

Affirmed and Memorandum Opinion filed December 7, 2017.



**In The
Fourteenth Court of Appeals**

NO. 14-17-00019-CV

NICOLE RENAUD, Appellant

V.

THE ESTATE OF DOUGLAS E. BROWN, DECEASED, Appellee

**On Appeal from the Probate Court No. 2
Harris County, Texas
Trial Court Cause No. 437,892**

M E M O R A N D U M O P I N I O N

In this proceeding to determine heirship, the sole issue is whether the evidence is factually sufficient to support the trial court's judgment that appellant was not informally married to the deceased and therefore not the deceased's legal heir. We affirm.

BACKGROUND

Douglas E. Brown died on February 25, 2015, at the age of 61, from pancreatic cancer. Before his death, Brown lived with appellant Nicole Renaud and her two children. Brown left a will dated November 25, 2014, naming Renaud as his independent executrix. Brown's will was admitted to probate in the trial court on March 17, 2015.

Throughout the will, Brown referred to Renaud as his "dearest friend" and noted that they had lived together for over ten years. Brown expressed his desire to "take care of her and her children" and stated that he had raised Renaud's children as his own. Brown left Renaud "our home" and most of his assets, except for thirty-five percent of a life insurance policy, which he bequeathed to his sister, Renee Greenfield. Any property not specifically disposed of under the will was to be distributed to Brown's heirs-at-law. Elsewhere in the will, Brown stated that "my spouse and I are executing wills at approximately the same time," but he did not identify the "spouse" by name.

The following year, Renaud filed an application to determine heirship in the trial court, alleging that at the time of Brown's death, she and Brown had a common law marriage. Renaud alleged that on December 17, 2013, she and Brown agreed to be married in a public ceremony, they lived together in Texas as husband and wife, and held themselves out to others as husband and wife. Renaud also requested that the trial court appoint an attorney ad litem to represent Brown's unknown heirs. The trial court appointed Jennifer Zenero as the attorney ad litem.

Zenero filed a report detailing the results of her investigation to determine the existence of any unknown heirs and to verify the information provided in Renaud's application. Zenero located and interviewed Brown's relatives, and also interviewed several disinterested witnesses concerning their understanding of Renaud's and

Brown's relationship. Zenero opined that if the trial court found that a common law marriage existed between Brown and Renaud, then Renaud would be Brown's sole heir. If the trial court found that there was no common law marriage between Brown and Renaud, however, Brown's heirs would be his sister, Martha Renee Greenfield, and the three children of Brown's deceased brother, Gary Brown.

In an amended report, Zenero described interviewing a neighbor of Brown's and two other acquaintances who stated that Brown and Renaud either introduced or referred to themselves as husband and wife. The witnesses were unaware of any marriages of Brown other than to Renaud. None of the witnesses mentioned attending the ceremony Renaud maintained occurred in 2013.

Through further investigation, Zenero found Brown's obituary published in the Valley Morning Star, which referred to him as a "confirmed bachelor" and did not mention Renaud or her children. Zenero also contacted Greenfield and her husband, who provided Zenero with Brown's updated will and other documents, which were attached to the report. This will was dated February 23, 2015. In the 2015 will, Brown declared that he was not married, he had never been married, and he had no children. He appointed Greenfield as his independent executrix and named her the primary beneficiary of his estate. The 2015 will did not mention Renaud or her children.

Zenero also interviewed four friends of Brown's, three of whom were also his work colleagues. These witnesses stated that Brown had no biological children and had never been married. They also stated that Brown was very close to Renaud's children and wanted to take care of them, but they were unaware of the ceremony Renaud claimed took place in 2013. One of the witnesses stated that it was his understanding that Renaud had a lock on her bedroom door and that she and Brown referred to each other as roommates. The witnesses stated that Brown never referred

to Renaud as his wife, never represented that they were married, and never stated that he intended for them to be married. One witness said that Brown never changed his federal income tax filing status, which was “single.” Finally, the witnesses stated that Brown would not allow Renaud into his hospital room, and that while in the hospital, Brown signed a will and beneficiary designation.

Renaud filed an amended application to determine heirship to name Brown’s relatives. Renaud maintained her allegation that she was Brown’s common law spouse on the date of his death, and asserted that pursuant to Brown’s probated will, Renaud was the sole heir to Brown’s property.

The appellate record does not include a reporter’s record, but the clerk’s record contains a “Post-Hearing Memorandum” filed by Renaud. This memorandum reflects that a hearing was held before the court on June 1, 2016, at which several witnesses testified on Renaud’s behalf. In the memorandum, Renaud indicates that during the hearing, references were made “on the record” to three occasions when Brown referred to Renaud as his spouse. Renaud also states that the matter is “fully uncontested,” noting that Brown’s relatives have not contested the matter, an appearance of counsel has not been made for any heir other than Renaud, and Brown’s sister, who appeared in court, did not testify or indicate that she opposed the confirmation of the common law marriage between Renaud and Brown.

