THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

RECEIVED
DEC 12 2016
SC Court of Appeals

Case No. 2015-CP-10-2056

In the Matter of John Thomas Cameron, Decedent,

Linda Seaton-Cameron, ... Appellant,

v.

Helen L. Cameron, ... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN RELYING ON THE AMERIPRISE IRA BENEFICIARY DESIGNATION IN FINDING THAT DECEDENT DID NOT ASSENT TO A COMMON LAW MARRIAGE?

II. DID THE TRIAL COURT ERR IN MAKING CERTAIN FINDINGS OF FACT THAT ARE NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL?

III. DID THE TRIAL COURT ERR IN RELYING ON TESTIMONY THAT WAS ONLY PROFFERED AT TRIAL IN FINDING THAT DECEDENT DID NOT ASSENT TO A COMMON LAW MARRIAGE?

IV. DID THE TRIAL COURT ERR IN FINDING THAT THE DECEDENT DID NOT ASSENT TO A COMMON LAW MARRIAGE?

STATEMENT OF THE CASE

John Thomas Cameron (the "Decedent") died on July 12, 2014, in the County of Suffolk, State of New York. The decedent's mother, Helen L. Cameron (the "Respondent"), filed a verified Petition for Probate and Letters Testamentary in the County of Suffolk, State of New York, on or about July 29, 2014. The Respondent was issued a Decree Granting Probate of Decedent's estate by the Surrogate's Court on August 28, 2014, and Letters Testamentary were issued on September 10, 2014.

Linda Seaton-Cameron (the "Appellant") subsequently filed with the Charleston County Probate Court a Formal Application for Appointment and Testacy and a Petition for Common Law Spouse/ Omitted Spouse on October 20, 2014, requesting that the probate proceeding in the County of Suffolk, State of New York, be dismissed or stayed. Appellant further alleged that the Decedent was not a domiciliary of the State of New York at the time of his death, but rather a domiciliary of the State of South Carolina.

The Respondent filed an Answer (Jury Trial Demanded) to Appellant's Petition and a Motion for Removal to the Court of Common Pleas on February 25, 2015. The Probate Court

granted the Respondent's Motion and issued an Order Granting Removal to the Court of Common Pleas on March 2, 2015. Respondent then filed her Motion for Summary Judgment in this Court on May 9, 2016. A hearing was held on June 13, 2016, and the Court issued an Order Denying Respondent's Motion for Summary Judgment on July 14, 2016.

A previous demand for jury trial requested in the Respondent's Answer was withdrawn with the consent of the Appellant, and a bench trial was heard on July 18, 2016. The Court issued an Order Denying the Appellant's Petition for Common Law Spouse and Omitted Spouse on July 20, 2016, and the Appellant timely filed her Notice of and Motion to Amend, Alter or Reconsider Judgment Pursuant to Rule 59(e) and 52(b) of SCRCP on August 1, 2016. Finally, the Court issued an Order Denying Appellant's Motion for Reconsideration on August 30, 2016, and the Appellant timely filed her Notice of Appeal on September 30, 2016.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN RELYING ON THE AMERIPRISE IRA BENEFICIARY DESIGNATION IN FINDING THAT DECEDENT DID NOT ASSENT TO A COMMON LAW MARRIAGE.

Rule 401 of the South Carolina Rules of Evidence - Definition of "Relevant Evidence" reads as follows:

> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The evidence being contested by Appellant consists of an Ameriprise IRA Beneficiary Designation in which the Appellant was listed as the primary beneficiary and specifically designated as "friend." (Transcript p. 58, lines 4-16; Trial exhibit D-4). This evidence must have *any tendency* to support the existence of a fact that is of consequence in determining this action, and this burden is satisfied since the designation form makes it more probable than not that the Decedent did not assent to a common law marriage with Appellant. The beneficiary designation is also just one of various forms of evidence introduced at trial which revealed the Decedent's intent to remain unmarried at various times throughout the course of their relationship. (See Respondent trial exhibits D-1, D-3 through D-7; Testimony of Joan Wise, Transcript p.62, line 20 to P. 81, line 13; Testimony of Helen Cameron, Transcript p. 92, line 15 to p. 97, line 14). Therefore, the Ameriprise IRA Beneficiary Designation is admissible since it has the tendency to make it more probable than not that the Decedent did not assent to a common law marriage with Appellant.

