Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00318-CV

Lisa Bueno **MARTINEZ**,
Appellant

v.

FURMANITE AMERICA INC., Furmanite Corporation, Furmanite Louisiana LLC f/k/a Furmanite US GSG LLC, Galbraith Contracting Inc., Southcross Energy Partners GP LLC, Southcross Energy Partners LP, Southcross NGL Pipeline Ltd., Estate of Dennis Henneke and Estate of Rene Elizondo,
Appellees

From the 229th Judicial District Court, Duval County, Texas
Trial Court No. DC-16-139-C
Honorable Ana Lisa Garza, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Irene Rios, Justice

Delivered and Filed: September 19, 2018

REVERSED AND REMANDED

Lisa Bueno Martinez appeals from the dismissal of her wrongful death claims against Furmanite America Inc., Furmanite Corporation, Furmanite Louisiana LLC f/k/a Furmanite US GSG LLC, (collectively, Furmanite); Galbraith Contracting Inc.; Southcross Energy Partners GP LLC, Southcross Energy Partners LP, Southcross NGL Pipeline Ltd., (collectively, Southcross); the Estate of Dennis Henneke; and Rene Elizondo. Because we conclude a genuine issue of material fact exists with regard to the existence of a common law marriage, we reverse and remand.

BACKGROUND

Lisa claims to have been the common law wife of Jesus Gonzalez Jr. (Jesse), who was employed by Galbraith and died in a work-related explosion on April 12, 2016. At the time of the explosion, Jesse was working on a pipeline at a gas processing facility near Woodsboro, Texas. Another worker, Dennis Henneke, also died in the explosion. Henneke's family members filed a wrongful death suit against Furmanite, Galbraith, Southcross, Jesse's estate, and Rene Elizondo.[1] Lisa intervened in the suit, bringing wrongful death claims against Furmanite, Galbraith, Southcross, the Estate of Dennis Henneke, and Rene Elizondo.

After conducting discovery, Furmanite filed a traditional motion for summary judgment arguing that, as a matter of law, Lisa was not Jesse's wife at the time of his death and, therefore, she was not entitled to sue under the Texas wrongful death statute. Attached to Furmanite's motion was: (1) Lisa's original petition in this case; (2) the certified record from a probate action involving Jesse's estate; and (3) Lisa's deposition. Galbraith and Southcross joined Furmanite's summary judgment motion.[2] The record from the probate action showed that the probate court had found that Jesse was not married at the time of his death.[3] Southcross submitted additional summary judgment evidence, namely, divorce decrees showing that Lisa and Jesse were not divorced from their former spouses until 2015.

Lisa responded to the summary judgment responses, asserting that a fact issue existed as to whether she and Jesse had a common law marriage. Additionally, Lisa submitted evidence to controvert the summary judgment proof submitted by Furmanite, Galbraith, and Southcross. This

[1]Furmanite owned the equipment involved in the explosion. Galbraith was a contractor at the site of the explosion. Rene Elizondo was employed by Galbraith. Southcross owned the pipeline and the property where the explosion occurred. Dennis Henneke was employed by Southcross.

[2]Neither the Estate of Dennis Henneke nor Elizondo filed a summary judgment motion.

[3]However, this finding was eventually set aside by the probate court.

evidence included orders showing that the probate court had set aside its order finding that Jesse was not married at the time of his death and had dismissed the probate action altogether.

The trial court held a hearing on the summary judgment motions. At the end of the hearing, Lisa's counsel asked the trial court if it wanted further submissions from the parties. In response, the trial court advised counsel: "If you want to submit anything else I will allow you all to do that within ten days" and "I will let both of you submit something within ten days." Lisa submitted two additional summary judgment responses with additional evidence.

The trial court granted the summary judgment motions and dismissed all of Lisa's claims with prejudice. The order granting summary judgment states it is based on "the Motions, the Response of the Intervenor, the Reply of the Furmanite Defendants, argument of all counsel, and the post-hearing additional Responses by Intervenor and Replies by the Furmanite Defendants, and on the documents on file with the Court…." The trial court severed Lisa's claims from the other claims in the suit. Lisa appealed.

THE SUMMARY JUDGMENT EVIDENCE

As a preliminary matter, we address Furmanite, Galbraith, and Southcross's arguments about the summary judgment evidence.

Late-filed Responses and Evidence

Lisa filed four responses to the summary judgment motions. According to Furmanite and Southcross, we may only consider the evidence attached to Lisa's first summary judgment response because Lisa's other summary judgment responses were not timely filed in the trial court.

