Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00693-CV

Teresita **CUTLER**,
Appellant

v.

Ernest Eugene **CUTLER** Jr.,
Appellee

From the 166th Judicial District Court, Bexar County, Texas
Trial Court No. 2013-CI-00007
Honorable Michael E. Mery, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 24, 2016

REVERSED AND REMANDED

Teresita Martell[1] appeals from the trial court's final decree of divorce. She argues the trial court erred by not declaring her marriage to Ernest Cutler Jr. void, awarding Cutler an equitable lien on her separate property house, and denying her request for offsets. We reverse the trial court's judgment and remand for further proceedings.

---

[1] After the filing of the notice of appeal, the trial court granted Teresita Cutler's motion for a judgment nunc pro tunc to reflect she changed her name to Teresita de Jesus Coss Martell.

BACKGROUND

Martell filed a petition for divorce alleging her marriage to Cutler had become insupportable. Cutler counter-petitioned for divorce, alleging the community estate was entitled to reimbursement from Martell's separate estate. Martell amended her petition to allege the marriage was void and filed a motion to declare their marriage void.

At the hearing on Martell's motion, the parties stipulated they had a marriage ceremony in Florida in March 2002. They also stipulated Cutler was married to another woman at that time, but had filed for divorce to dissolve the prior marriage. Cutler's divorce was not finalized until November 2002. Martell testified she first learned of Cutler's prior marriage after their marriage ceremony. Although she and Cutler briefly separated when she learned of his prior marriage, they eventually reconciled.

They later moved to Japan, and then to California, before moving to Texas in June 2010. Martell testified that after they moved to Texas, they filed tax returns as married; she represented to her neighbors she was married to Cutler; and when she and Cutler "went out in public," they would introduce each other as husband and wife. The trial court denied Martell's motion to declare the marriage void and determined the marriage became valid upon dissolution of the prior marriage in November.[2]

The case proceeded to a bench trial. Martell testified she purchased a house in Florida in 2001 (before the 2002 ceremony), and she and Cutler lived there until October 2004 when they relocated to Japan. She further testified that after she and Cutler moved to Japan, she rented the Florida house, received $1,050 a month in rental payments, used about $100 of each month's rent to pay a property manager, and used the remaining amount to pay the mortgage on the house.

[2] The order denying Martell's motion to declare the marriage void was signed by the Honorable Richard Price.

Michael Turner, a forensic accountant, testified the mortgage balance was $87,755.53 around the time they moved to Japan. Martell testified that as of trial, the balance on the mortgage was $3,000.

The trial court signed a final decree of divorce in which it decreed the community estate is entitled to reimbursement from Martell's separate estate for reducing the principal of the purchase money lien on Martell's Florida house "in the amount of $84,755.53." In dividing the community property, the trial court awarded Cutler an equitable lien on Martell's Florida house in the amount of $42,375. Martell argued her separate estate was entitled to offsets for the rental income produced by the Florida house, but the trial court denied the request. Martell appeals.

VALIDITY OF THE MARRIAGE

Martell argues the trial court erred by entering a decree of divorce instead of granting her motion to declare the marriage void. She argues that under Florida law, she and Cutler were not married while they were living in Florida. Martell also argues there is legally insufficient evidence that she and Cutler were married under Texas law after they moved to Texas. On appeal, she requests that we render judgment declaring her marriage to Cutler void and denying Cutler's reimbursement claim.

A. Standard of Review

A trial court's determination as to the validity of a marriage is subject to a legal sufficiency review. *In re A.M.*, 418 S.W.3d 830, 841 (Tex. App.—Dallas 2013, no pet.); *see Russell v. Russell*, 865 S.W.2d 929, 933-34 (Tex. 1993). When conducting a legal sufficiency review, we credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *In re A.M.*, 418 S.W.3d at 841. "If there is more than a scintilla of evidence to support the finding, the legal sufficiency challenge fails." *Id.* at 839. "In a bench trial, the trial court acts as the fact-finder and is the sole judge of witness credibility. The fact-finder

may choose to believe one witness over another, and we may not impose our own opinion to the contrary." *Id.* at 841 (internal citation omitted).

B. Legal Sufficiency

Martell contends the trial court erred by applying Texas law when finding her marriage to Cutler became valid in November 2002 because they did not move to Texas until June 2010. Cutler suggests the trial court properly applied Texas law because section 1.103 of the Texas Family Code provides Texas law "applies to persons married elsewhere who are domiciled in this state." *See* TEX. FAM. CODE ANN. § 1.103 (West 2006).

1. Conflict of Laws

The trial court found Martell and Cutler's common law marriage became valid in November 2002 when Cutler's divorce from his prior spouse became final. Under Texas law, a marriage that is void because one of the parties has an existing marriage may become an informal, common law marriage upon the dissolution of the prior marriage. *See* TEX. FAM. CODE ANN. § 6.202(a), (b) (West 2006) (providing such informal marriages are valid if, "after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married"). Florida law, however, does not recognize informal, common law marriages. *See* FLA. STATS. § 741.211 (providing common law marriages entered into after January 1, 1968 are invalid). To find that Martell and Cutler's common law marriage became valid upon the dissolution of Cutler's prior marriage, the trial court must have concluded that Texas law, rather than Florida law, applied. We review this choice-of-law determination de novo. *See Cudd Pressure Control Inc. v. Sonat Exploration*, 202 S.W.3d 901, 904 (Tex. App.—Texarkana 2006), *aff'd*, 271 S.W.3d 228 (Tex. 2008).

