

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00263-CV

IN THE ESTATE OF OTIS DEON COLLIER

On Appeal from the 1A District Court
Jasper County, Texas
Trial Cause No. 30299

MEMORANDUM OPINION

This is an appeal from a judgment declaring heirship arising from a dispute about whether Otis Deon Collier was married when he died in July 2009, and if so, to whom. Two of the parties, Weikitha Collier and Debra Jackson,¹ contend they were married to Otis when he died. Tina Cooper, the mother of Otis's eight-year-old child, asserts that Weikitha and Otis were not married when he died.

Weikitha and Otis divorced in May 2003. After their divorce, according to Weikitha, she continued to live with Otis, and they established a common law marriage. Disputing Weikitha's testimony, Debra asserts that she and Otis established a marriage at

¹Debra's name is spelled various ways in the record, as Debra, Deborah, and Debora. We adopt the spelling used in the judgment declaring heirship.

common law after Otis and Weikitha divorced, and that the evidence is legally insufficient to support the trial court's ruling that Weikitha was Otis's wife when he died. Debra also asserts that the trial court erred in failing to find that she was Otis's putative spouse. Tina also disputes Weikitha's claim that she and Otis established a common law marriage, and she contends the evidence is legally and factually insufficient to support the trial court's finding that Weikitha was Otis's spouse at his death. Having reviewed the evidence, we conclude it is sufficient to support the trial court's judgment. We affirm the trial court's judgment.

Background

While disputed, there is evidence in the record that Otis and Weikitha continued to live together after their 2003 divorce. Weikitha testified that Otis continued to live with her as her husband after she and Otis divorced. Debra disputed Weikitha's testimony, as she testified that Otis began living with her in 1998, and that Otis continued to live with her after Otis and Weikitha divorced. Debra explained that before Otis divorced Weikitha, he told her that he was working on getting a divorce; in 2003, according to Debra, Otis showed her the divorce decree.

Other witnesses testified about Weikitha's and Otis's living arrangement after their divorce. William Tyler, Otis's friend, testified that Otis continued to live with Weikitha as her husband for a few years after their 2003 divorce. Danielle Sells, Weikitha's co-worker, testified Otis and Weikitha continued to live together after they

were divorced, their lives did not change after the divorce, and they continued to act like they were married. Angel Simmons, Otis's co-worker, testified that after the divorce, Otis continued living with Weikitha. Additionally, there is testimony about Otis having represented to others that he and Weikitha were married after their divorce. Jeffrey Adams, Sr., Weikitha's cousin, testified that after Otis became a member of his church, Otis referred to Weikitha as his wife. Tyler, Sells, and Simmons also testified that after the divorce, Otis continued to refer to Weikitha as his wife.

The record contains documents supporting Weikitha's testimony that she and Otis continued to cohabit after 2003. Photographs depicting Otis with Weikitha, their daughters, and their niece on a family vacation in Florida in 2004 are included in the evidence admitted at trial. The record also contains evidence of plaques that Otis gave to Weikitha. One of these, given to Weikitha in 2005, states:

For My Loving Wife
Weikitha
Your love has been the sweetest thing
Life ever brought to me,
I've found more joy with you, Dear,
Than I ever dreamed could be.
That's why this comes with so much love
In every word and line
To say that you, and you alone,
Are my special one!

Another plaque, that Weikitha testified Otis gave her on their 2007 anniversary, states:

To My Wife
When I first laid
eyes on you

I couldn't believe
that God has created
something so
wonderful and had
blessed me with it.
You are His special
creation, a beautiful
angel and I am lucky
to have you in my life.
I Love you!

Weikitha identified two additional similar plaques that Otis gave her after their 2003 divorce. Other circumstantial evidence introduced into evidence supports Weikitha's claim that she and Otis remarried after the 2003 divorce. Documents in evidence indicate that after their divorce, Otis retained Weikitha as the beneficiary on savings plans, on a health insurance plan, and on a life insurance policy.

We also find testimony in the record that Weikitha and Otis agreed to marry after they divorced. According to Weikitha, after her divorce, she and Otis discussed their future relationship. Weikitha explained that Otis told her the purpose of the divorce was to prevent the Internal Revenue Service from taking "what we had just purchased." According to Weikitha, she and Otis agreed to remain married and agreed they would not tell others about the divorce.

