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To: First Year Law Students

From: Gerry W. Beyer
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Topic: Orientation Presentation – *How to Read and Brief a Case*
Monday, August 14, 2017

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Welcome to the Texas Tech University School of Law!

During the orientation program, I will be meeting with you to discuss how to read and brief a case – a skill which is essential to success in law school and practice.

My presentation will be more valuable and meaningful if you take an hour or two to prepare the following assignment before coming to my presentation.[1]

Please read the *In re Estate of Gardiner* case which follows and prepare your first law school brief. What is a brief?

A brief is a structured outline of a case. The brief is for your own personal use as you prepare for class, recite during class, and study for the examination. A brief typically contains the following sections.[2]

1. **Citation**
   - Name of case.
   - Jurisdiction (federal or a particular state?).
   - Court (if state, what level of appellate court; if federal, is it a district, circuit, or Supreme Court case?).

[1] This assignment will not be graded and will not be collected. However, you should be prepared to respond if you are called upon to recite.

[2] Your professor may recommend a brief format which varies from this general approach. In addition, you may, in time, develop your own style. This outline provides you with a starting point.

- Year of decision.
- Page on which case is reprinted in your casebook.

**2. Facts**

- Who are the parties (e.g., plaintiff and defendant)?
- What is the plaintiff seeking?
- What is the factual basis of the plaintiff's claim? (It is helpful to associate a few key facts with the name of the case so you can quickly recall the case.)
- Upon what legal theory is the plaintiff relying?
- What is the defendant's defense?
- Include only the relevant facts.

**3. Procedural History**

- Who won at the trial level?
- Who won at the lower appellate level if case had already been appealed?
- Is there other important information about the procedural posture of the case?

**4. Issue(s)**

- One sentence question posing the issue(s) the court needs to decide.
- State the precise legal issue(s) using the key facts of the case.

**5. Holding**

- Statement of what the court decided (the answer to the issue(s) you previously phrased).
- Distinguish from *dicta*, that is, the court's statements about matters not directly relevant to the issue which are not binding on future cases.

**6. Reasoning**

- Legal reasons behind the court's decision.
- Policy grounds underpinning the court's decision.

**7. Procedural Result**

- Did the court affirm (agree with) or reverse (disagree with) the lower court's decision?
- What happens next? (e.g., plaintiff collects money, defendant goes to jail, new trial, etc.)

### 8. Other Opinions

- *Concurring Opinion* – Judge agreed with the result but for a different reason.
- *Dissenting Opinion* – Judge disagreed with the result.

As you read the case, you are likely to encounter many terms with which you may not be familiar (e.g., "summary judgment," "intestate," and "letters of administration"). Do not panic and do not become frustrated – most of your colleagues are in the same position. Instead, consult a legal dictionary for assistance.

I look forward to seeing you during orientation!

**Checklist for *How to Read and Brief a Case* presentation:**

- ❑ This handout.
- ❑ Your brief.
- ❑ Pen/pencil & paper or computer to take notes.

Supreme Court of Kansas

In the Matter of the ESTATE OF Marshall G. GARDINER, Deceased.

No. 85,030

273 Kan. 191, 42 P.3d 120

March 15, 2002

The opinion of the court was delivered by ALLEGRUCCI, J.

J'Noel Gardiner appealed from the district court's entry of summary judgment in favor of Joseph M. Gardiner, III, (Joe) in the probate proceeding of Marshall G. Gardiner. The district court had concluded that the marriage between Joe's father, Marshall, and ****122** J'Noel, a post-operative male-to-female transsexual, was void under Kansas law.

The Court of Appeals reversed and remanded for the district court's determination whether J'Noel was male or female at the time the marriage license was issued. See *In re Estate of Gardiner,* 29 Kan.App.2d 92, 22 P.3d 1086 (2001). The Court of Appeals directed the district court to consider a number of factors in addition***193** to chromosomes. Joe's petition for review of the decision of the Court of Appeals was granted by this court.