Rule 103 of the South Carolina Rules of Evidence - Rulings on evidence reads in part as follows:

> **(a) Effect of Erroneous Ruling**. Error may not be predicated upon a ruling which admits or excludes evidence unless *a substantial right of the party is affected,* and
>
> > **(1) Objection**. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
> >
> > **(2) Offer of Proof**. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context (emphasis added).

In order for an error to be predicated on a ruling that admits evidence, a *substantial right* of the adverse party must be affected. The Appellant argues that "the trial court has committed reversible error because the court failed to recognize the impediment to marriage" while the parties were residents of New York. (Initial Brief of Appellant, Argument Section I). But, this is this merely a restatement of a renewed objection put forth by the Respondent prior to trial (Transcript p. 7 line 11 - p. 8 line 1). The IRA beneficiary designation as a "friend" and not as a "spouse" or "wife" remained the unchanged designation until the time of the Decedent's death, at which time the Appellant asserts the Decedent was a resident of the state of South Carolina. The Decedent could have changed the beneficiary designation at any time to acknowledge the Appellate as his "spouse" or "wife", but instead, did not. Furthermore, Appellant objects to evidence of the relationship between the Decedent and Appellant outside of South Carolina, yet relies heavily on testimony from multiple witnesses regarding their relationship in *New York* in order to establish their purported common-law marriage in South Carolina. (Appellant's Initial Brief relies, *inter alia*, on Transcript p.36, lines 8-25 and P. 37, lines 1-6; Transcript p. 17, lines 23-5; Transcript p. 42, lines 9-20). Since the Appellant also relies on evidence of the relationship between the Decedent and Appellant outside of South Carolina, there can be no substantial right

of the Appellant affected by introduction of the Ameriprise IRA Beneficiary Designation. Therefore, the determination of the Trial Court should be upheld that the Ameriprise IRA Beneficiary Designation was one of various forms of relevant and admissible evidence showing Decedent did not assent to the common law marriage alleged by Appellant. (Order p. 2-3).

II. THE TRIAL COURT DID NOT ERR IN MAKING CERTAIN FINDINGS OF FACT AS THEY WERE SUPPORTED BY EVIDENCE PRESENTED AT TRIAL.

Findings of fact will not be disturbed on appeal from an action at law tried without a jury unless there is no evidentiary support for the judge's findings. Murrells Inlet Corp. v. Ward, 378 S.C. 225, 231, 662 S.E.2d 773, 775 (1976). Furthermore, the admission of evidence is within the trial court's discretion. Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994); Haselden v. Davis, 341 S.C. 486, 534 S.E.2d 295 (Ct.App.2000). A ruling of the trial court to admit or exclude evidence will be reversed only if it constitutes an abuse of discretion amounting to an error of law. See Strother v. Lexington County Recreation Comm'n, 332 S.C. 54 n. 2, 504 S.E.2d 117 n. 2 (1998); Carlyle v. Tuomey Hosp., 305 S.C. 187, 407 S.E.2d 630 (1991). Finally, the determination of a witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate his or her veracity. State v. Tutton, 354 S.C. 319, 325–26, 580 S.E.2d 186, 190 (Ct. App. 2003); State v. Rosier, 312 S.C. 145, 149, 439 S.E.2d 307, 310 (Ct.App.1993).

The finding of the trial court that some members of the community acknowledged Appellant and Decedent had a reputation as a married couple because of statements made by the Appellant is supported by the evidence presented at trial. Specifically, witness testimony from Michelle Johnson stated the following:

> Q. How did you understand their relationship?
> A. As a married couple.
> Q. What do you base that opinion on?

> A. She gave me a postcard with her number on it and it said: John and Linda Cameron. Call me. We are going to New York, if there's any problems. (Transcript p.34, lines 7-12).

Multiple witnesses presented by Appellant also failed to *definitively* state their knowledge of the relationship between the Decedent and Appellant. For example, witness Gail Young stated the following at trial:

> Q. Did you ever hear them introduce each other as their spouse? Do you remember that?
> A. I don't recall that. (Transcript p.15, lines 2-4).

