

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2015-CP-10-2056

In the Matter of John Thomas Cameron, Decedent,

Linda Seaton-Cameron,

Appellant,

v.

Helen L. Cameron,

Respondent.

FINAL BRIEF OF APPELLANT

James D. Gandy, III (11925)
Law Office of James D. Gandy, III, LLC
Post Office Box 2326
Mt. Pleasant, South Carolina 29465
(843) 469-0800
Attorney for Appellant

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SC COURT OF APPEALS

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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

On October 20, 2014, Linda Seaton-Cameron brought this action in the Probate Court of Charleston County against Helen Cameron seeking to be declared the common law spouse and omitted spouse of the decedent, John Thomas Cameron. Helen Cameron filed a motion to dismiss based on lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCF. The Probate Court denied Helen Cameron's motion to dismiss by way of Order dated February 11, 2015. On February 25, 2015, Helen Cameron filed her answer with the Probate Court and also filed a motion to remove this case to the Court of Common Pleas for Charleston County. The motion to remove was granted by the Probate Court on March 2, 2015. On May 9, 2016, Helen Cameron moved for summary judgment based on lack of subject matter jurisdiction by Order dated July 14, 2016. Respondent maintained throughout the case that South Carolina courts lacked subject matter jurisdiction because Decedent's estate was first opened in New York.

On July 18, 2016, this action was tried without a jury by the Honorable Carmen T. Mullen who entered judgment for Helen Cameron by way of an Order filed on July 20, 2106. On September 1, 2016, Linda Seaton-Cameron received written notice of entry of an Order of the Honorable Carmen T. Mullen denying Linda Seaton-Cameron's motion to reconsider the July 20, 2016 Order. On September 30, 2016, Linda Cameron Seaton served the Notice of Appeal on Helen Cameron.

ARGUMENTS

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.

Appellant and Decedent first met during the first part of 2000 while both parties were living in the State of New York. Shortly after the tragic events of September 11, 2001, they moved in together living in Manorville, New York. (R. p. 40, line 8- p. 41, line 6). Appellant and Decedent lived together continuously from that point until Decedent's death on July 12, 2014. (R. p. 37, lines 11-20). In August of 2009, the couple purchased a house together in Mt. Pleasant, South Carolina with as joint tenants with rights of survivorship. (R. p. 48, lines 15-22; R. pp.141-145). After the couple purchased this home in Mt. Pleasant, this home became their permanent home where when they were away from it, they always intended to return. (R. p. 48, line 23- p. 49, line 8). After moving to South Carolina in 2009, the Appellant and Decedent considered themselves married and held themselves out as being married and intended to be married. (R. p. 50, lines 3-15).

While the couple was living in East Moriches, New York in 2006, the Decedent designated Appellant as the primary beneficiary of his Ameriprise IRA. On this designation, appellant was listed as "friend". (R. p. 62, lines 4-16; R. pp. 128-134). Counsel for Appellant made a timely objection to the admission of this exhibit into evidence but the document was admitted over objection. (R. p. 62, line 20-p. 63, line 4). The Trial Court relied heavily on this

document in finding that Decedent did not assent to a common law marriage with the Appellant. (R. p. 3).

The state of New York does not recognize common law marriage. Consequently, the Appellant and Decedent could not have entered into a common law marriage until after they moved to South Carolina. Since New York does not sanction common law marriage, there was an impediment to marriage until the parties took residency here. Callen v. Callen, 365 S.C. 618, 620 S.E. 2d 59 (2005). There is a presumption that the relationship remains non-marital after the impediment is removed. Kirby v. Kirby, 270 S.C. 137, 241 S.E.2d 415 (1978). In this case at bar, the appellant met her burden of proof that the parties entered into a marital agreement after moving to South Carolina. (R. p. 50, lines 3-15). The trial court, however, relied heavily on the decedent's conduct prior to coming to South Carolina. 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

The trial court's finding "primarily as a result of statements made by the Plaintiff, some members of the community acknowledged that Plaintiff and Decedent maintained a reputation

as being a married couple” is contrary to the evidence and is not supported by the evidence presented at the trial of this matter. (R. p. 3). Every member of the community who testified at trial testified that Appellant and Decedent had the reputation as being married in the community. Defendant offered no witnesses from the community who testified that Appellant and Decedent were not regarded as a married couple. Additionally, four witnesses, Robert Jenkins, Denise Salomon, Lisa Smith, and Michelle Johnson testified that they formed their opinion as to Appellant and Decedent’s marital status based on statements directly from the Decedent wherein he referred to Plaintiff as his wife and made statements that he was married to Plaintiff. Lisa Smith testified that the decedent referred to appellant as his wife. (R. p. 21, lines 23-25). Denise Salomon testified that decedent called the appellant “my wife”. (R. p. 26, lines 13-16). Robert Jenkins testified that decedent referred to appellant as his wife. (R. p. 34, lines 1-5). Michelle Johnson testified that the couple introduced themselves to her as John and Linda Cameron. (R. p. 38, lines 2-6). Not only is this finding not supported by the evidence, it is, in fact, contrary to the evidence presented and, as such, constitutes reversible error as the trial court relied on evidence that did not exist.

The trial court in its findings of fact relies on documents that were not presented at trial and were not admitted into evidence and, as such, cannot be the basis of this finding of fact. The trial court references South Carolina and New York state income tax returns in its findings of fact. (R. p. 3). Only the 2011, 2012 and 2013 Federal Income Tax Returns of the Decedent were admitted into evidence. (R. p. 116; R. p. 120; R. p. 124). Relying on evidence that was not presented at trial and not admitted into evidence constitutes reversible error.

