IN THE COURT OF APPEALS OF IOWA

FILED
MAY 31 1996
CLERK SUPREME COURT

No. 5-467 / 94-1021

IN RE THE MARRIAGE OF CATHERINE M. WILLIAMS AND DENNIS R. WILLIAMS

Upon the Petition of
CATHERINE M. WILLIAMS,

Appellee,

And Concerning
DENNIS R. WILLIAMS,

Appellant.

Appeal from the Iowa District Court for Clinton County, David J. Sohr, Judge.

Dennis Williams appeals an order contending the district court erred in rejecting his common-law marriage claim and his request to have a constructive trust imposed upon the former marital residence. **AFFIRMED.**

James L. Pillers of Pillers, Pillers & Zimmerman, P.C., Clinton, for appellant.

Catherine M. Williams, Clinton, pro se, appellee.

Considered by Cady, P.J., and Huitink and Streit, JJ. Vogel, J., takes no part.

STREIT, J.

Catherine and Dennis Williams were previously married to each other. They are the parents of one child, Cathy Jo, who was born in 1976. In 1985 the parties purchased by real estate contract a home in Clinton for $12,000.

The parties were divorced on April 9, 1986. The dissolution decree incorporated their stipulation. Catherine was awarded primary physical care of Cathy Jo, and Dennis was ordered to pay child support. Catherine was awarded the marital residence and ordered to assume the contract payments.

Dennis never moved out of the marital residence. Although the parties were divorced, they continued to live together Both parties contributed to household expenses and contract payments on the house In 1989 Catherine filed a deed giving Dennis a one-half interest in the house

The parties made many improvements to the house. The front porch, upstairs, and a bathroom were remodeled Also, insulation was added, and the electrical and plumbing systems were fixed Both of the parties financially contributed to the purchase of renovation supplies Dennis did much of the work himself. He estimated he spent between 3000 to 4000 hours repairing the home

In August 1992 Dennis filed a deed giving his interest in the house to Catherine. Shortly thereafter, Catherine moved out of the house Cathy Jo continued to live in the

house with Dennis until September 1993. During this one-year period Dennis made all of the contract payments on the house and paid all of the utilities.

On September 29, 1993, Catherine filed an application to modify the dissolution decree to increase Dennis's child support obligation. In his answer, Dennis claimed the parties had entered into a common-law marriage after the 1986 dissolution by continuing to hold themselves out as a married couple, and this made the 1986 dissolution decree a nullity. He asked the court to enter a new dissolution decree for this common-law marriage. Dennis also claimed Catherine had been unjustly enriched by his work on the house. He asked the court to impose a constructive trust of the property or grant him a money judgment based on a theory of quantum meruit.

The district court held a hearing on all pending matters on April 25, 1994. The district court determined Dennis had failed to show the parties had a common-law marriage The court denied Dennis's claims based on unjust enrichment and quantum meruit The court found Dennis intended his labor to be a gift to Catherine. Dennis has appealed

I. Our review of this equitable action is de novo Iowa R App P 4 We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992)

II. Iowa recognizes common-law marriages. *In re Marriage of Jones*, 451 N.W.2d 25, 27 (Iowa App. 1989). The party asserting the existence of a common-law marriage must prove three elements by a preponderance of the clear, consistent, and convincing evidence: (1) present intent and agreement to be married; (2) continuous cohabitation; and (3) general and substantial public declarations that the parties are husband and wife. *In re Estate of Stodola,* 519 N.W.2d 97, 99 (Iowa App. 1994). The burden of proof lies on the party asserting the existence of a common-law marriage. *In re Marriage of Gebhardt,* 426 N.W.2d 651, 652 (Iowa App. 1988).

In the present case Catherine testified she did not intend to remain married to Dennis after the 1986 divorce. Catherine's mother testified Catherine considered herself a single person after the divorce Dennis testified he and Catherine cohabited and continued to hold themselves out as a married couple after the divorce. A woman who worked with Catherine testified that until 1991 she believed Catherine was married to Dennis

We agree with the district court's conclusion that Dennis failed to present clear, consistent, and convincing evidence of a common-law marriage. Although the evidence showed the parties cohabited, it also showed Catherine did not intend to be married There was very little evidence of public declarations by either party that they were husband and wife We affirm the district court on this issue.

III. Dennis claims Catherine was unjustly enriched by his efforts in repairing and remodeling the house and believes the district court should have imposed a constructive trust on the house. He asserts his labor increased the value of the house. Dennis states he performed the work in the belief he and Catherine would continue to live together in the house. He claims the district court improperly found he intended his labor to be a gift to Catherine.

The three essential elements for an inter vivos gift are donative intent, delivery, and acceptance. *Gray v. Roth*, 438 N.W.2d 25, 29 (Iowa App. 1989). The donative intent of the grantor is the controlling consideration. *Raim v. Stancel*, 339 N.W.2d 621, 623 (Iowa App. 1983).

Dennis testified he did not intend for his labor, or the deed to the house, to be considered a gift As noted above, the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Brown*, 487 N W.2d at 332 The court found Dennis was not credible when he denied his labor was intended as a gift to Catherine Because the district court had the advantage of observing the parties, we give the court deference in determining credibility of the parties Therefore, we conclude Dennis intended his labor to be a gift to Catherine

Because we have found Dennis's labor was a gift to Catherine, we need not address Dennis's claims under the theories of unjust enrichment and quantum meruit.

We affirm the decision of the district court on all issues raised in this appeal. Costs of this appeal are assessed to Dennis.

AFFIRMED.