THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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Case No. 2015-CP-10-2056

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In the Matter of John Thomas Cameron
(decedent)

Linda Seaton-Cameron,

Appellant,

v.

Helen L. Cameron, Respondent.

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# INITIAL REPLY BRIEF OF APPELLANT

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### I. BECAUSE THE TRIAL COURT RELIED ON EVIDENCE FROM A PERIOD OF TIME BEFORE APPELLANT AND DECEDENT MOVED TO SOUTH CAROLINA, THE TRIAL COURT COMMITTED REVERSIBLE ERROR.

Respondent argues that the Ameriprise IRA Beneficiary Designation which was completed and signed by the Decedent in 2006 while a resident of the state of New York is admissible as relevant evidence because it has "the tendency to make it more probable than not that the Decedent did not assent to a common law marriage with Appellant." (Initial Brief of Respondent, p. 4). However, this line of reasoning is erroneous. When this IRA Beneficiary Form was completed, Decedent and Appellant were residents of the state of New York. Decedent and Appellant were domiciled in New York from when they first met in 2000 until they bought their home in South Carolina in August of 2009. (Transcript p. 36, l. 8-25; p. 37, l. 1-6; p. 37, l. 11-20; p. 44, l. 15-22; trial exhibit D-7).

The state of New York does not recognize common law marriages. Any action or statement by the Decedent or the Appellant which occurred while they were domiciled in the state of New York is irrelevant because such action or statement occurring during this time period does not make it more probable than not that the Decedent did or did not assent to a common law marriage because New York does not recognize common law marriages. The IRA beneficiary designation that list Appellant as "friend" and designates Decedent as "single" is from 2006 when the couple were residents of New York. (Respondent trial exhibit D-4).

Not only did the trial court admit this evidence over timely objection, the trial court relied heavily on this document in reaching its holding that the Decedent did not assent to common law marriage with the Appellant. (Order, p.2). Respondent argues that the admission of this evidence

did not affect a substantial right of Appellant and, therefore, is not reversible error. (Initial Brief of Respondent, p.4). However, Appellant has been prejudiced by the admission of this incompetent evidence because the trial court gave it probative value to a material issue of fact in this case. "Ordinarily, the admission of incompetent evidence having some probative value upon a material issue of fact in the case is presumed to be prejudicial." S.C. State Hwy. Dept. v. Graydon, 246 S.C. 509, 144 S.E. 2nd 484, 485 (1965).

In Callen v. Callen, 365 S.C. 618, 620 S.E. 2nd 59 (2005), the couple litigating the issue of common law marriage had lived in several jurisdictions that did not recognize common law marriage prior to moving to South Carolina. In Callen and in this case at bar, no common law marriage could have been formed, if at all, until the couples moved to South Carolina. Since neither New York nor any of the other jurisdictions at issue in Callen recognized common law marriages, there was an impediment to marriage until the parties took residence here in South Carolina. The trial court in Callen like the trial court in this case at bar failed to recognize the impediment to marriage and instead considered both couple's relationships in their entirety, relying heavily on the parties' conduct prior to coming to South Carolina. The Supreme Court concluded that this constituted reversible error by the trial court. Callen, p. 620.

Respondent argues that "Decedent could have changed the beneficiary designation". (Initial Brief of Respondent, p.4). However, Respondent cites no proof in the record that Decedent could have done so or was under any obligation to do so. Respondent also argues that because Appellant "relies on evidence of the relationship between the Decedent and Appellant outside of South Carolina" somehow there can be no substantial right of Appellant affected by the introduction of the Ameriprise IRA Beneficiary Designation. (Initial Brief of Respondent, p. 4-5). After Appellant and Decedent established their domicile in South Carolina in August of

2009, they continued to spend about five months out of the year in New York and the other seven months in South Carolina. (Transcript, p.44, l. 15-25 and p. 45, l. 1-15). While Appellant did present testimony from two witnesses, Lisa Smith and Denise Salomon, from New York, their testimony involved how Appellant and Decedent held themselves out in New York after they had established their domicile in South Carolina. (Transcript, p. 23, l. 15-25, p. 24, l. 1-25).