Further, witness Denise Salomon stated the following at trial:

> Q. What was their reputation in the community as far as you know?
> A. In Charleston?
> Q. In Charleston.
> A. I don't know. I think they were considered husband and wife. I mean, I got to know some friends of theirs that lived next-door that have since moved away. Then another friend of theirs was around the corner. I forgot her name.
> Q. That's all right. What about -- what was their reputation in Sag Harbor?
> A. Their reputation in Sag Harbor was they were a couple. (Transcript p. 23, lines 2-13).

The typical evidence relied upon to establish a common law marriage includes proof establishing that the parties lived together for an extended period of time and publicly held themselves out as husband and wife. See e.g. Kirby v. Kirby, 270 S.C. 137, 142, 241 S.E.2d 415, 417 (1978) (finding a common law marriage where parties represented themselves as husband and wife in the community, filed joint income tax returns, and appeared as husband and wife on birth certificates of children); Owens v. Owens, 320 S.C. 543, 546, 466 S.E.2d 273, 375 (Ct. App. 1996) (finding a common law marriage where parties held themselves out as married, entered into contracts and opened a checking account as husband and wife).

None of the witness testimony above provides clear and convincing evidence that *both* the Decedent and Appellant had the intent to be married. By contrast, Respondent presented various forms of evidence which support the findings of the trial court that no common law marriage existed. The Decedent consistently represented himself as single on federal income tax returns during the time alleged by Appellant as their marriage. (See Trial exhibits D-1, D-2, and D-3). Decedent listed the Appellant as "friend" on his Amerirpise IRA Beneficiary Designation form, and both Appellant and Decedent kept separate bank accounts as a matter of course. (See Trial exhibit D-4; Transcript p. 47, lines 1-7). The Last Will and Testament of the Decedent makes no reference to the Appellant, and when he passed away he was a "divorced" resident of Sag Harbor, New York. (See Transcript p. 64, lines 1-25 to p. 67, lines 1-6; Trial exhibits D-5 and D-6). The findings of fact in the case at bar depart significantly from Kirby and Owens, in which those courts found the existence of common law marriage. The evidence presented at trial, including the testimony of Joan Wise and Helen Cameron, was sufficient to make the findings of fact appearing in the Order of the trial court. (Testimony of Joan Wise, Transcript p.62, line 20 to P. 81, line 13; Testimony of Helen Cameron, Transcript p. 92, line 15 to p. 97, line 14; Order p.2). The findings of fact of the trial court are therefore supported by the evidence at trial. These findings, as well as the credibility determinations of the trial judge, should not be disturbed as the Appellant has failed to show a clear abuse of discretion or error of law.

III. THE TRIAL COURT DID NOT ERR IN RELYING ON PROFFERED EVIDENCE BECAUSE APPELLANT OPENED THE DOOR TO TESTIMONY OTHERWISE PRECLUDED UNDER THE SOUTH CAROLINA "DEAD MAN'S" STATUTE.

The South Carolina Dead Man's Statute reads in part the following:

> [N]o person who has a legal or equitable interest which may be affected by the action shall be examined in regard to any transaction or communication between such witness and a person (now) deceased, ... as a witness against a party prosecuting or

> (now) deceased, ... as a witness against a party prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person when such examination or any judgment in such action can affect the interest of such witness... S.C. Code Ann. § 19-11-20.

The rule essentially prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect her interest. See Long v. Conroy, 246 S.C. 225, 143 S.E.2d 459 (1965). This rule is principled on the notion that a witness thus interested should not be permitted to testify as to such matters when such testimony, if untrue, cannot be contradicted. Trimmier v. Thomson, 41 S.C. 125, 19 S.E. 291 (1894); Harris v. Berry, 231 S.C. 201, 98 S.E.2d 251 (1957). The statute requires a restrictive reading since it is directed to the competency of witnesses instead of the admissibility of evidence. See Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969); Estate of Mason v. Mason, 289 S.C. 273, 346 S.E.2d 28 (S.C. App. 1986). Three main criteria need to be proven for the statute to apply: (1) there must exist some transaction or communication between the witness and the deceased; (2) the lawsuit must be against or brought by the executor, administrator, heir-at-law, next of kin or the like of the decedent, and (3) the outcome of the lawsuit must affect a present interest of the witness. Kelly v. Peeples, 362 S.E.2d 636, 638 (S.C. 1987).

