

DA 19-0137

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 284

IN RE THE MARRIAGE OF:

JENNIFER D. HANSEN,

Petitioner and Appellant,

and

THOMAS J. ROFFE, JR.,

Respondent and Appellee.

APPEAL FROM: District Court of the Fifth Judicial District,
In and For the County of Jefferson, Cause No. DR-2017-17
Honorable Luke Berger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Thomas J. Karem, Karem Law Firm, P.C., Bozeman, Montana

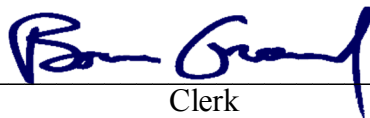
For Appellee:

Christopher J. Gillette, Christopher J. Gillette, P.C., Bozeman, Montana

Submitted on Briefs: October 9, 2019

Decided: December 10, 2019

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Jennifer Hansen (“Hansen”) appeals from an order of the Fifth Judicial District Court, Jefferson County, dismissing her Verified Petition for Dissolution of Marriage on the basis that she failed to establish a common law marriage with Thomas Roffe (“Roffe”).

¶2 We address the following issues on appeal:

1. Whether the District Court erroneously concluded that Hansen failed to establish that Hansen and Roffe assumed a marital relationship by mutual consent and agreement.

2. Whether the District Court erroneously concluded that Hansen failed to establish that Hansen’s and Roffe’s alleged common law marriage was confirmed by public repute when they were held out as “life partners.”

¶3 We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶4 In 2005, Roffe and Hansen, both unmarried, met and began dating exclusively for a period of ten years with their relationship ending in 2015. In 2007, Hansen moved in with Roffe at his Bozeman home. While living together Hansen led and financed remodeling efforts of Roffe’s home. Hansen’s financing of the remodel served as repayment of a 2008 loan from Roffe to Hansen that was formalized in a promissory note.

¶5 In addition to living together, Roffe and Hansen travelled extensively together and hosted parties at their shared residences. Roffe and Hansen would also send holiday and invitation letters to friends jointly, but none of the letters referenced that they were

husband and wife or married. In fact, the only cited reference to using marital terminology was by Hansen in an email where she referred to Roffe as her husband. Roffe was not copied. Both Hansen and Roffe agree that they viewed each other as “life partners.”

¶6 Throughout the relationship, Roffe gifted Hansen jewelry, including several rings. The parties dispute the classification of the rings, but there was no mention by any witness, other than Hansen herself, that the rings signified marriage. Hansen claimed that one of the rings was an “eternity ring” that commemorated them being together forever as life partners. Hansen occasionally wore the eternity ring. Roffe did not wear a ring.

¶7 Roffe and Hansen also largely kept their finances separate. With the exception of joint car insurance in 2011 and 2012 and a Costco credit card, which Roffe asserts he repaid his expenses, their finances were separate. They did not jointly file taxes together, as Roffe purposely avoided doing so, and neither Roffe or Hansen listed the other as a beneficiary on their retirement accounts.

¶8 In 2013, Roffe’s Bozeman residence was sold, and the proceeds were used to build a house near Boulder, Montana, on property adjoining land owned by Roffe. The property was first jointly deeded by Hansen and Roffe, but Hansen later quitclaimed her portion to Roffe. Both Hansen and Roffe were involved in design, construction, and financing of the new home; however, all contracts for the home were in Roffe’s name. Hansen and Roffe disagree as to the extent of Hansen’s financial contributions.

¶9 During the trial, several witnesses testified. However, none of the witnesses testified that they thought Hansen and Roffe were a married couple. Roffe’s witnesses all

similarly testified that after Roffe's two marriages ended in divorce (the second included a prenuptial agreement), he unequivocally had no desire to get married again. Roffe's desire to not get married was a fact made clear to and known by Hansen. None of Hansen's witnesses testified that they were a married couple; rather, the testimony centered on them being a "forever couple" or "life partners." Even Hansen testified that Roffe didn't consent to marriage "in the traditional sense."

