

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

IN RE: ESTATE OF RICHARD GIRIO, : NO. 41-23-0758  
Deceased. :  
: ORPHAN’S COURT  
:  
: Petition to Revoke Spousal Election

**OPINION AND ORDER**

This matter came before the Court for hearing on May 30, 2024, on the Petition of David Girio (son of Richard Girio) and Suzanne Girio-Judge (daughter of Richard Girio), co-executors of the estate of Richard Girio (hereinafter collectively “Executors”) to revoke or vacate the election of Dorothy Andersen (hereinafter “Andersen”) as spouse to take against the will of Richard Girio. The issue contended by Executors and Andersen is whether, at the time of the death of Richard Girio, Andersen was his common law spouse. For the reasons more fully set forth herein, the Court rules that she was not. For that reason, the Executors’ Petition is granted.

**FINDINGS OF FACT:**

1. Richard Girio died testate on December 8, 2023.
2. A Last Will and Testament was filed and named his son, David Girio, and his daughter, Suzanne Girio-Judge, as executors of his estate (hereinafter the “Estate”).
3. David Girio and Suzanne Girio-Judge were issued Letter Testamentary to act as executors of the Estate by the Register of Wills of Lycoming County on or about December 18, 2023.
4. On January 12, 2024, Andersen filed an Election of Spouse To Take Against Will and Conveyances.
5. Beginning in approximately June of 2003, Richard Girio and Andersen commenced a committed relationship, which included cohabitation over many years.
6. On approximately October 31, 2001, Richard Girio made a gift of two (2) rings to Andersen. Andersen did not make a gift of rings to Richard Girio at that time.
7. On approximately October 31, 2001, Richard Girio and Andersen privately made vows of love to each other. Andersen recalls the vows as “I love you and I want to spend the

rest of my life with you.” Andersen’s testimony regarding those vows did not include words of present intent to marry.

8. Richard Girio and Andersen attended a public ceremony in Rome, Italy, where the Pope gave a general Papal Blessing to the members of the crowd. No vows were a part of that public ceremony.
9. Andersen testified that neither she nor Richard Girio told anyone about their vows.
10. Andersen testified that she and Richard Girio never secured a marriage license.
11. Andersen testified that neither she nor Richard Girio participated in any public wedding ceremony nor public exchange of wedding vows.
12. Andersen testified that neither she nor Richard Girio celebrated any wedding anniversary.
13. Richard Girio and Dorothy Andersen did not represent themselves publicly as husband and wife. They did, however, encourage their family members to refer to them as family, such as “call me Uncle Dick, or call me Aunt Dot.”
14. Andersen made periodic contributions to Richard Girio for household expenses.
15. Andersen and Richard Girio maintained separate bank accounts and generally did not co-mingle their personal funds.
16. For many years during her committed relationship with Richard Girio, Andersen accepted monthly checks from the Social Security Administration on the account of her former spouse.
17. Investment accounts held by Richard Girio listed his marital status as “divorced.”
18. Both Richard Girio and Andersen filed tax returns as single persons.
19. Richard Girio did not refer to Andersen as his wife in his conversations with his children.
20. Richard Girio was formerly married, and divorced.
21. Richard Girio was a practicing Catholic throughout his life. His former marriage was not annulled by the Catholic Church.

**QUESTION PRESENTED:**

WHETHER, AT THE TIME OF THE DEATH OF RICHARD GIRIO, ANDERSEN WAS HIS SPOUSE AT COMMON LAW.

**ANSWER TO QUESTION PRESENTED:**

ALTHOUGH RICHARD GIRIO AND DOROTHY ANDERSEN ENJOYED A COMMITTED RELATIONSHIP OVER A PERIOD OF MANY YEARS, INCLUDING COHABITATION, THEY WERE NEVER SPOUSES AT COMMON LAW.

**DISCUSSION:**

Common Law Marriage In Pennsylvania

Common law marriage was abolished by statute in Pennsylvania effective January 24, 2005, by operation of 23 Pa.C.S.A. § 1103. That statute did not affect common law marriages entered into on or before January 1, 2005. Although not abolished until 2005, common law marriage has long been disfavored in Pennsylvania:

Because claims for the existence of a marriage in the absence of a certified ceremonial marriage present a “fruitful source of perjury and fraud,” Pennsylvania courts have long viewed such claims with hostility. *See In re Estate of Wagner*, 398 Pa. 531, 533, 159 A.2d 495, 497 (1960). Common law marriages are tolerated, but not encouraged. *Id.* While we do not today abolish common law marriages in Pennsylvania, we reaffirm that claims for this type of marriage are disfavored.

