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18 UNITED STATES DISTRICT COURT
19 DISTRICT OF ARIZONA

20 Michael Marvin Ely, on behalf of himself
and all others similarly situated,

21 Plaintiff,

22 vs.

23
24 Nancy Berryhill, in her official capacity as
the Acting Commissioner of the Social
25 Security Administration,

26 Defendant.
27
28

Case No. 4:18-cv-00557-TUC-BGM

DECLARATION OF MICHAEL ELY

*(Color Version of Michael Ely Personal
Statement Found at Administrative Record
Pages 88-98; Omitting Record Pagination
and Execution)*

Michael Ely Personal Statement

James and I were together for 43 years. I didn't call him "Jim" or "James." I called him "Spider." We met in 1971, when I was 18 and he was 20. We had both hitchhiked to this little bar in Sunset Beach, California. I was just sitting there staring at a wall and someone tapped me on the shoulder. I turned around and there he was. He asked me to dance, and we started talking.

Afterward, he gave me his telephone number and we walked outside. The bar was right on Pacific Coast Highway, and it was



Michael Ely and James "Spider" Taylor in 1977.

engulfed in a fog. "Well, call me," he said. Then he stuck his thumb out and literally, I watched him disappear into the fog. And, I knew right then -- I don't know how I knew -- but I knew I had met my soul mate.

I still have the first flower he gave me, and I still have our first fortune cookie fortunes. We started living together on December 5, 1971, and that was our anniversary until we got married in November 2014.

We were very active in bands. Spider played guitar in a band called Emperor when we got together. For about the first ten years I sat on the sidelines with band wives and girlfriends. It wasn't until about ten years into our relationship that I got involved in bands, and I was the lyricist and the singer.

California was home for both of us. But, by the early 1990s we had lost a lot of friends to the AIDS crisis. There were a lot of ghosts, and we just kind of wanted to start over, to start fresh and start a new life. Ultimately, we chose to move to Arizona because Spider had family in Northern Arizona and used to spend summers working on a ranch up there. When we came to Tucson I think we were here five minutes and we said, “This is it, this is it.”



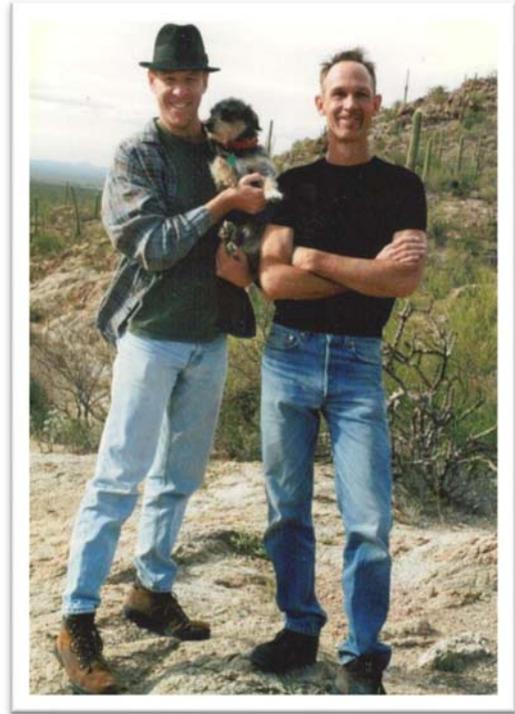
Cover of the June 23, 2012 edition of Record Collector News. The cover story recounted Spider’s and Michael’s contribution to the music scene in southern California.

Life in Arizona

We moved to Arizona in 1994. Spider looked for a job here, while keeping his job at Boeing in California. For about eight months, Spider commuted to work in California and flew back every weekend to be with me.

We moved to Oro Valley, a more conservative suburb of Tucson. We weren’t the type to be out there marching with signs about gay rights, but we always lived openly gay before it was done. Our idea was that we’d just set an example to our neighbors. They would see us coming home from the store after shopping, or walking our dog, or doing our yard work, and they’d realize we’re no different than they are. We decided we’d set an example to show people we’re not really much different.

Spider worked for Boeing, and then for Bombardier, as a structure mechanic on jets, and I did not work. All the years we were together I was the domestic partner. He was the breadwinner, and I was the person who took care of the house. I did the laundry and almost all of the cooking. I used to tease him that he couldn't boil water. I did all the cooking, laundry, scrubbing toilets, vacuuming, dusting, all the household stuff, while he worked. I also did all the banking and paid all



Michael and Spider in 2004.

the bills. He pitched in and washed dishes and stuff like that. And he did all the repair work; he could repair anything. He coated the roofs and repaired leaky faucets and things like that. And when we watched TV together I was in charge of the remote control. Together we had a dog named Frappy, a rescue pet.