The Appellant appeared as a witness in the present action in order to establish her purported common law marriage to the Decedent, and Respondent timely objected to admission of any evidence relating to transactions or communications that she had with the Decedent. (Transcript p.18, line 18 to p.19, line 10). Furthermore, Appellant originally brought this action against Helen L. Cameron, next of kin of the Decedent, by way of a Formal Application for Appointment and Testacy and a Petition for Common Law Spouse/ Omitted Spouse on October 20, 2014. Finally, the Appellant is currently seeking a declaration of both common law spouse

and omitted spouse under S. C. Code Ann. § 62-2-301, which provides Appellant would inherit the Decedent's entire estate as if the Decedent had died without leaving a will; thus superseding a validly executed will which makes no reference to Appellant. (See Trial exhibit D-6). This is a clear indication that the Appellant falls directly within the narrow requirements of the Dead Man's Statute, since the result of this litigation directly affects the amount of the Decedent's estate she stands to inherit. See SC. Code Ann. Section 62-2-301.

A notable exception to the Dead Man's Statute provides that the benefit may be waived where the party asserting the statute "opens the door" by offering testimony otherwise excludible. Norris v. Clinkscales, 47 S.C. 488, 25 S.E. 797 (1896); Thomas v. Taylor, 300 S.C. 127, 386 S.E.2d 630 (Ct. App.1989).

Appellant opened the door to testimony otherwise excludible under the Dead Man's Statute by appearing as a witness and testifying as to her relationship with the Decedent when her interest is clearly affected by the outcome of the lawsuit. (Transcript, p. 35, line 7 to p. 56, line 9). On the other hand, Respondent proffered the testimony of Helen Cameron, another witness whose testimony would otherwise be excluded under the Dead Man's Statute due to her pecuniary interest as sole heir to the Decedent's estate. (Transcript p. 90, line 17 to p. 97, line 14). Since Appellant asserted the Statute (Transcript p. 97, lines 17-20) and introduced testimony otherwise excludible, the trial court properly included testimony of Helen L. Cameron in finding that the Decedent did not assent to common law marriage with the Appellant. (Order P.2).

IV. THE TRIAL COURT DID NOT ERR IN FINDING THAT DECEDENT DID NOT ASSENT TO COMMON LAW MARRIAGE AS THERE WAS "STRONG, COGENT" EVIDENCE THAT DECEDENT DID NOT INTEND TO BE MARRIED TO APPELLANT.

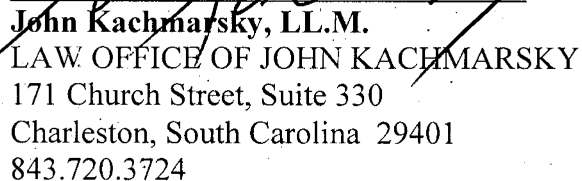
Whether a common-law marriage exists is a question of law. Campbell v Christian, 235 S.C. 131, 133, 193 S.E.2d 1, 2 (1959). The proponent of an alleged common law marriage has the burden of proving the elements by clear and convincing evidence in the probate court. In re Estate of Duffy, 392 S.C. 41, 46, 707 S.E.2d 447, 450 (Ct. App. 2011); See also S.C. Code Ann. § 62-2-802(b)(4). A common-law marriage exists in South Carolina if the parties intend to enter into a marriage contract. *Id*; Accord Johnson v. Johnson, 235 S.C. 542, 550, 112 S.E.2d 647, 651 (1960) ("It is essential to a common law marriage that there shall be a mutual agreement between the parties to assume toward each other the relation of husband and wife. Cohabitation without such an agreement does not constitute marriage."). When the proponent proves that the parties participated in "apparently matrimonial" cohabitation, and that while cohabiting the parties had a reputation in the community as being married, a rebuttable presumption arises that a common-law marriage was created. Jeanes v. Jeanes, 255 S.C. 161, 166–67, 177 S.E.2d 537, 539–40 (1970). However, this presumption may be overcome by "strong, cogent" evidence that the parties in fact never agreed to marry. *Id.*

