

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CASE NO.: 04-004277-FD-14

IN RE: THE MARRIAGE OF

LAWRENCE ROACH,

Petitioner,

and

JULIA ROACH, n/k/a  
JULIO ROBERTO SILVERWOLF,

Respondent.

**ORDER ON RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

THIS MATTER came on before the Court on March 27, 2007, before the Honorable Jack R. St. Arnold on Respondent's Motion for Judgment on the Pleadings filed February 1, 2007, and superseded by Respondent's Amended Motion for Judgment on the Pleadings, with Supporting Memorandum of Law filed March 8, 2007 and another Amended Motion for Judgment on the Pleadings, with Supporting Memorandum of Law filed March 20, 2007. Present before the Court were the Petitioner, Lawrence Roach, his attorney, John Smitten, Esquire and John McGuire, Esquire, the Respondent, Julia Roach, n/k/a Julio Roberto Silverwolf was not present at the hearing but was represented by Jonathon Coleman, Esquire, Greg Nevins, Esquire and Jennifer Reh, Esquire. The Court having received exhibits, heard the argument of counsel and otherwise being fully advised, the Court finds as follows:

The parties were married on July 24, 1986. On May 26, 2004, they entered into a Marital and Property Settlement Agreement which, among other things, provided that the Petitioner would pay the Respondent as permanent, periodic alimony the sum of \$1,250 per month. While the alimony obligation would terminate upon the death of either party, or marriage of the Respondent, it was not to be modifiable except by written agreement of the parties. On December 2, 2004, the Court approved the above-described agreement and entered its Final Judgment of Dissolution of Marriage. The Petitioner alleges, and the Respondent admits, that following the dissolution of marriage she underwent sex reassignment surgery and no longer holds herself out as a female, but rather holds herself out as a male. These facts are not in dispute.

The Petitioner argues that the sex reassignment surgery is the legal equivalent of the death of the Respondent and the support obligation should be terminated. The Petitioner further asserts that the Respondent is now legally a man. Because Florida

does not recognize same sex marriages, as a matter of law, the Court cannot continue to award alimony from one man to another.

Any party may move for a Judgment on the pleadings at any time after the pleadings are closed. Fla. R. Civ. P. 1.140(c). The Trial Court's decision on such a motion must be decided solely on the pleadings without reference to any outside matters. All material allegations of the opposing party's pleadings are taken as true.

Despite the surgery and the fact that the Respondent holds herself out to be a male, Florida recognizes the immutable female traits determined at birth. Whether advances in medical science support a change in the meaning commonly attributed to the terms "male" and "female" as they are used in Florida, is a question that raises issues of public policy that should be addressed by the legislature, not the Florida Courts. The Courts have held that Florida Statutes prohibit a post operative transsexual from marriage in the reassigned sex. Until the Florida legislature recognizes sex reassignment procedures and amends Chapter 61 to provide for a termination of permanent periodic alimony as constituting a substantial change in circumstances, this Court will adhere to the common meaning of the terms "male" and "female" as such was determined by their biological sex at birth. Kantaras v. Kantaras, 884 So.2d 155 (2<sup>nd</sup> DCA 2004). Because Florida does not recognize gender reassignment surgery as effective to alter an individual's gender, this Court cannot find that the Respondent is now a male. Accordingly, there has not been a substantial, permanent, involuntarily change in circumstances sufficient to support a termination of alimony.

The Petitioner additionally contends that a sex reassignment procedure is the legal equivalent of death. This is illogical in that there is no physical evidence that the Respondent is in fact dead.

Finally, the Marital Settlement Agreement included a "non-modifiable" provision which specifically set forth the circumstances under which alimony would terminate. Gender reassignment surgery was not listed therein. For the foregoing reasons, it is

ORDERED AND ADJUDGED that the Respondent's Motion for Judgment on the Pleadings in granted. Petitioner's Supplemental Petition for Modification of Final Judgment filed November 8, 2006 and amended on February 13, 2007 is dismissed.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida this \_\_\_ day of March, 2007.

Copies furnished to:  
John Smitten, Esquire  
Jonathan Coleman, Esquire

JACK R. ST. ARNOLD  
Circuit Court Judge

