

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF ROANOKE

TERESA JOYCE AUSTIN,

Plaintiff,

v.

CL07-607

REBEKAH THEODORA AUSTIN,

Defendant.

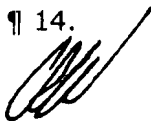
OPINION AND FINAL DECREE

Proceeding as she might in a divorce or annulment suit, plaintiff Teresa Austin ("Teresa") asks this court to dissolve or annul a civil union that she entered into with Rebekah Austin ("Rebekah") under the laws of Vermont, or to declare that the civil union between the parties "is not a valid marriage."¹ She "wishes to obtain legal recognition that the civil union between her and the Defendant has been terminated so that the Defendant may not attempt to avail herself of any rights which may have been conferred upon her by the union."²

Teresa and Rebekah are adult women who, according to the evidence, established a civil union with one another in Bennington,

¹ Complaint, Prayer for Relief.

² *Id.* ¶ 14.



Vermont on November 27, 2002.³ According to the pleadings and depositions, the parties then lived together in Roanoke County, Virginia until March 3, 2007. A nonparty witness testified that the parties have lived separate and apart, without interruption, without cohabitation, and with intent to be permanently apart, since March 3, 2007, and that there is no probability of reconciliation between them.⁴ According to Teresa's deposition testimony, she seeks dissolution of the civil union "[b]ecause Rebekah stole money from me and I don't want to be in a relationship with her anymore, and I don't want her to be able to make any claims on my [sic] or my property as a spouse or partner in a civil union."⁵

According to the testimony, Teresa is, and for more than six months immediately preceding commencement of this suit, was, an actual *bona fide* resident of, and domiciled in, the Commonwealth of Virginia.⁶ Although the evidence indicates that Rebekah now lives in the

³ A copy of the "Vermont License and Certificate of Civil Union" is attached and incorporated by reference. Also attached are a copy of the Complaint and of the proposed decree tendered by the plaintiff's lawyer.

⁴ Uninterrupted and intentional separation for more than one year is a ground for divorce under Virginia law. See Code § 20-91 (9); *Hooker v. Hooker*, 215 Va. 415, 211 S.E. 2d 34 (1975). The plaintiff offered the testimony of a nonparty witness because "[n]o divorce, annulment, or affirmation of marriage shall be granted on the uncorroborated testimony of the parties, or either of them." Code § 20-99. The nonparty witness also testified that no children had been born to or adopted by the parties. Thus, the principles that controlled the decision in *Miller-Jenkins v. Miller-Jenkins*, 49 Va. App. 88, 637 S.E.2d 330 (2006) have no bearing on the case at bar.

⁵ Deposition of Teresa Joyce Austin, March 19, 2008, p. 2.

⁶ "No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties is and has been an actual bona fide resident and domiciliary of this (footnote continued)



state of Washington, she was personally served, in Virginia, with process in this suit. She has not answered or otherwise responded to the plaintiff's complaint. In suits for divorce, annulment or affirmation of marriage, however, Virginia law provides that "whether the defendant answers or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise."⁷

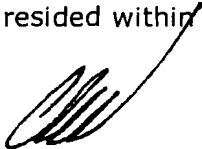
Vermont law explicitly authorizes civil unions between persons of the same sex. In that state, those who enter into civil unions "have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage."⁸ Civil unions are to be dissolved, under Vermont law, through the same legal process employed for dissolution of marriages — and as with suits for divorce, those who look to Vermont's courts for dissolution of civil unions must meet that state's residency requirements.⁹ Neither party, according to the evidence, meets those requirements.

Commonwealth for at least six months preceding the commencement of the suit. . . ." Code § 20-97.

⁷ Code § 20-99.

⁸ 15 V.S.A. § 1204(a); *see generally*, 15 V.S.A. §§ 1201-1207. A civil union is not, under Vermont law, a "marriage." "Marriage means the legally recognized union of one man and one woman." 15 V.S.A. § 1201 (4).

⁹ 15 V.S.A. § 1206; 15 V.S.A. § 592 (complaint may be filed if either party has been a resident for six months, but dissolution cannot be granted unless one of the parties has resided within Vermont for one year next preceding the final hearing in the case).



Under the Constitution of Virginia, "only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions."¹⁰

This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.¹¹

Thus, the Code of Virginia provides that "[a] civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable."¹²

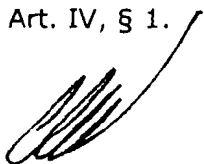
The Full Faith and Credit Clause of the Constitution of the United States¹³ is not implicated in this case, because of what is sometimes called the "public policy exception": The clause "does not compel a state

¹⁰ Constitution of Virginia, Art. I, § 15-A.

