IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

SHIRLEY RANOLLS, INDIVIDUALLY AND AS A REPRESENTATIVE OF THE ESTATE OF APRIL DAWN RANOLLS, DECEASED	§ § § § §	
VS.	§ §	Civil Action No.: 1:15-cv-00111
ADAM DEWLING, ET AL	§ §	

DEFENDANTS ADAM DEWLING, TANKSTAR USA, INC., ROGERS CARTAGE, CO., AND BULK LOGISTICS, INC.,'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants, Adam Dewling, Tankstar USA, Inc., Rogers Cartage, Co., and Bulk Logistics, Inc., ("Defendants") file this Motion for Partial Summary Judgment as to the claims of Rhonda Renee Hogan ("Hogan") and respectfully requests this Court, pursuant to Fed. R. Civ. P. 56, grant their partial summary judgment. In support Defendants would show the Court as follows:

I. INTRODUCTION

Hogan should not be permitted to prosecute the claims she has asserted. Hogan has intervened into this suit asserting claims for Wrongful Death and Survival actions as the same-sex "spouse" of April Ranolls. However, for this Court to allow her to proceed with these claims, it must apply the Supreme Court's June 26, 2015 opinion on same-sex marriages retroactively to a purported "common law" marriage that had ended over a year before her death. Such a scenario would open a Pandora's box filled with countless same-sex partners now seeking to re-open litigation long-since resolved, apply for benefits previously denied before the death of an alleged partner, and cause uncertainty in the law where it should not exist for those who have been in long-term relationships that previously ended.

Texas law did not recognize same-sex marriages (formal, informal or common law) at the time April Ranolls was alive and living with Hogan. As a logical corollary, there was no mechanism for a divorce from a non-recognized marriage in Texas when Ranolls ended her relationship with Hogan months (and by some accounts more than a year) before her death. Further, Texas law was clear at the time of Ranolls' death: "spouses" from same-sex marriages did not have standing to sue under the Texas Wrongful Death Act. Nor does Hogan have standing to assert a survival action as an heir of the estate, because Shirley Ranolls is the personal representative of the estate and has filed this suit. Assuming Hogan is an heir to the deceased's estate, an heir may bring a survival action only if the personal representative refuses or is unable to sue on behalf of the estate. This is not the case, as the deceased's adopted mother has already filed suit on behalf of the estate.

II. STATEMENT OF MATERIAL FACTS

Defendants offer the following undisputed material facts pursuant to FED. R. CIV. P. 56(c) and LCvR 56.1(b), for purposes of this Motion only:

- This lawsuit stems from an accident involving Adam Dewling and April Dawn Ranolls which occurred on Monday, March 9, 2015, at approximately 6:00 a.m.
- Ranolls was driving a 2014 Chevrolet Silverado and Dewling was driving a Freightliner tractor with an attached tanker/trailer.
- The accident occurred while Ranolls was traveling southbound on Hwy. 62. Dewling was entering the roadway from the Pilot truckstop, heading north. Ranolls' truck struck the tanker before it had cleared the southbound lane of travel.
- The accident resulted in the immediate death of Ranolls.
- At the time of her death, Ranolls was not married.
- Ranolls had previously lived with Hogan.
- There was never an attempt by Ranolls or Hogan to have a formal or "common law" marriage recognized either in the State of Texas or any other State.

- Ranolls had stopped living with Hogan almost a year before her death.
- The women had participated in a same-sex couple's equivalent of a divorce; they had partitioned the property they had purchased together and were living separate lives.

III. SUMMARY JUDGMENT STANDARD

Summary Judgment shall be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56 (c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). Once the moving party has made an initial showing that it is entitled to judgment as a matter of law, the party opposing the motion must come forward with competent evidence demonstrating the existence of a genuine fact issue. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). Summary judgment must be granted if the non-moving party fails to present sufficient evidence in its response. *Celotex*, 477 U.S. at 322-23.

When federal jurisdiction in a suit is based on diversity of citizenship, a federal court applies the substantive law of the forum state in which it is sitting. *See, e.g., Foradori v. Harris*, 523 F.3d 477, 486 (5th Cir. 2008) (*citing Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)). The parties here are diverse because Plaintiffs are residents of Texas and Defendants are foreign corporations and an individual from Florida.

IV. ARGUMENT & AUTHORITIES

A. In order to assert a claim, Hogan must establish that she has standing to bring the claim asserted.

Standing is a constitutional prerequisite to filing a lawsuit. *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 11-12 (2004); *CGM, LLC v. BellSouth Telecomms.*, 664 F.3d 46, 52 (4th Cir.2011). A court does not have jurisdiction over a claim made by a plaintiff who does not have standing to assert it. Because standing is a component of subject-matter jurisdiction, it cannot be waived. *Id.*; *West Orange-Cove Consol. ISD v. Alanis*, 107 S.W.3d 558, 583 (Tex.2003); *See*

Fed.R.Civ.P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). Hogan does not have the requisite standing to prosecute claims for the alleged wrongful death of Ranolls. She was not her "spouse" at the time of the accident made the basis of this suit.

