

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
CIRCUIT COURT

James B. Jackson, Master-in-Equity

Appellate Case No. 2021-000772

RE: Estate of James Rivers

Karen Gibson Rivers.....Appellant,

v.

Jasmine Frederick, Jewel Hayden, James Rivers, Jr., Jahmesha Rivers, Angel Rivers, a minor
child.....Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Probate Court err as a matter of fact and law in finding that Petitioner did not prove by clear and convincing evidence that she was the common law wife of the decedent as required by S.C. Code §62-2-802(b)?

STATEMENT OF THE CASE

The decedent, James Rivers (the “Decedent”) died February 3, 2017. Karen Gibson Rivers filed a Summons and Petition April 6, 2017 in the Probate Court of Orangeburg County asking that she be named the Personal Representative of the Estate of James River and that she be found to be the common law wife of the Decedent pursuant to S.C. Code §62-2-802(b). Jasmine Rivers Frederick also filed an informal Application for Appointment March 20, 2017. The Court held a hearing August 9, 2017 to hear testimony and receive evidence on these issues and issued an Order September 21, 2017 denying Ms. Rivers’ Petition for Common Law Marriage and Formal Appointment, denying Jasmine Frederick’s Informal Application for Appointment and appointing Reagan Singletary, Esquire, as Personal Representative of the estate of James Rivers. Ms. Rivers filed a timely Notice of Intent to Appeal the portion of this Order relating to the denial of Ms. Rivers Petition for Common Law Marriage on September 28, 2017.

STATEMENT OF FACTS

Ms. Rivers and the Decedent lived together in a romantic relationship from 1987 – 2017 with some times of separation and had three children together during this time (R. p. 37, line 21 – p. 38, line 24.) Both Ms. Rivers and Decedent had the legal capacity to marry when they began living together (R. p. 38, line 25 – p. 39, line 7.) Ms. Rivers believed that she and the Decedent lived as husband and wife during the times they lived together and that she assumed the duties of a wife while he assumed the duties of a husband. (R. p. 38, line 8 – p. 39, line 1)

Decedent referred to Ms. Rivers as his spouse in the Waterfront Employee ILA Pension and Welfare Fund enrollment and beneficiary forms that the Decedent and Ms. Rivers signed. (R. p. 136). Decedent referred to Ms. Rivers as his spouse in an affidavit related to the Waterfront Employee ILA Pension and Welfare Fund that was signed by the Decedent and notarized (R. p.

136). Pay statements for the Decedent's pension also show Ms. Rivers listed as his spouse and Ms. Rivers signed these documents in the space designated for 'spouse' (R. p. 136). Ms. Rivers is currently receiving his pension as the surviving spouse (R. p. 42, lines 2-6).

Ms. Rivers was listed by Mr. Rivers as his wife on life insurance enrollment and beneficiary designation forms for his policy with the Independent Order of Foresters in 2010. (R. p. 141). Ms. Rivers demonstrated that she used her name when transacting business. The name 'Karen Rivers' is on a heating and air warranty the couple purchased for their home. (R. p. 144). Similarly, Dorchester County knew Appellant as Karen D. Gibson Rivers as evidenced by the property tax notice for the couple's property located at 112 Fripp Lane (R. p. 145). Ms. Rivers and Mr. Rivers were both listed on the check to pay a bill to Ditech (formally Greentree) for a water leak. (R. p. 146). Ms. Rivers testified that the only reason they never got legally married was that there was no practical benefit from doing so. She had his life insurance and pension benefits without being married and they saw no practical benefit from it (R. p. 49, lines 3-19). There was testimony that Mr. Rivers and Ms. Rivers filed individual tax returns, had vehicles in their own names, and that they maintained separate bank accounts. (R. p. 64-65).

Ms. Rivers' mother, Lee Dildy, testified that her son referred to Ms. Rivers as his wife in conversations they had (R. p. 78, lines 15-20). Delores Clinton testified that Ms. Rivers referred to the Decedent as her husband throughout the years (R. p. 95, lines 1-9). There was also a significant amount of time spent at the trial eliciting testimony from Ms. Rivers and other witnesses related to Ms. Rivers' criminal record and the approximate four years that her and Mr. Rivers were separated and had a relationship with another.

STANDARD OF REVIEW

In South Carolina, it is imperative for a finding that a common law marriage existed to establish that the two individuals in question were in a mutual agreement to undertake the relationship of a husband and wife. Johnson v. Johnson, 235 S.C. 542, 550; 112 S.E.2d 647, 651 (1960). However, this need not be an express agreement but instead can be inferred from the circumstances of the relationship. Kirby v. Kirby, 270 S.C. 137, 140, 241 S.E.2d 415, 416 (1978). S.C. Code §62-2-802(b) of the South Carolina Probate Code indicates that evidence that the common law marriage existed must be clear and convincing if an action is brought after the death of one of the parties.

