Rel: December 10, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200682

Lina Louise Porter, a minor, through her mother and next friend, Ilka Porter

v.

Alexis Campbell Porter, as administratrix of the Estate of Sean M. Porter, deceased

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1200683

Ilka Porter

v.

Alexis Campbell Porter, as administratrix of the Estate of Sean M. Porter, deceased

Appeals from Baldwin Probate Court
(No. 38863)

STEWART, Justice.

Ilka Porter and Lina Louise Porter, through her mother and next friend, Ilka Porter, appeal from an order of the Baldwin Probate Court concluding that Sean M. Porter was married to Alexis Campbell Porter at the time of his death and appointing Alexis Campbell Porter as administratrix of his estate. The question presented by these appeals is one of first impression in Alabama: Whether the death of a party to a marriage, after a marriage document is executed but before the marriage document is recorded, invalidates the marriage for failure to comply with the registration requirements of § 22-9A-17, Ala. Code 1975. For the reasons discussed below, we conclude that it does not, and we affirm the probate court's order.

Facts and Procedural History

The facts underlying these appeals are undisputed. On March 3, 2011, Sean M. Porter ("Sean") executed a will designating Ilka Porter ("Ilka"), his then wife, as executrix and naming both Ilka and Lina Louise

Porter ("Lina"), Sean's daughter with Ilka, as beneficiaries. The will designated a successor executrix who predeceased Sean.

Section 22-9A-17, which sets forth the requirements for registering a marriage in Alabama, became effective on August 29, 2019. On October 10, 2019, Sean and Ilka were divorced. On August 14, 2020, Sean had a second child, Emma Lauren Porter, through his relationship with Alexis Campbell, now Alexis Campbell Porter ("Alexis").

On September 26, 2020, Sean and Alexis duly executed a marriage certificate before a notary public. On October 19, 2020, Sean died unexpectedly. On October 20, 2020, the previously executed marriage certificate was recorded with the Baldwin Probate Court ("the probate court") pursuant to § 22-9A-17.

On January 6, 2021, Ilka filed a petition to have letters testamentary issued to her, but, on March 4, 2021, she amended her petition to ask that letters of administration with the will annexed be issued to the county administrator instead. On March 4, 2021, Alexis filed her own petition for letters of administration with the will annexed, and she requested that the letters be issued to her, as Sean's surviving spouse.

Ilka subsequently moved for the probate court to enter a summary judgment finding that Sean's death had abated the marriage process and, consequently, that Alexis was not a surviving spouse entitled to serve as the administratrix of or to inherit from Sean's estate. Alexis simultaneously moved for the probate court to confirm her marriage to Sean, i.e., to confirm that the registration requirements of § 22-9A-17 had been complied with, and to conclude that Sean's death was immaterial to the validity of their marriage.

On May 25, 2021, the probate court issued an order finding that the marriage between Sean and Alexis was "not abated by the intervening death between execution of a certificate of marriage and filing of same" and that, as Sean's surviving spouse, Alexis had priority to serve as the administratrix of his estate pursuant to § 43-2-42(a)(1), Ala. Code 1975. Lina and Ilka (hereinafter referred to collectively as "the appellants") appeal.

Standard of Review

" 'This Court reviews de novo [a probate] court's interpretation of a statute, because only a question of law is presented.' " Pickens v. Estate

of Fenn, 251 So. 3d 34, 36 (Ala. 2017) (quoting Scott Bridge Co. v. Wright, 883 So. 2d 1221, 1223 (Ala. 2003)).

Discussion

The appellants argue that, because Sean's death occurred before the appropriate marriage documents were filed with the probate court within the 30-day period prescribed by § 22-9A-17(a), his death abated his marriage to Alexis. They contend that the probate court incorrectly concluded that a valid marriage existed between Alexis and Sean and that the probate court should not have appointed Alexis as the administratrix of his estate.

Section 22-9A-17 was substantially revised by Act No. 2019-340, Ala. Acts 2019, to abolish the requirement that marriage licenses be issued by probate-court judges. Section 22-9A-17 now provides as follows:

> "(a) Two persons desiring to unite in marriage may do so by submitting the affidavits, forms, and data specified in Section 30-1-5[, Ala. Code 1975,] and Section 30-1-9.1[, Ala. Code 1975,] for recording with the office of the judge of probate. The recording of the affidavits, forms, and data establishes legal recognition of the marriage as of the date the affidavits and forms were properly signed by the two parties so long as the documentation was provided to the probate office within 30 days of the signatures of the parties. Each

> marriage filed with the probate office shall be filed and registered with the Office of Vital Statistics.
>
> "(b) The office of the judge of probate shall record, in a permanent record, each marriage presented to the probate office for filing so long as the affidavits, forms, and data are submitted as required by Act 2019-340, and shall forward each marriage filed with the probate office during the preceding calendar month to the Office of Vital Statistics on or before the fifth day of the following calendar month."