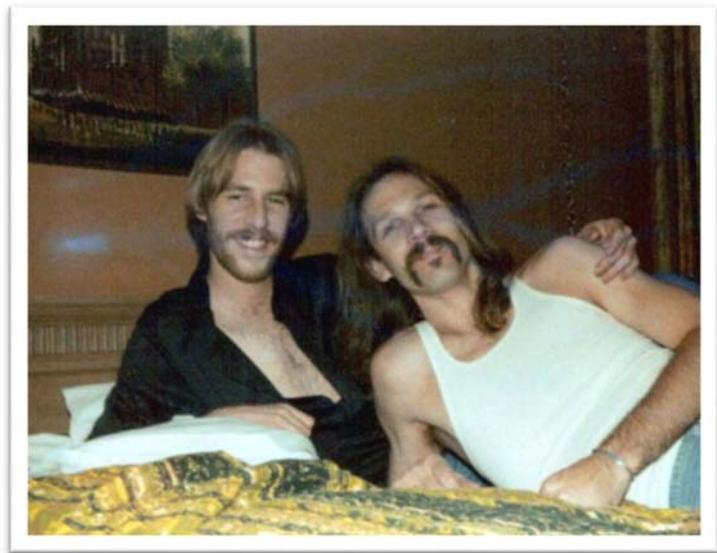
Around the time we moved to Arizona we got a joint banking account. We did, however, keep pretty much everything besides the bank account in Spider's name. It wasn't until we were able to get married that we started putting my name jointly on the house and other things. Everything was in Spider's name because I didn't work outside the home. I had little, if any, work history, and in those days you couldn't put your name on a house if you weren't paying a mortgage. The banks wouldn't let you unless you had a job, so everything was in his name.

For all intents and purposes Spider and I were married. From the beginning, we held ourselves out as a committed couple. We did everything else that married couples did. I remember in about 1973, two friends married. We were the “witnesses” and that’s when we first talked about, “wouldn’t it be nice if we could get married?” At that same wedding, the groom’s mother said to us, not knowing we were a gay couple, “Now don’t you two run off and get married.” Those same friends who married in 1973 later “witnessed” our wedding in 2014.



Spider and Michael at Cheri and Mark’s wedding in 1973.

From the early 1970s until just a few years ago, I never believed we would be allowed to marry. Gay couples our age just didn’t entertain the idea. When we first got together in 1971, it was still illegal to be gay. Homosexuality was listed as a mental illness. Gay bars were hidden away in industrial parts of a town, and police would raid them



Michael and Spider in 1975.

and rough up patrons. Soon after we started living openly together, our cat was murdered. One time in the 1970s, Spider was hospitalized with pneumonia, and hospital staff

prohibited me from seeing him after visiting hours. I was allowed only one hour a day because I wasn't "family."

Marriage seemed unattainable

The idea that we could ever get married just did not cross our minds. When California allowed gay marriage, I actually started thinking, "Oh, maybe there is hope." Our friends encouraged us to go to California to get married, and had we stayed in California, of course we would have married. But we lived in Arizona, a more conservative state, and in Oro Valley, a more conservative town, which did not even offer a domestic partner registry.

We didn't go to California to get married because we felt like we lived in Arizona and had for almost 20 years, and we didn't see marriage becoming legal in Arizona any time soon. Getting married somewhere else felt futile. What was the point if it wasn't recognized where we lived? We could have flown to Canada too, but what good would it do us in Arizona? We also didn't have a lot of money. It costs money to travel and get married.

We did other things to show we were a committed couple. On certain forms you have to fill out, there was never a box for "significant other." So we made our own little box next to the other boxes and put "gay couple," or "domestic partners." Then we would check it. Office staff never acknowledged our "checked" box. Instead, they would still put me as "single" or something similar because we weren't married. The sad thing is when I finally got to check that "married" box, six months later I was having to check "widow" box.

Spider's Aunt Margie used to visit us, and when California passed gay marriage the first time she voiced her disapproval. In our case, Aunt Margie said there should be "one step below marriage." She thought we should have some rights but not all of them. And I guess that kind of made us angry, that someone that we were so close to, a family member, would say that we should only be allowed "one step below marriage."

Aunt Margie's comment proved to be a catalyst. I don't remember who asked whom. We just said, "Let's have a commitment ceremony. We're gonna wear rings." On December 5, 2007 – 36 years after we started living together -- we had a commitment ceremony. There were just three of us -- Spider, me and our



Spider and Michael pictured with celebrant at their December 5, 2007 commitment ceremony. Spider is holding the broom he and Michael jumped over.

friend Cindy – and the woman who served as our celebrant. Back in the days when slaves couldn't get married, they would hold hands and jump over a broom to get married. So, we jumped over a broom. That was as close as we could get to marriage at that time.