The finding by the trial court that the decedent held himself as being single during the relationship is also not supported by the evidence and, in fact, is contrary to the evidence submitted

at trial. As an initial matter, as set forth above, Appellant and Decedent were together for nearly fourteen years from 2001 through 2014 with the years of 2001 through 2009 as residents of New York and the years 2009 through 2014 with South Carolina as their domicile. Any reliance on their time together in New York before becoming residents of South Carolina constitutes reversible error because the court again failed to recognize the impediment to marriage that existed in New York. Callen, p. 620. Furthermore, there is absolutely no testimony from any witness who testified at trial that decedent stated that he was single. Decedent's sister, Joan Wise, did testify at trial. Her testimony was that the Decedent never represented himself to her as being married. (R. p. 78, lines 7-8). She also testified that he never told her that he wanted to marry the appellant. (R. p. 78, lines 15-17). There is no testimony from Joan Wise that the decedent held himself out to her as being single. Not telling his sister that he was married is not the same as holding himself out as single. There is no testimony from any witness that Decedent stated that he was single. Furthermore, Decedent did not hold himself out as being single. As set forth above in more detail, four witnesses, Denise Salomon, Robert Jenkins, Lisa Smith and Michelle Johnson all testified that Decedent held himself out to them as being married to Appellant. Reliance on evidence that was not presented at trial constitutes reversible error.

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

When counsel for Respondent began his direct examination of the Respondent, he stated on the record that he was only making a proffer of her entire testimony. (R. p. 94, line 17- p. 95, line 6).

As such, the finding of fact based on the testimony of the Respondent that decedent held himself out as being single during the relationship, particularly to members of his family, is in error as that testimony was only made in the form of a proffer. (R. p.2) Rule 103(a)(2) and 103(b), SCRE. Even if Respondent's testimony wasn't presented as a proffer, her testimony regarding conversations she had with her son are barred by South Carolina's Dead Man's Statute. S.C. Code Ann. Section 19-11-20 (1976). Counsel for Appellant objected to any testimony from Respondent regarding conversations she had with her son, the Decedent. (R. p. 101, lines 17-21). 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. (R. p. 134). 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). As such, any reliance on this proffered evidence or inadmissible evidence 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

A common-law marriage is formed when two parties contract to be married. Johnson v. Johnson, 235 S.C. 542,550, 112 S.E. 2^d 647, 651 (1960). No express contract is necessary; the agreement may be inferred from the circumstances. Kirby v. Kirby, 270 S.C. 137, 140, 241

S.E.2d 415, 416 (1978). In order for a common-law marriage to arise, the parties must agree to enter into a common law marriage after the impediment is removed, though such an agreement may be gathered from the conduct of the parties. Johns v. Johns, 309 S.C. 199, 420 S.E. 2d 856 (Ct. App. 1992). Due to the lack of direct evidence demonstrating the requisite intent of the parties to be married, circumstantial evidence is often used to prove the existence of a common law marriage. Barker v. Baker, 330 S.C. 361, 499 S.E. 2d 503 (Ct. App. 1998). The circumstantial evidence typically relied upon to establish a common law marriage includes evidence that the parties have lived together for an extended period of time and have publicly held themselves out as husband and wife. Barker.

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

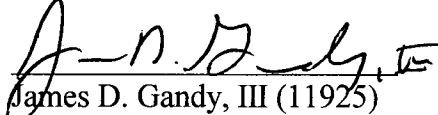
proof to overcome this presumption is generally very high. Jeanes. The individual federal tax returns of the Decedent for the tax years 2011, 2012 and 2013 do not rise to that level of very high proof nor to the level of conclusive as required. No evidence was presented which went to Decedent's intent in claiming single on these three tax returns. Respondent testified that she sometimes did not file individual tax returns. (R. p. 58, line 23- p. 59, line 2). She further testified that the Decedent's business failed in the 2008-2009 time period. (R. p. 46, lines 9-20). Decedent filed single on this tax returns to maximize the refund or to minimize the tax burden. That does not equate to an intent on his part not to be married. To base a finding that his intent was not to be married merely from these three tax returns is speculation. Again, no evidence was presented as to Decedent's intent in claiming single on these tax returns. The evidence that Decedent did intend to be common law married to Appellant is much stronger and overwhelming. The evidence in support of this contention consists of not only all the testimony evidence of the witnesses presented at trial but also the documentary evidence presented at trial including the joint credit cards, a joint safe deposit, and various bills addressed to John and Linda Cameron. (R. p. 110; R. p. 111; R. p. 112; R. p. 113; R. p. 114; R. p. 115). In this case, these three tax returns are not high enough proof to overcome the strong presumption in favor of marriage

CONCLUSION

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

February ^{7th} 2017

Respectfully submitted,



James D. Gandy, III (11925)

Post Office Box 2326

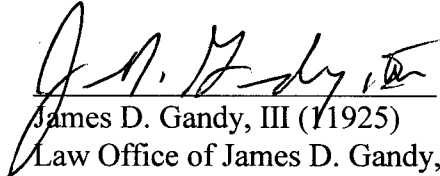
Mt. Pleasant, South Carolina 29465

(843) 469-0800

Attorney for Appellant

CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief of Appellant complies with Rule 211(b), SCACR.



James D. Gandy, III (1925)

Law Office of James D. Gandy, III, LLC

Post Office Box 2326

Mt. Pleasant, South Carolina 29465

(843) 469-0800

Attorney for Appellant

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