

IN THE COURT OF APPEALS OF IOWA

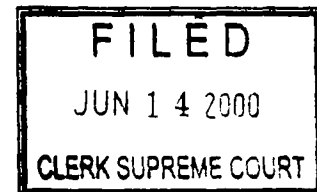
No. 0-005 / 98-1696

Filed June 14, 2000

IN RE THE MARRIAGE OF ROSE WADE AND GLENN FETZER

Upon the Petition of
ROSE WADE,
Appellee,

And Concerning
GLENN FETZER,
Appellant.



Appeal from the Iowa District Court for Iowa County, Kristin L. Hibbs,
Judge.

Respondent appeals the district court ruling dissolving the parties'
common-law marriage. **AFFIRMED.**

Douglas A. Oliver, Williamsburg, for appellant.

Michael P. Brice, Oskaloosa, and Martha L. Mertz, Knoxville, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

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VOGEL, P.J.

Glenn Fetzer appeals the district court ruling dissolving the parties' common-law marriage. We find the evidence presented to the trial court was sufficient to establish the existence of a common-law marriage, and affirm.

Background facts. Rose Wade and Glenn Fetzer cohabited from 1983 until 1997, when Rose filed for the dissolution of their common-law marriage. The trial court found the existence of a common-law marriage and proceeded to dissolve it. Glenn appeals this decision, alleging the evidence was insufficient to prove such a marriage existed.

Scope of review. This case was tried in equity and will, therefore, be reviewed de novo. See Iowa R. App. P. 4. On our de novo review, we give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. See Iowa R. App. P. 14(f)(7).

Common-law marriage. There are three elements necessary to find a common-law marriage, including: (1) present intent and agreement to be married; (2) continuous cohabitation; and (3) public declaration that the parties are husband and wife. *Conklin by Johnson-Conklin v. MacMillan Oil Co.*, 557 N.W.2d 102, 105 (Iowa App. 1996). The burden of proof is with the party asserting the existence of a common-law marriage. *In re Marriage of Winegard*, 278 N.W.2d 505, 510 (Iowa 1979). 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). Circumstantial evidence may be relied upon to establish the

existence of a common-law marriage. *Conklin*, 557 N.W.2d at 105; *In re Estate of Fisher*, 176 N.W.2d 801, 806 (Iowa 1970). "A continuous cohabitation of the parties and the declaration or holding out to the public they were, in fact, husband and wife constitutes circumstantial evidence which tends to create a fair presumption that a common-law marital relationship existed." *In re Marriage of Winegard*, 257 N.W.2d 609, 617 (Iowa 1977).

The record contains evidence presented to the trial court, by each party, in order to prove or defeat the existence of a common-law marriage. It is undisputed Rose and Glenn lived together as man and wife continuously from approximately 1983 until 1997. They had planned on marrying in 1986, but when Rose's daughter was tragically killed, the ceremony was cancelled. They nonetheless exchanged and wore rings, which were purchased in anticipation of the ceremony.

Although she admitted she did not use the phrase "married" as she believed that term required a marriage ceremony, Rose considered herself married to Glenn. Both testified Glenn referred to Rose as his "old lady" and they referred to each other as their "better half". Rose testified that when asked, Glenn identified his spouse as "Rosie".

Glenn met Rose while she worked at his bar. Upon cohabiting with each other, Rose ceased to receive a wage for the work she did for the bar. There was evidence that they shared not only a home and personal expenses, but some business expenses as well. The record contained Federal and Iowa income tax returns for 1994 and 1995, in which they used the filing status of

"married, filing jointly." On the same returns, Rose's son, Justin, was listed as a dependent child. Additionally, Glenn applied for and received social security benefits. In applying for benefits, Glenn led a social security benefits worker to believe he and Rose considered themselves married. From the scant record on the subject, it appears Rose and her son began drawing benefits as Glenn's wife and child. Although Glenn denied having knowledge of Rose and Justin qualifying for the additional benefits, he admittedly did nothing to correct the government's conclusion or deny the relationship when Rose and her son received the social security income.

Glenn contends they did not meet all of the requirements of a common-law marriage because he never had any intention of entering into such an arrangement with Rose. He argues the record contains more evidence to negate the existence of a marital relationship and that the trial court erred in its evaluation of the relationship. The record does contain the testimony of several friends or acquaintances who stated Glenn and Rose did not represent themselves to them as a married couple and that Rose denied being married on several occasions. In addition, Glenn presented several real estate documents, which identified them as single persons. In advancing his argument, Glenn relies heavily on the fact that he never intended to be married to Rose. However, a person may be entitled to marital rights if her intention is to be married, even though his intention is not the same, "provided they cohabit and provided his conduct is such as to justify her in believing that he intends present marriage." *Winegard*, 257 N.W.2d at 616.

In this case, we find there is sufficient evidence to determine the couple had established a common-law marriage. The jointly filed tax documents and social security benefits weigh heavily into the equation. The trial court found Glenn's testimony with regard to the social security benefits to be less than convincing. Rose's testimony more generally supports the finding of a common-law marriage through cohabitation, intent, and public declarations. Rose's intent was to be Glenn's common-law wife and she was justified in believing Glenn shared that intention. Glenn's testimony is inconsistent, as he appears to be willing to accept the benefits of receiving additional tax and social security funds by representing his relationship as marital and yet unwilling to claim such a relationship when it becomes a burden to him.

We agree with the trial court that Rose carried her burden in asserting and proving the existence of a common-law marriage between Glenn and Rose. Accordingly, we affirm.

AFFIRMED.