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 is created by that. *Commonwealth v. Gorby*, 527 Pa. 98, 110, 588 A.2d 902, 907 (1991). Regarding this requirement for an exchange of words in the present tense, this Court has noted:

It is too often forgotten that a common law marriage is a marriage by the express agreement of the parties without ceremony, and almost invariably without a witness, by words—not in futuro or in postea, but—in praesenti, uttered with a view and for the purpose of establishing the relationship of husband and wife. *Estate of Manfredi*, 399 Pa. at 291, 159 A.2d at 700 (citations omitted). The common law marriage contract does not require any specific form of words, and all that is essential is proof of an agreement to enter into the legal relationship of marriage at the

present time. *Estate of Gavula*, 490 Pa. 535, 540, 417 A.2d 168, 171 (1980).

The burden to prove the marriage is on the party alleging a marriage, and we have described this as a “heavy” burden where there is an allegation of a common law marriage. *Id.* at 540, 417 A.2d at 171. When an attempt is made to establish a marriage without the usual formalities, the claim must be reviewed with “great scrutiny.” *Id.* at 541, 417 A.2d at 171.

Generally, words in the present tense are required to prove common law marriage. *Estate of Wagner*, 398 Pa. at 535–36, 159 A.2d at 498. Because common law marriage cases arose most frequently because of claims for a putative surviving spouse's share of an estate, however, we developed a rebuttable presumption in favor of a common law marriage where there is an absence of testimony regarding the exchange of *verba in praesenti*. When applicable, the party claiming a common law marriage who proves: (1) constant cohabitation; and, (2) a reputation of marriage “which is not partial or divided but is broad and general,” raises the rebuttable presumption of marriage. *See Estate of Manfredi*, 399 Pa. at 291, 159 A.2d at 700. Constant cohabitation, however, “even when conjoined with general reputation are not marriage, they are merely circumstances which give rise to a rebuttable presumption of marriage.” *Id.* Here, however, we are presented with the problem of whether this rebuttable presumption pertains when both parties are alive and able to testify regarding the formation of the marriage contract. We have stated that “the rule which permits a finding of marriage duly entered into based upon reputation and cohabitation alone is one of necessity to be applied only in cases where other proof is not available.” *In re Nikitka's Estate*, 346 Pa. 63, 65, 29 A.2d 521, 522 (1943). The “necessity” that would require the introduction of evidence concerning cohabitation and reputation of marriage is the inability to present direct testimony regarding the exchange of *verba in praesenti*. We held in *In re Estate of Stauffer*, 504 Pa. 626, 476 A.2d 354 (1984), that the Dead Man's Act prohibited the purported wife's testimony regarding the exchange of marital vows with her alleged common law husband. There, we noted that the inability of the putative widow to present any testimony regarding the exchange of vows did not prevent her from proving a common law marriage. “Where there is no such proof available,” we held, “the law permits a finding of marriage based upon reputation and cohabitation when established by satisfactory proof.” *Id.* at 632, 476 A.2d at 357.

We have not, however, dispensed with the rule that a common law marriage does not come into existence unless the parties uttered the *verba in praesenti*, the exchange of words in the present tense for the purpose of establishing the relationship of husband and wife. See *Commonwealth v. Wilson*, 543 Pa. 429, —, 672 A.2d 293, 301 (1996) (discussing common law marriage in context of a claim of spousal testimonial immunity). We have allowed, as a remedial measure, a rebuttable presumption in favor of a common law marriage based on sufficient proof of cohabitation and reputation of marriage where the parties are otherwise disabled from testifying regarding *verba in praesenti*. However, 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. In those situations, the rebuttable presumption in favor of a common law marriage upon sufficient proof of constant cohabitation and reputation for marriage, does not arise.

