

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
ORPHANS COURT

ESTATE OF BRIAN P. :
ROSENBLATT a/k/a :
BRIAN ROSENBLATT, : 12-9275
DECEASED, :
: :
: :
: :

Stuart T. Schmookler, Esquire	Counsel for Administratrix
Kimberly G. Krupka, Esquire	Counsel for Administratrix
James R. Nanovic, Esquire	Counsel for Additional Party

MEMORANDUM OPINION

Matika, J. - June 6, 2013

In this estate matter, the Court is called upon to make a determination as to whether Ethel Rosenblatt, mother of the Decedent, Brian P. Rosenblatt, (hereinafter "Decedent") is the appropriate person to be the administratrix of his estate. This question was presented and her authority to act challenged as a result of a "Petition for Citation for Revocation of Letters of Administration" filed by Linda Stokes. Linda Stokes claims that she is entitled to the issuance of letters of administration of the Decedent's estate as his surviving spouse, this status having been created by virtue of a claimed common law marriage between them. After conducting a hearing, the Court concludes that Linda Stokes and Decedent were not common law husband and wife and therefore the Court denies her petition to revoke the

letters of administration previously issued to Ethel Rosenblatt.

FACTUAL AND PROCEDURAL BACKGROUND

The Decedent met the Petitioner Linda Stokes, (hereinafter "Linda") in 1999. Sometime in the summer of 2003, they began residing together and continued to do so until Decedent's death on July 30, 2012. Linda claims that shortly after her second husband passed away on May 19, 2003, she and Decedent began their relationship, and consummated such relationship as husband and wife through a common law marriage ceremony held in the living room of Decedent's home on September 6, 2003.¹ After that date, Linda claimed that she and Decedent held themselves out as husband and wife despite indicating that it was not her intent to nor did she tell any member of her or Decedent's family about their marital status until after her restaurant "Linda's Country Gap Inn" sold in 2009. Linda also testified that she had utilized the name Rosenblatt instead of Stokes on several documents such as invoices and appliance receipts.

In addition, Linda also stated that she and Decedent had received mail at their home, which was occasionally addressed as: "Mr. and Mrs. Brian Rosenblatt," "Mrs. Brian Rosenblatt," "Linda Stokes Rosenblatt," and "Linda Rosenblatt." Furthermore, friends and customers of Linda's restaurant testified that they

¹ Although it was Decedent's home, both Linda and Decedent resided there together in said home and continued to do so until his death.

believed Linda and Decedent were married, and when the opportunity presented itself, they introduced Linda and the Decedent to others as a married couple.

Conversely, Ethel Rosenblatt (hereinafter "Ethel"), Mother of Decedent, presented testimony that neither she nor her children, Decedent's siblings, were ever aware that Decedent and Linda were husband and wife.

During his lifetime, Decedent owned two retirement accounts through different plan administrators, American Funds and Putnam. These accounts listed "Linda A. Stokes" as the beneficiary. The American Funds account identified Linda as "Girlfriend/Spouse" and the Putnam account listed her as "Non-Spouse." Such designations were placed there by Linda herself. Further, Decedent's employer, Kinsley Construction Incorporated, after receiving a request to add Linda on Decedent's health insurance, refused to do such on the basis that the employer did not recognize common law marriage as a legally enforceable status between the parties. Linda then got her own health insurance. Additionally, Decedent owned a profit sharing plan through Kinsley Construction on which Decedent designated the primary beneficiary as Linda Ann Stokes and categorized her as his "Girlfriend."

For tax years 2003 through 2011, Linda identified on her federal income tax returns her marital status as "single." Likewise, for the same tax years, Decedent listed his marital status as "single."

On the day of Decedent's passing when his loved ones were at the hospital, a Doctor asked to speak to Decedent's "next of kin." Decedent's brother Gary, with Linda present, indicated that he was Decedent's next of kin; Linda did not pose any objection to this response.

After his death, Decedent's mother, siblings, and Linda met at the funeral home to discuss funeral arrangements and the preparation of Decedent's obituary. An obituary was prepared referencing Linda as Decedent's "significant other." Linda, prior to submission of the obituary, was asked if this was acceptable to her and again no objection was raised by her.

Finally, Decedent's death certificate indicated his marital status as "never married." Linda did not take any issue with this designation either.

DISCUSSION

Marriage is a civil contract by which a man and a woman take each other as husband and wife in either a ceremonial marriage or common law marriage. *Staudenmayer v. Staudenmayer*, 714 A.2d 1016, 1019 (Pa. 1998). Common law marriage is a

"fruitful source of perjury and fraud;" it is tolerated but not encouraged. *In re Estate of Wagner*, 159 A.2d 495, 497 (Pa. 1960). In terms of a common law marriage, the party alleging its existence has the burden of proving such. *Staudenmayer*, 714 A.2d at 1020. This burden is a heavy one and the claim must be reviewed with great scrutiny. *Id.*

A common law marriage can only be created by an exchange of words in the present tense, spoken with the specific purpose that the legal relationship of husband and wife be created. *Commonwealth v. Gorby*, 588 A.2d 902, 907 (Pa. 1991). Words in the present tense are required to prove common law marriage. *In re Estate of Wagner*, 159 A.2d at 498. In spite of that, the Supreme Court of this Commonwealth found that the Dead Man's Act² prevents a purported spouse from testifying on the issue of the exchanging of vows between the alleged spouse and a decedent. *See, In re Estate of Stauffer*, 476 A.2d 354 (Pa. 1984). Notwithstanding such, in the absence of testimony regarding the exchange of *verba in praesenti*, the Court has developed a rebuttable presumption in favor of a common law marriage. *Staudenmayer*, 714 A.2d at 1020-21. "When applicable, the party claiming a common law marriage who proves: 1) constant cohabitation; and 2) a reputation of marriage," raises the rebuttable presumption of marriage. *In re Manfredi's Estate*,

