had substantial assets when they moved in together in 1995 in Florida. They moved to Nevada in 1999; they kept all assets separate with the exception of a co-owned house.

In 2000, they went to Vermont to get a civil union as a "political statement," but never registered it in Nevada. In 2003, they married in Canada for the same reason. They broke up just before the *Latta* decision rendered them retroactively married. Gail sued for divorce.

The trial court found their "community" started in 2000, but divided between them all property acquired by either of them before or after that date, and ordered alimony. Mary appealed.

The appeal

After *en banc* argument, the Supreme Court of Nevada found that *Obergefell* required recognition of only marriages, not un-registered civil unions, but required retroactivity to the date of the 2003 Canadian mar-

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riage, and remanded for regular community property principles, including tracing, to apply to all property acquired after that date. *LaFrance v. Cline*, No. 76161, Order Affirming in Part, Reversing in Part, and Remanding (Unpublished Disposition, Dec. 23, 2020).

Missed opportunities

Mary had argued that equal protection required that she have the same right that an opposite-sex party would have to hold property separately. Cohabiting opposite sex couples can choose to *not* pool their assets. If they decide to marry, they can enter into pre-marital agreements, and can agree after marriage to treat earnings as separate property. Mary claimed that all those rights to have her intentions recognized were denied to her when, in 2014, she was deemed retroactively married as of 2003.

The Court did not directly address the equal protection issue. The unpublished decision is not binding authority under NRAP 36. Therefore, reserved to some future case is the question of whether true equality requires an equal opportunity to choose how property should be treated, which was denied to same-sex couples prior to *Latta* and *Obergefell*. **C**