

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF ROBERT J. NOVAK,
DECEASED

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: ROBERT K. NOVAK,

Appellant

No. 891 WDA 2013

Appeal from the Order entered April 24, 2013,
in the Court of Common Pleas of Westmoreland County,
Orphans' Court, at No(s): 65-12-02053

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY ALLEN, J.: FILED: December 11, 2013

Robert K. Novak ("Appellant") appeals from the orphans' court order finding Barbara Pospisil ("Wife") to be the common law spouse of Appellant's father, Robert J. Novak ("Decedent"), and revoking the letters of administration issued to Appellant, and issuing the letters of administration to Wife.¹ We affirm.

Appellant states his issue as follows:

¹ Pennsylvania abolished common law marriage effective January 1, 2005. 23 Pa.C.S.A. § 1103. However, common law marriages "otherwise lawful and contracted on or before January 1, 2005" remain valid. *Id.* Valid common law marriages entered into prior to abolition are "grandfathered." *Stackhouse v. Stackhouse*, 862 A.2d 102 (Pa. Super. 2004). The orphans' court in this case determined that Wife and the Decedent entered into a common law marriage on October 31, 1998.

1. Did the Trial Court err in finding that sufficient evidence was presented to support that a common law marriage existed between [Wife] and Decedent, causing the Letters of Administration for the estate of Decedent issued to Appellant to be revoked?

Appellant's Brief at 5.

Appellant argues that the evidence was "insufficient to find that a marriage existed." Appellant's Brief at 7. Appellant asserts that "the totality of the testimony and evidence offered by [Wife] falls far short of meeting the heavy burden on [Wife], ... by clear and convincing evidence, that a common law marriage existed between the Decedent and [Wife]." *Id.* at 11. We disagree.

We initially note that the findings of the orphans' court, if supported by competent evidence of record, are entitled to the weight of a jury's verdict; such findings are controlling and should not be reversed unless the court abused its discretion or committed an error of law. ***In re: Cummings Estate***, 479 A.2d 537, 541 (Pa. Super. 1984). In an estate case, the burden of proving an alleged common law marriage is on the woman who alleges she is the widow. ***In re: Estate of Kovalchick***, 498 A.2d 374, 376 (Pa. Super. 1985). 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. ***Staudenmayer v. Staudenmayer***, 714 A.2d 1016 (Pa. 1998). Moreover:

[A] presumption of marriage based on cohabitation and reputation will not arise where the parties admit that they lived together unmarried up to the time of the alleged agreement to create a marriage relationship. Where a relationship between a man and a woman is "illicit and meretricious" in its inception, it is presumed to so continue during the cohabitation of the parties. That presumption will be rebutted only if the consent of both parties to enter into a valid marriage is established by clear and convincing evidence.

In re: Cummings Estate, 479 A.2d at 542.

In the present case, Wife testified that she met the Decedent in 1990, and that they began living together in "late '93, early '94, something like that." N.T., 4/2/13, at 6-7. Significantly, Wife testified that she and the Decedent married on October 31, 1998. *Id.* at 8. Wife explained that the Decedent gave her a ruby engagement ring, and the marriage subsequently occurred at Monday's Union Restaurant. *Id.* at 9. Wife testified that she and the Decedent exchanged vows before the owner of Monday's Union Restaurant, Paul Denunzio.² *Id.* at 11. Wife said that Mr. Denunzio presided over the ceremony "like a judge." *Id.* Wife knew that Mr. Denunzio was not a minister or judge, but testified that the wedding ceremony was real "in our eyes." *Id.* at 25.

Wife introduced into evidence "a marriage license that Donna Miller wrote and Paul [Denunzio] signed." *Id.* at 13-14; Petitioner's Exhibit 1.

² Later in the transcript, and somewhat inexplicably, witnesses refer to Mr. Denunzio as "Paul Monday" and "Paul Ianuzzo (phonetically)?". See, e.g., *Id.* at 30, 32, 40, 45, 50.

Wife and the Decedent lived together until the Decedent's death on August 31, 2012. *Id.* at 14. Wife did not take the Decedent's last name, although she and the Decedent filed joint tax returns for the years 2008-2011. *Id.* at 17-19.

Donna Miller testified to working at Monday's Union Restaurant on October 31, 1998, and being present when Wife and the Decedent exchanged vows. Mrs. Miller stated, "Well, I know they always wanted to get married on Halloween, they always said that. And they just decided to do it." *Id.* at 30. Mrs. Miller agreed that the vows were "the standard vows we often times hear at wedding ceremonies." *Id.* at 31. Mrs. Miller "wrote up" the marriage certificate. *Id.* at 32. Mrs. Miller described the ceremony as "serious." *Id.* at 34.

Mrs. Miller's husband, Raymond Miller, also testified to witnessing the wedding ceremony between Wife and the Decedent. Mr. Miller recalled Wife and the Decedent "saying the vows and saying I do and all that." *Id.* at 40. Mr. Miller also described the ceremony as "serious." *Id.* at 41. Mr. Miller testified, "They had talked about getting married somewhere else before that, and [Wife] decided to get married on Halloween, so that's what they were going to do." *Id.*

Heather Alfery was also present at the October 31, 1998 wedding ceremony, and testified:

It was very simple. They came together, [Wife] had a pumpkin, it was Halloween, and [Mr. Monday] was there, who was the bar owner, and they performed their vows, the standard vows, do you take this woman, do you take this man; and it was I do, I do, and it was pretty simple.

Id. at 45.

Ms. Alfery continued:

They were sincere in their vows, they loved each other, and it had been discussed that they were always going to get married on Halloween.