The following facts regarding J'Noel's personal background are taken from the opinion of the Court of Appeals:

> "J'Noel was born in Green Bay, Wisconsin. J'Noel's original birth certificate indicates J'Noel was born a male. The record shows that after sex reassignment surgery, J'Noel's birth certificate was amended in Wisconsin, pursuant to Wisconsin statutes, to state that she was female. J'Noel argued that the order drafted by a Wisconsin court directing the Department of Health and Social Services in Wisconsin to prepare a new birth record must be given full faith and credit in Kansas.
>
> "Marshall was a businessman in northeast Kansas who had accumulated some wealth. He had one son, Joe, from whom he was estranged. Marshall's wife had died some time before he met J'Noel. There is no evidence that Marshall was not competent. Indeed, both Marshall and J'Noel possessed intelligence and real world experience. J'Noel had a Ph.D in finance and was a teacher at Park College.
>
> "J'Noel met Marshall while on the faculty at Park College in May 1998. Marshall was a donor to the school. After the third or fourth date, J'Noel testified that Marshall brought up marriage. J'Noel wanted to get to know Marshall better, so they went to Utah for a trip. When asked about when they became sexually intimate, J'Noel testified that on this trip, Marshall had an orgasm. J'Noel stated that sometime in July 1998, Marshall was told about J'Noel's prior history as a male. The two were married in Kansas on September 25, 1998.
>
> "There is no evidence in the record to support Joe's suggestion that Marshall did not know about J'Noel's sex reassignment. It had been completed years before Marshall and J'Noel met. Nor is there any evidence that Marshall and J'Noel were not compatible.

"Both parties agree that J'Noel has gender dysphoria or is a transsexual. J'Noel agrees that she was born with male genitalia. In a deposition, J'Noel testified that she was born with a 'birth defect'-a penis and testicles. J'Noel stated that she thought something was 'wrong' even prepuberty and that she viewed herself as a girl but had a penis and testicles.

"J'Noel's journey from perceiving herself as one sex to the sex her brain suggests she was, deserves to be detailed. In 1991 and 1992, J'Noel began electrolysis and then thermolysis to remove body hair on the face, neck, and chest. J'Noel was married at the time and was married for 5 years. Also, beginning in 1992, J'Noel began taking hormones, and, in 1993, she had a tracheal shave. A tracheal shave is surgery to the throat to change the voice. All the while, J'Noel was receiving therapy and counseling.

"In February 1994, J'Noel had a bilateral orchiectomy to remove the testicles. J'Noel also had a forehead/eyebrow lift at this time and rhinoplasty. Rhinoplasty refers to plastic surgery to alter one's nose. In July 1994, J'Noel consulted with a psychiatrist, who opined that there were no signs of thought disorder or major ***194** affective disorder, that J'Noel fully understood the nature of the process of transsexual change, and that her life history was consistent with a diagnosis of transsexualism. The psychiatrist recommended to J'Noel that total sex reassignment was the next appropriate step in her treatment.

"In August 1994, J'Noel underwent further sex reassignment surgery. In this surgery, Eugene Schrang, M.D., J'Noel's doctor, essentially cut and inverted the penis, using part of the skin to form a female vagina, labia, and clitoris. Dr. Schrang, in a letter dated October 1994, stated that J'Noel has a 'fully functional ****123** vagina' and should be considered 'a functioning, anatomical female.' In 1995, J'Noel also had cheek implants. J'Noel continues to take hormone replacements. * * *

"After the surgery in 1994, J'Noel petitioned the Circuit Court of Outagamie County, Wisconsin, for a new birth certificate which would reflect her new name as J'Noel Ball and sex as female. The court issued a report ordering the state registrar to make these changes and issue a new birth certificate. A new birth certificate was issued on September 26, 1994. The birth certificate indicated the child's name as J'Noel Ball and sex as female. J'Noel also has had her driver's license, passport, and health documents changed to reflect her new status. Her records at two universities have also been changed to reflect her new sex designation." 29 Kan.App.2d at 96-98, 22 P.3d 1086.

Before meeting Marshall, J'Noel was married to S.P., a female. J'Noel and S.P. met and began living together in 1980, while J'Noel was in college. They married in 1988. J'Noel testified she and S.P. engaged in heterosexual relations during their relationship. J'Noel believed she was capable of fathering children, and the couple used birth control so S.P. would not become pregnant. J'Noel and S.P. divorced in May 1994.

