

After Gay Marriage Comes Gay Divorce

Jen Doll 112,275 Views Jun 25, 2012

Soon after New York passed the Marriage Equality Act on June 24 last year, Katie Marks and Dese'Rae Stage began planning their wedding day. A licensed masseuse and a photographer, both 28, the couple had been dating since 2008 and were already planning to get married — in Boston over the Memorial Day weekend of 2012 — but the euphoria of the moment moved everything forward. “It was kind of one of those things, to be a part of history,” Des says. On July 30, the first Saturday that gay marriages could be performed in New York City, Katie in a magenta dress and Des in skinny jeans and pink Chuck Taylors joined 23 other couples at the Pop Up Chapel, a one-day wedding event in Central Park, as part of New York City’s first wave of legally married gay couples. By January, though, things had started to come apart. Des and Katie have since separated and moved out of their Washington Heights apartment. They’re now one of the first married gay couples — if not the very first — in New York to divorce. “I feel like I’m the president of the loneliest club in the world,” Des says. “I was the first gay person in my group of friends to marry, and now I’m the only gay divorcée I know.”

“Of course, the news made us sad,” says Bex Schwartz, one of the Pop Up Chapel’s organizers, “but as ministers who perform weddings, marriage equality means marriage is marriage. Unfortunately, the other side is divorce is divorce.”

For all the best intentions, nearly half of U.S. marriages end in divorce. In a Williams Institute study by M.V. Lee

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Badgett and Jody L. Herman from November 2011, the authors chronicled data to provide a picture of the need for legal recognition of same-sex marriage and divorce. "In the U.S., over 140,000 same-sex couples have formalized their relationship under state law and nearly 50,000 have married," they write. "The data show that same-sex couples marry at much higher rates than they enter civil unions or other legal statuses.... When a state allows marriage for same-sex couples, over 60 percent of those who marry come from other states." Their research found that on average the annual divorce rate for same-sex couples is similar to, though slightly lower than, the rate for different-sex couples. About 1.1 percent of same-sex couples in legal unions end their relationship, they found, while about 2 percent of married different-sex couples divorce.

Few couples go into a marriage expecting to end up on the wrong side of these statistics. State by state, bit by bit, advocates of marriage equality have celebrated victories — like New York becoming the sixth state to allow gay marriages, Obama's long-awaited personal support, or the court reversal of California's Prop. 8 — and have mourned setbacks — like North Carolina voters adopting a same-sex marriage ban. But the d-word almost never comes up. It's certainly not a pleasant topic. And, indeed, there's even a bit of fear: If we acknowledge that gay marriages can (and, based on the statistics for heterosexual couples, many of them will) fall apart, does it weaken the case for those marriages having existed in the first place? Of course not: Everyone should have a right to marry as well as to divorce. But we need to acknowledge that the rights of marriage are as much about moments of crisis as they are about the moments of happiness: when a spouse loses a job, the law continues health care benefits under COBRA; when a spouse is injured, the law grants hospital visitation rights; or when a spouse dies, the law provides Social Security benefits and inheritance. So, too, are divorce rights — all the mechanisms jurisdictions have devised to divide a love broken, property, finances, and child custody — most needed when a wedding day's joy has long faded.

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In the six states that allow same-sex marriage—Massachusetts, New York, Connecticut, Iowa, New Hampshire, and Vermont—

plus the District of Columbia—heterosexual and gay marriage and heterosexual and gay divorce are still not quite the same things, largely because of the federal benefits gay couples don’t receive by marrying and federal protections they don’t have while divorcing. That gap is greater in states that only legally recognize civil unions, state-registered domestic partnerships, and limited rights statuses of same-sex couples, and even greater still in states that don’t recognize the relationships at all. Gay divorce is still largely “uncharted territory,” says Elizabeth Schwartz, a lawyer practicing in Florida.

In New York, gay divorce is recognized because gay marriage is recognized, but that’s not the case everywhere. In Florida, for example, where gay marriage is not legal, same-sex couples who have married in another state are reliant on the discretion of judges. “What I’ve been seeing,” says Schwartz, “are people who’ve said, ‘Wow, is it possible for me to divorce without having to move to that state [where they were married] and get residency?’ And when there’s fighting over kids and assets—if you’re not in a state that recognizes same-sex marriage, there’s no alimony. You have to count on the generosity of your ex.”

