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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-578 / 01-0126
Filed November 16, 2001

JOHN TALBOT, a/k/a JOHNNIE A. TALBOT,
Petitioner-Appellant,

vs.

TOM SHESTON, Executor of the Estate of RUTH L. SHESTON, Deceased,
Respondent-Appellee.

Appeal from the Iowa District Court for Appanoose County, Annette J. Scieszinski, Judge.

John Talbot appeals an adverse ruling on his petition for declaratory judgment asserting he was the decedent's common-law husband. **AFFIRMED.**

John A. Pabst of Pabst Law Firm, Albia, for appellant.

Sidney E. Drake, Centerville, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

John Talbot argues he is Ruth Sheston's surviving spouse and entitled to take under her will. The trial court disagreed, and we affirm in this memorandum opinion pursuant to Supreme Court Rule 9.

Because this case was tried in equity, our review is de novo. Iowa R. App. P. 4. While we give weight to the trial court's fact-findings, we are not bound by them. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991).

John has the burden of proving the existence of a common-law marriage by clear, consistent, and convincing evidence. *See In re Estate of Stodola*, 519 N.W.2d 97, 98 (Iowa Ct. App. 1994). Common-law marriages are evidenced by three elements: (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. *Id.*

Upon review of the evidence, we find John has failed to prove he and Ruth were common-law married. While John and Ruth spent considerable time together, they continued to maintain separate residences. They were listed separately in the phone book. Ruth filed her income-tax returns as "single" through her last filing in 1994. In her medical information, she listed herself as widowed. As a beneficiary to Ruth's life insurance policy, John was listed as a "friend." John was also listed in Ruth's obituary as "a special friend."

John claims the correspondence he and Ruth received identifying them as John and Ruth Talbot, or identifying them as husband and wife, is evidence of public declarations that they were husband and wife. However, this

correspondence is only evidence of the writers' perceptions of John and Ruth's relationship. There is no evidence that John and Ruth undertook any action to hold themselves out as husband and wife.

Because John has not met his burden of proof, we affirm the district court's ruling.

AFFIRMED.