B. Hogan does not have standing to bring a wrongful death action.

On June 26, 2015, the U.S. Supreme Court held in a 5–4 decision that the Fourteenth Amendment requires all states *to grant* same-sex marriages and *recognize* same-sex marriages granted in other states. *Obergefell et al v. Hodges, Director, Ohio Department of Health, et al.*, 576 U.S. ____; 135 S. Ct. 2584; 2015 WL 2473451; and 2015 U.S. LEXIS 4250. Factually, in *Obergefell*, there was no question that a valid marriage was performed in a State that allowed same-sex marriages, and that the State of Ohio refused to recognize the marriage. The Court held that as of June 26, 2015, same-sex couples ***may now*** exercise the fundamental right to marry in all States; there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character. *Id.*

It is undisputed that no formal marriage was ever attempted between Hogan and Ranolls; no marriage was performed in any State that allowed same-sex marriages between Hogan and Ranolls. Thus, there are no concerns about unfairly denying a claim of a formal marriage between a same-sex couple. Instead, Hogan is attempting to claim a "common law" marriage after the death of the Ranolls, which she had never claimed before Ranolls' death. To apply the *Obergefell* decision to a purported "common law" marriage between a same-sex couple (a relationship which had ended) would be extending the decision beyond its scope.

C. The Supreme Court's decision cannot be used to create a "marriage" when one either never existed or was dissolved before the June 26, 2015 ruling.

It is undisputed that Texas law recognizes that persons who desire to live as "husband and wife" need not necessarily formalize their desires by engaging in a ceremonial wedding. At the time Ranolls and Hogan purportedly lived together, common law marriage in Texas was governed by Section 2.401 of the Texas Family Code. The statute provided that in a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that, "the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and they represented to others that they were married." TEX. FAM. CODE § 2.401(a)(2). At the time of the Ranolls' death, the law in Texas was that common law marriage could only be between a man and a woman.

Obergefell requires all states to issue marriage licenses to same-sex couples and to recognize same-sex marriages validly performed in other jurisdictions. While this ruling legalized same-sex marriage throughout the United States, it did not retroactively recognize common law "marriages". The Opinion clearly focuses on requiring states to recognize formal unions consummated in jurisdictions that allowed same-sex marriage and mandating that all jurisdictions begin to issue marriage licenses for same-sex couples. Perhaps understanding the pitfalls of recognizing informal marriages (especially ones that had previously ended or where one of the partners could no longer express her clear intent to be married), the Court does not indicate that recognition of these unions is part of its ruling.

a. Hogan Cannot meet the criteria as a common law marriage

Assuming for *arguendo* that this Court is going to attempt to make the Supreme Court's ruling retroactive to a purported common law marriage, Hogan cannot establish that she and Ranolls were common law married. The party seeking to establish existence of the marriage

bears the burden of proving the three elements by a preponderance of the evidence. Whether the evidence is sufficient to establish that a couple held themselves out as "wife and wife" turns on whether the couple had a reputation in the community for being married. Hogan cannot establish that she was married to Ranolls.

b. Ranolls had ended the relationship with Hogan before her death.

It is undisputed that Hogan and Ranolls had not lived together for almost a year before Ranolls' death. In fact, Hogan had hired a lawyer regarding the sale of the home that the women jointly owned and suit was filed September 11, 2014 to partition the property; Hogan sought and was granted a Temporary Restraining Order against Ranolls on September 17, 2014 in Orange, Texas. *See* Exhibit A. Prior to the Supreme Court's ruling on same-sex marriage, this would clearly be recognized as an end to whatever relationship once existed between Hogan and Ranolls; some might even call it a "divorce".

Clearly, these documents show that these two individuals as of the 11th day of September, 2014, were partitioning their real estate in which they had previously purchased together, and it clearly shows they were not living together for almost seven months before the accident made the basis of this suit. The relationship was so bad that Hogan had Ranolls served with a Temporary Restraining Order. *See* Exhibit A. There is clearly no marriage of any kind between Hogan and Ranolls at the time of her death on March 9, 2015. It is also apparent that Ranolls had moved on in her relationships. In her own words from her Facebook posting on July 4, 2014, she referenced the "light of her life", a Jodie Jones-McGee (not the Intervener). *See* Exhibit B.