Id. at 47.

Jane Fisher testified to attending the October 31, 1998 wedding ceremony. Ms. Fisher testified:

It was Halloween Eve and they decided that they were going to get married, and they walked into the bar carrying pumpkins, walked up to the bar, and Paul Monday, ... said to them do you take [Decedent] to be your husband. And she said yes. And do you take [Wife] to be your wife. And he said yes. It was just like if they were at church.

Id. at 50. Ms. Fisher described Wife and the Decedent as "very serious." *Id.* at 51. Ms. Fisher explained why she considered Wife and the Decedent to be married:

Because they were. They were just married. Everybody thought of them as married. They did everything together. They went to races together. [The Decedent] would make her special things for her birthday, ... Everything they did was together for them. ... It was for each other. It's like they were a married couple.

Id. at 52-53.

Suzanne Heide testified to being best friends with Wife's daughter. Ms. Heide thought Wife and the Decedent were married because "they associated as husband and wife, he considered her his wife." *Id.* at 57. Ms. Heide was not present at the wedding ceremony, although Wife told Ms. Heide about it on the phone the next day, and "said, me and [the Decedent] got married last night." *Id.* at 59.

Wife's daughter, Stacy Charles, testified to learning about the wedding ceremony from her mother. Ms. Charles explained that the Decedent "treated me like one of his daughters." *Id.* at 64.

Stacy Charles' husband, Michael, testified that the first year he knew Wife and the Decedent, he "thought they were married. It was not until after that Stacy and I were talking about it that I found out that they didn't technically have a – [marriage license]." *Id.* at 67.

In addition, longtime friends and acquaintances of Wife and the Decedent, Diana Blasco, Henry Albright, Holly Blake, Monica Trice, and Michelle Ansell, all testified that they considered Wife and the Decedent to be married. *Id.* at 70-89.

Appellant presented the testimony of Sean Hribal, who was a deputy coroner in Westmoreland County. Mr. Hribal was called to the Decedent's home on August 31, 2012, the day that the Decedent passed away. *Id.* at 91. Mr. Hribal determined that the Decedent was not legally married, and testified that Wife identified herself as the Decedent's "girlfriend." *Id.* at 92-

93, 98. Mr. Hribal considered the Decedent's daughter to be his "next of kin." *Id.* at 92.

Funeral director Sandra Hoffer testified that Mr. Hribal contacted her and that she in turn contacted the Decedent's family. *Id.* at 102. In preparing the Decedent's obituary, Ms. Hoffer described Wife as the Decedent's "dearest companion." *Id.* at 107. Ms. Hoffer based this description on communication with the family. *Id.* at 107-110.

The Decedent's daughter, Michelle Kobistek, testified that Wife and the Decedent told her that "they were never going to get married." *Id.* at 114. Ms. Kobistek had not heard about the October 31, 1998 wedding ceremony until the April 2, 2013 hearing. *Id.* at 115-116; 121. Ms. Kobistek said that all of the family – including Wife – agreed that Wife be described in the Decedent's obituary as "dearest companion." *Id.* at 117.

The Decedent's son, Thomas Novak, testified that he did not know of his father being married to Wife. *Id.* at 134. Thomas Novak did not know about the October 31, 1998 wedding ceremony, and did not believe that his father was married to Wife. *Id.* Thomas Novak did not discuss marriage with his father, and since "2000 or 2001," rarely saw his father. *Id.* at 137.

Michelle Kobistek's husband, Paul Kobistek, testified to having discussions with Wife and the Decedent when they would say "they weren't ever going to get married." *Id.* at 139-141. Mr. Kobistek did not know whether Wife and the Decedent meant getting "formally married by getting a marriage license issued by the Commonwealth of Pennsylvania" when they

said they were not getting married. *Id.* at 143-144. Mr. Kobistek did not know about the October 31, 1998 wedding ceremony. *Id.* at 145.

Appellant is the Decedent's other son, Robert Novak, who testified that the Decedent never referred to Wife as "his wife" and neither Wife nor the Decedent indicated to him that they were married. *Id.* at 149, 152. Although Appellant lived with Wife and the Decedent in October of 1998, he did not know about the wedding ceremony, and learned about it for the first time at the April 2, 2013 hearing. *Id.* at 150, 155. Appellant testified to his belief that the October 31, 1998 wedding ceremony never occurred, and that the witnesses who testified otherwise were lying. *Id.* at 155-156.

Based on the foregoing evidence, the orphans' court concluded:

In the present case, [Wife] has presented clear, convincing and uncontested evidence of the exchange of [words in the present tense] between [Wife] and the Decedent at a common-law wedding ceremony that occurred on October 31, 1998, at Monday's Union restaurant located in Marguerite, Pennsylvania. At that moment in time, in the eyes of the law, [Wife] and the Decedent were united in marriage.

* * *

Since [Wife] and the Decedent were married and a divorce was required to end that marriage, the testimony concerning comments they may have made later about their intention to be married is irrelevant.

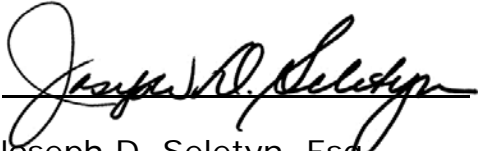
Orphans' Court Opinion, 4/24/13, at 2, 4.

Our review of the aforementioned pertinent case law and evidence of record indicate that the orphans' court did not abuse its discretion or commit

an error of law in concluding that clear and convincing evidence existed to support a finding that Wife and the Decedent had entered into a common law marriage. ***In re: Cummings Estate, supra.*** Accordingly, we affirm the orphans' court.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/11/2013