The IRA beneficiary designation that list Appellant as "friend" and designates Decedent as "single" is from 2006 when the couple were residents of New York. There was an impediment to marriage at this particular time. The couple had not moved to South Carolina yet. By relying on this document and by relying on the Decedent's conduct prior to coming to South Carolina to find that Decedent did not assent to a common law marriage, the trial court has committed reversible error because the court failed to recognize the impediment to marriage. Callen, at p. 620.

## II. BECAUSE THE TRIAL COURT MADE FINDINGS OF FACT THAT ARE NOT SUPPORTED BY ANY EVIDENCE AT TRIAL, THE TRIAL COURT ERRED BY RELYING ON THESE UNSUPPORTED FACTS IN REACHING ITS FINDINGS

Respondent argues that "[n]one of the witness testimony above provides clear and convincing evidence that *both* Decedent and Appellant had the intent to be married." (Initial Brief of Respondent, p. 7). Appellant presented multiple witnesses who all testified that Decedent held himself out as being married which provided clear and convincing evidence that Decedent had the intent to be married. Lisa Smith testified that the Decedent referred to Appellant as his wife. (Transcript, p. 17, l. 23-25). Lisa Smith went on to testify that because Decedent referred to Appellant as his wife, Ms. Smith understood them to be married and that their relationship in the community was that of husband and wife. (Transcript, p. 18, l. 2-10). Denise Salomon also testified

that the Decedent and Appellant referred to each other as husband and wife and that Decedent called Appellant "my wife". (Transcript, p, 22, l. 10-17). Additionally, Ms. Salomon testified that in addition to referring to Appellant as is wife, Decedent told her that "under South Carolina law,..., we are married..." (Transcript, p. 27, l. 14-22). There can be no more clear and convincing evidence that Decedent intended to be married than that.

Robert Jenkins testified that Decedent referred to Appellant as his wife. (Transcript, p. 30, l. 1-5; p. 31, l. 19-24). Michelle Johnson testified that the couple introduced themselves to her as John and Linda Cameron. (Transcript, p. 34, l. 2-6). Ms. Johnson furthered testified that she would get their mail when they were gone and mail would be addressed to John and Linda Cameron. (Transcript, p. 34, l. 13-14). Ms. Johnson also testified that Decedent and Appellant held themselves out as a married couple.

> Q. Did *they* hold themselves out as a married couple? (emphasis added).
> A. Absolutely. (Transcript, p. 34, l. 15-16).

These witnesses establish by clear and convincing evidence that *both* Decedent and Appellant intended to be married. Respondent's reliance on Decedent's 1999 will is also misplaced in that this will pre-dates Decedent and Appellant meeting for the first time and is of no probative value whatsoever.

## III. BECAUSE THE TRIAL COURT RELIED ON EVIDENCE THAT WAS ONLY PROFFERED AT TRIAL OR WAS OTHERWISE EXCLUDED UNDER SOUTH CAROLINA'S DEAD MAN STATUTE, THE TRIAL COURT ERRED BY RELYING ON THIS EVIDENCE IN REACHING ITS FINDINGS

The "Dead Man's" statute found at S.C. Code Ann. Section 19-11-20 (1976) bars Respondent, Helen Cameron, from testifying that the Decedent never told her that he was married or

told her that he was not married. Respondent is the beneficiary under Decedent's 1999 Will and stands to inherit the Decedent's estate if Appellant is found not be the common law spouse or the omitted spouse. (Respondent's trial exhibit D-6).Thus, such testimony from Respondent regarding what decedent did or did not tell her regarding his marital status is inadmissible because that testimony can in any manner affect the interest of the Respondent." Essentially, the rule prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest." Hanahan v. Simpson, 326 S.C. 140, 485 S.E. 2d 903, 909 (1997). The majority of Respondent's testimony is inadmissible because the testimony centers around what Decedent allegedly told her regarding his relationship with Appellant. (Transcript, p. 94, l. 7 through p. 96, l. 6).