(Emphasis added.)

Rules of statutory construction guide our interpretation of statutes like the one at issue in these appeals. This Court has previously recognized that

> "[t]he fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). In Water Works & Sewer Board of Selma v. Randolph, 833 So. 2d 604, 607 (Ala. 2002), this Court further cautioned that, "[w]hen determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the

statute," and that, "[w]hen the language is clear, there is no room for judicial construction."

The statutory language of § 22-9A-17 is clear. It outlines the process for filing marriage documents, states that two persons seeking to marry "may do so" by observing that process, provides that compliance with that process establishes legal recognition of the marriage, and defines the probate office's duties with respect to recording and forwarding the marriage documents to the Office of Vital Statistics.

Section 30-1-9.1, Ala. Code 1975, which is entitled "Requirements for marriage; validity; construction with other laws," and which is referenced in § 22-9A-17, provides:

> "A marriage conforming to the requirements of this section shall be valid on the date the marriage is executed by both parties, provided the affidavits, forms, and data are recorded in the office of the judge of probate within 30 days of the date of the last party's signature in accordance with Section 22-9A-17."

§ 30-1-9.1(c) (emphasis added). Notably, neither § 22-9A-17 nor § 30-1-9.1 mentions or addresses the effect of the death of a party on the registration process or a duly executed marriage. In applying the above-mentioned

rules of statutory construction to § 22-9A-17, we conclude that the statutory text does not support a conclusion that the legislature intended for the death of a party to a marriage that occurs after the execution of the marriage but before the recordation of the marriage documents to have any legal effect on the validity of that marriage.

Here, the undisputed facts establish that the marriage between Sean and Alexis conformed with the requirements of § 30-1-9.1, that both parties signed the requisite marriage documents on September 26, 2020, and that those documents were submitted to the probate court for recording on October 20, 2020, which was 24 days after the parties signed the documents. Accordingly, the marriage between Sean and Alexis was entitled to legal recognition consistent with the plain and unambiguous terms of § 22-9A-17.

Although the appellants concede that § 22-9A-17 does not address the impact of an intervening death on the marriage process, they nevertheless contend that this omission is inconsequential. According to the appellants, "[i]t is commonly understood that a dead person cannot

marry and as unfortunate and as unexpected as [Sean's] death was, the result is no different than if [Sean] had died in an unforeseen automobile accident on the day before his ceremonial wedding was to occur." The appellants' brief at p. 10.

In support of this proposition, the appellants assert that "death's impact on various proceedings has been thoroughly addressed by this and other courts," id. at 8, and direct us to look to purportedly analogous caselaw in resolving this question of first impression. Specifically, they cite several decisions from this Court, the Court of Civil Appeals, and federal courts that, according to the appellants, indicate that Sean's death in this case rendered the marriage certificate filed in the probate court following his death a nullity.

In particular, the appellants cite Ex parte Thomas, 54 So. 3d 356 (Ala. 2010), Ex parte Parish, 808 So. 2d 30 (Ala. 2001), and Ex parte Riley, 10 So. 3d 585 (Ala. Civ. App. 2008), as illustrative of the principle that death terminates divorce and marriage proceedings in Alabama. Those decisions, however, are inapposite to the issue raised by these appeals. In

Ex parte Thomas, this Court concluded that a divorce action between a husband and wife abated upon the death of the husband. 54 So. 3d at 359. In Ex parte Parish, this Court held that a court's interlocutory orders dividing marital property in a divorce action were abated by the death of a spouse. 808 So. 2d at 33. In Ex parte Riley, the Court of Civil Appeals likewise affirmed that a husband's death abated the divorce action between the husband and his wife. 10 So. 3d at 587. Significantly, all three decisions applied common-law abatement rules to pending divorce proceedings.

The appellants further rely on Ex parte Estate of Cook, 848 So. 2d 916 (Ala. 2002) (concluding that criminal defendant's death pending appeal abated both appeal and underlying conviction), Price v. Southern Ry., 470 So. 2d 1125 (Ala. 1985) (stating that plaintiff's personal-injury action did not survive the plaintiff's death), United States v. Volpendesto, 746 F.3d 273 (7th Cir. 2014) (holding that criminal defendant's death pending appeal of conviction abated entire course of the proceedings against him and invalidated previously issued restitution order), and

United States v. Estate of Parsons, 367 F.3d 409 (5th Cir. 2004) (concluding that criminal defendant's death pending appeal of his case abated the entire criminal proceeding), to buttress their claim that settled caselaw supports their view that Sean's death foreclosed the formation of a valid marital union under § 22-9A-17. Those cases, however, again involve the application of statutory and common-law abatement rules to pending legal actions, and there is no such action at issue in this case.