A response to a summary judgment motion, including opposing summary judgment evidence, may be filed no later than the seventh day before the date of the summary judgment hearing, except on leave of court. *Neimes v. Ta*, 985 S.W.2d 132, 138 (Tex. App.—San Antonio 1998, pet. dism'd by agreement); TEX. R. CIV. P. 166a(c). Therefore, a party may file a late

response and evidence only if she obtains permission from the trial court. *See Neimes*, 985 S.W.2d at 138; TEX. R. CIV. P. 166a(c). Permission to file a late response to a summary judgment motion may be reflected in a separate order, a recital in the summary judgment, or an oral ruling contained in the reporter's record from the summary judgment hearing. *Neimes*, 985 S.W.2d at 138. The record must contain an affirmative indication that the trial court permitted the late filing of the response. *Id*.

Here, the record contains affirmative indications that the trial court permitted Lisa's late-filed responses. First, at the summary judgment hearing, the trial court stated it would give all parties ten additional days to file whatever they would like to file. Second, the order granting summary judgment states the trial court's ruling was based on all of Lisa's responses and the documents on file with the court. Therefore, the record affirmatively indicates that the trial court permitted Lisa's late-filed responses and evidence. We conclude Lisa's late-filed responses and evidence were permitted by the trial court and, therefore, we will consider them on appeal.

Alleged "Sham Affidavit"

Next, Furmanite, Galbraith, and Southcross argue that we cannot consider Lisa's supplemental affidavit in this appeal because they claim it is a "sham affidavit." When a summary judgment affidavit is executed after a witness's deposition and there is a clear contradiction on a material point without an explanation for the change, the affidavit merely creates a sham fact issue. *E-Learning LLC v. AT & T Corp.*, 517 S.W.3d 849, 855 (Tex. App.—San Antonio 2017, no pet.). In the trial court, Furmanite objected in writing to Lisa's supplemental affidavit asserting that it was a sham affidavit. On appeal, Furmanite asserts that its sham affidavit objection "was implicitly sustained by the trial court."

Nothing in the record indicates the trial court ruled on Furmanite's sham affidavit objection. "Absent a timely objection and a ruling from the trial court, the complaint that a

summary-judgment affidavit is a sham is waived for purposes of appellate review." *In re T.A.D.*, No. 14-16-00717-CV, 2017 WL 924550, at *5 (Tex. App.—Houston [14th Dist.] Mar. 7, 2017, no pet.). Furthermore, objected-to evidence is valid summary judgment proof unless an order sustaining the objection is reduced to writing, signed, and entered of record. *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 583 (Tex. 2017). No such order appears in the record.

Additionally, the record indicates the trial court in fact considered Lisa's supplemental affidavit. The trial court's order granting summary judgment states, without qualification, that it is based on "the post-hearing additional [r]esponses by [i]ntervenor" and "on the documents on file with the [c]ourt."

We conclude that all the evidence Lisa submitted in opposition to the summary judgment motions, including her supplemental affidavit, is valid summary judgment proof. *See Well Solutions Inc. v. Stafford*, 32 S.W.3d 313, 317 (Tex. App.—San Antonio 2000, no pet.) (concluding that by failing to obtain rulings on its objections to the form of summary judgment evidence, party waived objections and appellate court could consider objected-to evidence in determining if a fact issue existed). Therefore, we will consider all the evidence Lisa submitted in analyzing the issues presented in this appeal. *See id*.

STANDARD OF REVIEW

We review the granting of a summary judgment motion de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). A party moving for traditional summary judgment has the burden to submit sufficient evidence to establish on its face that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014); TEX. R. CIV. P. 166a(c). When the movant meets this burden, the burden then shifts to the respondent to raise an issue of material fact in response to the summary judgment motion. *Amedisys*, 437 S.W.3d at 511. In

reviewing a trial court's summary judgment ruling, we take as true all evidence favorable to the respondent, and we indulge every reasonable inference and resolve all doubts in the respondent's favor. *Valence*, 164 S.W.3d at 661. "An appellate court reviewing a summary judgment must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all the evidence presented." *Goodyear Tire and Rubber Co. v. Mayes*, 236 S.W.3d 754, 755-56 (Tex. 2007).

COMMON LAW MARRIAGE

On appeal, Lisa argues the trial court erred in granting summary judgment because (1) Furmanite, Galbraith, and Southcross did not meet their summary judgment burden to conclusively negate the existence of a common law marriage; and (2) she submitted evidence raising material fact issues as to the existence of a common law marriage. For purposes of our analysis, we will assume, without deciding, that Furmanite, Galbraith, and Southcross met their initial summary judgment burden to conclusively negate the existence of a common law marriage and that the burden shifted to Lisa to raise a material fact issue. Thus, our analysis focuses on whether Lisa raised a material fact issue as to the existence of a common law marriage.

In Texas, a valid common law marriage consists of three elements: (1) a present agreement to be married; (2) living together in Texas as husband and wife after the agreement, and (3) representing to others they are married. *Ballesteros v. Jones*, 985 S.W.2d 485, 489 (Tex. App.—San Antonio 1998, pet. denied); *see* TEX. FAM. CODE ANN. § 2.401(a)(2) (West 2006). The statutory requirement of "representing to others that they [are] married" is the same as the common law requirement of "holding out to the public." *See Small v. McMaster*, 352 S.W.3d 280, 284-85 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). These elements may be proved by either direct or circumstantial evidence. *Russell v. Russell*, 865 S.W.2d 929, 933 (Tex. 1993). "A common-law marriage does not exist until the concurrence of all three elements." *Eris v. Phares*,

39 S.W.3d 708, 713 (Tex. App.—Houston [1st Dist.] 2001, pet. denied); *see In re J.J.F.R.*, No. 04-15-00751-CV, 2016 WL 3944823, at *1 (Tex. App.—San Antonio July 20, 2016, no pet.). The circumstances of each case must be determined from the facts of that case. *Russell*, 865 S.W.2d at 933.

If an impediment to the creation of a lawful marriage exists, such as when one party is married to someone else, there can be no common law marriage, even if all elements are proven. *Ballesteros*, 985 S.W.2d at 490. However, an ongoing agreement to be married may be shown by the circumstantial evidence of the parties continuing to live together as husband and wife and holding themselves out to others as being married after the removal of the impediment. *Id*.

The Texas Family Code provides that a marriage is void if it is entered into when either party has an existing marriage to another person that has not been dissolved by legal action or by the death of the other spouse. TEX. FAM. CODE ANN. § 6.202(a) (West 2006). However, a marriage that is void under section 6.202(a) becomes valid when the prior marriage is dissolved if, after the date of dissolution, the parties lived together as husband and wife and represented themselves to others as being married. *Id*. 6.202(b).

ANALYSIS

It is undisputed that Lisa and Jesse were both married to other individuals when their relationship began in 2011. Lisa was divorced from her former husband on April 21, 2015, and Jesse was divorced from his former wife on July 14, 2015. Thus, the final impediment to a valid common law marriage was removed on July 14, 2015, when Jesse was divorced.

In determining if a fact issue exists, Furmanite, Galbraith, and Southcross urge us to focus on the evidence concerning Lisa and Jesse's relationship after Jesse's divorce, and to disregard the evidence concerning Lisa and Jesse's relationship before Jesse's divorce. However, this approach is contrary to the approach we have taken in similar situations. *See In re J.J.F.R.*, 2016 WL

3944823, at *5-6 (considering evidence from the time period before the alleged common law husband's divorce from a prior spouse when evaluating the sufficiency of the evidence to support an agreement to be married); *Ballesteros*, 985 S.W.2d at 489-90 (examining all the facts pertaining to the alleged common law marriage, including facts arising prior to the removal of all impediments to the marriage). Therefore, we will consider the evidence from before and after Jesse's divorce, knowing that a common law marriage could not exist until the concurrence of all three required elements and the removal of all impediments to a valid marriage. *See Eris*, 39 S.W.3d at 713; *Ballesteros*, 985 S.W.2d at 490.

The summary judgment evidence attached to Lisa's responses included two affidavits (an original and a supplemental) in which Lisa testified about aspects of her relationship with Jesse; letters Jesse had written to Lisa; a text message in which Jesse referred to himself as "daddy" to Lisa's son; text messages from Jesse in which he referred to Lisa's son as one of his kids and "my son;" a health record in which Lisa listed Jesse as her son's "step-dad;" the divorce decrees from Lisa and Jesse's previous marriages; affidavits from neighbors, friends, and family who had observed Lisa and Jesse's relationship; photographs of the house where Lisa and Jesse allegedly lived; a photograph of Lisa, Jesse, and Lisa's son together; a photograph of Lisa and Jesse together; Jesse's identification cards; several of Jesse's paystubs; records showing that Jesse and Jesse's mother and father sometimes picked up Lisa's son from daycare; an obituary and a funeral program listing Lisa's son as Jesse's "step-son;" and Lisa's deposition testimony.