> Q. Did he ever express any desire to marry Linda?
> A. No, absolutely not.
> Q. Did he ever tell you that he was married to Linda.
> A. No. (Transcript, p. 95, L. 18-21)

Respondent argues that Appellant "opened the door" to such testimony by offering Appellant as a witness in the case at bar. (Initial Brief of Respondent, p. 9). Following an objection from counsel for Respondent, the trial judge ruled that Appellant "has to be able to testify to her relationship, and at least what she did with him". (Transcript, p. 19, l. 14-19). Appellant testified about her relationship with the Decedent and what she did with him. Her testimony did not open the door to the testimony offered by the Respondent. As such, any reliance on this proffered evidence or inadmissible testimony from the Respondent regarding what Decedent said to her by the trial court constitutes reversible error.

## IV. BECAUSE THE TRIAL COURT APPLIED AN INCORRECT PRESUMPTION THE TRIAL COURT ERRED IN FINDING THAT DECEDENT DID NOT ASSENT TO A COMMON LAW MARRIAGE TO APPELLANT

Respondent places a great deal of weight on the trial testimony of Joan Wise to support her

position that Decedent did not assent to a common law marriage with Appellant. (Initial Brief of Respondent, Section IV). Ms. Wise testified at trial that she never visited Decedent and Appellant in South Carolina nor did she know what their reputation was as a couple in South Carolina. (Transcript, p. 84, l. 23 through p. 85, l. 3). Additionally, she did not visit the couple at the Sag Harbor house after 2009. (Transcript, p. 85, l. 20-23). This Sag Harbor where the couple resided when they were in New York for five months out of the year from Memorial Day through Columbus Day. Ms. Wise's testimony regarding Decedent's relationship with Appellant was that Decedent (her brother) "he never represented himself to me as being married." (Transcript, p. 74, l. 7-8). "And it was never my understanding that the relationship he had with Linda had changed into any kind of marriage". (Transcript, p. 74, p. 5-7). Ms. Wise also testified that Decedent was not obligated to tell her that he and Appellant were married. (Transcript, p. 86, l. 7-8).

There is a strong presumption in favor of marriage by cohabitation, apparently matrimonial, coupled with social acceptance over a long period of time. Jeanes v. Jeanes, 255 S.C. 161, 177 S.E. 2d 537 (1970).The evidence in this case is clear and convincing that Appellant and Decedent cohabitated together in a matrimonial fashion over a long period of time that was accepted by the community as a marriage. "A man and a woman living together as husband and wife are generally presumed to be married, provided they have acquired a general reputation as a married couple. While the presumption of marriage from cohabitation and reputation is ordinarily a rebuttable presumption, the degree of proof to overcome it is generally very high, especially where the parties have cohabitated as husband and wife for a long time." Jeanes, p. 539. The presumption of marriage can be dispelled only by evidence which is strong, cogent, satisfactory or conclusive. Jeanes. There can be no doubt from the evidence presented at trial that Appellant and Decedent acquired a general reputation in the community as a married couple. While this presumption is rebuttable, the degree of

proof to overcome this presumption is generally very high. Jeanes. The testimony of Joan Wise does not rise to that level of very high proof nor to the level of conclusive as required. The evidence that Decedent did intend to be common law married to Appellant is much stronger and overwhelming.

## CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

December 19, 2016

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PROOF OF SERVICE

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I certify that I have served the Initial Reply Brief of Appellant on Helen L. Cameron by depositing a copy of it in the United States Mail, postage prepaid, on December 19, 2016, addressed to her attorney of record, John Kachmarsky, 171 Church St., Suite 330, Charleston, SC 29401.

December 19, 2016

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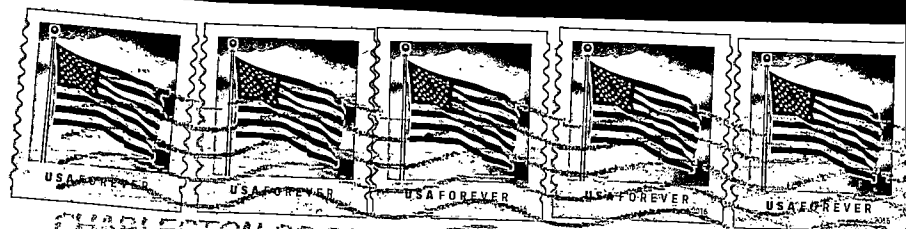


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