After Otis died, Weikitha filed an application to determine heirship, alleging that she was Otis's surviving spouse. Debra and Tina contested Weikitha's claim. Following a bench trial, the court found that Weikitha was Otis's surviving spouse, and that Debra had "no claim to any portion of the Estate of the Decedent as either a putative spouse or

as an informal spouse[.]” On appeal, Tina, the mother of one of Otis’s six children, and Debra, who claimed she was Otis’s wife at common law, contend the evidence is insufficient to support the trial court’s judgment. Debra also contends that even if Weikitha and Otis remarried after their 2003 divorce, she has a right to share in Otis’s estate as his putative spouse.

Sufficiency of the Evidence

Debra challenges the legal sufficiency of the evidence supporting the trial court’s finding that Weikitha was Otis’s spouse in July 2009 when he died. Tina challenges the legal and factual sufficiency of the evidence supporting a finding that Weikitha and Otis married after the date they divorced.

In a sufficiency review, we give a trial court’s findings of fact the same weight that we give to a jury’s verdict. *See Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991) (“Findings of fact in a case tried to the court have the same force and dignity as a jury’s verdict upon questions.”). We review the trial court’s findings on appeal using the same sufficiency standards as those used to review jury verdicts. *Id.*

When analyzing a challenge to the legal sufficiency of the evidence supporting a verdict, we view the evidence in the light most favorable to the prevailing party, crediting favorable evidence if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 807, 827 (Tex. 2005). Since Weikitha prevailed at trial, we view the evidence in the light most favorable

to her claims. *See id.* The evidence is legally sufficient if it enables “reasonable and fair-minded people to reach the verdict under review.” *Id.* at 827.

In determining whether evidence is factually sufficient to support a judgment, we weigh all the evidence, both for and against the finding. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001). In reviewing a factual sufficiency challenge, the appellant must demonstrate that the trial court’s finding is “clearly wrong and unjust.” *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (citations omitted).

One of the threshold issues in this case is whether the evidence establishes the existence of a common law marriage between Otis and Weikitha after they divorced in 2003. The existence of a common law marriage can be proven by evidence that (1) the parties agreed to be married; (2) after the agreement, the parties lived together in Texas as husband and wife; and (3) “there represented to others that they were married.” Tex. Fam. Code Ann. § 2.401(a)(2) (West 2006); *Russell v. Russell*, 865 S.W.2d 929, 932 (Tex. 1993). Additionally, if a person is presently a party to a marriage, the person cannot become a party to another common law marriage. *See* Tex. Fam. Code Ann. § 2.401(d) (West 2006).

In this case, none of the parties requested the trial court to make findings of fact and conclusions of law. *See* Tex. R. Civ. P. 296 (requiring request for findings and conclusions to be filed within twenty days after judgment is signed). Where no party has requested findings of fact, appellate courts imply that the trial court made all fact findings

necessary to support the trial court's judgment. *See Sixth RMA Partners, L.P. v. Sibley*, 111 S.W.3d 46, 52 (Tex. 2003); *Black v. Dallas Cnty. Child Welfare Unit*, 835 S.W.2d 626, 631 n.10 (Tex. 1992). In light of the trial court's judgment stating that at the time of Otis's death, Weikitha was Otis's spouse "by informal marriage," we imply findings that Otis and Weikitha agreed to marry after their 2003 divorce; that they lived together in Texas as husband and wife; and that, while in Texas, they represented to others that they were married after their 2003 divorce. We further infer from the trial court's judgment that it rejected Debra's claim that she and Otis established a common law marriage.

A person can establish the existence of a marriage at common law even though the same parties had previously divorced each other. *See Lewis v. Anderson*, 173 S.W.3d 556, 561 (Tex. App.—Dallas 2005, pet. denied) ("The jury could reasonably infer that Lewis and Anderson agreed to be married after their divorce."). Whether the parties reached an agreement to marry can be established by direct or by circumstantial evidence. *Russell*, 865 S.W.2d at 933. The testimony of one of the parties to the marriage is some evidence of an agreement to be married. *See Collora v. Navarro*, 574 S.W.2d 65, 70 (Tex. 1978) (concluding that the testimony of one of the parties of an agreement to be married raised the issue of the existence of the agreement); *Eris v. Phares*, 39 S.W.3d 708, 714 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (holding that the testimony that Phares considered himself married after Eris told him "they 'didn't have to be married to be married'" was some evidence of an agreement to marry).