Cancer diagnosis

Six years later, in November 2013, Spider was diagnosed with cancer. For the longest time doctors wouldn't tell us the stage. It was the one thing we wanted to know, and they kept saying they wouldn't tell us. But I knew this: the person that I loved so much was dying. In order to qualify for a transplant you could only have three tumors, and they had to be a certain size. Spider had seven tumors, with dozens more forming. He

had no chance; but he held onto the hope of a transplant. He said, “You wait, I’m going to get a transplant.” Just one small part of his liver was working and yet that kept him going. It was kind of a miracle.

The thought of losing him was like having a rug pulled from under me. Everything unraveled overnight. We had to sell our beautiful home and our stuff, and move into a townhouse while Spider was getting chemo. Friends pitched in and helped us a lot. My whole world was upended.

‘Just married’

When we finally were able to marry in 2014, there was no need for a down-on-one-knee proposal. We had been together for 43 years. We were already like an old married couple. We exchanged the same rings that we had worn since our commitment ceremony in 2007. Inside the rings was engraved, “Don’t forget,” which was short for, “Don’t forget I love you.” At times when we were in unsafe situations, we made up our own code to convey certain things we couldn’t say. “Don’t forget” -- that was like me saying “I love you.” I still wear his ring.



Marriage ceremony at the Pima County Courthouse, November 7, 2014.

Only seven people were allowed at the courthouse on November 7, 2014, but we got eight of our closest friends in there. We had a reception and a big party planned by our friends at Cindy’s house. We were on a high because we were finally married.

Spider did not live to see our first anniversary, but he tried. He was a very, very positive person. I don't remember him complaining about having cancer. I don't remember him asking, "Why me?" or "Why is this happening?" He did not complain.

During his final illness, Spider would get horrible chills, and I would wrap him in blankets in the middle of the night. Other times he would sweat, soaking the bed. I

changed the bedding and

covered him again in

blankets. It was rough.

Sometimes, he couldn't stop

throwing up. I read about

people who abandon partners

at times like that, and I can't

relate. I took a vow to love

and care for him, "in

sickness and in health," and I

did.



Michael and Spider in November 2014.

Spider stopped working in January 2014. He had worked for Bombardier from 1995 until 2014. His job required intense physical labor, and he had to follow detailed blue prints. If he made a mistake he'd be fired. It wasn't an easy job. He was an incredibly gifted guitar player, but he kept working even though the work bruised and cut his hands. He worked twelve-hour shifts, even while he had advanced cancer.

So much was going on from the time he was diagnosed. The paperwork alone was overwhelming. We struggled with his doctor bills. Once married, we put the house in Oro Valley in both of our names, and when we had to downsize, we put the townhouse that we moved to in both names. And then later, we started putting everything into just my name. I think he pretty much just made sure that by then everything was in my name.

Three months short

Soon after we got married we went to the Social Security office. Spider was in a wheelchair, and it just wasn't a very positive experience. They were actually not very friendly to us. The woman at Social Security said, "Well, you have to be married for nine months." Spider said, "I don't know if I can make it." It seemed so unfair. I don't know if I was more upset because they were curt or because I felt what they were doing to us was so unfair.

But Spider kept telling me over and over and over, "I'm going to live long enough and I'm going to outlive what the doctors are saying." And he tried. Spider had so many tumors on his liver that he wasn't expected to live more than six months. He lived 18 months because of sheer willpower. He believed he was going to beat it. Toward the very end his main concern was not dying. Rather, it was "what's going to happen to Michael?"

Social Security requires us to be married for at least nine months, even though we had been together for 44 years. When Spider died, on May 21, 2015, had we not been married, the hospital would have called his family members before they called me. It's been nearly two years since I lost him, and I am only now able to remember our good times without overwhelming grief.

I had a good life with Spider and that's why I'm fighting for survivor benefits. He paid into Social Security for over 40 years. I am his legal husband, and we were a committed couple for more than 40 years. The benefits would make a significant difference in my life. I'm struggling right now. Currently, my only income is from



Michael and Spider in May 2015.

Spider's pension from his work at Bombardier in Arizona, which he left to me. It is just over \$800 a month. Boeing in California would not give me his pension because we weren't married a year when he died. All his years there, and all our years together, and Boeing still said I did not qualify.

I live modestly. The Affordable Healthcare Act covers my meds for high cholesterol, high blood pressure, diabetes, and my psych meds. The \$800-a-month Bombardier pension runs out in six years. Then I have no income. I don't have my own Social Security because I did not work outside the house. Without my husband's Social Security what am I supposed to live on?

DECLARATION

I declare that the statements in this document are true to the best of my knowledge and belief.

Michael Ely

AFFIDAVIT OF NOTARY

STATE OF ARIZONA,)
) ss.
COUNTY OF PIMA)

On April 11, 2017, before me, a Notary Public in and for the County of Pima, State of Arizona, on this day personally appeared known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2019, I served the foregoing document on Defendant Nancy Berryhill through the CM/ECF system.

/s/ Jamie Farnsworth
Jamie Farnsworth
Paralegal