In the present matter, Appellant has failed to carry the burden by clear and convincing evidence to prove the existence of a common law marriage to the Decedent. Specifically, a common law marriage in South Carolina requires intent by *both parties* to enter into a marriage contract. Testimony presented by Appellant makes *her* intentions to be married clear (Transcript p. 46, lines 3-15; Trial exhibits P-1, P-2, and P-3), but does not establish the Decedent's intent by clear and convincing evidence. Testimony presented by witnesses of Appellant at best create a façade of "apparent matrimonial" cohabitation. But, Respondent presented "strong, cogent"

evidence that the Decedent did not intend to be married to Appellant. For example, Appellant purports that she and Decedent purchased a house in Mt. Pleasant, South Carolina in August 2009 with the intent to live there as a married couple. (Transcript p. 44, lines 15-22; Trial exhibit D-7; Transcript p. 26, lines 3-15). This suggests that the Decedent had approximately five years before his death in which he could have updated his Last Will & Testament and Ameriprise IRA to include and/or identify the Appellant as "spouse" but chose not to do so. When considered in light of the credibility determinations of Appellant's witnesses made by the trial judge, testimony of Joan Wise and Helen Cameron, as well as the Decedent's election to file single on his 2011, 2012, and 2013 Federal Income tax returns, there is strong, cogent evidence that the Decedent lacked the requisite intent to enter into a common law marriage with Appellant. (See Trial exhibits D-1, D-2, D-3, and D-4; Testimony of Joan Wise, Transcript p.62, line 20 to P. 81, line 13; Testimony of Helen Cameron, Transcript p. 92, line 15 to p. 97, line 14). Therefore, the trial court did not err in finding that the Decedent did not assent to a common law marriage with the Appellant because of the strong, cogent evidence to the contrary.

CONCLUSION

For the reasons stated above, Respondent respectfully requests that this Court AFFIRM the decision of the Trial Court Denying the Petition for Common Law Spouse and Omitted Spouse and for any other such relief as this Court may deem just and proper.



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Dated: December 9, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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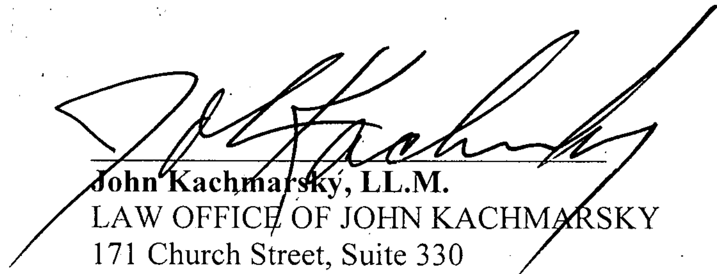
v.

Helen L. Cameron, ... Respondent.

PROOF OF SERVICE

I certify that on the 9 day of December, 2016, I served a copy of the Initial Brief of Respondent upon Linda Seaton-Cameron by placing same in the United States mail, postage prepaid, addressed to her attorney of record, James D. Gandy, III, P.O. Box 2326, Mt. Pleasant, SC 29465.



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SC Court of Appeals

VIA REGULAR U.S. MAIL

South Carolina Court of Appeals
ATTN: The Honorable Jenny Abbott Kitchings
P.O Box 11629
Columbia, SC 29211

RE: In the Matter of John Cameron (Seaton-Cameron v. Cameron)
Appellate Case No.: 2016-002068

Dear Ms. Kitchings:

In reference to the above-captioned matter, please find an original and one conformed copy of the following enclosed for filing:

1. Initial Brief of Respondent;
2. Proof of Service regarding same;
3. Designation of Matter to be Included in the Record on Appeal; and
4. Proof of Service regarding same.

Please file the originals and return the stamp-filed copy to this office via the self-addressed, stamped envelope provided. By copy of this correspondence, I am serving the same upon all counsel of record.

With kindest regards I remain .

Very truly yours,

LAW OFFICE OF JOHN KACHMARSKY

John Kachmarsky, LL.M.

JK/cd
Enclosures
cc: James D. Gandy, III (Via Regular Mail & Email: trippgandy@jdgandylaw.com) (With Enclosures)
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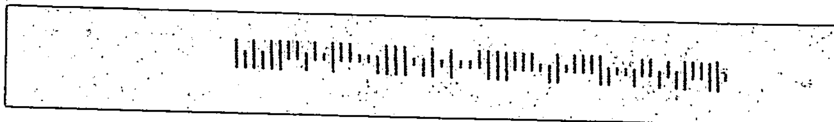

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