¶10 In October 2015, Hansen ended the relationship. Roffe agreed to pay Hansen for her contributions to the Boulder property, and in November 2015, they executed a "Separation Settlement Agreement," detailing that they were not married, nor did they ever intend to be married. The Separation Settlement Agreement also recognized Hansen's contributions to the Boulder home and provided for payment of \$30,000 to Hansen. While Hansen was upset, she signed the Separation Settlement Agreement.

¶11 On July 31, 2017, Hansen filed a Verified Petition for Dissolution of Marriage. On December 18, 2017, Roffe filed a Motion for Declaratory Relief Regarding Existence of Common-Law Marriage and Request for Hearing. On February 7, 2019, the District Court issued its order dismissing Hansen's petition. Hansen now appeals.

STANDARD OF REVIEW

¶12 This Court reviews a district court's findings of fact to determine whether they are clearly erroneous. *Matter of Estate of Alcorn*, 263 Mont. 353, 355, 868 P.2d 629, 630 (1994). When reviewing a district court's conclusions of law, we determine whether the court's interpretation of the law is correct. *Alcorn*, 263 Mont. at 355, 868 P.2d at 630.

DISCUSSION

¶13 Montana law recognizes common law marriage under § 40-1-403, MCA. The party asserting a valid common law marriage must prove by a preponderance of the evidence that the parties: 1) were competent to enter into a marriage;¹ 2) assumed a marital relationship by mutual consent and agreement; and 3) confirmed their marriage by cohabitation and public repute. *Barnett v. Hunsaker*, 1998 MT 279, ¶ 32, 291 Mont. 412, 968 P.2d 281.

¶14 In Montana, common law marriage “is an equitable doctrine used to ensure people are treated fairly once a relationship ends.” *Snetsinger v. Mont. Univ. System*, 2004 MT 390, ¶ 24, 291 Mont. 412, 968 P.2d 281 (explaining that the concept is “designed, in part, to prevent unjust economic harm to couples who have held themselves out as [spouses]”). Public policy favors the finding of a valid marriage and the presumption in favor of matrimony is one of the strongest known to the law. *Barnett*, ¶ 32; *In re Estate of Murnion*, 212 Mont. 107, 113, 686 P.2d 893, 897 (1984). Not only does public policy favor a finding of matrimony, Montana’s marital code “shall be liberally construed and applied to promote its underlying purposes, which are to . . . (2) strengthen and preserve the integrity of marriage and safeguard family relationships.” Section 40-1-101, MCA.

¶15 At the outset, it is important that we establish that a life partnership is not the functional equivalent of a marriage. *Devlin v. City of Phila.*, 580 Pa. 564, 580, 862 A.2d 1234, 1243 (2004) (holding that even a government verified life partnership “is simply not the functional equivalent of ‘marriage’”). Marriage, ceremonial or non-ceremonial,

¹ Element one is not in dispute.

is a deliberative agreement between parties “that they will hold toward each other the relation of [spouse], with all the responsibilities and duties which the law attaches to such relation” *Sutherland*, 131 Mont. at 182, 309 P.2d at 326 (citation omitted). Indeed, marriage has “important consequences in many areas of the law, such as torts, criminal law, evidence, debtor-creditor relations, property, and contracts.” *Marriage, Black’s Law Dictionary* (10th ed. 2009). Conversely, while a life partnership may afford certain limited rights and benefits that spouses enjoy, *see Snetsinger*, ¶ 23, it does not encompass the same legal consequences and benefits as that of a marriage. This is not to say that all life partnerships do not rise to the level of marriage, as some relationships, while termed a life partnership, in actuality resemble a marriage and can satisfy the elements of a common law marriage.

¶17 *1. Whether the District Court erroneously concluded that Hansen failed to establish that Hansen and Roffe assumed a marital relationship by mutual consent and agreement.*

¶18 Mutual consent must be based on deliberate action by each party. While mutual consent may be implied from the conduct of the parties, “marriage cannot be said to steal upon them unawares.” *Barnett*, ¶ 34 (citation omitted). In other words, one “cannot become married unwittingly or accidentally” and the “consent required . . . must be seriously given with the deliberate intention that marriage result” *Miller v. Sutherland*, 131 Mont. 175, 182, 309 P.2d 322, 326 (1957). One partner’s insistence that they did not intend to be married does not defeat a finding of common law marriage if their conduct implied otherwise. *In re Marriage of Swanner-Renner*, 2009 MT 186, ¶ 18, 351 Mont. 62, 209 P.3d 238.

