FILED

AUG 27 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEANNA L. GEIGER; et al.,

Plaintiffs - Appellees,

v.

JOHN KITZHABER, in his official capacity as Governor of Oregon; et al.,

Defendants - Appellees,

v.

NATIONAL ORGANIZATION FOR MARRIAGE, INC., Proposed Intervenor,

Movant - Appellant.

No. 14-35427

D.C. Nos. 6:13-cv-01834-MC
6:13-cv-02256-MC
District of Oregon,
Eugene

ORDER

Before: SCHROEDER, THOMAS, and N.R. SMITH, Circuit Judges.

This appeal arises from the district court's denial of the National Organization for Marriage, Inc.'s ("NOM") motion to intervene in a consolidated action challenging the validity of Oregon's state constitutional and statutory provisions limiting civil marriage to one man and one woman, and the district court's subsequent order granting summary judgment. The district court's summary judgment order enjoined the enforcement of Article 15, § 5A, of the

Constitution of Oregon; O.R.S. 106.010; O.R.S. 106.041(1); O.R.S. 106.150(1); and any other state or local law, rule, regulation, or ordinance as the basis to deny marriage or the rights accompanying marriage to same-gender couples otherwise qualified to marry under Oregon law, or to deny recognition of a same-gender couple's marriage leally performed in other jurisdictions and in all other respects valid under Oregon law.

Before the court are two motions to dismiss filed by defendants-appellees (collectively "Oregon State Defendants"). On May 14, 2014, the district court denied NOM's motion to intervene in the consolidated district court action. On May 16, 2014, NOM filed a notice of appeal from that denial. On May 19, 2014, the district court issued an opinion and an order granting summary judgment for plaintiffs-appellees (collectively "Geiger"), and entered final judgment in favor of Geiger. On May 22, 2014, NOM filed an amended notice of appeal in the district court, amending the appeal to include a protective notice of appeal of the district court's May 19, 2014 order and judgment. On the same date, NOM also filed in the district court a separate protective notice of appeal of the May 19, 2014 order and judgment.

On May 20, 2014, the Oregon State Defendants filed in this court a motion to dismiss as moot the appeal of the district court's May 14, 2014 denial of NOM's

motion to intervene. Geiger filed a joinder in the Oregon State Defendants' May 20, 2014 motion. On June 13, 2014, the Oregon State Defendants filed a motion to dismiss the protective notice of appeal for lack of standing.

Neither Geiger nor the Oregon State Defendants filed a notice of appeal from the district court's May 19, 2014 final judgment. Therefore, even if NOM were to prevail in its appeal of the district court's denial of its motion to intervene, NOM must also demonstrate that it has Article III standing to challenge the final judgment. *See Diamond v. Charles*, 476 U.S. 54, 68 (1986) (intervenor's right to continue a suit on appeal "in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Article III").

NOM asserts that it has Article III standing to appeal the district court's judgment as a third party on behalf of several of its members, identified as Oregon members who provide wedding services, Oregon members who voted for Measure 36, and at least one member who is an elected Oregon county clerk. We find that NOM's Oregon wedding service provider members' objection to facilitating same-gender marriage ceremonies is not sufficient to establish Article III standing. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (Article III standing "requires the litigant to

prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision[]"). Likewise, the interest of NOM's Oregon voter members in reversing the district court judgment in order to vindicate the constitutional validity of a generally applicable Oregon law is insufficient to establish Article III standing. *See Hollingsworth*, 133 S. Ct. at 2662-63 (holding proponents of ballot proposition had "no 'personal stake' in defending its enforcement that is distinguishable from the general interest of every citizen of California[]"). Finally, as the district court determined, we also find that NOM's member who is an elected Oregon county clerk is not appearing in an official capacity and that the clerk's personal objections are not sufficient to establish Article III standing. *See Hollingsworth*, 133 S. Ct. at 2664-65, 2668 (citing *Karcher v. May*, 484 U.S. 72 (1987)) (holding the private party petitioners who held no office lacked Article III standing, and declining to uphold "the standing of a private party to defend the constitutionality of a state statute when state officials have chosen not to[]").

We therefore hold that NOM lacks Article III standing to appeal the district court's May 19, 2014 final judgment. *See Hollingsworth*, 133 S. Ct. at 2663-64 (citing *Lujan*, 504 U.S. at 560-61). We grant the Oregon State Defendants' June 13, 2014 motion to dismiss NOM's appeal from the final judgment for lack of

standing. *See id*. We also grant the Oregon State Defendants' May 20, 2014 motion to dismiss as moot NOM's appeal of the denial of its motion to intervene.[1] *See Diamond*, 476 U.S. at 68.

DISMISSED.

[1]The district court denied intervention as a matter of right under Federal Rule of Civil Procedure 24(a) on the grounds that appellant's members lacked a significant protectable interest, and in its discretion denied permissive intervention under Federal Rule of Civil Procedure 24(b). The district court also denied the motion to intervene on the grounds that appellant's motion was untimely.