As such, and assuming for *arguendo* only, that the elements of a "common law marriage" {except the same-sex issue} may have existed between Ranolls and Hogan at some time, this

court must ask itself, "how would Ranolls have ever ended a non-recognized union in Texas?" In other words, if this Court is going to find that Ranolls and Hogan were "common law" married prior to June 26, 2015, then Ranolls could never have divorced Hogan since same-sex divorces were unnecessary until after June 26, 2015. And such a ruling by this Court could lead to thousands of other couples who once had a relationship to now have to determine how to deal with a relationship that ended long ago.

D. This Court should not retroactively apply the Supreme Court's ruling to this situation.

Using the Supreme Court's ruling in *Obergefell* to find that a "marriage" existed would operate to retroactively impair these Defendants' rights, increase liability, and impose new duties where they did not exist at the time of Ranolls' death. The 5th Circuit and the U.S. Supreme Court have addressed a similar "retroactive" issue in the context of the application of the Civil Rights Act of 1991. *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994). The subject Act's purpose was to expand the scope of the rights and provide adequate protection to victims of discrimination. In the *Landgraf* case, the Supreme Court was deciding whether provisions of the Civil Rights Act of 1991 which create a right to recover compensatory and punitive damages for certain violations applied to a Title VII case that was pending on appeal when the statute was enacted. The Court held the law was not retroactive and the reasoning is akin to this matter.

In coming to their determination the Court concluded "[r]etroactivity is not favored in the law," and there is an interpretive corollary that "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hospital,* 488 U.S. 204, 208, 109 S.Ct. 468, 471 (1988). This presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. *Kaiser Aluminum & Chemical*

Corp. v. Bonjorno, 494 U.S. 827, 842–844, 855–856, 110 S.Ct. 1570, 1579–1581, 1586–1587, 108 L.Ed.2d 842 (1990). Thus, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." *Kaiser,* 494 U.S., at 855, 110 S.Ct., at 1586.

The *Landgraf* Court does not apply the law retroactively and finds in favor of the traditional presumption against retroactive application of laws affecting substantive rights, liabilities, or duties. *Landgraf* at 280 (1994). Similarly, setting this precedent would open the door to a deluge of new or "re-opened" litigation where a member of a same-sex couple now asserts that a "common law" marriage existed. Everything from previous wrongful death suits to benefits awards would have to be re-opened to account for these newly recognized "marriages". Further, for those who have now formally married a spouse, they would have to face the possibility of being "married" to more than one person since divorce from a common law, same-sex spouse was not previously recognized.

E. Hogan does not meet the criteria to bring a Wrongful Death Action.

The Texas Wrongful Death Act as it existed on March 9, 2015 specifies who may bring an action on behalf of the deceased:

> (a) An action to recover damages as provided by this subchapter is for the exclusive benefit of the *surviving spouse*, *children*, and *parents* of the deceased.
>
> (b) The surviving *spouse*, *children*, and *parents* of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all.
>
> (c) If none of the individuals entitled to bring an action have begun the action within *three calendar months* after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals.

TEX. CIV. PRAC. & REM. CODE § 71.004(a),(b), (c) (emphasis added).

Only a spouse from a recognized marriage can bring a wrongful-death suit. Same-sex marriages are not recognized in Texas; thus, spouses from such marriages do not have standing to sue for wrongful death. *See, e.g., Littleton v. Prange*, 9 S.W.3d 223, 231 (Tex.App. – San Antonio 1999, pet. denied) (transgender woman who was born biologically male did not have standing to sue for wrongful death as male decedent's surviving spouse); *see also* Tex. Fam. Code § 2.001(b) (marriage license cannot be issued for same-sex partners), § 6.204(c)(2) (State of Texas cannot give legal protection or benefit to same-sex spouse of same-sex marriage in any jurisdiction).

The only exception to a party who is not a spouse, child, or parent of the deceased filing under the Wrongful Death Act is pursuant to Section 71.004(c). The executor or administrator of the deceased's estate has standing to file a wrongful death claim <u>if</u> the surviving spouse, children, or parents have not brought suit within three calendar months from the deceased's death. TEX. CIV. PRAC. & REM. CODE § 71.004(c). As Shirley Ranolls, the deceased's biological grandmother and adopted mother, filed a wrongful death claim within twenty-four hours of the death of April Dawn Ranolls, even if Hogan is the executor or administrator of the estate, she would not have standing. *Id.*

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Adam Dewling, Tankstar USA, Inc., Rogers Cartage, Co., and Bulk Logistics, Inc., pray that the Court GRANT its Motion for

Partial Summary Judgment against the claims of Rhonda Renee Hogan and that the Court awards all other relief, in law and in equity, to which Defendants are justly entitled.

Respectfully submitted,

JOHNSON, TRENT, WEST & TAYLOR, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served upon the following in accordance with the Federal Rules of Civil Procedure on this 16th day of September 2015.

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