Indeed, Alabama's abatement doctrine narrowly provides that certain actions, or causes of action, do not survive the death of one of the parties. See Wynn v. Tallapoosa Cnty. Bank, 168 Ala. 469, 490, 53 So. 228, 237 (1910) ("At common law not only the cause of action, but the action itself died with the person."). In Wynn, this Court noted that the term "action" was alternatively defined as " 'a civil proceeding taken in a court of law to enforce a right' " or " 'the means by which men litigate with each other.' " Id. at 491 (citations omitted); see also Meek v. Centre Cnty. Banking Co., 268 U.S. 426, 429 (1925) (concluding that an administrative bankruptcy proceeding, "not being in the nature of a common-law action,

is not abated by any rule of the common law"); Shelton v. Green, 261 So. 3d 295, 296-97 (Ala. 2017) (defining "action," in the context of our state's survival statute, as a " 'proceeding pending in court to determine the parties' rights and liabilities with respect to a legal wrong or cause of action' ") (quoting McDowell v. Henderson Mining Co., 276 Ala. 202, 204, 160 So. 2d 486, 488 (1963))).

Here, the appellants fail to allege, much less demonstrate, that the submission of marriage documents to a probate office for recording should properly be considered within the class of actions or causes of action subject to Alabama's common-law or statutory abatement rules. Importantly, persons who register previously executed marriage documents pursuant to § 22-9A-17 are not engaging in a court proceeding, litigating with another party, or seeking the probate court's determination of their rights and liabilities.

Indeed, according to the title of Act No. 2019-340, which amended § 22-9A-17, the stated purposes of the act include "abolish[ing] the requirement that a marriage license be issued by the judge of probate"

and "provid[ing] that the judge of probate would record each marriage presented to the probate court for recording," effectively limiting the probate court's role in the marriage process to that of record keeper. In fact, § 22-9A-17, when read in conjunction with § 30-1-9.1, affords the probate court seemingly no discretionary authority with respect to recording otherwise compliant marriage documents submitted to the probate office within the designated period. See § 22-9A-17 ("The office of the judge of probate shall record … each marriage presented to the probate office for filing so long as the affidavits, forms, and data are submitted as required." (emphasis added)); § 30-1-9.1(c) ("A marriage conforming to the requirements of this section shall be valid on the date the marriage is executed by both parties, provided the affidavits, forms, and data are recorded in the office of the judge of probate within 30 days of the date of the last party's signature …. " (emphasis added)).

In light of this language commanding the probate court to record any marriage documents properly filed with the probate office, there is no basis for concluding that the registration process outlined in § 22-9A-17

meaningfully invokes the adjudicatory power of a court of law. Therefore, neither the authorities cited by the appellants nor the statutory text reflect that the submission of marriage documents pursuant to § 22-9A-17 qualifies as the kind of action that, under Alabama's governing common-law or statutory rules, would be abated by the death of a party.[1]

[1]The appellants also rely on Hays v. Hays, 946 So. 2d 867 (Ala. Civ. App. 2006), a decision that does not invoke the abatement doctrine but that, according to the appellants, supports their claim that death will terminate a legal relationship. Hays, however, is readily distinguishable from the present case. In Hays, the Court of Civil Appeals determined that a trial court had erred in granting a stepmother's petition to adopt her adult stepdaughter because, at the time the stepmother filed her adoption petition, her husband, the prospective adoptee's biological father, was dead. Id. The Court of Civil Appeals explained that the purely statutory right of adoption in Alabama permits adoption of an adult when the adult " 'consents in writing to be adopted and ... is a stepchild by marriage.' " Id. at 868 (quoting § 26-10A-6(2)c., Ala. Code 1975 (emphasis omitted)). The Court of Civil Appeals concluded that, because the stepmother had lost her "stepparent" status upon the death of her husband, her petition failed to adhere to the express requirements of the adoption statute. However, as discussed above, and in contrast to the not-yet-adjudicated adoption proceeding in Hays, the marriage-registration process set forth in § 22-9A-17 does not require that both parties to a validly executed marriage be alive when the marriage documents are provided to the probate office. Thus, a spouse's death does not preclude adherence to the statutory requirements of § 22-9A-17.

Accordingly, Sean's death in this case did not abate the marriage-registration process set forth in § 22-9A-17.

