



April, left, and Tracy:
now pronounced wife and wife.

Not the Man She Married

*A man and woman get married.
The man becomes a woman.
Is the marriage still legal?*

By Katherine Glover

April and Tracy are legally married in the state of Minnesota. Not registered as domestic partners or joined in a same-sex civil union. Married.

They met six years ago. Tracy had a room open in the house she was living in. "I interviewed for the room," April explains.

"As a boy," Tracy interjects.

"Right, my name was Nick," says April.

April, 27, has a condition known as gender dysphoria, or transsexualism—although she was born with a male body, she is psychologically a woman.

April began hormone therapy in 2004 and went through surgery in 2007 to complete her transition. Though she has yet to change her passport, her driver's license now lists her as female.

But April and Tracy married before any of the legal changes went through.

"Generally speaking, the validity of a marriage is measured at the time that the marriage is contracted," says Phil Duran, a staff attorney with GLBT rights group OutFront Minnesota. "So if at the time of the marriage one person was legally male and one person was legally female, then short of an annulment, the only way you can terminate that is through death or divorce."

Which adds an extra twist to the legal issues around same-sex marriage.

"If we were ever to get a divorce," April says, "I could go to Texas and marry another woman, or I could stay here and marry a man."

She's referring to a decision by the Texas Fourth Court of Appeals in San Antonio. The court ruled that Christie Lee Littleton, a male-to-female transsexual, did not have standing to sue for the wrongful death of her husband. Although Littleton had legally changed her birth certificate and was listed as female in all of her documents, the court ruled that sex was determined by chromosomes. Hence, Littleton was still considered a man and the marriage was invalid.

In response to this ruling, a trans woman and her girlfriend traveled from Houston to San Antonio and demanded a marriage license, as by the chromosomes standard, they were still a heterosexual couple. The license was granted, and other same-sex trans couples soon followed—including, Duran says, a couple from Minnesota.

"It creates these really bizarre kinds of problems," Duran says. As an attorney, his strategy is to say, "God bless you for doing this," but to warn the couple that they should take precautions—writing wills, setting up health care directives, creating a financial power of attorney—things young married couples generally don't need to worry about for a while.

Marriages of trans couples have been

invalidated in Kansas, in an inheritance case, and in Florida, over custody issues. But Sharon McGowan, a staff attorney with the American Civil Liberties Union's LGBT Project, says these cases are the exception. "I think that, for the most part, courts respect the judicial proceedings that people have undertaken," she says. "It would make no sense and lead to chaos if your gender changed when you crossed the border."

But what about that first change?

"Some people think, 'You can change your birth certificate? That's pretty wild,'" Duran says. "But 47 states have a procedure to do it. Minnesota is in the mainstream."

The medical consensus is that talk therapy cannot change a person's gender identity. There is disagreement about the causes of gender dysphoria and whether it should be classified as a mental disorder, but the standard treatment is to help people transition to live as their psychological gender. Public health care systems even pay for sex reassignment surgeries in at least nine countries, including Canada.

But not all trans people opt for surgery. "There are a lot of people where surgery is not appropriate or is in fact medically counter-indicated," says McGowan. And genital

surgery is much less likely to be effective for those transitioning into male bodies. It's also extremely expensive, for men and for women. So some trans people opt for top surgery—adding or removing breasts—but not bottom. Most take hormones, but some don't, for medical or other reasons.

Yet regardless of these differences, in the end everyone legally must have an "F" or "M" designation—even newborns with ambiguous genitalia or other intersex conditions. So how do states determine who is legally a man and who is legally a woman?

In some states officials associate transitioning exclusively with genital surgery, which McGowan considers unfortunate. "It's really a very crude understanding of what gender transitioning is all about. In fact, it's a very individualized process."

Minnesota judges are more flexible, says Duran. Minnesota statutes allow for birth certificates to be updated if a judge rules the information is "incomplete, inaccurate, or false," and in practice, Duran says, judges will generally allow a gender change if a doctor testifies on a patient's behalf and verifies that the person is taking steps to permanently alter his or her body, whatever those steps might be.

And, he adds, "if you physically transition from one sex to the other and you get your birth certificate changed, that is your legal sex." Sometimes when trans people go with their heterosexual partner to get a marriage license, the person behind the desk hesitates and goes off to find a manager, "but they come back and they say, 'OK, you're legally a man, you're legally a woman; here you go.'"

Similarly, there are cases of federal agencies hesitating and initially refusing to, for example, issue Social Security benefits to a trans widow or allow the foreign spouse of a trans person to apply for citizenship. But ultimately the federal government tends to recognize any marriage that a state proclaims a legal heterosexual union, Duran says.

"People get so worked up about these issues," says McGowan, "but at the end of the day, transgender people are just having families, living their lives. In most cases we're not hearing about it, because at the end of the day life goes on."

Family law is dealing with new issues all the time, she points out, from same-sex parents to children being raised by their grandparents. "Life is always a little bit ahead of the law anyway." **L&P**

Trans (I) Am

Chrissy Nakonsky looks to become the first transgender Republican state legislator from Brainerd (or anywhere)

"I'm the regular run-of-the-mill person," says Chrissy Nakonsky, a Brainerd Republican candidate for the Minnesota House. "I'm like everybody that's struggling."

It may seem a strange statement coming from a trans woman. But Nakonsky doesn't want her gender to be an issue in her campaign—and so far it hasn't been.

"The community has been super," she says.

She's campaigning on poverty, education and prescription drug costs. These aren't abstract issues to Nakonsky—she has a wife and four children, but no job. The family lives in a trailer home.

She left Wal-Mart in May 2007 because of harassment for being trans. "I was getting threatening notes," she says. "Someone vandalized my van to where it caught on fire." She has filed a discrimination suit.

Her campaign budget is only \$1,000 and she doesn't ask for donations. "People can't afford it," she says. So she does a lot of door-knocking and puts information up in local stores. "I'm constantly talking to people."

Nakonsky says she has gotten no negative comments

about being transgender. When the *Brainerd Dispatch* wrote its first article about her candidacy, the writer got angry letters—for using male pronouns to describe her.

More often, people question Nakonsky's choice of parties. But she's been a Republican all her life. "I will not change sides," she says. "I trust the Republicans more than I do the Democratic side. The Democrats want to raise our taxes."

And she says Republicans support her, despite her support for a higher minimum wage. "I'm the best chance the Republicans have to get [Democratic incumbent] John Ward ousted." At this point, no other Republican is running—but Nakonsky will "fight to beat whoever comes."

She has attracted national media attention—not typical for a state House seat run. She knows it's because she's trans and she acknowledges that sooner or later, things might get ugly.

But she's ready. "There isn't anything anyone can do to me, say to me, that hasn't already happened at Wal-Mart," she says. "Bring it on."

—Katherine Glover