Present Agreement to be Married

To establish the first element of a common law marriage, an agreement to be married, the evidence must show that the parties intended to have a present, immediate, and permanent marital relationship and that they did in fact agree to be husband and wife. *In re J.J.F.R.*, 2016 WL 3944823, at *4; *Eris*, 39 S.W.3d at 714. The testimony of one party that they agreed to be married

is more than a scintilla of evidence that the two agreed to be married. *Eris*, 39 S.W.3d at 714. Additionally, "[p]roof of cohabitation and representations to others that the couple are married may constitute circumstantial evidence of an agreement to be married." *Russell*, 865 S.W.2d at 933.

In her supplemental affidavit, Lisa testified she and Jesse were married to other people when they met in 2011. According to Lisa, she and Jesse were both in bad relationships and they were unhappy about it, but they were happy together and they decided to be together forever. Lisa and Jesse began referring to each other as husband and wife in 2012. However, Lisa and Jesse knew they could not be legally married to each other because they were still married to other people. Lisa and Jesse agreed that they would divorce their spouses so they would be legally married. Lisa filed for divorce on February 4, 2015, and Jesse filed for divorce on February 9, 2015. Lisa's divorce became final on April 21, 2015. Jesse's divorce became final on July 14, 2015. As far as Lisa and Jesse were concerned, they were now legally married to each other. In fact, when they walked out of the courtroom after Jesse's divorce hearing, Jesse told Lisa "now we are both divorced and really married and there is nothing [my former wife] can do about it." According to Lisa, "When the judge granted our divorces we knew we were no longer married to others, and we were married to each other."

Lisa's affidavit testimony in which she states that she and Jesse agreed to be married raises a fact issue as to whether she and Jesse agreed to be married. *See Eris*, 39 S.W.3d at 714; *Ballesteros*, 985 S.W.2d at 490 (concluding that alleged wife's testimony that she and alleged husband had entered into an agreement to be married was some evidence of the required agreement to be married).

Furmanite, Galbraith, and Southcross argue Lisa failed to raise a fact issue on this element because the evidence showing an agreement to be married must be from both parties. *See Gary v.*

Gary, 490 S.W.2d 929, 932 (Tex. Civ. App.—Tyler 1973, writ ref'd n.r.e.). Furmanite, Galbraith, and Southcross assert that none of the evidence presented in this case shows that Jesse agreed to be married. Contrary to these assertions, there is some evidence indicating that Jesse agreed to be married. First, Lisa stated in her affidavit that immediately after his divorce was granted, Jesse told her that they were "really married." Second, the record contains a letter Jesse wrote to Lisa in February 2015, before he was divorced from his former wife. Jesse signed the letter, "love your husband [sic]." Additionally, when Jesse sent the letter to Lisa, he added his surname to Lisa's name and addressed the envelope to "Lisa Gonzalez-Bueno." Thus, there is some evidence that Jesse agreed to be married.

Finally, the law provides that an ongoing agreement to be married may be shown by the circumstantial evidence of the parties continuing to live together as husband and wife and holding themselves out to others as being married after the removal of the impediment. *See Ballesteros*, 985 S.W.2d at 490. As will be discussed in greater detail below, some of the summary judgment evidence shows that Lisa and Jesse continued to live together as husband and wife and to hold themselves out to others as being married after both of them were divorced from their former spouses. We conclude the evidence raises a fact issue as to whether Lisa and Jesse had a present agreement to be married.

Living Together in Texas as Husband and Wife

Ample evidence exists to raise a fact issue as to the second element of common law marriage. In her supplemental affidavit, Lisa testified that she and Jesse started living together in 2011 and continued living together after Jesse's divorce in July 2015. Specifically, Lisa testified in her affidavit, "We continued living together as husband and wife (and a family) from after Jesse's divorce until just before his death" and "Jesse continued treating me as his wife . . . as he had before our divorces." Lisa testified that about two or three weeks before Jesse's death in April

2016, she and Jesse had had a disagreement and he had left the couple's home. Lisa further testified that Jesse left behind his clothes and important documents, such as his check stubs and his identification cards. According to Lisa's testimony, Jesse told her that he intended to return home to the family. And, while Jesse was gone, he continued to provide money to Lisa and her son. Lisa said that Jesse had left in anger and that he had done this before and had always returned home.

