FILED
FEB 25 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE ESTATE OF AUGUSTUS C. ANDERSON, SR., Deceased,	)	**1**
AUGUSTUS C. ANDERSON JR. and **LEE RUSSELL PHILLIPS,**	)	Filed February 25, 1987
Plaintiffs-Appellees,	)	
vs.	)	
DELORES LOWE,	)	6-469 85-1776
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 40733) - Joseph C. Keefe, Judge.

Defendant appeals from an order in probate determining that she was not the common law wife of decedent, asserting that the evidence was sufficient to establish the existence of a common law marriage. **AFFIRMED.**

Gary J. Boveia of Boveia Law Offices, Waverly, for defendant-appellant.

Walter W. Rothschild, Waterloo, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

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PER CURIAM 2

On July 21, 1984, Augustus C. Anderson, Sr. died intestate. Delores A. Lowe, who claims to have been Anderson's common law wife, was appointed administrator of Anderson's estate. On December 10, 1984, Anderson's son and sister filed this declaratory judgment action, requesting the district court to determine, inter alia, whether Lowe was, in fact, Anderson's common law spouse. Trial was had to the court. On November 11, 1984, the district court filed an order wherein the court determined that Lowe had failed to sufficiently show a common law marriage between herself and Anderson. Lowe brings this appeal to challenge that determination. Our review is de novo. In re Estate of Fisher, 176 N.W.2d 801, 804 (Iowa 1970); Iowa Code § 633.33 (1985).

Common law marriages are recognized as valid in Iowa. Coleman v. Graves, 255 Iowa 396, 402, 122 N.W.2d 853, 856 (1963). There are three elements requisite to a common law marriage: (1) intent and agreement in praesenti to be married by the parties; (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), cert. denied, 444 U.S. 951, 100 S. Ct. 425, 62 L. Ed. 2d 321 (1979). The latter element, which consists of a general and substantial "holding-out" or open declaration thereof to the public by both parties, has been said to be the acid test of a common law marriage. In re Estate of Dallman, 228 N.W.2d 187, 190 (Iowa 1975). In other words, there can be no secret common law marriage. Id. The burden of proving a common law marriage rests on the party who asserts its existence. In re Estate of Fisher, 176 N.W.2d at 804 (Iowa 1970). When, as here, one party to the asserted relationship is dead, the essential elements must be shown by clear, consistent, and convincing evidence. Id. A claim of a common law marriage is regarded by our courts with suspicion and will be closely scrutinized. In re Estate of Malli, 260 Iowa 252, 256-57, 149 N.W.2d

155, 158 (1967). Although a common law marriage may be proven by circumstantial evidence, mere proof of cohabitation is not enough. Coleman, 255 Iowa at 402, 122 N.W.2d at 856.

The present record contains a great deal of evidence relevant to the elements necessary to the establishment of a common law marriage. One fact that appears to be undisputed is that Anderson and Lowe lived together continuously from 1976 until Anderson's death in 1984. The battle lines are drawn at whether Lowe proved by clear, consistent, and convincing evidence their intent and agreement to be married and their general and substantial public declaration that they were husband and wife. We think she has failed to do so.

There is evidence on this record that Lowe and Anderson referred to themselves as husband and wife while traveling together. This they had done even prior to 1976, when their continuous cohabitation began. They also received mail at their place of residence addressed to "Mr. and Mrs. A. C. Anderson," or some other form of address treating them as husband and wife. Lowe maintained stationery with the name "Delores Lowe Anderson" printed on it. A Christmas card sent by the couple in 1981 or 1982 was labeled "The Anderson's--Gus and Delores." Anderson regularly attended class reunions where he introduced Lowe as his friend during the early years of their attendance together and as his wife during the later years. Lowe was referred to as the surviving spouse on much of the funeral correspondence and arrangements. There is disputed testimony that Anderson and Lowe had exchanged rings.

On the other hand, however, Anderson and Lowe conducted all of their business and legal affairs as unmarried individuals. Both filed separate income tax returns as single persons, except for 1983 when Lowe filed as an unmarried head of household. Anderson listed himself on two real estate contracts, drafted

in 1981 and 1982, as a single person. In 1982, Lowe was admitted to a hospital and listed herself as single and named Anderson as a "friend" to be contacted in case of emergency. On a 1983 credit application, Lowe listed herself as unmarried. That same year Anderson received medical attention at a care center and listed himself as a "single-widower." Both Anderson and Lowe kept separate bank accounts under their single names. Employee data sheets from Lowe's place of employment list her as being either "single" or "unmarried," as do her withholding certificates from 1977 and 1980. While traveling together, they each paid their separate expenses. A substantial amount of testimony was elicited to the effect that Anderson considered himself to be unmarried during the time he was living with Lowe, routinely told those who knew him that he was not married to Lowe, and had no intention of being married to Lowe. For example, Anderson turned down an appointment as Deacon of his church because he considered himself unmarried to Lowe and believed that an unmarried man who was living with a woman should not accept that office.

We think the record discloses that Lowe has failed in her attempt to show by clear, consistent, and convincing evidence both that she and Anderson had an in praesenti intent and agreement to be married and that they maintained a general and substantial holding-out to the public that they were husband and wife. The district court is affirmed.

AFFIRMED.