Conclusion

Applying the plain language of § 22-9A-17, we conclude that the legislature did not intend for the death of a party to a marriage that occurs after a marriage document is executed but before the marriage document is recorded to void a marriage for failure to comply with § 22-9A-17. We further hold that there is no basis in existing law for overriding the plain meaning of § 22-9A-17. Accordingly, the probate court did not err in recognizing Sean's marriage to Alexis as valid, and we affirm the probate court's order.

1200682 -- AFFIRMED.

1200683 -- AFFIRMED.

Bolin and Sellers, JJ., concur.

Parker, C.J., concurs specially.

Wise, J., concurs in the result.

PARKER, Chief Justice (concurring specially).

Fully concurring in the main opinion, I write to emphasize the sea change that recent amendments to the marriage statutes have worked in Alabama law regarding legal recognition of marriages.

To understand the nature of this change, it is important to first clarify in what sense the State of Alabama, or any civil government, has power to "redefine" marriage. The relationship of marriage was designed by the Creator; it both predates and transcends civil societies. See Campbell's Adm'r v. Gullatt, 43 Ala. 57, 67 (1869) ("Marriage is a divine institution, and, although in some respects it may partake of the nature and character of ordinary contracts, it has, with few exceptions, always been considered as standing upon higher and holier grounds ...."). See generally Ex parte State ex rel. Alabama Pol'y Inst., 200 So. 3d 495, 504-05 (Ala. 2015) ("API") (expounding meaning of marriage). No civil government was its originator, so none has power to define its essence. Rather, the nature and outer boundaries of marriage are defined only by its Supreme Architect, in His written word and in the natural order. See

API, 200 So. 3d at 613 (Murdock, J., concurring specially with order issued March 4, 2016) ("Governments did not and do not create the institution of marriage. A civil government can choose to recognize that institution; it can choose to affirm it; and it can even take steps to encourage it. Governments throughout history have done so. But governments cannot change its essential nature. Marriage is what it is."). That nature and those boundaries include the original creation of marriage as a covenant relationship by mutual consent between two human beings of opposite sexes -- i.e., one man and one woman. See generally API, 200 So. 3d at 505-06 (recognizing nature of marriage).

Although governments are without power to change this institution of marriage, they are nevertheless obligated to recognize it in their laws. Thus, as long as they act consistently with the divinely established nature and boundaries of the institution, governments have power to determine the methods by which particular marriages receive legal recognition. See Wilkes v. Wilkes, 245 Ala. 54, 55, 16 So. 2d 15, 16 (1943) ("Every state has the ... power to regulate and define by law the marital status of its citizens

...."). In this limited sense, governments have power to "define" and "redefine" who is and is not married in the eyes of the law.

Like other American states, Alabama has done exactly that. Before 2017, Alabama law recognized two methods of obtaining legal recognition of a marriage: ceremonial marriage and common-law marriage. The first method I refer to as "ceremonial" marriage because its essential feature was a ceremony by which the marriage was initiated. The ceremony could take many forms and could be officiated at by a variety of religious or civil officials, see § 30-1-7, Ala. Code 1975, but some kind of marriage ceremony was required. A marriage license was ostensibly a condition precedent to a valid ceremony, see former § 30-1-9 (repealed); Ashley v. State, 109 Ala. 48, 49, 19 So. 917, 918 (1896); Herd v. Herd, 194 Ala. 613, 615, 69 So. 885, 886 (1915), but sometimes defects in the licensing process were overlooked by this Court in favor of holding a ceremony sufficient, see Ely v. Gammel, 52 Ala. 584, 586 (1875); Smith v. Smith, 205 Ala. 502, 88 So. 577 (1921); Wallace v. Screws, 227 Ala. 183, 149 So. 226 (1923).

The other method, common-law marriage, allowed recognition of a marriage without having to prove the occurrence of a ceremony. Instead, establishing the existence of a common-law marriage required proving that the parties had capacity to marry; that they mutually agreed to permanently enter the marriage relationship to the exclusion of all other such relationships; that they cohabited or publicly assumed marital duties; and that the public recognized their relationship as a marriage. See Harbin v. Estess, 267 So. 3d 300, 307 (Ala. 2018); Creel v. Creel, 763 So. 2d 943, 946 (Ala. 2000).

In 2017 and 2019, however, the Legislature prospectively abolished each of those methods of obtaining legal recognition of a marriage. The Legislature did so in two steps. First, the enactment of § 30-1-20 expressly did away with common-law marriage as to marriages entered into in 2017 or later. See § 30-1-20(a) ("No common-law marriage may be entered into in this state on or after January 1, 2017."). Thus, after that amendment to our marriage statutes, the only remaining method was ceremonial marriage.