J'Noel Ball and Marshall Gardiner were married in Kansas in September 1998. Marshall died intestate in August 1999. This legal journey started with Joe filing a petition for letters of administration, alleging that J'Noel had waived any rights to Marshall's estate. J'Noel filed an objection and asked that letters of administration be issued to her. The court then appointed a special administrator. Joe amended his petition, alleging that he was the sole heir in that the marriage between J'Noel and Marshall was void

since J'Noel was born a man. J'Noel argues that she is a biological female and was at the time of her marriage to Marshall. There is no dispute that J'Noel is a transsexual.

According to Stedman's Medical Dictionary 1841 (26th ed.1995), a transsexual is a "person with the external genitalia and ***195** secondary sexual characteristics of one sex, but whose personal identification and psychosocial configuration is that of the opposite sex; a study of morphologic, genetic, and gonadal structure may be genitally congruent or incongruent." A post-operative transsexual, such as J'Noel, is a person who has undergone medical and surgical procedures to alter "external sexual characteristics so that they resemble those of the opposite sex." Stedman's Med. Dict. 1841 (26th ed. 1995). The external sexual characteristics may include genitalia, body and facial hair, breasts, voice, and facial features.

Joe opposed J'Noel's receiving a spousal share of Marshall's estate on several grounds-waiver, fraud, and void marriage in that J'Noel remained a male for the purpose of the "opposite sex" requirement of K.S.A.2001 Supp. 23-101. * * *

The sole issue for review is whether the district court erroneously entered summary judgment in favor of Joe on the ground that J'Noel's marriage to Marshall was void.

****124** On the question of validity of the marriage of a post-operative transsexual, there are two distinct "lines" of cases. One judges validity of the marriage according to the sexual classification assigned to the transsexual at birth. The other views medical and surgical ***196** procedures as a means of unifying a divided sexual identity and determines the transsexual's sexual classification for the purpose of marriage at the time of marriage. The essential difference between the two approaches is the latter's crediting a mental component, as well as an anatomical component, to each person's sexual identity.

Among the cases brought to the court's attention not recognizing a mental component or the efficacy of medical and surgical procedures are *Corbett v. Corbett,* 2 All E.R. 33 (1970); *In re Ladrach,* 32 Ohio Misc.2d 6, 513 N.E.2d 828 (1987); and *Littleton v. Prange,* 9 S.W.3d 223 (Tex.Civ.App.1999), *cert. denied* 531 U.S. 872, 121 S.Ct. 174, 148 L.Ed.2d 119 (2000). Recognizing them are *M.T. v. J.T.,* 140 N.J.Super. 77, 355 A.2d 204, *cert. denied* 71 N.J. 345, 364 A.2d 1076 (1976); and *In re Kevin,* FamCA 1074 (File No. SY8136 OF 1999, Family Court of Australia, at Sydney, 2001).

The district court, in the present case, relied on *Littleton.* The Court of Appeals relied on *M.T.* * * *

*Littleton* was the source for the district court's language and reasoning. The Texas court's statement of the issue was: "[C]an a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth?" 9 S.W.3d at 224. For what purported to be its findings of fact, the district court restated the Texas court's conclusions nearly verbatim (See 9 S.W.3d at 230-31):

> "Medical science recognizes that there are individuals whose sexual self-identity is in conflict with their biological and anatomical sex. Such people are termed transsexuals....
>
> "[T]ranssexuals believe and feel they are members of the opposite sex.... J'Noel is a transsexual.
>
> "[T]hrough surgery and hormones, a transsexual male can be made to look like a woman, including female genitalia and breasts. Transsexual medical treatment, however, does not create the internal sexual organs of a woman, except for the vaginal canal. There is no womb, cervix or ovaries in the post-operative transsexual female.

***197** "[T]he male chromosomes do not change with either hormonal treatment or sex reassignment surgery. Biologically, a post-operative female transsexual is still a male....

"The evidence fully supports that J'Noel, born male, wants and believes herself to be a woman. She has made every conceivable effort to make herself a female.