² 42 Pa.C.S.A. § 5930

159 A.2d 697, 700 (Pa. 1960).

Additionally, the advocate of the existence of the common law marriage can establish such marriage with evidence including: 1)the execution of deeds as husband and wife, *In re Thewlis' Estate*, 66 A. 519, 519 (Pa. 1907); 2)the establishment of joint bank accounts, *In re Cummings Estate*, 479 A.2d 537, 543 (Pa. Super. Ct. 1984); 3)the woman's use of the man's surname, *Id.* at 541; 4)the parties' filing status on tax returns, *In re Estate of Rees*, 480 A.2d 327, 329 n.2 (Pa. Super. Ct. 1984); 5)the wearing of wedding rings, *In re Garges' Estate*, 378 A.2d 307, 310 (Pa. 1977); 6)taking out of life insurance naming each other as spouse, *Id.*; and 7)introducing one another as husband and wife, *In re McGrath's Estate*, 179 A. 599, 603 (Pa 1935); conversely, so too can a party advocating against the existence of a common law marriage.

Evidence presented at the time of the hearing in this matter touched upon a number of these factors, however, the proponent of the common law marriage must establish by clear and convincing evidence that such marriage existed. *Staudenmayer*, 719 A.2d at 1022.

In this case Linda, prohibited by the Dead Man's Act, could not testify to the specifics of the "exchange of words" creating the alleged common law marriage between her and the Decedent.

All she was able to establish was the date of this alleged ceremony, September 6, 2003, and where this ceremony took place, that being the living room of Decedent's home, a place where both Linda and Decedent resided.

In spite of the lack of testimony regarding the exchange of words, a purported common law wife can still establish a rebuttable presumption of a common law marriage through cohabitation and reputation. *Estate of Gavula*, 417 A.2d 168, 171 n.7 (Pa. 1980).

It was uncontested that Decedent and Linda resided together starting in June 2003 and cohabitated until Decedent's passing in 2012. Further Linda presented several friends and patrons of her restaurant who testified regarding their purported knowledge of Decedent and Linda's relationship as husband and wife. This evidence, while very general and only presenting a claim of knowledge of a marriage from a selected few individuals, gives some rise to the presumption; however this Court's analysis does not stop here.

In contrast, there was more significant and a quantifiably greater amount of evidence to refute not only the presumption of a common law marriage, but also the overall existence of any possible exchange of words occurring on September 6, 2003. Linda was listed as beneficiary on a number of Decedent's

accounts, as testified to by Leona Thompson. Her relationship status with Decedent was listed as "girlfriend" or "non-spouse," a designation placed there by Linda. Such notation suggests to the Court a non-marital relationship, notwithstanding Linda's rationale for why such account documents read that way.

As previously indicated, Linda testified that she attempted to obtain health insurance through Decedent's employer; however, Kinsley Construction would not recognize Linda as Decedent's common law spouse. Instead of attempting to prove to Kinsley Construction that Decedent and she were in fact husband and wife, or otherwise "get married" in a civil ceremony, Linda obtained her own health insurance benefits. Linda also testified that neither she nor Decedent wore a wedding ring, explaining that the reason was due to her restaurant and the prohibition against wearing such jewelry as a cook.

Furthermore, despite the claim that she was married to Decedent since September 6, 2003, Linda continued at times to use the surname of her second husband, claiming it was too burdensome to change her name on all legal documents. Moreover, evidence regarding the marital status of Linda and Decedent as "single" was no more evident than their marital status designation of "single" on each of their respective federal

income tax returns for tax years 2003 through 2011, inclusive.

Ethel Rosenblatt, Decedent's mother, along with Decedent's Brother Gary Rosenblatt, and Sister Lisa Vecchioli testified at the hearing. All three affirmed that they had a good relationship with Decedent and that they were very much in constant contact with him over the years. All three, plus Decedent's best friend, Jerome Galm, testified that they were unaware and never informed by Decedent or Linda that they became husband and wife at anytime up until Decedent's passing.

Lastly, and perhaps most telling was the testimony elicited regarding a meeting at the hospital where Decedent passed away and also at the funeral home. When a doctor appeared to inform Decedent's family that he had passed away, the doctor asked to speak to the "next of kin." Gary Rosenblatt spoke up and said that he was Decedent's brother and thus next of kin. Linda, who was present, did not at any point interject and indicate that she was Decedent's spouse nor object to Gary's claim that he was Decedent's next of kin. Further, when Ethel, Linda, and others met at the Brubaker Funeral Home, an obituary was prepared with information obtained from all present. When presented for review, Linda did not raise an objection to her being listed as Decedent's "significant other." Likewise, Linda did not object when Decedent's marital status on his death certificate

described him as never having been married.

We find that the evidence presented by Ethel Rosenblatt was more credible than that presented by Linda Stokes.

CONCLUSION

Upon consideration of the evidence presented by Linda Stokes regarding her claim of a common law marriage to Decedent, the overwhelming evidence that counters such claim presented by Respondent, Ethel Rosenblatt, the Court's credibility determinations, and in light of the heavy burden imposed on Linda Stokes in this case, the Court is constrained to find that Linda Stokes failed to meet her burden. The Court further finds that no common law marriage existed between Linda Stokes and Decedent. Accordingly, the Court enters the following order:

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ORDER OF COURT

AND NOW, this day of June, 2013, upon consideration of the "Petition for Citation for Revocation of Letter of Administration" issued to Ethel Rosenblatt, the answer filed thereto, and after hearing, it is hereby **ORDERED** and **DECREED** that said petition is **DENIED**.

BY THE COURT:

Joseph J. Matika, Judge