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SC Court of Appeals

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 RESPONDENT

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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.

Appellant continues to narrowly focus on the Ameriprise IRA Beneficiary Designation (the "Beneficiary Designation") in which the Appellant was listed as the primary beneficiary and specifically designated as "friend." (R. pp. 128-32). Appellant's objection is based on one of multiple factual findings made by the trial court, but these findings were supported by the evidence. (R. pp. 2-4). Further, the Appellant mistakenly argues that "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." (See Initial Reply Brief of Appellant, Argument Section 1, Paragraph 3). On the contrary, the Beneficiary Designation was just one of various forms of evidence presented by Respondent which showed the Decedent's intent to remain unmarried throughout the course of his relationship with the Appellant. (See e.g. R. pp. 116-145; Testimony of Joan Wise: R. p. 67, lines 16-17; R. p. 74, lines 18-23; R. p. 78, lines 7-14; R. p. 79, line 20-p. 82, line 1; R. p. 83, lines 10-18; R. p. 84, line 16-p. 85, line 11; Testimony of Helen Cameron: R. p. 96, lines 19-22; R. p. 98, lines 7-15).

The Appellant also insists 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 Reply Brief of Appellant, Arguments Section I). However, Appellant's continued attempts to repurpose Respondent's jurisdiction-based objection should fail as Appellant ignores the standard of review. (R. p. 11, line 11-p. 12, line 1). Specifically: it is not the job of the Appellate Court to offer its own conclusion upon review of the facts, but to determine whether there is *any evidence* to support the findings of the trial judge. Callen v. Callen, 365 S.C. 618,

629, 620 S.E.2d 59, 64–65 (2005); Tarnowski v. Lieberman, 348 S.C. 616, 619, 560 S.E.2d 438, 440 (Ct. App. 2002) (Emphasis added).

The Beneficiary Designation was just one of various forms of evidence introduced at trial demonstrating a lack of mutual assent to common law marriage. The Decedent consistently represented himself as single on federal income tax returns during the time alleged by Appellant as their purported marriage. (R. pp. 116-127). Decedent listed the Appellant as "friend" on his Beneficiary Designation form. (R. p. 120). Both Appellant and Decedent kept separate bank accounts as a matter of course. (R. p. 51, 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. (R. p. 70, lines 5-24; R. pp. 134-9). 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. (R. pp. 2-4; Testimony of Joan Wise: R. p. 67, lines 16-17; R. p. 74, lines 18-23; R. p. 78, lines 7-14; R. p. 79, line 20-p. 82, line 1; R. p. 83, lines 10-18; R. p. 84, line 16-p. 85, line 11; Testimony of Helen Cameron: R. p. 96, lines 19-22; R. p. 98, lines 7-15). The determination of the trial court should therefore be upheld since the Beneficiary Designation was just one of various forms of relevant evidence showing the Decedent did not assent to a common law marriage with Appellant.

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

Appellant fails to acknowledge that 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. Barker v. Baker, 330 S.C. 361, 370–71, 499 S.E.2d 503, 508 (Ct. App. 1998); 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).

Witness Lisa Smith testified that the Decedent referred to the Appellant as wife when led to the response, but also candidly referred to them as "a very happy couple" when asked about their reputation in *New York*. (R. p. 21, lines 23-24; R. p. 22, lines 6-8). Her understanding of their relationship does not establish clear and convincing evidence of a common law marriage in South Carolina. Further, Denise Salomon, another witness from New York, stated the Decedent and Appellant referred to one another as husband and wife. (R. p. 24, lines 8-14; R. p. 24, lines 10-11). However, she also stated "I don't know. I think they were considered husband and wife" when asked about their reputation in Charleston. (R. p. 27, lines 2-7). Again, this inconsistent testimony does not establish the existence of a common law marriage in South Carolina by clear and convincing evidence. Finally, witness Michelle Johnson testified that her understanding of the Appellant's relationship with the Decedent was based on a postcard she received from the Appellant. (R. p. 38, lines 7-12). This does not provide clear and convincing evidence of the existence of a common law marriage, but does support the finding of fact appearing in the trial court order that the couple gained a reputation as a married couple as a result of statements made by Appellant. (R. p. 3). Therefore, the findings of the trial court and credibility determinations of the trial judge should not be disturbed as the Appellant has yet 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 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) (Emphasis added). The Appellant appeared as a witness in the present action to establish her purported common law