Then, in 2019, further amendments removed ceremonial marriage as a method of legal recognition, as to marriages entered into on or after August 29, 2019. That is, a ceremony is no longer a necessary condition or a sufficient condition to establish a statutorily recognized marriage. The amendments provided: "The requirement of a ceremony of marriage to solemnize the marriage is abolished," § 30-1-9.1(g), and "[t]he state shall have no requirement for any ceremony or proceeding and whether or not a ceremony or proceeding is performed or not performed shall have no legal effect on the validity of the marriage," § 30-1-9.1(d). The amendments also removed the license requirement that had been a prerequisite for a ceremony. See Act No. 2019-340, § 3, Ala. Acts. 2019, repealing § 30-1-9.

In place of a ceremony, the 2019 amendments substituted a registration method of recognition. The marriage-requirements statute now provides: "[T]he only requirement for a marriage in this state shall be for parties who are otherwise legally authorized to be married to enter into a marriage as provided in this section." § 30-1-9.1(a). The statute then

sets forth the registration procedure discussed in the main opinion, primarily execution and recording of a marriage document. § 30-1-9.1(b), (c), (e); see also § 22-9A-17(a) (cross-referencing, and similarly stating, registration procedure). In this way, the 2017 and 2019 amendments collectively abolished ceremonial and common-law marriage (prospectively) in favor of a single administrative method of recognition, registration.

The above understanding of the effect of the amendments has important implications for, among many other things, interpreting the seemingly permissive language of the marriage-registration record-keeping statute, § 22-9A-17. That statute provides: "Two persons desiring to unite in marriage may do so by submitting the affidavits, forms, and data specified in [certain parental-consent and marriage-registration statutes] for recording with the office of the judge of probate." § 22-9A-17(a) (emphasis added). In light of the above explanation of Alabama marriage law pre- and post-amendments, the word "may" in that statute cannot be read as permissive in the sense there

is some other way to establish a legally recognized marriage. The only other methods, ceremonial marriage and common-law marriage, have been expressly abolished, and the statute's use of "may" cannot be read in a manner that would resurrect those methods. Rather, it must be read in an exclusive-permissive sense: The marriage-registration statutes do not require anyone to get married, but if people do decide to marry, these statutes provide the exclusive method by which to obtain legal recognition of the marriage. Cf. Celtic Life Ins. Co. v. McLendon, 814 So. 2d 222, 225 (Ala. 2001) (interpreting contractual arbitration provision's use of "may" in this exclusive-permissive sense; " '[T]he use of the word "may" in an arbitration agreement does not imply that the parties to the agreement have the option of invoking some remedy other than arbitration.' " (quoting Held v. National R.R. Passenger Corp., 101 F.R.D. 420, 424 (D.D.C. 1984))); Hanover Ins. Co. v. Kiva Lodge Condo. Owners' Ass'n, 221 So. 3d 446, 450-56 (Ala. 2016) (same; " '[M]ay' ... 'merely means that neither party is obliged to initiate ... arbitration.' " (quoting with approval

Benihana of Tokyo, LLC v. Benihana Inc., 73 F. Supp. 3d 238, 249 (S.D.N.Y 2014))).

Finally, in pointing out that Alabama has obviated ceremony as a method for legal recognition of marriage, I am in no way discounting the societal significance of a marriage ceremony. This practice commonly has a multitude of salutary features, including encouraging the couple to appreciate the solemnity of the commitment into which they are entering. See Campbell's Adm'r, 43 Ala. at 67 ("There is, no doubt, much wisdom in ... seek[ing] to throw around the marriage relation safeguards to prevent its being entered into hastily[] or unadvisedly ...."). A ceremony also often provides an opportunity for witnesses to observe the event, including family and friends who may provide important support and accountability for the success of the marriage in years to come. In addition, when sufficiently public, the ceremony functions as a reminder that marriage is not merely a private, isolated arrangement between two individuals. It is an institution for the collective good, and each marriage forms a crucial thread in the tapestry of a flourishing society. In that vein, a wedding

often provides an occasion for celebration and merriment, as guests joyously commemorate the formation of a new family unit. Indeed, although the relationship of marriage is temporal -- good for this life only, see Matthew 22:23-30; Mark 12:18-25 -- there may be something about a wedding and its feast that reflects eternal realities, see Revelation 19:6-9. Perhaps something about those realities underlies the ubiquity of this custom in cultures around the world. Whatever the case, the societal benefits of a marriage ceremony abound. And the new legal reality that a marriage ceremony is not required in Alabama ought not to discourage the continuation of this important tradition.