

Estate of ROBERT A. YOUNG, : ORPHANS COURT OF LYCOMING
deceased, : COUNTY, PA
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: NO. 41-04-0017

OPINION AND ORDER

Before the Court is Petitioner Sean Patrick Young’s Petition to show cause why Michelle Johnson should not be removed as the Administratrix of the Estate of Robert Young. Specifically at issue is whether Michelle Johnson, (hereinafter referred to as Respondent) was the spouse of Robert Young, (hereinafter Decedent) pursuant to a valid common law marriage. Petitioner, the son of Decedent, asserts that the Respondent was never lawfully married to Decedent and therefore is an inappropriate administrator under the Commonwealth’s intestacy statutes. 20 Pa.C.S.A. § 3155. Pursuant to Pennsylvania laws of intestate succession, Respondent is entitled to half of the Decedent’s Estate if she is found to be the widow of the Decedent. 20 Pa.C.S. § 2102(4). The Petitioner would otherwise be the sole heir.

The Court finds the following facts. On December 8, 2003, Decedent was walking across the intersection of Route 405 and Housels Run Road in West Chilisquaque Township, Northumberland County when he was struck and killed by a vehicle. Decedent was 36 years old at the time of his death. Respondent had a domestic relationship with the Decedent for approximately two years prior to his death. The couple shared a bank account, filed as “married” for federal income tax purposes on at least two occasions, and the Decedent listed Respondent as the beneficiary of his life insurance policy. Respondent paid the funeral expenses of the Decedent. The only asset of the Estate appears to be possible proceeds from litigation arising out of the accident that resulted in Decedent’s death.

Pennsylvania Courts have long viewed common law marriages with hostility, asserting, “claims for the existence of a marriage in the absence of a certified ceremonial marriage present a ‘fruitful source of perjury and fraud.’” *Staudenmayer v. Staudenmayer*, 552 Pa. 253, 261; 714 A.2d 1016, 1019 (1998). They are decidedly disfavored in the Commonwealth and, “are tolerated, but not encouraged.” *Id.* Verba in praesenti, or words in the present tense, are generally required to prove common law marriage; “uttered with a view and for the purpose of establishing the relationship of husband and wife.” *Id.*, at 262. A rebuttable presumption of common law marriage can arise when there is an absence of testimony regarding verba in praesenti. The party claiming the common law marriage must prove (1) constant cohabitation; and, (2) a reputation of marriage “which is not partial or divided but is broad and general.” *Id.*, at 263. The burden on the party asserting the existence of a common law marriage is a decidedly heavy one. This is especially so, “where one of the parties is dead and the claim, so grounded, is to share in the distribution of the Estate.” *Estate of Gavula*, 490 Pa. 535, 541, 417 A.2d 168, 171 (1980). Pennsylvania has recently put an end to the formation of common law marriages in the Commonwealth. House Bill 2719 was signed into law on November 23, 2004 and abolishes common law marriage formation after January 1, 2005. However, the law does not invalidate common law marriages that have been legally formed prior to that date.

Respondent provides evidence of verba in praesenti arising in the form of a “common law ceremony” where rings and promises were exchanged. She also presented evidence of cohabitation and general reputation of marriage to establish a presumption of marriage. As an initial determination, the testimony evidencing the common law ceremony is not sufficiently conclusive to overcome the scrutiny applied when one of the parties is deceased and the claim is intended to result in a share in the distribution of the Estate. References to some form of

ceremony were made through testimony, but no other evidence has been offered. Therefore, the Court will move forward to consider whether the Respondent has established a rebuttable presumption of marriage through evidence of cohabitation and reputation of marriage.

The evidence of cohabitation is strong enough to satisfy the first prong of the test to establish a rebuttable presumption of common law marriage. There is ample evidence in the record that Respondent and Decedent lived together for a considerable period of time. Whether there was a sufficient reputation of marriage must next be ascertained. The Respondent provided several witnesses to testify that the Decedent often referred to her as his wife and that there was a general understanding that the two were in fact married. There is also testimony regarding the fact that the couple wore wedding bands. The couple also filed joint tax returns as married. Further evidence was presented that the Decedent listed Respondent as beneficiary of his life insurance policy, held a joint checking account with her, and that Respondent paid the funeral expenses of the Decedent.

The Petitioner offered evidence to rebut the reputation of marriage. To undermine the importance of the “married filing jointly” status on the tax forms submitted by the Respondent, Petitioners assert that the couple had a financial incentive to file as such. Furthermore, other misinformation appears on the tax forms that would have decreased the couple’s tax liability. The Decedent claimed Earned Income Credit for Respondent’s children as if they were his own. Mr. Young was neither the biological father of the children nor did he adopt them. Taken as a whole, the tax forms best indicate a filer intending to interpret his domestic situation in a light most favorable to his tax liability, and do little to indicate his intent to represent himself as married to the community.

Petitioners also argue that several forms and applications filled out over the course of the relationship fail to express a marriage between Respondent and Decedent. The joint checking account did not identify the couple as married. The life insurance policy named Michelle Johnson as a beneficiary but not a spouse. During child support litigation between decedent and his son's mother, Respondent was never alleged to be his wife. In neither a Housing Assistance Payment Contract submitted to the U.S. Department of Housing and Urban Development nor Northumberland County Housing Authority Summary Application did Respondent list Decedent as a husband nor reflect in any way a marital relationship. Respondent argues that these documents and records were not asking for such marital status in particular and that they should not be indicative of marital status. However, taken as a whole they represent the dearth of available documentary evidence that the reputation of the relationship in the community was one of marriage. The failure to reflect a marital relationship in so many instances belies any presumption of common law marriage based on reputation in the community.

Petitioners presented witness testimony that cast further doubt on the validity of a common law marriage between the Decedent and Respondent. Members of the Decedent's family testified that they did not believe Respondent to be Decedent's wife and that his relationship with her was in no way uniquely representative of a marriage. Petitioner testified that he had no understanding of a marriage between the two, even following periodic custodial visits. Decedent's sister-in-law testified that decedent had referred to previous girlfriends as his wife, indicating this was a common practice. This evidence was corroborated by the testimony of Gail Schainholz, mother of the Petitioner. She testified that the Decedent also referred to her as his wife and they "held themselves out" to be married at times during their relationship.

The evidence of reputation of marriage presented by the Respondent is insufficient to establish a common law marriage. Because the Court finds that no marriage existed between Respondent and Decedent, the Respondent is an inappropriate Administratrix of the Estate. The Petition to remove her as Administratrix will be granted. However, the Court is reluctant to appoint James Young as Administrator of the Estate in light of his criminal record. This is an elevated concern for the Court due to the contentious nature of the distribution and the status of the Petitioner as a minor. After much deliberation, the Court believes that an independent attorney should be appointed to act as administrator of the Estate.

ORDER

AND NOW, this _____ day of November, 2004, it is hereby ORDERED AND DIRECTED that the Register of Wills remove Michelle D. Johnson as Administratrix of the Estate of Robert A. Young. Based on the foregoing discussion, Marc F. Lovecchio, Esquire is hereby appointed Administrator of the Estate of Robert A. Young for litigation purposes only. Counsel will not be required to perform any other administrative duties which would include but are not limited to advertising the Estate, filing a tax return or filing of an inventory are limited to the litigation only.

By The Court

Nancy L. Butts, Judge

cc: Ronald C. Travis, Esq.
Douglas N. Engelman, Esq.
Marc F. Lovecchio, Esq.

Annabel Miller, Register of Wills
Gary Weber, Esq.
Judge Nancy L. Butts
Law Clerk