We conclude that Weikitha's testimony that she and Otis agreed to marry after their 2003 divorce constitutes some evidence supporting the trial court's conclusion that Otis and Weikitha were married at the time of Otis's death. Also, the record contains additional evidence that Otis and Weikitha were married, including, the conduct of the parties in cohabitating following the divorce, representations that Otis made to others after the divorce that Weikitha was his wife, plaques demonstrating that Otis continued to recognize his marital status with Weikitha after the date of their divorce, and documents showing that Otis continued to include Weikitha as his beneficiary on his employee benefits plan. *See Russell*, 865 S.W.2d at 933; *Eris*, 39 S.W.3d at 714.

Although there is also conflicting evidence in the record, weighing the evidence, drawing inferences from the facts, and choosing between conflicting inferences is the fact-finder's function. *See Ramo, Inc. v. English*, 500 S.W.2d 461, 467 (Tex. 1973). When presented with conflicting evidence, the finder-of-fact may believe one witness and disbelieve others. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986). Thus, although Otis appears to have been a "rolling stone," the trial court was entitled to conclude that he "made his home" with Weikitha.

Having reviewed the record, we conclude that the trial court could have reasonably decided to believe the witnesses supporting Weikitha's claim that she was Otis's spouse when he died. The trial court could have reasonably rejected the contradictory evidence and chosen to disbelieve Debra's claim that Otis lived with her in

the period immediately following the date he divorced Weikitha. Having reviewed the record, we conclude there is evidence from which the trial court could have reasonably concluded that Otis and Weikitha agreed to establish a common law marriage after their divorce, that Otis and Weikitha continued living together as husband and wife during a substantial period after the 2003 divorce before Otis died, and that Otis represented to others, after the 2003 divorce, that he and Weikitha were married. We reject Tina and Debra's assertion that there is no evidence in the record supporting the trial court's conclusion that Otis and Weikitha established a common law marriage after their 2003 divorce. We overrule Tina and Debra's legal sufficiency issues challenging the trial court's conclusion that Weikitha was Otis's surviving spouse.

Tina also contends the evidence is factually insufficient to support the trial court's finding that Weikitha and Otis established a common law marriage. Tina points to the evidence in the record contradicting Weikitha's claim. The evidence that the trial court apparently chose to discount or reject in reaching its conclusion includes testimony showing (1) Otis was not faithful during his marriage to Weikitha; (2) Otis and Weikitha had a strained relationship; (3) Otis paid child support to Weikitha after the divorce during the period that Weikitha claimed she and Otis had a common law marriage; (4) after 2003, Weikitha filed tax returns as a single person; (5) after the divorce, Otis told people he was divorced; (6) Otis did not pay household bills after his divorce; (7) after the divorce, Otis did not live with Weikitha; (8) after the divorce, Otis told several

witnesses that Debra was his wife; (9) after the divorce, Otis contributed to Debra's bills and listed her as an insured on his automobile insurance policy; and (10) after the divorce, Otis received mail at his mother's house, his niece's house, and at a house he shared with Debra. Tina contends the trial court's conclusion that Otis and Weikitha continued to live together after they divorced is manifestly unjust.

Generally, the fact-finder resolves the issues surrounding the credibility of the witnesses and the weight to give each witness's testimony. *See City of Keller*, 168 S.W.3d at 819 (footnote omitted). The fact-finder "may choose to believe one witness and disbelieve another. Reviewing courts cannot impose their own opinions to the contrary." *Id.* (footnotes omitted).