Cohabitation need not be continuous for a couple to enter into a common law marriage. *Small*, 352 S.W.3d at 284; *see Ballesteros*, 985 S.W.2d at 491. Thus, the fact that Lisa and Jesse were not living together at the time of his death does not defeat this element of common law marriage.

Lisa also submitted multiple affidavits from friends and family members that raise a fact issue on this element. Ricardo Chapa testified that he knew Lisa and Jesse and he had seen them in the two different homes that they had shared together. Chapa further testified that Lisa and Jesse had lived together "as man and wife" for more than six months. Elma Marie Casso, a neighbor, testified that Lisa and Jesse "were living together across the street from her" at Jesse's grandfather's house. Casso had heard Jesse refer to Lisa as his wife on more than one occasion. Lisa had a son who was not Jesse's biological son. However, Casso testified that Jesse had raised Lisa's son as his son, and Jesse had always referred to Lisa's son as his son.

Additionally, Lisa Lopez testified that she had attended barbecues and parties at Lisa and Jesse's house, and it was clear to her that Lisa and Jesse "were actively living together as husband and wife." In another affidavit, Hermelinda Tanguma testified that she would sometimes live with Jesse and Lisa in their house. Tanguma testified that, based on what she saw and heard, Lisa and Jesse were living together as a married couple. Finally, Lisa's mother, Emelinda Bueno, testified that it had been her understanding that Lisa and Jesse were living together as husband and wife for

the last six to seven years. We conclude the evidence raises a fact issue as to whether Lisa and Jesse lived together in Texas as husband and wife after they agreed to be married.[4]

Representing to Others/Holding Out

The element of "representing to others that they are married" or "holding out" may be established by either word or conduct. *Ballestros*, 985 S.W.2d at 491. Establishing that a couple held themselves out as husband and wife turns on whether the couple had a reputation in the community for being married. *Small*, 352 S.W.3d at 285. Proving a reputation for being married requires evidence that the community viewed them as married, or that the couple consistently held themselves out in the public eye. *Id*. Occasional introductions as husband and wife are not sufficient. *Id*. Further, this element requires both parties to have represented themselves as married. *Id*.

Here, the summary judgment evidence includes affidavits from multiple witnesses who testified that they had heard both Jesse and Lisa refer to the other as their spouse. One witness, Chapa, testified that on more than one occasion, Jesse had told him that Lisa was his "'Mujer' which translates to wife," that Lisa would always refer to Jesse as her "man or husband." Another witness, Cano, testified that she had heard Jesse refer to Lisa as his wife on more than one occasion. Similarly, Lopez testified that she had heard Jesse refer to Lisa as his wife many times. Lisa's mother, Bueno, testified that Jesse had told her many times that he considered Lisa his wife, and he considered Lisa's son his son. Another family friend, Sarah Hernandez, also testified that she had known Jesse for five or six years and had visited the home he shared with Lisa. Hernandez had heard Jesse refer to Lisa as "his significant other, his wife[,] and 'mi mujer.'" Furthermore, in

[4]Additionally, both Furmanite and Southcross acknowledged in their summary judgment pleadings that the evidence showed that Lisa and Jesse had lived together for at least a short period after Jesse was divorced. Furmanite stated the evidence showed that Jesse had moved out of Lisa's trailer two months after his divorce, and Southcross stated the evidence showed that Lisa and Jesse had lived together for "at most" "three months after" Jesse's divorce.

her supplemental affidavit, Lisa testified that, "Especially after our divorces, the community knew us as a married couple and treated us as a married couple." Lisa further testified that she and Jesse had held parties together at their home, and they were invited to parties together.

Additionally, the evidence shows that Lisa listed Jesse as her son's "step-dad" on a health record, and that Jesse referred to Lisa's son, who was not Jesse's biological son, as his child, in text messages. *See Bailey v. Thompson*, No. 14-11-00499-CV, 2012 WL 4883219, at *11 (Tex. App.—Houston [14th Dist.] Oct. 16, 2012, no pet.) (concluding the evidence was sufficient to support "holding out" element when it included, among other things, testimony that purported husband was introduced as the child's stepfather at school events and did not object). Another witness, Chapa, testified in his affidavit that Lisa's son would refer to Jesse as his "dad," and Jesse would refer to Lisa's son as his "son." In her supplemental affidavit, Lisa explained that she would not have allowed her son to create a "permanent father/son relationship with Jesse without Jesse also forming a permanent husband/wife relationship with me." Finally, the evidence included Jesse's obituary and his funeral program, which listed Lisa's son as Jesse's step-son.

