

IN THE COURT OF APPEALS OF IOWA

No. 8-837 / 08-0293
Filed November 13, 2008

**IN RE THE MARRIAGE OF JUDITH
ANN O'CONNOR-SHERRETS AND
LARRY D. SHERRETS**

**Upon the Petition of
JUDITH ANN O'CONNOR-SHERRETS,**
Petitioner-Appellant,

**And Concerning
LARRY D. SHERRETS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Buchanan County, Thomas N.
Bower, Judge.

The petitioner appeals from the district court's ruling that a common-law
marriage did not exist between the parties. **AFFIRMED.**

John Carr of Carr & Carr, Manchester, for appellant.

Steven Ristvedt of Ristvedt Law Offices, P.C., Independence, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

Judith O'Connor-Sherrets¹ appeals from the district court's ruling that she did not prove the existence of a common-law marriage between herself and Larry Sherrets. As we agree with the district court that the evidence is lacking to support her assertion of a common-law marriage, we affirm.

We review claims of common-law marriage de novo. See *In re Marriage of Martin*, 681 N.W.2d 612, 616 (Iowa 2004). Common-law marriage is recognized in Iowa, but there is no public policy favoring this type of marriage. *Id.* at 617. Thus, claims of common-law marriage are carefully scrutinized. *Id.* The burden of proof lies with the party asserting a claim of common-law marriage to prove it by a preponderance of the evidence. See *id.* (stating the burden of proof lies with the party asserting that a common-law marriage exists); *In re Marriage of Winegard*, 257 N.W.2d 609, 615 (Iowa 1977) (stating the burden of proof is by a preponderance of the evidence); *In re Marriage of Grother*, 242 N.W.2d 1, 1 (Iowa 1976) (same); *c.f. State v. Ware*, 338 N.W.2d 707, 711 (Iowa 1983) (stating proof of a common-law marriage must be by a preponderance of clear, consistent, and convincing evidence).

In order to establish a common-law marriage, three elements must be proven: "(1) present intent and agreement to be married, (2) continuous cohabitation, and (3) public declaration that the parties are husband and wife." *In re Marriage of Gebhardt*, 426 N.W.2d 651, 652 (Iowa Ct. App. 1988); see *Martin*, 681 N.W.2d at 617 (stating all three elements must be shown).

¹ Judith testified that she did not begin using the hyphenated name of O'Connor-Sherrets until after Larry moved out of their home in March 2007.

In the present case, the evidence was that Judith and Larry cohabitated from September 1993 to March 2007. While this fact was not disputed, cohabitation is merely one factor and standing alone is not sufficient to establish a common-law marriage. *Winegard*, 257 N.W.2d at 616.

In addition, Judith was required to prove “present intent and agreement to be married,” which reflects the contractual nature of marriage. *Martin*, 681 N.W.2d at 617. In January 1994, the parties signed a document entitled, “Affidavit, Common-Law Marriages.” They both testified that they signed the affidavit in order to obtain a family health insurance policy at no cost, which would cover Judith, Larry, Judith’s son, and Larry’s son. Larry added that he never understood the import of signing the affidavit, except that he could obtain “free insurance” for himself and his son. However, Judith testified that it was her understanding that they were “married” as a result of signing the affidavit. She points to the affidavit as strong evidence of their intent to be married and cites to *In re Estate of Stodola*, 519 N.W.2d 97 (Iowa Ct. App. 1994). In that case the parties filed an affidavit of common-law marriage, identical to the affidavit signed by Judith and Larry, in order to obtain health insurance coverage.

However, many more facts in *Stodola* supported the finding of a common-law marriage. During their twenty-year cohabitation, the parties filed joint federal income tax returns twice, claiming a marital status and subsequently as part of a tax audit, filed a statement with the IRS claiming their common-law marriage. *Stodola*, 519 N.W.2d at 100. Later the “husband” designated the “wife” as a beneficiary of his retirement plan, describing her as his common-law wife. *Id.* Additionally, the couple represented themselves as married persons at many

social events and on motel registrations. *Id.* This court affirmed the district court's finding that the affidavit of common-law marriage was supported by the "undisputed evidence of twenty years of cohabitation and the undisputed evidence of other holding outs." *Id.*

In contrast to the *Stodola* facts, there was little, if any, evidence that Judith and Larry ever claimed to be married either prior to or subsequent to the signing of the affidavit. See *Martin*, 681 N.W.2d at 618 (stating that in order for a common-law marriage to exist, there must be a "substantial holding out to the public"). "[T]here can be no secret common-law marriage." *Id.* It therefore appears Judith and Larry signed the affidavit not as a formal declaration of their intent to be husband and wife, but rather solely for their personal benefit, in essence defrauding the health insurance company. See *id.* ("The fluctuating status of their relationship was, from the beginning, largely based on personal convenience or benefit, which is inconsistent with the concept of marriage.").

Other than the affidavit, there is very little evidence, save some affectionate familial references, that supports the parties' intent to be married. In fact, several witnesses testified that both Judith and Larry consistently stated they were not married, had no plans to marry or would never marry. As the preponderance of the evidence strongly undercuts an intent to be married or any public declarations of a marital status, Judith's claim must fail. We therefore agree with the district court that Judith failed to carry her burden of proof that a common-law marriage existed.

AFFIRMED.