We disagree with Cutler's suggestion that section 1.103 directs us to apply Texas law in determining whether the parties have been "married elsewhere" regardless of whether the parties

had any relationship to Texas at the time of the purported marriage. *See* TEX. FAM. CODE ANN. § 1.103. In the absence of a legislative directive to apply Texas law, we apply the law of the state that has the most significant relationship to the alleged marriage. *See Tex. Employers' Ins. Ass'n v. Borum*, 834 S.W.2d 395, 399 n.2 (Tex. App.—San Antonio 1992, writ denied); *Seth v. Seth*, 694 S.W.2d 459, 462 (Tex. App.—Fort Worth 1985, no writ). When applying the "most significant relationship" test, we give considerable weight to the parties' expectations and may consider where the acts forming the marriage occurred, where the spouses were domiciled before a marriage ceremony, and where they made their home immediately thereafter. *See Seth*, 694 S.W.2d at 463 (holding courts apply the factors in section 6(2) of the Restatement (Second) of Conflict of Laws); *see also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6(2) (1971) (providing the "most significant relationship" factors), 283(1) (stating the validity of the marriage is determined by the law of the state that has the most significant relationship to the spouses and the marriage); *id.* cmts. b, c, e (discussing section 6's factors in the marriage context).

Martell and Cutler resided in Florida before their March 2002 marriage ceremony, and their marriage ceremony was held in Florida. Although Martell and Cutler briefly separated, Martell and Cutler lived together in Florida for over two and a half years after their marriage ceremony and continued to live in Florida when Cutler's divorce became final. The record does not show Texas had any relationship to the marriage before Martell and Cutler moved from Florida. We therefore conclude that before Martell and Cutler moved from Florida, Florida had the most significant relationship to the marriage.

Under Florida law, no common-law marriage entered into after January 1, 1968 is valid. FLA. STATS. § 741.211. "The marriage of a man and woman, where one of them has a husband or wife by a prior marriage, who is then living and undivorced, is generally held to be absolutely void, and not merely voidable, and, being a nullity, no judicial decree is ordinarily necessary to

avoid same." *Jones v. Jones*, 119 Fla. 824, 832, 161 So. 836, 839 (1935). Such a void ceremonial marriage may become a valid common-law marriage under Florida law, but only if the impediment ceased to exist prior to January 1, 1968. *Day v. Day*, 331 So. 2d 335, 336 (Fla. Dist. Ct. App. 1976). Because Cutler had a living, undivorced spouse from a prior marriage in March 2002, Martell and Cutler's ceremonial marriage was void. *Jones*, 119 Fla. at 832, 161 So. at 839. Because the impediment to the marriage ceased to exist after January 1, 1968, when Florida abolished common-law marriages, Martell and Cutler were not married under Florida law while they were living in Florida. *See* FLA. STATS. § 741.211; *Day*, 331 So. 2d at 336.

We next consider whether the evidence was sufficient to support a finding that Martell and Cutler had a common law marriage in Texas. Martell does not argue the trial court erred by applying Texas law to her relationship with Cutler after they moved to Texas. Instead, she argues there is legally insufficient evidence that she and Cutler had a common law marriage under Texas law. Martell testified she and Cutler began living together in Texas and continued to live in Texas until Martell filed for divorce. Texas law provides that in a judicial proceeding, an informal marriage may be proven by evidence that the parties "agreed to be married and after the agreement they lived together in [Texas] as husband and wife and there represented to others that they were married." TEX. FAM. CODE ANN. § 2.401(a)(2).

Martell argues there is no evidence that she and Cutler ever agreed to be married. "It is well-established that the agreement to marry need not be shown by direct evidence, but may be implied or inferred from evidence that establishes the elements of cohabitation and holding out to the public as husband and wife." *Collora v. Navarro*, 574 S.W.2d 65, 69 (Tex. 1978). The parties stipulated they had a marriage ceremony in March 2002. Martell also testified that after she and Cutler moved to Texas, they lived together; they filed tax returns as a married couple; she represented to her neighbors she was married to Cutler; and when she and Cutler "went out in

public," they would introduce each other as husband and wife. We hold there is more than a scintilla of evidence that Martell and Cutler agreed to be married and thus were informally married under Texas law after they moved to Texas. *See id.* Therefore, we overrule Martell's issues that the trial court erred by denying her motion to declare the marriage void and there is legally insufficient evidence that she and Cutler had a common law marriage in Texas.

DIVISION OF THE COMMUNITY ESTATE & DISPOSITION

In her remaining issues, Martell argues the trial court erred in dividing the community estate. She argues the trial court erred by awarding the community equitable reimbursement and denying her request for offsets. In declaring the community estate is entitled to reimbursement from Martell's separate estate in the amount of $84,755.53, the trial court determined Martell and Cutler were married in Florida.[3] Because the trial court found Martell and Cutler were married in Florida, the trial court did not address (1) whether they entered into a common law marriage after they moved from Florida and (2) if so, when they entered into a common law marriage. Because we hold the trial court erred by finding Martell and Cutler were married in Florida, and that finding materially affected the trial court's division of the community estate, we must reverse the trial court's equitable reimbursement award and the denial of Martell's request for offsets, and remand the entire community estate for a new, just and right division of the property. *See Jacobs v. Jacobs*, 687 S.W.2d 731, 732 (Tex. 1985).

CONCLUSION

We reverse the trial court's judgment and remand for the trial court (1) to determine whether Martell and Cutler entered into a common law marriage after they moved from Florida

---

[3] In its order denying Martell's motion to declare the marriage void, the trial court expressly found that Martell and Cutler's marriage became valid in November 2002.

and (2) if so, to make a new just and right division of the property based on the date on which the trial court finds the parties were married.

Luz Elena D. Chapa, Justice