The
Pop
Up

Chapel website still bears the engagement photo in which Katie’s lips are pressed to Des’ cheek. “They’ve accumulated quite the furry family, but also look forward to meeting the children they’ve named and have yet to conceive. All in all, they complete each other, and they think that’s pretty awesome,” reads the accompanying text. Des is quoted, “I know we’ve already started a life together, but I can’t wait to be able to call her my wife.”

They’d gone to middle school and high school together, but went their

separate ways before reconnecting on MySpace in 2008. On July 24, the first day that New York clerks issued marriage licenses to same-sex couples, Des and Katie picked theirs up at the City Clerk's Office in downtown Manhattan. "Couples were getting married and coming out of the courthouse, and there were musicians playing. I got chills every time a couple came out," Des told me when I met with her at a bar in SoHo, her mood more somber than the festive events she remembered, or, for that matter, as I remember. At the time, I was covering New York's first same-sex marriages for the *Village Voice*. I'd spoken to Des about how excited she was to be married. You could hear it in her voice. The New York wedding would be the "no-stress" one, Des told me then, to be followed by the bigger formal ceremony in Boston. There would be cupcakes. The couple seemed giddy, thrilled, and very publicly in love.

That Saturday, July 30, their wedding day, Des says now, was the kind of whirlwind any bride speaks of. "It went by so fast. We got our hair done, we got our makeup done. We changed, we went to Central Park. We forgot to eat, so we went to Whole Foods, and we're like, *We're eating at Whole Foods and we're about to get married*. It was surreal. I was so excited."

After the wedding, Des wrote on her blog, in a post titled "We Did It!",

That was seriously the best day of my life. Yes, I'm

speaking in clichés, but seriously. If I could just re-live that day a couple of times to experience it more, I'd be happy. I mean, I am happy. Ecstatic. But I'd be happier with a do-over or two. Instead, it lives in memory, and in the photographs...

While the right to wed legally (in some states, that is) has inspired a wave of new couples to tie the knot, the opposite side of that is the fallout that occurs when things don't work out. And, as several lawyers told me, gay couples often jump into marriage the same way many heterosexual couples do: Eager, euphoric—and without much time and attention given to the possibility of things going wrong.

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people do: 'I'm excited, let's get married, and work out the problem later.'” Shannon Minter, Legal Director of the National Center for Lesbian Rights, told us, “Every time a state gets rid of a marriage bar, there's a flood of couples. That makes sense, and maybe some people do it impulsively, caught up in the moment. But it's a serious step, and it has significant legal consequences.” On the sort-of-bright side, Minter adds, “I think we will continue to see people divorce. But nothing has humanized gay couples more than for straight people to realize gay couples need to divorce, too.”

“We have 34 [gay divorce] cases right now in the office, compared to 150 [heterosexual] divorce cases,” says Raoul Felder, a New York divorce lawyer who has handled numerous high-profile breakups including Rudy Giuliani's split from his wife of 18 years, Donna Hanover, while he was mayor of New York. Felder's growing case file did not yet include couples who'd wed in New York starting last June; instead they are couples who'd married in other states, like Massachusetts. With New York divorce law requiring marriages to be “irretrievably broken” for at least six months before couples can file for a no-fault divorce (which is itself relatively new in New York state, adopted only in 2010), cases like Des' and Katie's will be some of the earliest to come down the pike. Felder added that gay divorces are currently “filtering down at a faster rate than heterosexual divorces.”

The patchy legal protections for gay couples who are married or have civil unions provide vengeful exes all sorts of ways to get back at their former spouses. “I met with two different women breaking up with their partners with whom they've been for more than 20 years,” Schwartz told us. “Both of these women in one way or another were like, ‘I don't want

her to be out on the street, I want to be fair.’ Then I have people who come to me and say, ‘This person never works, do I have any obligation?’ There’s what the law requires and what law and ethics require. Plenty of people take homophobic positions, using the law to their advantage.” She adds, “The kid thing is the heartbreaker. A biological mom saying, thanks for everything, you’re out of luck,” to her former partner, who has no legal rights to the child. Or, with a 401(k), she explains, “there’s a mechanism for dividing that asset upon a heterosexual divorce,” but it does not exist for gay couples even in states where their marriages are recognized. “Overall,” she says, “there’s a sense that we’ve been crafting our way into this marriage, we’ll have to craft our way out. We have the added obstacle of not having a legal system to arbitrate, so it’s up to us.”

“The antagonism and anger in these divorces is enormous. When they’re finally able to get married and it doesn’t work out, there’s a terrific letdown. But that’s the price of progress.”

The Internet can be a tough place to showcase a relationship, but it’s a tougher place for one to implode. Along with photos of the happy

couple on Des’s blog and on the Pop Up Chapel site to serve as a reminder of what was and what now is not, there was an online chronicle, tumultuous, emotional, and vengeful at times (much has since been deleted) of the couple’s divorce-in-progress, on social media sites and Internet forums.

“January 28 is the day I can really pinpoint that something started,” Des says. Katie had become involved with another woman, whom she’d met via the social media site Instagram. Prior to that, as Des tells it, “There was never an indication of anything wrong. I was so invested in being married.”

I was in touch with Katie as I gathered the facts for this piece. There are two sides to every story, particularly in a breakup, and I offered her the chance to share hers and to respond to Des’s statements about the dissolution of their marriage, as well as to talk about her feelings on gay divorce in general. Ultimately, she declined to comment, explaining, “Although we are on good terms currently, it took us a long time to get here. Des is very open with what happened between us and her entire life really. I am the absolutely opposite.”

On February 3, Des found suspicious emails between Katie and another woman. “Somehow, between the 22nd and the 3rd of February, I lost my wife,” she says. A month of attempting to work things out followed, with phone calls and visits with families, talks, and tears, but the end, for Des, was finding out that Katie had gone to visit the other woman, now her girlfriend, in Tampa in March. “During that process

everyone said, you'll know your boundaries, and I just felt, if she's in Tampa with the girlfriend, I'm done," she said.

Her reaction was to post about what was happening on Twitter, Instagram, and Facebook. Sometimes Des's posts also involved talk of new women she was seeing. "All the stuff that came out publicly, on social media," Des told me, "I don't regret it. I was feeling vindictive. I knew her family would sweep [the breakup] under the rug. Was it immature or unkind, yes, but I don't regret it."

Now, Des says, "I'm trying to find the most loving way to get us through this practically — divorce paperwork, credit card bills — and personally — with the hope of maybe someday being able to carry on a friendship — but I do believe we never should have been anything more than friends."

Some states and judges have upheld draconian policies against gay divorce; you

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hear about cases in which people are "wedlocked," says Schwartz, which seems particularly ironic as those states don't support gay marriage in the first place. "If you're against same-sex marriage, you certainly should be for divorce," Schwartz says. "My sense with judges granting divorces [in non-recognition states] is that they're finding that the law preventing relationship recognition is against public policy, and they don't see a downside to letting people out. I imagine that providing this one small measure of dignity to this couple is more important or outweighs the risk to society to not do it."

Not allowing same-sex couples to get divorced has led to another problem, too: Bigamy. "People are jumping in without being informed, get out, and jumping into another relationship," says Schwartz. Minter adds, "It is a very serious problem, and we're going to see more of those situations—where people find themselves in really awful legal situations, where the couple didn't divorce because they couldn't. If one of them moves to a state where the marriage is recognized, that person could come along, or creditors could come after them. We are already seeing cases where people don't understand they cannot re-marry. We're starting to see cases where there's a second marriage."

There's also the emotional side of divorce, ratcheted up even further with gay couples, says Felder. "The antagonism and anger in these divorces is enormous," he says. "These people have been so misused by the system and treated so shabbily. When they're finally able to get married and it doesn't work out, there's a terrific letdown. Gay women who have children, one way or another—they had to go through a lot more. But that's the price of progress, you're dealing in a zone of very raw emotions now."

As painful as all divorces can be, few carry the weight of history. “When the Marriage Equality Act was passed, I felt I’d been granted an amazing privilege: a set of rights I would cherish forever because they would protect my family,” Des told me, “So, to me, this divorce struck deeply on more than just a personal level. It was political, too. The feeling of that privilege having been squandered is soul-crushing.”

Her best memory of her and Katie together, she says, was of the banter, the back and forth, the easy teasing relationship the two had. “I loved our road trips and our mutual love of bad pop music. We had fun cooking together. For a while, we were able to carry on a surface relationship (including divorce jokes),” she says, “but as of late, I’ve found that maintaining a dialogue with her hurts me.” The pain is a point they can agree on. “I don’t think there is a difference between hetero and gay divorce,” Katie told me. “They both suck.”

Photos by Matt Miller; Sarah Tew

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