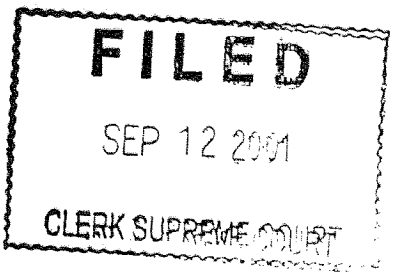
IN THE COURT OF APPEALS OF IOWA

No. 1-508 / 99-1625
Filed September 12, 2001

ROGER A. FRITZ,
Petitioner,

v.

MARY JEAN MORK,
Respondent.



IN RE THE MARRIAGE OF MARY J. FRITZ
AND ROGER A. FRITZ

Upon the Petition of
MARY J. FRITZ, a/k/a MARY J. MORK,
Petitioner-Appellant,

And Concerning
ROGER A. FRITZ,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

The petitioner appeals from the district court ruling adopting the parties' stipulation regarding child custody and visitation, and finding the parties did not have a common law marriage. **AFFIRMED.**

Mary J. Fritz De Witt, pro se.

M. Leanne Tyler of Tyler & Associates, P.C., Davenport, for appellee.

Considered by Sackett C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

The fighting issue in this dissolution of marriage appeal is whether there was a marriage to begin with. The district court concluded there was not, and we agree. We must also decide whether to enforce a custody stipulation approved by the court. The record suggests we should. Accordingly, we affirm.

I. Background Facts and Proceedings

Mary Mork and Roger Fritz lived together for approximately eighteen years and had three children together. When Roger decided to end the relationship, Mary became depressed, suicidal, and aggressive. Ultimately, she manifested her aggression by setting fire to the parties' home and taking a sledgehammer to its contents.

Roger sought custody of the children. Mary countered by filing a dissolution of marriage petition. The district court awarded Roger temporary custody. The two cases were consolidated for trial.

In the midst of trial, the parties, both represented by counsel, stipulated that Roger would have sole legal custody and physical care of the children and Mary would have visitation as deemed appropriate by a licensed psychotherapist. The stipulation essentially resolved all but the child support issue raised in Roger's petition. Following trial, the court ordered Mary to pay child support of fifty dollars per month.

Remaining was Mary's dissolution of marriage petition. Mary argued she and Roger had a common law marriage, entitling her to alimony and a share of Roger's property and pension. The district court rejected this contention.

On appeal, Mary focuses primarily on the district court's refusal to find a common law marriage. She also suggests the custody stipulation is unenforceable and not in the best interests of the children. Our review of these issues is de novo. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999).

II. Common Law Marriage

Claims of common law marriage are viewed with suspicion and are closely scrutinized. *In re Marriage of Winegard*, 257 N.W.2d 609, 615 (Iowa 1977) (citing *In re Marriage of Grother*, 242 N.W.2d 1 (Iowa 1976)). A party seeking to establish a common law marriage must prove: 1) a present intent and agreement to be married; 2) continuous cohabitation; and 3) a public declaration that the parties are husband and wife. *Conklin v. MacMillan Oil Co.*, 557 N.W.2d 102, 105 (Iowa Ct. App. 1996). Where both parties are living, a common law marriage must be shown by a preponderance of the evidence. *Winegard*, 257 N.W.2d at 615; *Cf. Conklin*, 557 N.W.2d at 105 (noting proof is by preponderance of clear, consistent, and convincing evidence where one party is deceased).

There is no question the second element, continuous cohabitation, is satisfied here. The dispute centers on the first and third elements. We agree with the district court that Mary failed to prove the existence of either of those two elements.

With respect to the intent and agreement element, the record is clear that Roger never intended or agreed to marry Mary. He stated he was single and had always been single. He further stated he never exchanged marriage vows with Mary, never exchanged rings, and never participated in any ceremony, religious or otherwise, sanctioning a marital relationship. He filed separate tax returns as

a single person, never included Mary on his health insurance policy, had no joint debts or credit cards, listed only himself as the owner of the home in which the parties lived, maintained a bank account in his name only, and registered his car in his name only.

The evidence of Mary's intent is slightly more inconclusive, in light of her testimony that she wanted to marry Roger. However, she did not act as if she were married to him. For example, she filed for bankruptcy in her name alone, listing herself as a single person, filed her taxes as a single person in all but one year, and had a separate bank account in her name only. She had her own health insurance and credit cards and paid her own debts. Finally, she conceded the parties consciously separated their finances in this fashion to insulate Roger's assets from a child support debt she incurred following a prior marriage. Therefore, by her own admission, there was no agreement to marry.

Mary also did not satisfy the public declaration element. The parties told their children they were not married. Roger told his coworkers he was not married. Mary told a neighbor she was not married. Although Mary introduced envelopes addressed to the parties as "Roger and Mary Fritz," the record contains no indication she told third parties to address them in this fashion. Additionally, an application for car insurance listing the parties as married was inexplicably postdated, raising concerns about its veracity. In sum, we agree with the district court's statement that there was "no significant evidence in the record of any public declaration by either party that the parties were husband and wife."

While recognizing the harshness of this result in light of Mary's long-term cohabitation with Roger, we must nevertheless conclude that Mary has not met her burden of establishing a common law marriage. Accordingly, she is not entitled to alimony or a share of Roger's assets.

III. Stipulation

Mary also challenges the stipulation she signed relating to custody and visitation, arguing: (1) she did not understand the rights she was giving up in the stipulation; (2) her attorney was not sufficiently attentive to her interests; and (3) the agreement was not in the children's best interests.

Stipulations in domestic proceedings are considered contracts. *In re Marriage of Udelhofen,* 538 N.W.2d 308, 309-10 (Iowa Ct. App. 1995). They become final when approved by the court. *Id.*

We are not convinced Mary is entitled to void the stipulation on the ground she did not understand it. Although the stipulation here is essentially a complete concession by Mary on the issues of custody and physical care, that fact alone does not render the stipulation void. *See In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). Mary had counsel when she signed the stipulation and acknowledged she freely and voluntarily entered into the agreement. The record contains no evidence she was coerced into signing the stipulation. Finally, the district court reviewed and approved the agreement.

We also reject Mary's argument that the stipulation should not bind her because her attorney did not adequately discuss it with her. Mary concedes he gave her at least twenty minutes to review and discuss the three-page document,

and there is no indication she advised her attorney or the court that she required additional time.

Finally, we reject Mary's argument that the stipulation is not in the children's best interests. Her volatile post-separation conduct suggests the opposite. We conclude the stipulation is enforceable.

IV. Appellate Attorney Fees

Roger seeks an award of appellate attorney fees. We have discretion to make such an award after considering: 1) the needs of the requesting party; 2) the ability of the other party to pay; and 3) whether the party making the request was obligated to defend on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). Although we are sympathetic to Roger's assertion that he has incurred inordinate expenses in defending this appeal, we note Mary is virtually destitute and has significant health-related expenses. Accordingly, we decline to order her to pay a portion of Roger's fees.

AFFIRMED.