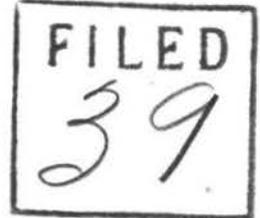


MARRIAGE LAW: "Good cause" to be determined in each instance from facts presented.

July 15, 1943

Hon. Cline C. Herren
Judge of the Probate Court
Marshfield, Missouri



Dear Judge Herren:

Under date of June 28, 1943, you wrote this office requesting an opinion as follows:

"In House Bill #20 requiring a three day waiting period before the issuance of a marriage license to an applicant there is a provisions authorizing the Probate Courts to make an order to the Recorder to issue said license without awaiting this period "for good cause shown and by reason of such unusual conditions as to make such marriage advisable."

"The question will come up as to what constitutes 'good cause' and 'unusual conditions' during this period of war and I should like your opinion as to the following matters at your earliest convenience:

"Would the fact that a person is about to be inducted into the army be grounds for such an order?

"Would a soldier home on short furlough be entitled to a waiver of the waiting period?

"I feel sure these questions will arise immediately upon this law going into effect and will appreciate your opinion as to the full intention of this section as undoubtedly the same questions are being studied by all Probate Court in this State."

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The portion of House Bill #20 enacted by the 62nd General Assembly concerning which you inquire is stated as follows:

" * * * * Provided, however, that said license may be issued on order of the Circuit or probate court or a judge thereof in vacation of the County in which said license is applied for, without waiting three days as herein provided, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable. * * * *"

The words "good cause" and "unusual conditions" as used in this bill have, of course, not yet been construed by any Missouri court in connection with this bill. However, the words "good cause" have been construed and defined in numerous cases as used in other statutes. In the case of Buckner v. Quick Seal, 118 S. W. (2d) 100, the Kansas City Court of Appeals held that a latent injury not discovered until after 30 days had elapsed was "good cause" for failing to notify the employer of an injury as required by Section 3336 R. S. Mo. 1929 (now Section 3726 R. S. Mo. 1939).

The case of State v. Johnson, 318 Mo. 596 holds that "good and sufficient cause" was shown by appellant in a criminal case for an extension of time within which to complete an appeal, by a showing that the attorney for appellant had failed to properly perform his duties. This ruling was given in Section 3761 R. S. 1929 (now Section 4151 R. S. 1939).

And again, in discussing the same language, the Supreme Court in the case of State v. Thomas, 318 Mo. 843 held that a showing that the filing of the transcript in the Supreme Court was delayed due to post office rules and a Sunday and holiday coming together was "good and sufficient cause" for permitting an appeal to be perfected out of time.

In the very early case of Green v. Goodloe, 7 Mo. 25, it was held that the good cause which would authorize a court to set aside a default judgment must include meritorious defense and showing of all diligence.

Further in this connection, the following quotation from the Alabama case of Ex parte Canada Life Assurance Co. Choate v. Canada Life Assurance Co., 115 Southern 244, 245 is cited:

"* * * * * The authorities are not very numerous in defining "good cause", as these words seem to have no fixed meaning, but must depend upon the circumstances of each case determined largely by the sound discretion of the court. Christensen v. Anderson, 24 Tex. Civ. App. 345, 58 S. W. 962. There are a few cases somewhat analogous to the one in hand. In the case of Hubbard v. Yocum, 30 W. Va. 740, 5 S. E. 867, it was held that, when a statute gave the right of appeal from a justice within 10 days from the entry of the judgment or thereafter, and, within 90 days upon showing good cause for not having taken the appeal within the 10 days, the fact that the defendant was a nonresident, and did not know that the appeal was required to be taken within 10 days, is not good cause for granting an appeal. The words "good cause" in the statute authorizing appeals after the prescribed time upon showing good cause mean a showing that appellant was prevented from taking his appeal within the time by fraud, surprise, or adventitious circumstances beyond his control as would entitle him to a new trial. Home Machine Co. v. Floding, 27 W. Va. 540. * * * * *

From the foregoing, it is the opinion of the writer that the "good cause" referred to in House Bill #20 enacted by the 62nd General Assembly would necessarily be a matter to be determined within the discretion of the court or the judge of the court in each instance; that no hard and fast rule could be laid down as to what would constitute "good cause"; that there should be a showing to the court or the judge thereof of the facts relied upon; and that the finding of the court should be based upon valid and substantial reasons for waiving the issuance of the three day waiting period, taking into consideration the intention of the Legislature in enacting the bill; and that the finding of "good

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cause" could not be based upon whim, caprice or an unreasonable and arbitrary desire on the part of the applicants to avoid the three day waiting period.

We do not find that the words "unusual conditions" have been defined by any court. "Unusual" is defined in Webster's New International Dictionary, Second Edition, as "not usual, uncommon, rare".

The intention of the Legislature in enacting House Bill 20 was to provide a period of waiting between the application for a license to marry and the issuance of the license in order to prevent hasty and ill considered marriages which would probably not be of a lasting nature.

CONCLUSION.

Taking into consideration the intention of the Legislature in enacting House Bill #20, and the foregoing definitions, it is the opinion of the writer that the "good cause" and "unusual conditions" which would authorize the court or judge to direct the issuance of a marriage license without the three day waiting period are matters which must be determined by the judge of the court, within his said discretion, taking into consideration the character of the applicants, the circumstances surrounding the application and the facts relied upon by the applicants.

Respectfully submitted

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APPROVED:

ROY MCKITTRICK
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WOJ:PD