"[S]ome physicians would consider J'Noel a female; other physicians would consider her still a male. Her female anatomy, however, is still all man-made. The body J'Noel inhabits is a male body in all aspects other than what the physicians have supplied.

"From that the Court has to conclude, and from the evidence that's been submitted under the affidavits, as a matter of law, she-J'Noel is a male." * * *

The Court of Appeals rejected the reasoning of *Littleton* "as a rigid and simplistic approach to issues that are far more complex than addressed in that opinion." 29 Kan.App.2d at 127, 22 P.3d 1086. The Court of Appeals "look [ed] with favor on the reasoning and the language" of *M.T.* 29 Kan.App.2d at 128, 22 P.3d 1086. The Court of Appeals ****125** engaged in the following discussion of the decision in *M.T.:*

> "In *M.T.,* a husband and wife were divorcing, and the issue was support and maintenance. The husband argued that he should not have to pay support to his wife because she was a male, making the marriage void. The issue before the court, similar to that before this court, was whether the marriage of a post-operative male-to-female transsexual and a male was a lawful marriage between a man and a woman. The court found that it was a valid marriage. 140 N.J.Super. at 90 [355 A.2d 204].
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> "In affirming the lower court's decision, the court noted the English court's previous decision in *Corbett.* 140 N.J.Super. at 85-86 [355 A.2d 204]. The court rejected the reasoning of *Corbett,* though, finding that 'for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards.' 140 N.J.Super. at 87 [355 A.2d 204]. Since the court found that the wife's gender and genitalia were no longer 'discordant' and had been harmonized by medical treatment, the court held that the wife was a female at the time of her marriage and that her husband, then, was obligated to support her. 140 N.J.Super. at 89-90 [355 A.2d 204].
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> ***198** "The importance of the holding in *M.T.* is that it replaces the biological sex test with dual tests of anatomy and gender, where 'for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards.' 140 N.J.Super. at 87 [355 A.2d 204].
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> "The *M.T.* court further stated:
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> 'In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did so here. In so ruling we do

> no more than give legal effect to a *fait accompli,* based upon medical judgment and action which are irreversible. Such recognition will promote the individual's quest for inner peace and personal happiness, while in no way disserving any societal interest, principle of public order or precept of morality.' 140 N.J.Super. at 89-90 [355 A.2d 204].
>
> "In *M.T.,* the husband was arguing that he did not owe any support because his wife was a man. However, in the record, it was stated that the wife had a sex reassignment operation after meeting the husband. Her husband paid for the operation. The husband later deserted the wife and then tried to get out of paying support to someone he had been living with since 1964 and had been married to for over 2 years." 29 Kan.App.2d at 113-14, 22 P.3d 1086.

In his petition for review, Joe complained that the Court of Appeals failed to "ask the fundamental question of whether a person can actually change sex within the context of K.S.A. 23-101." On the issue of the validity of the marriage, Joe's principal arguments were that the Court of Appeals failed to give K.S.A.2001 Supp. 23-101 its plain and unambiguous meaning and that the Court of Appeals' opinion improperly usurps the legislature's policy-making role.

K.S.A.2001 Supp. 23-101 provides:

> "The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law."

****126** Joe's principal argument is that the statutory phrase is plain and unambiguous. His statements of the issue and his position, however,***199** go beyond the statutory phrase to pin down the time when the two parties are of opposite sex. The plain and unambiguous meaning of K.S.A.2001 Supp. 23-101, according to Joe, is that a valid marriage must be between two persons who are of opposite sex at the time of birth.

Applying the statute as Joe advocates, a male-to-female transsexual whose sexual preference is for women may marry a woman within the advocated reading of K.S.A.2001 Supp. 23-101 because, at the time of birth, one marriage partner was male and one was female. Thus, in spite of the outward appearance of femaleness in both marriage partners at the time of the marriage, it would not be a void marriage under the advocated reading of K.S.A.2001 Supp. 23-101. As the Court of Appeals stated in regard to J'Noel's argument that K.S.A.2001 Supp. 23-101, as applied by the district court, denied her right to marry: "When J'Noel was found by the district court to be a male for purposes of Kansas law, she was denied the right to marry a male. It logically follows, therefore, that the court did not forbid J'Noel from marrying a female." 29 Kan.App.2d at 126, 22 P.3d 1086.

