

IN THE COURT OF APPEALS OF IOWA

No. 7-608 / 96-2242

**IN THE MATTER OF THE ESTATE OF
ALVIN LAMBERT WIGNALL, Deceased,**

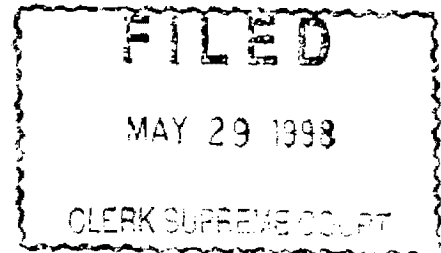
ANITA MAE WIGNALL,

Petitioner-Appellant,

vs.

**TRACY LOGSTON AND ROBERT LOGSTON,
Co-Administrators,**

Respondents-Appellees.



Appeal from the Iowa District Court for Polk County, Ruth B. Klotz, Associate Probate Judge.

Wignall appeals from the ruling of the probate judge which found she had not established by a preponderance of clear and convincing evidence she was the common law wife of the decedent. **AFFIRMED.**

John P. Roehrick of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellant.

Joseph W. Seidlin of Berger & Culp, P.C., Des Moines, for appellees.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

PER CURIAM.

Petitioner-appellant Anita Mae Wignall appeals contending (1) she was decedent Alvin Lambert Wignall's common law wife when he died in 1996, and (2) the probate judge incorrectly found to the contrary. We affirm.

Alvin and Anita married in 1988. Both had adult children. Alvin and Anita retained their own homes. Sometimes they lived together and at other times they lived separately. They divorced in 1991 but continued a relationship. They traveled together and occasionally lived together. Anita continued to utilize Alvin's health insurance. The insurance contract provided coverage for Anita only if she were Alvin's wife. Alvin continued to pay some of Anita's bills with checks showing both of their names. Anita continued to use Alvin's address for her voter registration and AARP membership. Alvin and Anita both filed their tax returns as single persons. Anita represented she was single on employment-related documents.

Alvin was hospitalized with a heart attack in 1996. His children objected to Anita's presence at the hospital. Alvin advised hospital personnel he and Anita were married but separated. After Alvin died, Anita filed this petition for a declaratory judgment asking for a determination she was Alvin's surviving spouse by common law marriage.

The probate court found Anita did not meet her burden to prove the existence of a common law marriage by clear, consistent, and convincing evidence. The court found more evidence to indicate Anita had intended a marriage exist than was

apparent from Alvin's conduct. The court also found there had not been continuous cohabitation as required for a common law marriage, and any evidence of public declarations of a marriage did not rise to the level of clear and convincing evidence.

Probate actions tried in equity are reviewed de novo. Iowa Code § 633.33; *In re Estate of Epstein*, 561 N.W.2d 82, 84 (Iowa App. 1996).

Iowa recognizes the validity of common-law marriages. *In re Estate of Fisher*, 176 N.W.2d 801, 805 (Iowa 1970). When one party is deceased, the party asserting the marriage must prove the elements of a common law marriage by a preponderance of clear, consistent, and convincing evidence. *Id.*; see also *State v. Ware*, 338 N.W.2d 707, 711 (Iowa 1983). The burden of proof is with the party asserting the existence of a common law marriage. *Id.* A claim of common law marriage is regarded with suspicion and is closely scrutinized. *In re Marriage of Grother*, 242 N.W.2d 1, 1 (Iowa 1976). No public policy favoring common law marriages exists in Iowa. *In re Marriage of Reed*, 226 N.W.2d 795, 796 (Iowa 1975); *Fisher*, 176 N.W.2d at 804.

Anita argues Iowa law does not require both parties to acquiesce in the existence of a marital relationship. She contends a common law marriage can arise from the intentions of one of the parties, provided the other party's conduct is such as to justify the belief there is an intent to be married. She contends no affirmative action was required by Alvin because his conduct amounted to adoptive admissions allowing the inference he acquiesced in the existence of a common law marriage.

Anita also contends the continuous cohabitation requirement should be viewed in light of the parties' living arrangements when they were ceremonially married.

The three elements necessary to find a common law marriage are: (1) present intent and agreement to be married; (2) continuous cohabitation; and (3) public declaration that the parties are husband and wife. *In re Marriage of Winegard*, 278 N.W.2d 505, 510 (Iowa 1979). A person may be entitled to marital rights if his or her intention is to be married, even though the other person's intention is not the same, provided they cohabit and provided the conduct of one person justifies the other to believe he or she intended to be married. *In re Marriage of Winegard*, 257 N.W.2d 609, 616 (Iowa 1977) (citing *McFarland v. McFarland*, 51 Iowa 565, 570, 2 N.W. 269, 273-74 (1879)).

Continuous cohabitation is a necessary element to prove a common law marriage. *Conklin by Johnson-Conklin v. MacMillan Oil Co.*, 557 N.W.2d 102, 104-05 (Iowa App. 1996). Anita and Alvin occasionally or intermittently cohabited. We find many of the public declarations cited by Anita were merely a continuation of circumstances existing before the marriage was dissolved. Alvin's statement at the hospital that they were married but separated is not sufficient to overcome other weaknesses in Anita's claim. We agree with the probate court Anita has not met her burden of proving by clear and convincing evidence a common law marriage to Alvin existed. We affirm.

AFFIRMED.