¶19 The District Court correctly determined that, contrary to Hansen’s assertion, Roffe never consented to any assumption of a marital relationship. Roffe made it well known that he had no desire to ever marry again. Not only did all of Roffe’s witnesses testify about his well-known wishes to never marry again after his first two divorces, Hansen also understood Roffe’s intentions. Hansen testified that Roffe had told her he did not want to marry due to past financial issues he struggled with resulting from his prior two divorces. Hansen further admitted during testimony that Roffe never consented to marriage but qualified her admission with “in the traditional church sense.”

¶20 Whether in the “traditional church sense” or common law marriage, Hansen knew that Roffe had no desire to marry. Roffe’s only desire was to be Hansen’s life partner, not her husband. This fact was well known by Hansen and their friends. Roffe never called Hansen his wife or spouse. Except for a single email that Roffe was not copied on, Hansen also did not refer to Roffe as her husband or spouse.

¶21 Importantly, not only did Roffe make his intentions to not marry explicit, Roffe’s conduct also implied that he did not intend to be married to Hansen. Roffe deliberately, with the exception of a Costco credit card and car insurance over a two-year period, kept his finances entirely separate from Hansen and limited the commingling of their finances. Roffe even required that Hansen sign a formalized promissory note when she borrowed money from him in 2008. Roffe also purposefully avoided filing taxes jointly. Additionally, neither Roffe nor Hansen listed the other as beneficiaries on their retirement accounts. Roffe also ensured that all contracts regarding the Boulder home were kept solely in his name.

¶22 It is incorrect to claim that a deliberative agreement, implied or explicit, existed between Roffe and Hansen that they would hold each other as husband and wife and assume the responsibilities of marriage. Neither party viewed the other as their spouse, they largely kept their finances separate, and Roffe’s intentions to never marry were well known to not only their friends, but also Hansen herself. Therefore, because Hansen did not meet her burden of proving Roffe’s consent to marriage her petition fails since all three elements must be met.

¶23 2. *Whether the District Court erroneously concluded that Hansen failed to establish that Hansen’s and Roffe’s alleged common law marriage was confirmed by public repute when they were held out as “life partners.”*

¶24 Even if mutual consent were found, Hansen’s petition would still fail due to lack of public repute. To establish public repute, the couple must have held themselves out to their community as spouses. *Barnett*, ¶ 38. The course of conduct establishing public repute “cannot be partial, it must be complete and sincere, [and] when we speak of repute, we mean reputation, being the character and status commonly ascribed to one’s actions by the public.” *Sutherland*, 131 Mont. at 184, 309 P.2d at 328; *Barnett*, ¶ 38. In analyzing public repute, we view the “public” as the people in the couple’s community “whose knowledge would establish reputation.” *Sutherland*, 131 Mont. at 185, 309 P.2d at 328.

¶25 Here, except for Hansen, not a single witness testified that they viewed the couple as married. Fourteen separate witnesses representing Hansen’s and Roffe’s community and having knowledge of their relationship all confirmed that, at most, they were “life partners” or a “forever couple,” not spouses. Even Hansen testified that their relationship

was a “partnership” and that they were simply “life partners.” Hansen failed to satisfy her burden of showing public repute that they were married.

CONCLUSION

¶26 The District Court correctly ruled that Roffe and Hansen’s relationship was not spousal. Hansen incorrectly attempted to equate a life partnership to marriage. While Hansen and Roffe viewed each other as life partners; neither viewed the other as their married spouse. Even in applying Montana’s marital code liberally, the record reflects their mutual decision to remain as life partners throughout their relationship, not spouses.

¶27 Hansen has failed to meet her burden of proving by the preponderance of the evidence that a common law marriage existed with Roffe. The District Court was correct in finding that Roffe did not consent to marriage and that the public did not view Roffe and Hansen as a married couple. The District Court did not err in dismissing Hansen’s Verified Petition for Dissolution of Marriage.

¶28 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JIM RICE

/S/ DIRK M. SANDEFUR

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON