



Gay Marriage Plaintiffs Want Cases In Fla. Supreme Court

By **Nathan Hale**

Law360, Miami (July 28, 2014, 4:38 PM ET) -- A gay couple from Key West who won a decision overturning Florida's ban on same-sex marriage is seeking to take the state's appeal directly to the Florida Supreme Court, where it seems certain to be headed.

Plaintiffs Aaron R. [Huntsman](#) and William Lee Jones, two bartenders who challenged state laws and a 2008 constitutional amendment after being denied a marriage license, [won summary judgment](#) in the case on July 17 but have since failed in both attempts to get the stay of Monroe County Circuit Judge Luis Garcia's order lifted.

They have suggested that the Third District Court of Appeal, where the case is pending on Florida Attorney General Pam Biondi's appeal, exercise "pass through" jurisdiction and certify the order directly to the state's highest court.

"The constitutionality of Florida's law barring same-sex couples from marriage is an issue of great public importance that has a great effect on the proper administration of justice throughout the state," they said in their filing. "There is a need to bring finality to this issue on a statewide basis so that clerks of court throughout the state have uniform guidance as to whether they must issue marriage licenses on an equal basis to otherwise qualified same-sex couples."

Huntsman and Jones' case is one of several similar cases currently pending across Florida in both state and federal courts. On Friday, Miami-Dade County Circuit Judge Sarah Zabel granted summary judgment in favor of [six same-sex couples](#) in the case Pareto et al. v. Ruvin, a decision that is also stayed pending state appeal.

Shannon Minter, legal director of the National Center for Lesbian Rights, who is representing the Miami couples, said that they intend also to ask the Third District to certify that decision.

"We are hopeful the Florida Supreme Court would agree to hear the case, given the importance of the issues and the compelling need for these families to know whether they have legal protections," Minter told Law360 on Monday. "Every day that goes by that the marriage ban remains in effect, same-sex couples and their children are being denied critical protections and suffering harms that cannot be remedied after the fact."

If the Third District grants the motion for certification, then it is up to the Florida Supreme Court whether it will take the case directly or ask the Third District to rule first, Minter said.

A decision from the Supreme Court would provide "uniform direction and guidance" to public and private entities and the judiciary throughout the state, Huntsman and Jones said.

They also argued that an immediate resolution is needed because the decision covers a matter of great public importance and because same-sex couples and their children and other family members are being excluded from a right the [U.S. Supreme Court](#) has described as "of fundamental importance for all individuals."

It has been well-established that infringement of a constitutional right amounts to irreparable harm, they

said.

“Delaying resolution by the Supreme Court (whose review will undoubtedly be sought by one of the parties, irrespective of this court's decision) will cause plaintiffs, and other similarly situated same-sex couples, irreparable harm by continuing to deprive them of important constitutional rights, as well as exposing them to ongoing dignity and practical harms that cannot be redressed by money damages or a later court order,” the filing says.

Monroe County Clerk Amy Heavilin, the named defendant in the case, has no objection to the certification, according to the filing. The state had not immediately responded to the plaintiffs' or Law360's request for comment.

In another suit in the Florida state court's addressing same-sex marriage rights, [The Florida Bar](#) announced Friday that it has granted permission to its Family Law Section to join in an amicus brief in the appeal of a decision out of Hillsborough County denying a divorce decree to a same-sex couple living in Florida but married under Massachusetts law.

The Florida Bar cannot take a position in the appeal, it said, but its governing board has the ability to permit a section and its members to use their resources to advocate in the section's name. The Family Law Section currently has 4,107 voluntary members, according to the announcement.

“As a result of this ruling, same-sex couples validly married in other states but living in Florida do not have access to our courts for divorce or for the orderly resolution of their legal rights and obligations,” Florida Bar President Gregory W. Coleman said in a statement. “Therefore, the bar’s Board of Governors, while not weighing in on this issue for the entire bar and not commenting on any related social issues, did agree to allow the Family Law Section to do so on behalf of its voluntary members in order to address the issue of access to justice.”

Briefs for the case, titled *Shaw v. Shaw*, have not yet been filed in the Second District Court of Appeal, according to Brett Rahall, counsel for appellant Mariama Shaw.

“I am hopeful that the Family Law Section’s amicus brief will assist the appellants in obtaining a successful ruling that will benefit many of Florida’s citizens,” Weston-based family law section member Lori Barkus told Law360, adding that the effect of the ruling in the suit is to deny Florida residents access to the courts and noting the rulings in the *Huntsman* and *Pareto* cases.

Huntsman and *Jones* are represented by Elena Vigil-Farinas, Bernadette Restivo and Thomas L. Hampton of Restivo Reilly & Vigil-Farinas LLC.

Monroe County Clerk of the Courts Amy Heavilin is represented by general counsel Ronald E. Saunders.

The plaintiffs — Catherina Pareto and Karla Arguello, Juan Carlos Rodriguez and David Price, Vanessa and Melanie Alenier, Todd and Jeff Delmay, Summer Greene and Pamela Faerber, and Don Price Johnston and Jorge Isaias Diaz — are represented by Sylvia H. Walbolt, Nancy J. Faggianelli, Luis Prats, Jeffrey Michael Cohen and Cristina Alonso of [Carlton Fields Jorden Burt PA](#), by Shannon P. Minter, Christopher F. Stoll, David C. Codell and Asaf Orr of the National Center for Lesbian Rights, by Elizabeth F. Schwartz PA and by Mary Meeks PA.

Miami-Dade County Clerk of Courts Harvey Ruvin is represented by Eileen Ball Mehta of [Bilzin Sumberg Baena Price & Axelrod LLP](#) and counsel to the clerk of courts Luis G. Montaldo.

The state of Florida is represented by Solicitor General Allen Winsor and Chief Deputy Solicitor General Adam S. Tanenbaum.

Mariama Shaw is represented by Brett Rahall and Ellen Ware.

Keiba Shaw is represented by Adam Cordover and Deborah Thompson.

The Florida Bar is represented by Christopher Rumbold.

The cases are Huntsman et al. v. Heavilin, case number 3D14-1783, and Pareto et al. v. Ruvin, case number, in the Third District Court of Appeal of Florida and Shaw v. Shaw, case number 2D14-2384, in the Second District Court of Appeal of Florida.

--Additional reporting by Carolina Bolado and Brandon Lowrey. Editing by Rebecca Flanagan.
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