marriage to the Decedent over timely objection from Respondent. (R. p. 22, line 18-p. 23, line 10). The Appellant originally brought this action against Helen L. Cameron, next of kin of the Decedent, and is currently seeking a declaration of both common law spouse and omitted spouse under S. C. Code Ann. § 62-2-301. Now, Appellant intends to supersede a validly executed will and inherit the Decedent's entire estate. (R. pp. 134-9). These facts lead to no other conclusion except that the Appellant falls 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 S.C. Code Ann. § 62-2-301; R. pp. 134-9).

The Dead Man's Statute further 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 waived the benefit of the Dead Man's Statute by testifying as to her purported common law marriage with the Decedent, since her interest is *clearly* affected by the outcome of the lawsuit. (R, p. 39, line 7-p. 60, line 9). Respondent is the only other witness whose testimony could be excluded since she is sole heir under the Decedent's Last Will & Testament. (R. p. 90, line 17-p. 91, line 6; R. p. 134). However, Appellant both asserted the Statute and introduced testimony that would otherwise be excludible. (R. p. 101, lines 17-20; R. p. 39, line 7-p. 60, line 9). Appellant thus gave the trial court discretion to consider the testimony of Respondent in finding that the Decedent did not assent to a common law marriage with the Appellant. Unlike the witness in Clinkscales, the Appellant in the present case clearly satisfies all of the disqualifying characteristics set forth in the South Carolina Dead Man's Statute. This case also departs from Thomas since counsel for Appellant herein elicited the witness testimony at trial which opened the door to otherwise excludable testimony from the Respondent. The trial

court therefore properly included testimony of Helen L. Cameron in finding that the Decedent did not assent to common law marriage with the Appellant.

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.

The issue whether a couple is common-law married is a question of law. Callen v. Callen, 365 S.C. 618, 629, 620 S.E.2d 59, 64–65 (2005); Tarnowski v. Lieberman, 348 S.C. 616, 619, 560 S.E.2d 438, 440 (Ct. App. 2002). The review of the Appeals Court is therefore limited to a determination of whether there is any evidence to support the trial judge's findings. Id. The question is not what conclusion this Court would have reached after reviewing the facts, but whether the facts as found by the... [trial] court are supported by the evidence. Id.

Appellant has failed to demonstrate an error of law or fact sufficient to overturn the findings of the trial court. Alternatively, Respondent presented "strong, cogent" evidence that the Decedent did not intend to be married to Appellant. For example, the Appellant kept her personal real estate holdings in her name, and both Decedent and Appellant kept separate bank accounts throughout their relationship. (R. p. 79, line 20- p.80, line 7; R. p. 51, lines 1-7). Appellant also maintained a formal rental agreement with the Decedent for space to store her retail merchandise; an arrangement which plainly contradicts the apparent matrimony perceived by the Appellant. (R. p. 83, lines 10-18). The Decedent consistently filed single on his income tax returns which provides strong, cogent evidence that he lacked the requisite intent to enter into a common law marriage with Appellant. (R. pp. 116-27; See e.g. Barker v. Baker, 330 S.C. 361, 368, 499 S.E.2d 503, 507 (Ct. App. 1998): Kirby v. Kirby, 270 S.C. 137, 142, 241 S.E.2d 415, 417 (1978) (finding common-law marriage where parties represented themselves as husband and wife in their community, filed joint income tax returns, and appeared as husband and wife on

children's birth certificates); Owens v. Owens, 320 S.C. 543, 545, 466 S.E.2d 373, 374 (Ct. App. 1996) (finding common-law marriage where, *inter alia,* parties held themselves out as husband and wife, and entered into contracts and opened checking account as husband and wife). Finally, testimony of the Decedent's family members revealed how the Decedent suffered deeply from one failed marriage, and vowed he would never marry again. (R. p. 78, lines 9-14; R. p. 98, lines 7-15). The trial court was therefore correct in finding that there was strong, cogent evidence that the Decedent did not assent to a common law marriage with the Appellant.

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: February 7, 2017