A state appeals court has cleared the way for a same-sex spouse to inherit the estate of his deceased partner. The Appellate Division, First Department, held yesterday in Matter of the Estate of H. Kenneth Ranftle, 4214, that recognizing the marriage in Canada of H. Kenneth Ranftle and J. Craig Leiby, who was designated as Mr. Ranftle's "surviving spouse and sole distributee," did not violate public policy.

I think the most interesting statement in this ruling was this:

> "[T]he Legislature's failure to authorize same-sex couples to enter into marriage in New York or require recognition of validly performed out-of-state same-sex marriages, cannot serve as an expression of public policy for the State," the unanimous panel wrote in an unsigned ruling."

Some of the other interesting language included:

> In denying the instant petition, the Surrogate found that appellant's position that same-sex marriage violated public policy had been "specifically addressed and rejected by the Appellate Division in Martinez v. County of Monroe (50 AD3d 189 [2008], lv dismissed 10 NY3d 856 [2008]) and is patently without merit." We agree.
>
> New York's long-settled marriage recognition rule affords comity to out-of-state marriages and "recognizes as valid a marriage considered valid in the place where celebrated" (Van Voorhis v. Brintnall, 86 NY 18, 25 [1881], see also Mott v. Duncan Petroleum Trans., 51 NY2d 289, 292 [1980]). This rule does not extend such recognition where the foreign marriage is "contrary to the prohibitions of natural law or the express prohibitions of a statute" (Moore v. Hegeman, 92 NY 521, 524 [1883]; see also Thorp v. Thorp, 90 NY 602, 606 [1882]). Same-sex marriage does not fall within either of the two exceptions to the marriage recognition rule.
>
> The failure of the Legislature to enact a bill "affords the most dubious foundation for drawing positive inferences" (see Clark v. Cuomo, 66 NY2d 185, 190-191 [1985], citing United States v. Price, 361 US 304, 310-311 [1960]). Thus, the Legislature's failure to authorize same-sex couples to enter into marriage in New York or require recognition of validly performed out-of-state same-sex marriages, cannot serve as an expression of public policy for the State. In the absence of an express statutory prohibition (Moore, 92 NY at 524) legislative action or inaction does not qualify as an exception to the marriage recognition rule.

Though this ruling was limited to the probate matter, but this may indicate a tend, at least in New York State for the courts to maintain an expansive view of the application of exta-territorial same sex marriages.

In 2009, Manhattan Surrogate Kristen Booth Glen (**See Profile**) ruled that Mr. Ranftle's three siblings were not entitled to notification of the probate proceedings under Surrogate's Court Procedure Act §1403(1)(a).

She cited the Feb. 1, 2008, decision of ***Martinez v. County of Monroe***, 50 AD3d 189, in which the Fourth Department ordered Monroe County to extend health insurance coverage to the same-sex spouse of a female community college employee.

The Court of Appeals has ruled that same-sex marriage is not valid if contracted in New York. At the same time, however, the Court has held that the state should recognize marriages in foreign countries and other states where such unions are legal (**NYLJ, Jan. 23, 2009**).

Former Governor David A. Paterson also has instructed state agencies to recognize such marriages. However, the Legislature has not addressed the issue.