Joe's fallback argument is that the legislature's intent was to uphold "traditional marriage," interpreting K.S.A.2001 Supp. 23-101 so that it invalidates a marriage between persons who are not of the opposite sex; *i.e.,* a biological male and a biological female.

Joe also contends that the legislature did not intend for the phrase "opposite sex" in K.S.A.2001 Supp. 23-101 to allow for a change from the sexual classification assigned at birth.

The other facet of Joe's argument is that policy questions are for the legislature rather than the

courts. In K.S.A.2001 Supp. 23-101 and K.S.A.2001 Supp. 23-115, the legislature declared the public policy of recognizing only marriages between a man and a woman. K.S.A.2001 Supp. 23-115 provides:

> "All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state. It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman."

The Court of Appeals extensively reviewed cases involving transsexuals from other states and countries. [discussion omitted]

The district court concluded as a matter of law that J'Noel was a male because she had been identified on the basis of her external genitalia at birth as a male. The Court of Appeals held that other criteria should be applied in determining whether J'Noel is a man or a woman for the purpose of the law of marriage and remanded in order for the district court to apply the criteria to the facts of this case. In this case of first impression, the Court of Appeals adopted the criteria set forth by Professor Greenberg in addition to chromosomes: "gonadal sex, internal morphologic sex, external morphologic sex, hormonal sex, phenotypic sex, assigned sex and gender of rearing, and sexual identity," as well as other criteria that may emerge with scientific advances. 29 Kan.App.2d at 127, 22 P.3d 1086. * * *

On appeal, J'Noel argues that the marriage is valid under Kansas law. However, in the district court, J'Noel's sole argument was that the marriage was valid under Wisconsin law and Kansas must give full faith and credit to Wisconsin law. In fact, J'Noel argued that ***211** the validity of the marriage under Kansas law was not an issue in this case and intimated the marriage would be prohibited under K.S.A.2001 Supp. 23-101.

The district court granted summary judgment, finding the marriage void under K.S.A.2001 Supp. 23-101. Summary judgment is appropriate when there is no genuine issue of material fact. *Bergstrom v. Noah,* 266 Kan. 847, 871, 974 P.2d 531 (1999). Here, the parties have supplied and agreed to the material facts necessary to resolve this issue. There are no disputed material facts. We disagree with the decision reached by the Court of Appeals. We view the issue in this appeal to be one of law and not fact. The resolution of this issue involves the interpretation of K.S.A.2001 Supp. 23-101. The interpretation of a statute is a question of law, and this court has unlimited appellate review. *State v. Lewis,* 263 Kan. 843, 847, 953 P.2d 1016 (1998).

The fundamental rule of statutory construction is that the intent of the legislature governs. In determining legislative intent, courts are not limited to consideration of the language used in the statute, but may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. *Sowers v. Tsamolias,* 23 Kan.App.2d 270, 273, 929 P.2d 188 (1996). Words in common usage are to be given their natural and ordinary meaning. *State v. Heffelman,* 256 Kan. 384, 886 P.2d 823 (1994). When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. *In re Marriage of Killman,* 264 Kan. 33, 42-43, 955 P.2d 1228 (1998).

The words "sex," "male," and "female" are words in common usage and understood by the general population. Black's Law ***213** Dictionary, 1375 (6th ed.1999) defines "sex" as "[t]he sum of the

peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female." Webster's New Twentieth Century Dictionary (2nd ed.1970) states the initial definition of sex as "either of the two divisions of organisms distinguished as male or female; males or females (especially men or women) collectively." "Male" is defined as "designating or of the sex that fertilizes the ovum and begets offspring: opposed to *female*." "Female" is defined as "designating or of the sex that produces ova and bears offspring: opposed to *male*." [Emphasis added.] According to Black's Law Dictionary, 972 (6th ed.1999) a marriage "is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex."