By requiring proof of *verba in praesenti* where both parties are able to testify, we do not discount the relevance of evidence of constant cohabitation and reputation of marriage. When faced with contradictory testimony regarding *verba in praesenti*, the party claiming a common law marriage may introduce evidence of constant cohabitation and reputation of marriage in support of his or her claim. We merely hold that if a putative spouse who is able to testify and 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, since he or she does not enjoy any presumption based on evidence of constant cohabitation and reputation of marriage. *Pierce v. Pierce*, 355 Pa. 175, 181, 49 A.2d 346, 349 (1946) (“ [p]roof of reputation and cohabitation could not establish marriage; nor, in the absence of evidence regarding a marriage contract, is it sufficient to warrant a presumption of marital relations”).

*Staudenmayer v. Staudenmayer*, 714 A.2d 1016, 1020-1021 (Pa. 1998); *Accord Int'l Painters & Allied Trades Indus. Pension Fund v. Calabro*, 312 F.Supp.2d 697, 702 (E.D. Pa. 2004) (“The party alleging a common law marriage has the ‘heavy’ burden of proving its existence.”)(citing *Estate of Gavula*, 417 A.2d 168, 171 (Pa. 1980)); see *In re Est. of Carter*, 159 A.3d 970, 981 (Pa. Super. Ct. 2017)(indicating that “the exchange of rings is particularly strong evidence of [present intent to marry]”)(citing *In re Wagner's Est.*, 159 A.2d 495, 497 (Pa. 1960)).

## CONCLUSIONS OF LAW:

1. Although the Court finds that Richard Girio and Andersen lived together in a committed relationship from June of 2003, until the death of Richard Girio, the fact of cohabitation does not itself establish a marriage at common law.
2. Although the Court finds that Richard Girio made a gift of two (2) rings to Andersen, a gift of rings does not itself establish a marriage at common law.
3. Although the Court finds that, on approximately October 31, 2001, Richard Girio and Andersen privately made vows of love to each other, those private vows of love do not establish a marriage at common law. Andersen recalls the vows as “I love you and I want to spend the rest of my life with you.” Andersen’s testimony regarding those vows did not include words of present intent to marry, and thus do not support the conclusion that Richard Girio and Andersen exchanged marriage vows.
4. Unlike *In re Estate of Carter*—where the alleged common-law spouse testified that he proposed, with a ring, and asked the decedent “‘Will you marry me?’ to which [the decedent] replied, ‘Yes.’” and soon thereafter received “a ring in return” from the decedent—the evidence presented at the May 30<sup>th</sup> hearing indicate that Richard Girio made a gift of two (2) rings to Andersen, and Richard Girio and Andersen made vows of “I love you and I want to spend the rest of my life with you.” 159 A.3d at 980-81 (the Superior Court further observed, in *In re Estate of Carter*, that the “ring in return” was engraved with the date of the completion of the ring exchange, the alleged common-law couple celebrated their anniversary “each year thereafter,” and both of their families treated the couple as spouses thereafter). Thus, unlike *In re Estate of Carter*, where our Superior Court determined that a “present intent to marry” reasonably existed, the evidence here does not show that such an intent reasonably existed between Richard Girio and Andersen.
5. Furthermore, given the concerns cited by the *Staudenmayer* Court about the “fruitful source of perjury and fraud” pertaining to claims of common law marriages, our Superior Court noted that—while “the declaration of common law marriage is [frequently] sought for use as a sword against competing claims to an estate—the

petition by the alleged common-law spouse in *In re Estate of Carter* “not only was uncontested but indeed was supported by [decedent’s] family”; therefore, the Superior Court concluded that those concerns cited by the *Staudenmayer* Court were not present in the facts of *In re Estate of Carter. Staudenmayer*, 714 A.2d at 1019 (citing *In re Wagner’s Est.*, 159 A.2d 495, 497 (Pa. 1960)); *In re Est. of Carter*, 159 A.3d at 981. Here, however, the Executors (i.e., the son and daughter of Richard Girio) not only do not support Andersen’s claim as a common law spouse, they vehemently contest that claim.

6. For the reasons more fully set forth in the Findings of Fact hereinabove, the Court concludes that, although Richard Girio and Andersen resided together in a committed relationship from June of 2003 until the death of Richard Girio, they did so as two single persons, and they never entered into a marriage at common law.

**ORDER**

**AND NOW**, this 8<sup>th</sup> day of July 2024, based upon the reasons set forth above, the Petition to Revoke or Vacate Election of Spouse, filed by Executors on February 16, 2024, is **GRANTED**.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Recorder’s Office  
Douglas N. Engelman, Esquire  
Joseph F. Orso III, Esquire