

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO

Adams County Justice Center
1100 Judicial Center Dr.
Brighton, CO 80601

REBECCA BRINKMAN and MARGARET BURD

Plaintiffs,

v.

KAREN LONG and THE STATE OF COLORADO

Defendants.

And

G. KRISTIAN McDANEIL-MICCIO, et. al.

Plaintiffs

v.

STATE OF COLORADO, et. al.

Defendants

COURT USE ONLY

Case No. 13 -CV-32572

Division: C

Courtroom: 506

And

Denver District Ct.

Case No. 14-CV-30731

MDL Case No. 14MD4

ORDER

The State of Colorado (the State) filed an Emergency Motion for Injunction Pending Appeal to Prevent Denver Clerk & Recorder (Clerk & Recorder) from Issuing Same-Sex Marriage Licenses Motion) on July 10, 2014. The Clerk & Recorder filed an Objection on July 11, 2014. Denver Plaintiffs filed an Opposition on July 11, 2014. A Reply was filed July 11, 2014. The Court, being fully advised, finds and orders as follows:

Background for the Motion

After full briefing and oral argument the Court issued its Summary Judgment Order finding, *inter alia*, that Colorado's Marriage Bans were

unconstitutional because they violated plaintiffs' equal protection and due process rights under the Fourteenth Amendment to the U.S. Constitution. The Court also stayed its Order pending appeal. The Court has been advised that notwithstanding the Court's stay order, the Clerk & Recorder has been issuing marriage licenses to same-sex couples.

Nature of the Motion

The Motion seeks an Order granting a preliminary injunction pursuant to Rule 62(c) enjoining the Clerk and Recorder from issuing same-sex marriage licenses before the stay of this Court's Order is lifted.

Brief Summary of the Parties' Positions

The State

The State argues that it needs an emergency injunction pursuant to CRCP 62(c) because the Clerk & Recorder has been issuing marriage licenses to same-sex couples despite this Court's entry of a stay of its Summary Judgment Order of July 9, 2014. For all the legal reasons previously presented to this Court in the State's motion for a stay, which was opposed, an injunction is necessary to prevent the issuance of the marriage licenses contrary to existing Colorado law. Without the injunction, the Court's Order and authority to resolve the disputed issues will be gravely undermined. Courts have authority to issue injunctions to preserve the status quo pending appeal, citing CRCP 62(c) and *Arapahoe County Pub. Airport Auth. v. Centennial Express Airlines, Inc.*, 956 P.2d 587, 599 (Colo. 1998).

Clerk & Recorder

The plain language of Rule 62(c) demonstrates that it has no application to the matter before the Court. Rule 62(c) provides:

Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the trial court in its discretion may suspend, modify, restore, or grant an injunction

during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. (Emphasis supplied).

In this case the Court specifically stated that it was not granting an injunction. Summary Judgment Order, p. 45.

The State has failed to demonstrate that this Court has jurisdiction to issue the injunctive relief being sought or that an actual emergency exists necessitating that an injunction enter immediately. Further, the issuance of unauthorized marriage licenses was not litigated as part of this case and was not addressed in the Court's Summary Judgment Order. This is unlike the case filed by the State in Boulder County which specifically sought relief preventing the Boulder County Clerk & Recorder from issuing marriage licenses to same-sex couples. The Response addressed injunctive relief under Rule 65 concluding that the State could not meet its burden to obtain such an injunction.

Denver Plaintiffs

Denver Plaintiffs argued that the Court's Order does not require clerks to continue to violate the constitutional rights of same-sex couples. Rule 62(c) provides for an injunction "when an appeal is taken." The rule cannot be invoked because no notice of appeal has been filed. Denver Plaintiffs also addressed an injunction under the factors set forth in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982).

State Reply

The State argued that the issuance of marriage licenses to same-sex couples by the Clerk & Recorder was an integral part of this case. The State itemized references in the Denver Plaintiffs' complaint referencing the involvement of the Clerk & Recorder. Denver Plaintiffs sought relief in the form of an injunction requiring the Clerk & Recorder to issue same-sex marriage licenses.

The State repeated its argument that CRCP 62 permits the Court to grant an injunction to preserve the status quo pending appeal, referencing *Woitcheck v. Isenberg*, 379 P.2d 392, 394 (Colo. 1963).

Issues

Is the State entitled to an injunction pending appeal pursuant to CRCP 62(c)?

Analysis

As noted by the Clerk & Recorder, the Court's Order for Summary Judgment specifically stated:

The Court has read and re-read the briefs filed by the parties in an attempt to find any discussion of the grant or denial of an injunction and has found none. None of the briefs mentioned *Rathke* or analyzed the facts of this case in light of the six factors set forth therein. This Court has found the Marriage Bans unconstitutional but has not issued an injunction, mandatory or otherwise. (Emphasis supplied).

The Court has, however, entered a stay of its Order pending appeal. It is informative that CRCP 62 addresses automatic stays; discretionary stays; injunction pending appeal; and stays on appeal. First, it would be redundant to once again stay the Order by injunction when the Order has already been stayed.¹

Second, and more importantly, Rule 62(c) has no application to this Court's Order. The Court did not deny, grant or dissolve an injunction. The injunction issue had simply not been adequately addressed in the briefing either from an evidentiary² or a legal standpoint for the Court to enter such an order.³ The precise

¹ The Court will not address an injunction from the standpoint of *Rathke* because it was not sought by the State in this Motion.

² Granting or denying an injunction would require findings by the Court regarding facts which were not submitted to the Court as stipulated.

³ This raises the specter that inasmuch as plaintiffs were seeking injunctive relief, which has not been addressed, this is not a final appealable judgment under Rule 54(b).

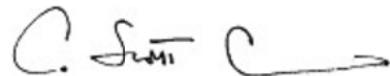
language of that subsection makes it clear that it applies, “[w]hen an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying injunction...” Once again, no injunction, interlocutory or otherwise, was entered or denied by the Court.⁴ The Court does not find *Woitcheck*, *supra*, persuasive in the present situation.

Order

The State’s Motion is DENIED.

Dated this 14th day of July, 2014.

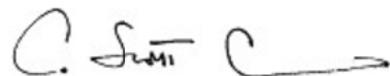
By the Court:



C. Scott Crabtree
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that the foregoing document was sent via JPOD (e-file) to all counsel of record and to all *pro se* parties this 14th day of July, 2014.



Court

⁴ It is not the function of an injunction to enforce the dignity and enforceability of a Court’s Order.