

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JMC,	:	NO. 00-21,390
Petitioner	:	
	:	
vs.	:	CIVIL ACTION - Law
	:	In Divorce
JK,	:	
Respondent	:	

OPINION AND ORDER

This case asks the Court to define three of the most misunderstood words in domestic practice: “common law marriage”.

Although the Plaintiff, who seeks to establish the existence of a marriage, introduced an affidavit signed by Defendant attesting to the marriage, and further introduced a Property Settlement Agreement prepared by Defendant’s counsel acknowledging a marriage, the Court finds that the key element necessary to create the marriage is absent. Since there was never an exchange of words between the parties with the specific purpose of establishing the legal relationship of husband and wife, no common law marriage exists between the Plaintiff and Defendant. With no marriage between the parties, there cannot be a divorce.

On September 8, 2000, Plaintiff JC filed for divorce from Defendant JK. In her Complaint, Plaintiff alleges that she and Mr. K were married on June 11, 1998.¹ Also, on September 8, 2000, Plaintiff petitioned the Court for special injunctive relief, in which Plaintiff averred that Defendant was seeking to evict her from the marital residence. Plaintiff averred that she had lived in the residence

¹The Complaint seeks divorce, equitable distribution, alimony pendente lite, spousal support, attorney’s fees, costs of suit and alimony. There were no children born to the marriage.

since January 1996.²

On October 3, 2000 Defendant filed an Answer to Plaintiff's Complaint. In his answer, Defendant specifically denied that the parties were ever married. Based on this, Defendant further denied that Plaintiff was entitled to the remedies she was seeking. Simultaneously, Defendant also filed a Petition for Declaratory Relief, which is currently before the Court.³

In support of her claim of a common law marriage, Plaintiff introduced a copy of a notarized Affidavit Attesting to the Existence of Common Law Marriage signed by both parties on June 11, 1998. In the Affidavit Plaintiff and Defendant "affirm, under penalty of perjury, that we have expressly agreed to and entered into a common law marriage. Pursuant to this common law marriage, we established the relationship of husband and wife. We hold ourselves out to the community as husband and wife and have cohabited for three (3) years."⁴ Two (2) other exhibits were also presented. One (1) is an unsigned hand written note that appears to focus on distributing the parties' possessions and makes several references to a divorce. The second exhibit is a document entitled Property Settlement Agreement. The preamble of that document reads as follows:

Whereas, the parties hereto were married under the Laws of the Commonwealth of Pennsylvania on June 11, 1998 in Lycoming County, Pennsylvania; and,

Whereas, the parties separated in March 1999; and,

Whereas, there were no children born of the marriage; and ...

The document is undated and unsigned but counsel agreed that it was prepared by Defendant's

²The Petition for Special Relief was resolved prior to hearing by agreement of the parties.

³Although the Petition refers only to "Declaratory Relief", which would imply a request that the Court simply "declare" there to be no common law marriage between the parties, Defendant also asks the Court to dismiss Plaintiff's Divorce Complaint.

⁴Testimony established that the Affidavit was signed to procure health insurance benefits for Defendant through Plaintiff's employment at the State Correctional Facility at Muncy.

attorney with Defendant's knowledge.⁵

Defendant maintains that he and the Plaintiff never spoke any words in a present tense that could be construed as an exchange of vows or that would indicate the existence of their present intent to be married, that they never held themselves out as a married couple to anyone other than the benefits manager at the State Correctional Institute at Muncy, they never filed a joint income tax return, they were never introduced as husband and wife, they never referred to each other as husband and wife except with respect to the aforementioned Affidavit, they never maintained joint financial accounts and they never owned property by the entireties or even jointly. These assertions are largely uncontested by Plaintiff.⁶

The Pennsylvania Supreme Court has spoken on the issue of common law marriage as recently as 1998. In Staudenmayer v Staudenmayer, 714 A2d. 1016 (Pa. 1998), the Court was asked to decide if the circumstances presented by the parties thereto constituted a common law marriage. In addition to cohabiting, the parties maintained a joint checking account as Linda and Theodore Staudenmayer, Linda Staudenmayer had begun using Staudenmayer as her last name on her driver's license, social security card and credit cards, the deed to the marital residence was conveyed to "Theodore A. Staudenmayer and Linda L. Staudenmayer, his wife ... as tenants by the entirety", and the parties filed "married, filing jointly" federal income tax returns. Linda Staudenmayer could not, however, recall a specific instance of when she and Theodore said to each other "we are husband and wife" or words to that effect. The Court observed that Pennsylvania Courts have been hostile to claims of marriage in the absence of a certified ceremonial marriage because such claims present a "fruitful source of perjury and fraud," See In Re Estate of Wagner, 159 A2d. 495, 497 (Pa.

⁵The admissibility of the document itself was contested by Defendant on the basis that it was an offer of negotiation and therefore inadmissible. Plaintiff did not wish to enter the offer portion of the document into evidence, however, only the preamble.

⁶Plaintiff did indicate that at the hospital prior to an operation, when a physician gave certain options, Defendant posed a question to the effect, "if your wife had this condition, what would you do?" The Court cannot find the significance Plaintiff seeks to attach to this statement. Was Defendant to ask "if your girlfriend had this condition ...?"

1960), and while common law marriages may be tolerated, they are not encouraged. The Court then went on to hold:

where the parties are available to testify regarding verba in praesenti, the burden rests with the party claiming a common law marriage to produce clear and convincing evidence of the exchange of words in the present tense spoken with the purpose of establishing the relationship of husband and wife, in other words, the marriage contract. ...

Staudenmayer, supra, at 1021. And, while evidence of constant cohabitation and reputation of marriage may be introduced in support of a claim of common law marriage where there is contradictory testimony regarding verba in praesenti,

if a putative spouse who is able to testify ... fails to prove, by clear and convincing evidence, the establishment of the marriage contract through the exchange of verba in praesenti, then that party has not met its “heavy” burden to prove a common law marriage,

Id.

In the instant matter, while Plaintiff demonstrated cohabitation and introduced evidence of reputation of marriage, Plaintiff did not present clear and convincing evidence that the parties had ever exchanged words of intention to establish the marriage relationship, in the context of a ceremony or otherwise. She did not testify to such, and the Affidavit, which states that the parties had “expressly agreed to” enter into a common law marriage, is simply an out of Court statement made by both parties, the credibility of which is as subject to question as the testimony given by each party in Court. The Affidavit is not itself verba in praesenti. In view of the lack of any in Court statement by Plaintiff to establish verba in praesenti, the Court finds the Affidavit of little moment.

Although it is tempting to effectuate what would be, in the Court’s view, poetic justice by finding the existence of the marriage which Defendant apparently fraudulently portrayed for insurance benefits, as Plaintiff is unable to meet the heavy burden established by case law, her claim must be dismissed.

ORDER

AND NOW, this 19th day of January, 2001, for the foregoing reasons, the Court finds that no valid common law marriage was established between the parties and therefore Plaintiff's Complaint in Divorce is hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: Patricia Bowman, Esq.
Christina Dinges, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson