

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**IN RE:** :  
**THE ESTATE OF DAVID W. BUBB** : **No. 41-04-0461**  
**Deceased** : **ORPHANS COURT DIVISION**  
:

**OPINION AND ORDER**

Before this Honorable Court, is the Petitioner’s Petition for Review of the Decision of the Department of Revenue filed on July 20, 2007. Argument on the Petition was held on November 25, 2008.

***Background***

David W. Bubb (Decedent) died testate on August 30, 2004. Thereafter, Gail Ulmer (Ulmer) filed the Estate’s Inheritance Tax Return with the Commonwealth of Pennsylvania Department of Revenue (Department) in which she represented that she was the common-law wife of the Decedent. On August 26, 2006, the Department issued an appraisal and assessment of the Estate’s Inheritance Tax Return which disallowed the claim of common law marriage between the Decedent and Ulmer. Ulmer then filed a protest appeal with the Department. On May 24, 2007, the protest was denied. This Petition followed.

At the time of the hearing, Ulmer stated that she had resided with the Decedent from 1991 until his death in 2004. She alleged that she and the Decedent held themselves out as husband and wife. Ulmer also presented several documents to show that she is the common law wife of the Decedent. First, she presented a leave of absence request she filled out for her employer requesting time off to take care of the Decedent. On the request, Ulmer listed the

Decedent as her husband. Ulmer also presented a newspaper article from a house fire that occurred at her and the Decedent's residence, which referred to her and the Decedent as "David and Gail Bubb." She also pointed out that the Decedent's Last Will and Testament (Will) left all of his personal effects to Ulmer.

The Department presented several documents to show Ulmer was not the common law wife of the Decedent. First, the Department pointed to the Individual Federal Income Tax Returns filed by both the Decedent and Ulmer for the years 2001, 2002, 2003, and 2004. The Decedent and Ulmer each filed separate tax returns and selected "single" as their filing status. Next, the Department pointed to the Decedent's Will that was executed on June 4, 1999. The Will states, "I declare that I am single and that I have no children", and "I give to my friend, Gail Ulmer . . ." Finally, the Department presented a letter written by Ulmer to the Department of Revenue, in which she states "for Christmas in 1991 he gave me an engagement ring." She goes on to say "Dave and I talked about getting married . . . and decided we were going to get married."

At the hearing, the Court took judicial notice of the certificate of death which listed the Decedent was "widowed." Ulmer agreed that she was the one who provided the information for his death certificate. Ulmer's wife, Pat died in 1984 from cancer.

### ***Discussion***

Petitioner asserts that she is a common law wife of the Decedent and therefore, the Department's assessment of the estate's inheritance tax return was incorrect.

Claims for the existence of a common law marriage present a "'fruitful source of perjury and fraud,' Pennsylvania courts have long viewed such claims with hostility. Common law

marriages are tolerated, but not encouraged.” Staudenmayer v. Staudenmayer, 714 A.2d 1016, 1019 (Pa. 1998) (and cases cited therein).

A common law marriage is “created by an exchange of words in the present tense, spoken with the specific purpose that the legal relationship of husband and wife is created by that.” Id. at 1020. The party alleging a common law marriage has the heavy burden of proving the marriage exists; and such a “claim must be reviewed with great scrutiny.” Id. See also Bell v. Ferraro, 849 A.2d 1233 (Pa. Super. Ct. 2004). “When there is an absence of testimony regarding the exchange of verba in praesenti,” Pennsylvania Courts have developed a rebuttable presumption in favor of common law marriage. Id. A rebuttable presumption of marriage is raised when the party alleging a common law marriage “proves: (1) constant cohabitation; and, (2) a reputation of marriage “which is not partial or divided but is broad and general . . . .” Id. At 1021 (quoting Estate of Manfredi, 159 A.2d 697, 700 (Pa. 1960). Constant cohabitation and reputation are not marriage; they are circumstances that merely give rise to the rebuttable presumption of marriage. Id. The Pennsylvania Supreme Court has found that the filing of separate, rather than joint federal tax returns and the selecting of “single” as the filing status manifests a lack of intent to be married. See Gavula Estate, 417 A.2d 168 (Pa. 1980); Corace Estate, 517 A.2d 1058 (Pa. 1987). Further, the presumption of the creation of a marriage is sufficiently refuted by inconsistent statements. See generally Rees Estate, 480 A.2d 327 (Pa. Super. Ct. 1984); Gavula Estate, 417 A.2d 168 (Pa. 1980).

The Court finds based upon the testimony and evidence presented that no common law marriage existed between the Decedent and Ulmer. The constant cohabitation of the Decedent and Ulmer and the alleged reputation of husband and wife create a rebuttable presumption of marriage. However, the presumption is easily rebutted after a review of the testimony and

evidence. Most damaging to Ulmer's claim is the letter she personally wrote and sent to the Department of Revenue in which she states she received an engagement ring for Christmas in 1991 and "talked about it and decided we were going to get married." As the letter continues, Ulmer states the marriage plans were put on hold until after the Decedent made it home from his surgery and that the Decedent died before ever making it home. Ulmer's statements that they **intended** to get married are statements inconsistent from those she made at the hearing, which further rebuts the presumption of marriage. Next, the Decedent and Ulmer both filed individual tax returns and selected "single" as their filing status, which shows a lack of intent to be married. Finally, the Decedent's own Will, executed in 1999, states "I declare I am single . . . and I give to my friend Gail Ulmer . . . which is again inconsistent with Ulmer's letter that alleges they were engaged in 1991 and married sometime after the engagement but before Decedent's passing. Ulmer's letter, combined with the income tax returns, and Decedent's Will all show a failure of the evidence to indicate the parties entered into even a common-law marriage.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of December 2008, after hearing on Petitioner's Petition for Review of the Decision of the Department of Revenue and determination that a common law marriage did not exist between the Decedent and Gail Ulmer, it is **ORDERED** and **DIRECTED** that the Petitioner request for the decision of the Department of Revenue to be set aside is hereby **DENIED**.

By the Court,

Nancy L. Butts, Judge

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