¹¹ *Id.*

¹² Code § 20-45.3.

¹³ Art. IV, § 1.

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to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate."¹⁴

Where does that leave Teresa Austin's prayer for relief in this case?

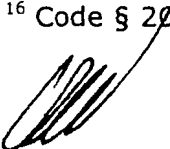
To an extent, the relief sought can be granted: In a suit in which this court has subject-matter jurisdiction¹⁵ and personal jurisdiction over the parties, the court finds that, within the boundaries of Virginia, the purported civil union between Teresa and Rebekah is void. No rights created by the civil union are enforceable by this or any court of this Commonwealth.¹⁶

Teresa, of course, seeks more — but what she seeks, a Virginia court cannot constitutionally give. Any declaration about the status of the Vermont-created relationship between the parties, any (in the words of the Complaint) "legal recognition that the civil union between [Teresa and Rebekah] has been terminated" requires the court, an agency of the Commonwealth, to "recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities,

¹⁴ *Franchise Tax Bd. v. Hyatt*, 538 U.S. 488, 494 (2003)(citations and internal quotation marks omitted). See 28 USC § 1738(c) ("No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession or tribe respecting the relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.")

¹⁵ Code § 17.1-500.

¹⁶ Code § 20-45.3.



significance, or effects of marriage [or] recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage."¹⁷ This, of course, I am forbidden to do by the Constitution and Code of Virginia.¹⁸

Accordingly, the court ADJUDGES, ORDERS and DECREES:

1. Within the boundaries of Virginia, the purported civil union between Teresa Joyce Austin and Rebekah Theadora Austin is void. No rights created by the purported civil union are enforceable by this or any court of this Commonwealth.
2. No other relief is granted.
3. Nothing further remaining to be done, the Clerk shall remove this cause from the docket, and place it among matters ended, indexing it in the names of Teresa Joyce Austin, Rebekah Theodora Townley, Rebekah Theadora Townley, Rebekah Theodora Austin, and Rebekah Theadora Austin.
4. Endorsements are dispensed with pursuant to Rule 1:13. The court reserves to the plaintiff all objections to the rulings contained

¹⁷ Constitution of Virginia, Art. I, § 15-A.

¹⁸ Sound judicial discretion and the Full Faith and Credit Clause also auger against a decision that a Virginia trial court has the power to declare that a legal relationship created and entered into in Vermont is void everywhere and for all time. If one of the parties to this suit were to become a resident of Vermont, for example, the courts of that state might legitimately wonder how, in our constitutional system, this court had the power to invalidate Vermont's statutory scheme.



herein, and specifically reserves to the plaintiff her objection to the court's failure to enter the decree tendered by the plaintiff's lawyer.

5. The Clerk is directed to send two certified copies of this decree to Evelyn K. Krippendorf, Esquire, The Krippendorf Law Firm, 354 W. Campbell Avenue, Roanoke, Virginia 24016. This is a final decree.

ENTER: This 27th day of May, 2008



Judge

CERTIFICATION OF VITAL RECORD

STATE OF VERMONT

DEPARTMENT OF HEALTH
VERMONT LICENSE AND CERTIFICATE
OF CIVIL UNION

02001518

LOCAL FILE NUMBER

STATE FILE NUMBER

PARTY A

1. NAME (First, Middle, Last) Teresa Joyce Austin		1b. MAIDEN SURNAME (If Applicable)	1c. DATE OF BIRTH (Month, Day, Year) August 16, 1955
2. SEX Female	3. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) 6928 LaMarre Drive, Roanoke, Virginia 24019		
4a. USUAL RESIDENCE - STATE Virginia	4b. CITY OR TOWN Roanoke		5. BIRTHPLACE (State or Foreign Country) Virginia
6a. FATHER'S NAME (First, Middle, Last) Kenneth Winifried Austin	6b. BIRTHPLACE (State or Foreign Country) Virginia	7a. MOTHER'S NAME (First, Middle, Maiden Surname) Margaret Evelyn Hawkins	7b. Birthplace (State or Foreign Country) Virginia

PARTY B

8a. NAME (First, Middle, Last) Rebekah Theadora Townley		8b. MAIDEN SURNAME (If Applicable)	8c. DATE OF BIRTH (Month, Day, Year) September 23, 1957
9. SEX Female	10. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) 6928 LaMarre Drive, Roanoke, Virginia 24019		
11a. USUAL RESIDENCE - STATE Virginia	11b. CITY OR TOWN Roanoke		12. BIRTHPLACE (State or Foreign Country) Kentucky
13a. FATHER'S NAME (First, Middle, Last) Shelby Thomas Armstrong	13b. BIRTHPLACE (State or Foreign Country) Kentucky	14a. MOTHER'S NAME (First, Middle, Maiden Surname) Louisa Mae Skovonia	14b. Birthplace (State or Foreign Country) Lithuania

APPLICANTS

We hereby certify that the information provided is correct to the best of our knowledge and belief and that we are free to form a civil union under the laws of Vermont.

15a. SIGNATURE <i>[Signature]</i>	15b. DATE SIGNED 11/27/02	15c. SIGNATURE <i>[Signature]</i>	15d. DATE SIGNED 11/27/02
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CERTIFICATION

I hereby certify that the above named persons have made oath to the truth of the facts stated in the foregoing declaration and complied with the civil union laws of the State of Vermont.

16a. DATE ON WHICH LICENSE WAS ISSUED (Month, Day, Year) November 27, 2002
16b. TOWN CLERK (Signature) <i>Cassandra Barbeau</i> , Asst
16c. TOWN OR CITY Bennington
16d. THIS LICENSE IS VALID FROM 11/27/02 (DATE) TO 1/25/03 (DATE) UNLESS WAIVED BY A VERMONT COURT

OFFICIANT

This license authorizes the establishment of a civil union IN VERMONT ONLY of the above named parties by any person duly authorized to certify a civil union.

17a. I CERTIFY THAT THE ABOVE PERSONS ESTABLISHED A CIVIL UNION ON (Month, Day, Year) DATE: November 27, 2002	17b. IN THE CITY OR TOWN OF Bennington
17c. SIGNATURE OF OFFICIANT <i>Linda A. Corcoran</i>	17d. NAME (Type Print) Linda A. Corcoran
17e. ADDRESS OF OFFICIANT (Street and Number or Rural Route Number, City or Town, State, Zip Code) 703 Jefferson Hgts Bennington, VT 05201	17f. TITLE Justice

REGISTRATION

18a. CLERK'S SIGNATURE <i>Cassandra Barbeau</i> , Assistant Town Clerk	18b. DATE RECEIVED BY LOCAL REGISTRAR November 27, 2002
19a. TOWN CLERK'S SIGNATURE (To be signed by Registrar on copy only) <i>Cassandra Barbeau</i>	19b. TOWN Bennington
19c. DATE Nov 27 2002	

THIS IS A TRUE AND EXACT REPRODUCTION OF THE DOCUMENT OFFICIALLY REGISTERED AND PLACED ON FILE IN THE VITAL RECORDS SECTION, DEPARTMENT OF HEALTH.

DATE ISSUED:

MAY 18 2007

ATTES

Shawn H. Moffatt

COMMISSIONER
VERMONT DEPARTMENT OF HEALTH

This copy not valid unless prepared on engraved border displaying Seal and Signature of Commissioner.



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

TERESA JOYCE AUSTIN,

Plaintiff

v.

COMPLAINT

REBEKAH THEODORA AUSTIN

Defendant

TO THE HONORABLE JUDGES OF THE AFORENAMED COURT:

COMES NOW **TERESA JOYCE AUSTIN**, by counsel, pursuant to §20-45.2 of the 1950 Code of Virginia, as amended, and moves the Court for a Decree dissolving her civil union with Rebekah Theodora Austin; and as grounds therefore, says as follows:

1. On the 27th day of November, 2002, in Bennington, Vermont, the Plaintiff and the Defendant, who are both of the same sex, entered into a civil union which is permitted by the laws of the State of Vermont. A copy of the "Vermont License and Certificate of Civil Union" is attached hereto as "Plaintiff's Exhibit."

2. No children were born to, or adopted by, the parties.

3. Plaintiff is domiciled in and has been a bona fide resident of the Commonwealth of Virginia for more than six months prior to the commencement of this suit.

4. Plaintiff is a resident of the County of Roanoke, Virginia.

5. Defendant is a resident of Seattle, Washington.

6. Neither member is a member of the armed forces of the United States.

7. Both parties are over the age of eighteen years.

8. The parties last cohabited together at 6928 LaMarre Drive, Roanoke VA 24019, in the County of Roanoke.

9. The parties separated on March 3, 2007. with the intent that the separation be a permanent one; and the separation has been continuous and uninterrupted since that date.

10. There is no probability that the parties will reconcile.

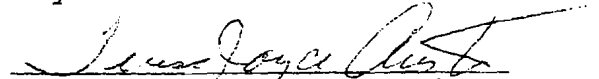
11. There are no property or support issues between the parties.

12. The civil union between persons of the same sex is recognized in the State of Vermont and confers certain rights upon the parties, but the union is invalid in the Commonwealth of Virginia, and in most other states.

13. The parties cannot obtain a dissolution of their civil union in Vermont because at least one of them must have been a resident of Vermont for a period of one year prior to filing in order to do so.


14. Plaintiff wishes to obtain legal recognition that the civil union between her and the Defendant has been terminated so that the Defendant may not attempt to avail herself of any rights which may have been conferred upon her by the union.

WHEREFORE, the Plaintiff prays that this Court enter an Order dissolving and/or annulling the civil union between her and the Defendant; or in the alternative, an Order declaring that said union is not a valid marriage; and that she have such other general and further relief as the Court may find warranted.


Teresa Joyce Austin

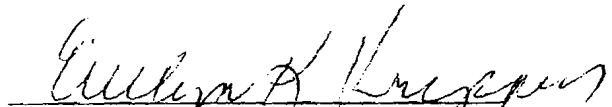
COMMONWEALTH OF VIRGINIA AT LARGE, to-wit:
City of Roanoke, to-wit:

The foregoing instrument was subscribed and sworn to in the City of Roanoke, Virginia, before me, Tiffany L. Harris, a Notary Public in and for the Commonwealth of Virginia At Large, this 29th day of May, 2007.


Notary Public

My commission expires:

June 30, 2010.


Evelyn K. Krippendorf (VSB #19197)

THE KRIPPENDORF FIRM
354 West Campbell Avenue
Roanoke VA 24016
Telephone: (540) 982-8499
Facsimile: (540) 982-1122

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

TERESA JOYCE AUSTIN,

Plaintiff

v.

DECREE

Case No. CL07-0607

REBEKAH THEODORA AUSTIN

Defendant

THIS CAUSE came this day, upon Plaintiff's Complaint requesting a Decree dissolving her civil union or annulling the union or declaring it invalid, which was filed on May 29, 2007, and personally served upon the Defendant in Roanoke, Virginia; upon Plaintiff's Notice to Take Depositions, which was personally served upon Defendant in Roanoke, Virginia; upon proof of service of same; upon depositions of witnesses on behalf of Plaintiff, which were taken on June 29, 2007, and continued to August 2, 2007, and to March 19, 2008; and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court independently of the admissions of either party in the pleadings or otherwise, that Plaintiff and Defendant entered into a civil union on November 27, 2002, in Bennington, Vermont; that both parties are over the age of eighteen years; that the Plaintiff has been a resident(s) of and domiciled in the State of Virginia for more than six months next preceding the commencement of this suit; that

the Defendant may be retired from the Armed Forces of the United States; that Plaintiff was a resident of the County of Roanoke, Virginia, at the time this suit was filed; that Defendant was a resident of Seattle, Washington, at the time this suit was filed; that the parties last cohabited together in the County of Roanoke, Virginia; that the parties have not cohabited since March 3,

IT FURTHER APPEARING TO THE COURT that marriage between same sex parties and civil unions or other arrangements between same sex parties purporting to bestow the privileges or obligations of marriage are prohibited in Virginia, and that any such marriage or civil union or other arrangements purporting to bestow the privileges or obligations of marriage entered into in another state is void in all respects in Virginia, including any contractual rights purportedly created thereby; and that the civil union between the Plaintiff and Defendant is of no force or affect in Virginia; it is hereby

ADJUDGED, ORDERED AND DECREED

that the civil union entered into by the parties in Vermont is **NULL AND VOID**; and nothing in this Decree shall be interpreted as recognition of the existence or validity of any such union in Virginia or in any other state which prohibits them.

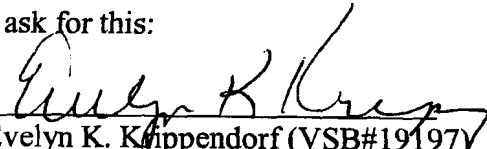
The Clerk is directed to certify a copy of this decree to counsel for the plaintiff and to the defendant who is appearing pro se.

There being nothing further remaining to be done in this cause, the Clerk is directed to strike it from the docket and place it with those matters ended.

Enter this the _____ day of _____, 2008.

Judge

I ask for this:



Evelyn K. Krupp

Evelyn K. Krupp (VSB#19197)

THE KRIPPENDORF FIRM

354 West Campbell Avenue

Roanoke, VA 24016

Telephone: (540) 982-8499

Facsimile: (540) 982-1122

Counsel for Plaintiff