The words "sex," "male," and "female" in everyday understanding do not encompass transsexuals. The plain, ordinary meaning of "persons of the opposite sex" contemplates a biological man and a biological woman and not persons who are experiencing gender dysphoria. A male-to-female post-operative transsexual does not fit the definition of a female. The male organs have been removed, but the ability to "produce ova and bear offspring" does not and never did exist. There is no womb, cervix, or ovaries, nor is there any change in his chromosomes. As the *Littleton* court noted, the transsexual still "inhabits ... a male body in all aspects other than what the physicians have supplied." 9 S.W.3d at 231. J'Noel does not fit the common meaning of female.

That interpretation of K.S.A.2001 Supp. 23-101 is supported by the legislative history of the statute. That legislative history is set out in the Court of Appeals decision:

> "The amendment to 23-101 limiting marriage to two parties of the opposite sex began its legislative history in 1975. The minutes of the Senate Committee on Judiciary for January 21, 1976, state that the amendment would 'affirm the traditional view of marriage.' The proposed amendment was finally enacted in 1980.
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> ****136** "K.S.A. 23-101 was again amended in 1996, when language was added, stating: 'All other marriages are declared to be contrary to the public policy of this state ***214** and are void.' This sentence was inserted immediately after the sentence limiting marriage to two parties of the opposite sex.
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> "In 1996, K.S.A. 23-115 was amended, with language added stating: 'It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman.' " 29 Kan.App.2d at 99, 22 P.3d 1086.

The Court of Appeals then noted:

> "The legislative history contains discussions about gays and lesbians, but nowhere is there any testimony that specifically states that marriage should be prohibited by two parties if one is a post-operative male-to-female or female-to-male transsexual. Thus, the question remains: Was J'Noel a female at the time the license was issued for the purpose of the statute?" 29 Kan.App.2d at 100, 22 P.3d 1086.

We do not agree that the question remains. We view the legislative silence to indicate that transsexuals are not included. If the legislature intended to include transsexuals, it could have been a simple matter to have done so. We apply the rules of statutory construction to ascertain the legislative intent as expressed in the statute. We do not read into a statute something that does not come within the

wording of the statute. *Joe Self Chevrolet, Inc. v. Board of Sedgwick County Comm'rs,* 247 Kan. 625, 633, 802 P.2d 1231 (1990).

> In *Ulane v. Eastern Airlines, Inc.,* 742 F.2d 1081 (7th Cir.1984), the federal district court, like the Court of Appeals here, held sex identity was not just a matter of chromosomes at birth, but was in part a psychological, self-perception, and social question. * * *

We agree with the Seventh Circuit's analysis in *Ulane*. It is well reasoned and logical. Although *Ulane* involves sex discrimination against Ulane as a transsexual and as a female under Title VII, the similarity of the basic issue and facts to the present case make it both instructive and persuasive. As we have previously noted, the legislature clearly viewed "opposite sex" in the narrow traditional sense. The legislature has declared that the public policy of this state is to recognize only the traditional marriage between "two parties who are of the opposite sex," and all other marriages are against public policy and void. We cannot ignore what the legislature has declared to be the public policy of this state. Our responsibility is to interpret K.S.A.2001 Supp. 23-101 and not to rewrite it. That is for the legislature to do if it so desires. If the legislature ****137** wishes to change public policy, it is free to do so; we are not. To conclude that J'Noel is of the opposite sex of Marshall would require that we rewrite K.S.A.2001 Supp. 23-101.

Finally, we recognize that J'Noel has traveled a long and difficult road. J'Noel has undergone electrolysis, thermolysis, tracheal shave, hormone injections, extensive counseling, and reassignment surgery. Unfortunately, after all that, J'Noel remains a transsexual, and a male for purposes of marriage under K.S.A.2001 Supp. 23-101. We are not blind to the stress and pain experienced by one who is born a male but perceives oneself as a female. We recognize that there are people who do not fit neatly into the commonly recognized category of male or female, and to many life becomes an ordeal. However, the validity of J'Noel's marriage to Marshall is a question of public policy to be addressed by the legislature and not by this court.

***216** The Court of Appeals is affirmed in part and reversed in part; the district court is affirmed.

DAVIS, J., not participating.

BRAZIL, S.J., assigned.