Indulging every reasonable inference and resolving all doubts in Lisa's favor, we conclude a fact issue exists about whether Lisa and Jesse represented to others that they were married. *See Valence*, 164 S.W.3d at 661.

Additional Arguments Presented by Furmanite, Galbraith, and Southcross

Furmanite, Galbraith, and Southcross emphasize that if Lisa and Jesse had entered into a common law marriage prior to Jesse's divorce on July 14, 2015, it would have been void. They argue that no material fact issue exists because the summary judgment evidence does not show that Lisa and Jesse satisfied each of the common law marriage elements *after* both Lisa and Jesse were divorced from their former spouses. We disagree. At a minimum, Lisa's supplemental affidavit raises a fact issue as to each of the required elements during the time period in question.

Furmanite and Southcross also argue that a material fact issue does not exist because the evidence in this case fails to show "a new matrimonial intent" after Jesse's divorce in July 2015. To support this argument, they cite to *Howard v. Howard*, which states that when

> the original relationship between the parties was illicit in origin, but where there has been a change in circumstances, a subsequent common law marriage may be shown circumstantially. However, the facts must be such as to exclude the inference that the previous illicit arrangement continued and must show a new matrimonial intent.

459 S.W.2d 901, 904 (Tex. Civ. App.—Houston [1st Dist.] 1970, no writ). Again, we disagree with this argument. In her supplemental affidavit, Lisa stated that immediately after Jesse's divorce hearing, Jesse told her that they were now married. Lisa also stated that immediately after Jesse's divorce hearing, she and Jesse went home and celebrated with a barbecue, and they told everyone they knew that they were now married to each other. Thus, there is some evidence indicating that Lisa and Jesse had "a new matrimonial intent" after the final impediment to the creation of a lawful marriage was removed.

Furmanite and Southcross further argue that no material fact issue exists because "every single record" in the summary judgment record—Jesse's paystubs, Jesse's Department of Public Safety records, and a Texas Department of Family and Protective Services form completed by Lisa—show that shortly after Jesse's divorce on July 14, 2015, Lisa and Jesse referred to themselves as "single" and stated that they were living at different addresses. According to Furmanite and Southcross, these records show that Lisa and Jesse were two "people living two different lives . . . in two different places." However, in determining whether a material fact issue exists, we are obligated to consider all the evidence in the summary judgment record, which in this case includes not only the above-referenced records, but also affidavit testimony indicating that Lisa and Jesse had agreed to be married, were living together in Texas as husband and wife, and were representing to others that they were married.

Finally, Galbraith and Southcross direct our attention to a social media post contained in the summary judgment record, asserting the post is detrimental to Lisa's common law marriage claim. The post, which was written on Lisa's Facebook account after Jesse's death, states:

> I need for people in San Diego to stop running there mouth saying that im trying to get lawyers to try and get money out of jesses death because that is all lies thd lawyers were calling me harassing me telling me offering me money and *i told them i was not jesses wife* and [my son] was not his blood son so for them to leave me alone cause no money in the world would bring jess back and thats the only thing I want is jess back so stop blabbing u alls mouths….

[sic passim] (emphasis supplied). However, Lisa submitted summary judgment proof controverting the statement in her post. In her deposition and her affidavits, Lisa testified that she did not write the post and that her sister-in-law wrote the post because Lisa was tired of being contacted by lawyers after Jesse's death and wanted to be left alone.

Based on all the evidence presented, we believe reasonable and fair-minded jurors could differ in their conclusions about whether Lisa and Jesse had a common law marriage. *See Goodyear Tire*, 236 S.W.3d at 755-56. Therefore, we conclude the summary judgment evidence raises a fact issue concerning the existence of a common law marriage.

CONCLUSION

Because the evidence raises fact issues on each element of common law marriage, the trial court erred in granting the summary judgment motions and in dismissing Lisa's claims.[5] We, therefore, reverse the trial court's judgment and remand for proceedings consistent with this opinion.

Karen Angelini, Justice

[5]Lisa also argues the trial court erred in granting summary judgment in favor of the Estate of Henneke and Elizondo because they did not file or join a summary judgment motion. Having determined that it was error to grant summary judgment in favor of Furmanite, Galbraith, and Southcross, we conclude it was also error to grant summary judgment in favor of the Estate of Henneke and Elizondo.