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). A man and a woman are generally presumed to be married, provided they have acquired a general reputation as a married couple. *Id.* 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. *Id.*

The issue of common law marriage sounds in law. Richland Mem'l Hosp. v. English, 295 S.C. 511, 513, 369 S.E.2d 395, 396 (1988). Our review in this case is limited to a determination of whether or not there is any evidence to support the findings of the trial judge. Weathers v. Bolt, 293 S.C. 486, 488, 361 S.E.2d 773, 774 (Ct.App.1987). Because this action sounds in law, and the existence of a common law marriage is a question of fact, this court is bound by the probate court's factual findings, and its credibility determinations. Barker v. Baker, 330 S.C. 361, 370, 499 S.E.2d 503, 508 (Ct.App.1998). "[T]he question is not what conclusion this Court would have reached

had it been the fact-finder, but whether the facts as found by the probate court have evidence to support them."

"The law is clear that this court has the authority to find facts in accordance with our own view of the preponderance of evidence." Rutherford v. Rutherford, 307 S.C. 199, 414 S.E.2d 157 (1992).

ARGUMENT

I. The Probate Court erred as a matter of fact and law in denying Ms. Rivers' Petition for common law marriage when all of the evidence points overwhelmingly toward a common law marriage and the court misstates evidence in its findings and conclusions.

Ms. Rivers and the Decedent built a life together in the traditional model of man and woman falling in love, living together for 25+ years, having children, raising them together, performing the traditional roles of husband and wife, holding themselves out to family and the community as husband and wife, and providing for each other emotionally and financially during life and after death. The only thing that differentiated the Rivers from a legally married couple is that they were never formally married.

Karen Gibson Rivers legal name is Karen Gibson, but she assumed the Decedent's last name of Rivers years ago and has been using it for all purposes since as evidenced by the various business, insurance and government documents produced at trial (Trial Exhibits 1-5). Ms. Rivers assumed his named, used it publically, lived with him, had his children, raised them, and cared for him throughout his life just as any spouse would. The evidence showed that she referred to him as her husband and that he referred to her as his wife on the most important business paperwork (pension, life insurance) and to the most important people, particularly, his mother. He cared for her just as any husband would making sure to care for her financially by making her the beneficiary of his pension and his life insurance.

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). This presumption is ordinarily rebuttable, but 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. *Id.* This is exactly the situation in this case.

Except for approximately four years where the couple separated and reconciled, the pair lived together as husband and wife, raising children, and planning a financial life together since 1987. Under *Jeanes*, this creates a strong presumption of marriage that requires a very high degree of proof to overcome.

In this case, the four facts the Court uses to support its finding against common law marriage are either facts not uncommon to legally married couples or simply misstated – hardly enough to meet the high degree of proof required by *Jeanes*. Paragraph ‘a’ on page 3 of the Order notes that the couple never held a joint bank account, never held title to a vehicle jointly, and never filed income tax returns as a couple. Many legally married couples keep their bank accounts separate, title vehicles in their own names and file tax returns separately especially in this day and age where most women have jobs and don’t have to rely on their husbands for income. Paragraph “b” points out that the parties separated for four years, had a relationship with another during that time and then reconciled. While certainly not encouraged, legally married couples having periods of separation with later reconciliation is not at all uncommon these days.

Paragraph “c” states that witnesses agree that Ms. Rivers commonly referred to Mr. Rivers as her husband, but that “no one could recollect the decedent referring to the Petitioner as his wife.” This is an inaccurate statement of the facts. Ms. Rivers’ mother, Lee Dildy, testified that the Decedent referred to Ms. Rivers as his wife in conversations they had throughout the years (R. p.

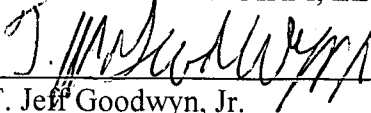
78, lines 15-20). Paragraph “d” states that Decedent gave power of attorney to his daughter instead of Ms. Rivers when he was sick in the hospital. This is not at all uncommon among legally married couples. Many people want power of attorney to go to a child that has a better education, have a better temperament, or who will be in good health in the years to come.

In short, facts such as these could be pointed out with any couple, legally married or not. This cannot fairly be said to reach the high standard of proof required to overcome the lifetime of living together, having and raising children together, planning for and providing a financial future for each other Mr. and Ms. Rivers have shown. Perhaps the Court was soured on Ms. Rivers’ arguments by the extensive time during the trial dedicated to pointing out her run-ins with the law and the references to alleged past drug use. This should not affect the case as it relates to the undisputed facts related to a common law marriage.

Under *Jeanes*, there is a high burden to reach in overcoming the presumption of a common law marriage after living together in a loving, caring, family relationship for 25+ years. It cannot fairly be said that the evidence cited by the court rises to this level and this court should reverse the trial court’s ruling to deny Ms. Rivers’ motion for common law marriage and grant the motion.

Respectfully Submitted,

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