

May 7, 2024

Case: KLABENES-McDERMOTT

Mr. Kenneth J. Klabenes
85445 488th Ave
O'Neill, NE 68763

Dear Mr. Klabenes,

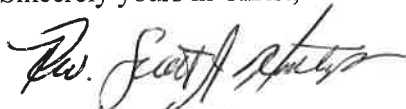
This letter is to inform you about the status of your petition for a declaration of nullity. Our most recent letter to you indicated that the case was nearing completion. It has now received a decision. This decision is open to appeal by you, by the Respondent, or by the Defender of the Bond. If any of you wish to appeal, this decision must be communicated to me within fifteen working days of the receipt of this letter, and I will guide you through that process. Appeal is made either to the Appellate Tribunal in the Archdiocese of St. Louis, or to the Roman Rota in the Vatican. If a petition to appeal is received by any of the parties, you will be notified immediately. If the fifteen days pass without a petition to appeal, the decision will become definitive and I will notify you of that without delay. Please look for another letter from me in the very near future.

The above-entitled marriage case that was introduced by you in February of 2024 has received an **Affirmative Decision**. Your marriage to Kathleen M. McDermott has been declared ecclesiastically null by the Matrimonial Tribunal of the Archdiocese of Omaha. This means that there was a reason that was demonstrated with moral certainty that your marriage was invalid from the beginning. As has been communicated from the start of this process, this is not meant in any way to assign blame for the breakdown of conjugal life or to impute guilt on any party. Further, it does not mean to dismiss the good efforts that you and Kathleen M. McDermott made to form a life together or to imply that either of you intended to enter into marriage without good faith. It simply means that it is the decision of the judge in this case that the bond of marriage, while thought to exist, did not exist.

A copy of the Definitive Sentence is enclosed. Again, please look for another letter from me after fifteen working days have passed. Or, in the event that you wish to appeal, please contact me. An appeal must be submitted in writing, indicating the grounds for appeal and the preferred Appellate Tribunal.

If I can answer any questions at all, please do not hesitate to contact me or our Tribunal staff.

Sincerely yours in Christ,



Rev. Scott A. Hastings, J.C.L.
Tribunal Judge

METROPOLITAN TRIBUNAL OF THE ARCHDIOCESE OF OMAHA
NULLITY OF MARRIAGE
DEFECT OF FORM CASE: KLABENES-MCDERMOTT / PROTOCOL # 4/24
COURT OF THE FIRST INSTANCE

DEFINITIVE SENTENCE

In Nomine Domini. Amen.

In the twelfth year of the reign of Pope Francis, on the 1st day of May in the year of our Lord 2024, a properly constituted Tribunal consisting of the Very Reverend Scott A. Hastings, JCL, sole judge, and assessor, Elizabeth A. Sondag, JCL, in the documentary case in the case of the nullity of marriage between Kenneth Klabenes, the male Petitioner, a resident of the Archdiocese of Omaha, and Kathleen McDermott, the female Respondent, a resident of the Archdiocese of Omaha, with the intervention and scrutiny of Deacon Ronald R. Ryan, JCL, Defender of the Bond, has pronounced the following decision:

THE FACTS OF THE CASE

The male Petitioner, Kenneth Klabenes (b. 7/17/1956), a Latin Rite Roman Catholic with domicile in the Archdiocese of Omaha, and the female Respondent, Kathleen McDermott (b. 11/29/1955), a Latin Rite Roman Catholic with domicile in the Archdiocese of Omaha, celebrated their wedding on 29 December 1984 at Our Lady of the Rosary Chapel in Sturgis, South Dakota. The celebrant was a priest of the Society of St. Pius X. The Petitioner was twenty-eight years old, and the Respondent was twenty-nine years old at the time of the wedding. The Respondent filed for divorce, which was granted on 17 September 2008 in the District Court of Holt County, Nebraska.

On 9 February 2024, the Metropolitan Tribunal of the Archdiocese of Omaha, as Court of First Instance, accepted the *libellus* after verifying that it is competent to hear this case per the requirements of canon 1672, 2° and cited the Respondent. On the same day, the decree establishing the formula of the doubt was issued, defining the controversy according to the following terms and ordering the case to follow the documentary process:

Whether the invalidity of the marriage is demonstrated on account of lack of marriage faculty or delegation (c. 1108)?

The conclusion of the case was decreed on 22 March 2024. The Defender of the Bond submitted his brief to the Court on 10 April 2024.

IN LAW

Marriage is an irrevocable covenant “by which a man and a woman establish between

themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, [that] has been raised by Christ the Lord to the dignity of a sacrament between the baptized" (c. 1055). Marriage is not a human creation, but "God Himself is the author of matrimony, endowed as it is with various benefits and purposes" (Vatican II, pastoral constitution *Gaudium et spes* 48 in *AAS* 58 (1966) 1067-1068). Since God is the author of marriage, man cannot change its objective essence. Pope Paul VI affirms this principle in his 1976 address to the Roman Rota: "For, when the spouses give their free consent, they are entering into and making themselves part of an objective order or institution that transcends them and does not in the slightest depend on them as far as its nature and special laws are concerned" (Paul VI, *Allocution to the Roman Rota*, February 9, 1976 in *AAS* 68 (1976) 206-207).

Canon 1108 states: "§1. Only those marriages are valid which are contracted before the local ordinary, pastor, or a priest or deacon delegated by either of them, who assist, and before two witnesses according to the rules expressed in the following canons and without prejudice to the exceptions mentioned in canon 144, 1112, §1, 1116, and 1127, §§1-2." Canon 1111 states: "§1. As long as they hold office validly, the local ordinary and the pastor can delegate to priests and deacons the faculty, even a general one, of assisting at marriages within the limits of their territory. §2. To be valid, the delegation of the faculty to assist at marriages must be given to specific persons expressly. If it concerns special delegation, it must be given for a specific marriage; if it concerns general delegation, it must be given in writing."

Canon 1688 states: "After receiving a petition proposed according to the norm of can. 1677, the diocesan bishop or the judicial vicar or a judge designated by him can declare the nullity of a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the defender of the bond."

A marriage is presumed valid "until the contrary is proven" (c. 1060). The judge needs moral certainty in order to declare the nullity of a marriage (c. 1608 §1; *DC*, art. 247 §1). Moral certainty is "characterized on the positive side by the exclusion of well-founded or reasonable doubt... on the negative side, it does admit the possibility of the contrary, and in this it differs from absolute certainty" (Pius XII, *Allocution to the Roman Rota*, October 1, 1942 in *AAS* 34 (1942) 339-340). Moral certainty is reached from the acts and the proofs in the case (c. 1608 §2).

IN FACT

The baptismal record of the Petitioner demonstrates that he is a Latin Rite Roman Catholic. The civil marriage license and the baptismal register of Our Lady of the Rosary Chapel both show the celebrant of the marriage in question to be Reverend Stephen DeLallo, a priest of the Society of St. Pius X. He was neither the true pastor of the place of the marriage nor was he delegated by

a competent authority. The judicial vicar of the Diocese of Rapid City testified for the case that the bishop of the time granted no permissions to the priests of the Society of St. Pius X nor did the possibility of granting them delegation for marriage by the local ordinary exist in the law like it does currently by the grant of Pope Francis. In summary, Reverend Stephen DeLallo, a priest of the Society of St. Pius X, lacked the faculty or delegation to celebrate the wedding of the Parties.

The Parties lived in the Archdiocese of Omaha for the length of their cohabitation during the marriage in question. The records of the Archdiocese of Omaha were checked to see if any sanation was decreed for the wedding in question. No record was found. The Petitioner testifies that the marriage was not convalidated either, which was verified by checking his baptismal record.

The *animadversiones* of the Defender of the Bond have been considered. He raises no objection to a declaration of nullity on this ground.

Based on the law and acts of the case, the Court concludes that the invalidity of the marriage is demonstrated on account of lack of marriage faculty or delegation.


Holding all of this before our eyes, the Court must find in favor of nullity.

WHEREFORE, we, the undersigned Judges of the Metropolitan Tribunal of the Archdiocese of Omaha, sitting as a Court of First Instance, having thoroughly examined all of these matters both as regards the law and the facts, and invoking the Divine Name, and having only God before our eyes, declare, decree and define in answer to the issue proposed for resolution:

*Whether the invalidity of the marriage is demonstrated on account of lack of marriage faculty or delegation (c. 1108)? **Affirmative, decisio pro nullitate.***

Given at the Metropolitan Tribunal of the Archdiocese of Omaha on this 1st day of May 2024.


Very Reverend Scott A. Hastings, JCL
Sole Judge


Elizabeth A. Sondag, JCL
Assessor & Notary

The Party who feels aggrieved by the decision of this Tribunal may appeal the sentence to the Tribunal of Second Instance for the Province of St. Louis or to the Tribunal of the Roman Rota as provided for in canon 1680 of the Code of Canon Law.

This decision is to be communicated to the Petitioner and the Respondent.

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