Renaud later filed a “Pre-Hearing Memorandum” submitted “in advance of the September 28, 2016 hearing” on her amended application to determine heirship. In this memorandum, Renaud claimed that the testimony of the witnesses at the earlier hearing proved that she had met the statutory requirements for an informal marriage. Further, Renaud asserted, “[t]hrough testimony and evidence offered at the upcoming hearing, further proof of the satisfaction of the requirements” for an informal marriage “will be offered.” Renaud also attached several exhibits to the

memorandum.

On October 6, 2016, the trial court signed a judgment declaring heirship. The judgment reflects that the trial court found that Brown was not married to Renaud on the date of his death, and that Brown was never married during his lifetime. The trial court ordered that Brown’s heirs were Greenfield and the children of Brown’s deceased brother. The trial court also determined each heir’s fractional interest in Brown’s real and personal property.

Renaud requested findings of fact and conclusions of law, and filed a notice of past-due findings when no findings of fact were filed. Renaud also moved to modify the judgment. No findings of fact were ever filed, and the motion to modify was overruled by operation of law.

ANALYSIS

In her sole issue, Renaud argues that the trial court’s finding that Brown and Renaud were not married is against the great weight and preponderance of the evidence.

An informal or common law marriage exists in Texas if the parties (1) agreed to be married, (2) lived together in Texas as husband and wife after the agreement, and (3) there presented to others that they were married. *See Tex. Fam. Code* § 2.401(a)(2); *Small v. McMaster*, 352 S.W.3d 280, 282 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). The existence of an informal marriage is a fact question, and the party seeking to establish existence of the marriage bears the burden of proving the three elements by a preponderance of the evidence. *Small*, 352 S.W.3d at 282–83.

When, as here, a party challenges the factual sufficiency of an adverse finding on an issue on which that party has the burden of proof, the factual-sufficiency

challenge will be sustained only if the trial court’s findings are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). When conducting a factual-sufficiency review, we must consider all the evidence in the record. *Francis*, 46 S.W.3d at 242; *Small*, 352 S.W.3d at 283.

As discussed above, Renaud’s memorandums indicate that at least one, and possibly two, evidentiary hearings were held before the trial court. Renaud’s post-hearing memorandum reflects that at least three witnesses testified at a June 1, 2016 hearing. Renaud’s subsequent pre-hearing memorandum indicates that another hearing was scheduled for September 28, 2016, at which Renaud anticipated presenting additional “testimony and evidence” to support her claim that she and Brown had a common law marriage. Additionally, the trial court’s order states that “the evidence presented and admitted fully and satisfactorily proves each and every issue presented to the Court.” Yet, no reporter’s record was made of these hearings and none was requested by Renaud’s counsel.

The burden is on the appellant to present a sufficient record to the appellate court to show error requiring reversal. *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990) (per curiam); *Melendez v. Exxon Corp.*, 998 S.W.2d 266, 278 (Tex. App.—Houston [14th Dist.] 1999, no pet.). Some circumstances obviate the need for a complete record, such as a partial-record appeal or the resolution of an issue of law that does not require the review of evidence. *See King’s River Trail Ass’n, Inc. v. Pinehurst Trail Holdings, L.L.C.*, 447 S.W.3d 439, 449–51 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Neither exception applies here.

Absent a complete record, we must presume that the omitted portions of the record are relevant to the disposition of the appeal and that they support the trial

court's judgment. *See id.*; *Middleton v. Nat'l Fam. Care Life Ins. Co.*, No. 14-04-00428-CV, 2006 WL 89503, at *2 (Tex. App.—Houston [14th Dist.] Jan. 17, 2006, pet. denied) (mem. op.). Because our appellate record contains no reporter's record of the hearings, we presume that these proceedings support the trial court's judgment, and we cannot reach the merits of Renaud's issue. *See King's River Trail Ass'n, Inc.*, 447 S.W.3d at 451; *Middleton*, 2006 WL 89503, at *2; *see also Hiroms v. Scheffey*, 76 S.W.3d 486, 489 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (holding court could not address merits of alleged charge error because appellate record did not contain complete record of trial proceedings). We therefore overrule Renaud's issue.

CONCLUSION

We overrule appellant's issue and affirm the trial court's judgment.

/s/ Ken Wise
Justice

Panel consists of Chief Justice Frost and Justices Busby and Wise.