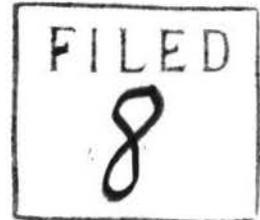


MARRIAGE: A marriage in Missouri between a man of twenty-one years of age and a woman of sixteen years of age is voidable.

November 18, 1939

FILED 8



Mr. Frank L. Bihlmeier
401 Laurel Building
Muscatine, Iowa

Dear Sir:

We are in receipt of your request for an opinion under date of November 9, 1939, which reads as follows:

"Please advise me as to the legal status in your State of a marriage consummated between a man of twenty-one years of age and a woman of sixteen years of age.

"The ceremony was performed in your State upon statements or affidavits that the woman was eighteen.

"We desire to be advised if the marriage is legal or null and void under your laws. In your reply, we would very much appreciate if you would quote to applicable sections of your statutes.

"The above is for my guidance in a situation confronting me and I, as well as our court, will appreciate your courtesy in giving us the information and data as promptly as possible."

Section 2973 R. S. Missouri, 1929, reads as follows:

"Marriage is considered in law as a civil contract, to which the consent of the parties capable in law of contracting is essential."

Section 374 R. S. Missouri reads as follows:

"All persons of the age of twenty-one years shall be considered of full age for all purposes, except as otherwise provided by law, and until that age is attained they shall be considered minors. (R.S. 1919, sec. 370. Amended, Laws of 1921, p. 399)."

The question confronting us is, briefly, whether in view of the above statutes, the marriage you describe in your set of facts is void or is merely voidable. We have been unable to find any cases in this jurisdiction directly in point on the foregoing proposition.

In 38 C. J. 1283-1284, it is said:

"While in some states the age of consent as fixed by the common law has been adopted, in a majority of jurisdictions it has been increased by statute. Occasionally such statutes expressly or by clear inference provide that a marriage contrary to their provisions shall be absolutely null and void; but unless they show an unequivocal intention to abrogate the common-law rule they will be construed as directory merely, and as rendering a marriage contrary to their provisions not void, but voidable. * * ."

There is language in the case of Guthery v. Wetzel, 226 S. W. 626, 1.c. 628, which seems to indicate that our courts, if a situation such as yours was presented, would follow the general rule set forth in Corpus Juris. In that case was involved the problem of marriage with a person of unsound mind, and the court said:

"The Legislature in enacting section 8280 and 8281, R. S. 1909, has singled out the marriages that are absolutely void in this state, leaving, I think, a necessary inference that it was the intention that all other prohibitive marriages should be voidable only. * * ."

The above language, as used in the Guthery case, seems to indicate that a marriage such as that described by you, is not void, but voidable.

There is one other related statute, which explains to you the necessity of the woman swearing that she was eighteen years of age. That section is Section 2983 R. S. Missouri, 1929, relating to the issuance of the marriage license, and reads as follows:

"No recorder shall in any event except as herein provided issue a license authorizing the marriage of any person under fifteen years of age: Provided, however, that said license may be issued on order of the circuit or probate court of the county in which said license is applied for, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable, and no recorder shall issue a license authorizing the marriage of any male under the age of twenty-one years or of any female under the age of eighteen years, except with the consent of his or her father, mother or guardian, which consent shall be given at the time, in writing, stating the residence of the person giving such consent, signed and sworn to before an officer authorized to administer oaths. The recorder shall state in every license whether the parties applying for same, one or either or both of them, are of age, or whether either or both are minors, and if either party is a minor, the name of the father, mother or guardian consenting to such marriage."

Section 2983, supra, was repealed and reenacted in Laws of Missouri, 1939, page 509, virtually word for word.

CONCLUSION

In view of the foregoing authorities, our conclusion and opinion is that a marriage consummated in this

Mr. Frank L. Bihlmeier

(4)

November 18, 1939

state between a man of twenty-one years and a woman of sixteen years is not void, but voidable.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

TYRE W. BURTON
(Acting) Attorney-General