Here, we conclude that the trial court's resolution of the many discrepancies in the record was not unreasonable. While the trial court was not required to accept Weikitha's explanation about the reasons leading to the divorce, it was also free to do so. Therefore, the trial court could accept Weikitha's explanation that the parties divorced to allow a portion of Otis's earned income to be characterized as child support, thereby allowing her to have access to those funds to pay her house note. With respect to the discrepancies in the testimony about the nature of Otis and Weikitha's relationship, where Otis lived following the divorce, statements Otis made about Debra being his wife, and evidence showing where Otis received mail, the trial court, in determining the credibility of the various witnesses, could have chosen to believe Weikitha and the witnesses who testified

on her behalf, or chosen to give that evidence more weight. For example, concerning the various locations where Otis received mail, the trial court—exercising its role in weighing the evidence—could reasonably give that circumstantial evidence little weight in resolving whether Otis and Weikitha had remarried. Likewise, with respect to testimony concerning Otis’s financial contribution to the household after 2003, the court could reasonably conclude that Otis’s financial circumstances prevented him from contributing amounts exceeding the amount he paid in child support toward the family’s bills. With respect to the evidence showing that Otis listed Debra as a driver on his automobile insurance policy in 2007, the trial court could reasonably conclude from the other evidence that because Otis had already established a common law marriage to Weikitha before 2007, Debra’s evidence regarding this circumstance was irrelevant.

Based on the record, we cannot say that the trial court’s verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Cain*, 709 S.W.2d at 176. We conclude that the evidence is factually sufficient to support the verdict. *See id.* We overrule Tina’s factual sufficiency issues.

Putative Spouse

Debra argues that even if Weikitha proved she is Otis’s surviving spouse, Debra established that she was Otis’s putative spouse as a matter of law. “A putative marriage is one that was entered into in good faith by at least one of the parties, but which is invalid by reason of an existing impediment on the part of one or both parties.” *Garduno v.*

Garduno, 760 S.W.2d 735, 738 (Tex. App.—Corpus Christi 1988, no writ) (citing *Dean v. Goldwire*, 480 S.W.2d 494, 496 (Tex. Civ. App.—Waco 1972, writ ref’d n.r.e.)). “A putative marriage may arise out of either a ceremonial or common law marriage.” *See id.*; *but see Papoutsis v. Trevino*, 167 S.W.2d 777, 779 (Tex. Civ. App.—San Antonio 1942, writ dism’d) (stating “it appears to be well settled that one asserting under a putative marriage cannot claim good faith in the absence of a ceremonial marriage attended by the formalities prescribed by law”). Generally, a putative spouse has the same right in the property acquired during a putative marital relationship as a lawful spouse. *See Davis v. Davis*, 521 S.W.2d 603, 606 (Tex. 1975). “However, there being no legally recognized marriage, property acquired during a putative marriage is not community property, but jointly owned separate property.” *Garduno*, 760 S.W.2d at 739.

Because no party requested findings, we imply the trial court rejected Debra’s claim that she acted in good faith in attempting to establish a marriage with Otis. The general rule is that “evidence given by a party or a witness who has an interest in the outcome of the suit cannot be the basis for an instructed verdict; it raises an issue of credibility upon which the jury must pass.” *Collora*, 574 S.W.2d at 69 (citation omitted). Under the circumstances here, where the evidence of Otis’s living arrangement after 2003 was hotly disputed, we conclude the trial court was not required to accept Debra’s testimony that she and Otis agreed to marry. Further, based on the testimony that Otis and Debra cohabitated before 2003, the trial court could reasonably infer that Debra was

willing to cohabit with Otis without the benefit of the bonds of marriage, and infer that she was also willing to do so after Otis and Weikitha divorced.

Having carefully reviewed the record, we conclude that Debra failed to establish as a matter of law that she was Otis's putative wife. We further conclude that the evidence concerning Debra's claim of having a putative marriage is not of such probative force that it is sufficient to conclusively establish the existence of the alleged putative marriage as a matter of law. *See City of Keller*, 168 S.W.3d at 814-17; *see also Cardwell v. Cardwell*, 195 S.W.3d 856, 859 (Tex. App.—Dallas 2006, no pet.) (holding that the trial court was free to disbelieve testimony of the alleged putative spouse as to the putative spouse's good faith). We overrule Debra's issue that asserts she established her putative marriage to Otis as a matter of law.

We overrule all of Debra's and Tina's issues and affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on April 1, 2011
Opinion Delivered June 16, 2011
Before Gaultney, Kreger, and Horton, JJ.