

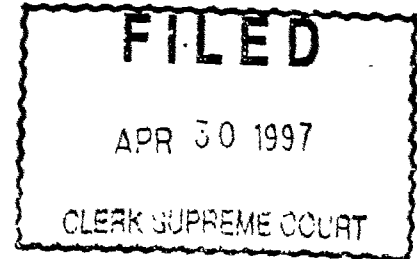
IN THE COURT OF APPEALS OF IOWA

No. 6-480 / 95-1908

**IN RE THE MARRIAGE OF RONDA LEIGH JACOB AND GARY
SHOEMAKER**

Upon the Petition of
RONDA LEIGH JACOB,
Appellee,

And Concerning
GARY SHOEMAKER,
Appellant.



Appeal from the Iowa District Court for Warren County, J. W. Jordan, Judge.

Gary Shoemaker appeals the district court's entry of the parties' dissolution of marriage decree. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Kolleen K. Samek, Des Moines, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Gary Shoemaker appeals the district court's entry of the parties' dissolution decree. He argues the district court erred in: (1) finding the parties had a common-law marriage; and (2) awarding Ronda alimony and attorney fees. Ronda requests appellate attorney fees and costs.

Ronda Jacobe and Gary Shoemaker continuously cohabited from 1988 to approximately June 1995. In 1989, they bought a home together. In 1991, Gary's two children came to live with Gary, Ronda, and her two children. Also in 1991, Ronda quit her employment at Hawkeye Securities in order to be a full-time mother to the four children.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). 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. Iowa R. App. P. 14(f)(7).

I. Common-law marriage. We recognize common-law marriages. *In re Marriage of Jones*, 451 N.W.2d 25, 27 (Iowa App. 1989). Common-law marriages in Iowa are as valid as ceremonial marriages. *In re Estate of Dallman*, 228 N.W.2d 187, 189 (Iowa 1975). In order to prove the existence of a common-law marriage, Ronda is required to prove three elements by a preponderance of clear, consistent, and

convincing evidence: (1) present intent and agreement to be married; (2) continuous cohabitation; and (3) general and public declarations that the parties are husband and wife. *In re Estate of Stodola*, 519 N.W.2d 97, 98 (Iowa App. 1994); *Conklin v. MacMillan Oil Co.*, 557 N.W.2d 102, 105 (Iowa App. 1996); *State v. Ware*, 338 N.W.2d 707, 711 (Iowa 1983). Gary's intent to be married to Ronda may be proved if his conduct justifies Ronda's belief he intended to be married to her. *See Conklin*, 557 N.W.2d at 105 ("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.").

We find the parties' behavior was consistent with common-law marriage. In reaching this conclusion, we focus particularly on the following undisputed evidence.

The couple bought a house together, raised the four children there, established a joint checking account, purchased automobiles together, and purchased a motor home together. Additionally, Gary insured Ronda and her children on his life and health insurance through his employment and identified Ronda on the application as his "common-law wife" in two different places on the form. He identified Ronda's children as his "step-children." On several occasions, he made statements to both Ronda and her mother he did not need a piece of paper to prove he was married.

Moreover, Gary and Ronda also held themselves out to the public as husband and wife. Gary acquiesced to Ronda's use of his surname, by never taking action to

disaffirm this representation made to others. *See In re Marriage of Gebhardt*, 426 N.W.2d 651, 653 (Iowa App. 1988) (stating husband's acquiescence to wife's use of his surname can be construed to be a declaration or holding out that the parties are married). He did not disaffirm Ronda was his wife. Officials at the school where Gary's children attended referred to Ronda as "Mrs. Shoemaker" and Gary did not correct them. The doctors' offices did not require a release from Gary for Ronda to authorize treatment of Gary's children. The couple also received mail addressed to both of them, some letters coming from Gary's workplace. Additionally, Gary listed Ronda and her children on his tax returns as dependents.

While it is true the two mortgages on the house Gary and Ronda owned were signed as single persons, the overwhelming evidence militates toward the establishment of a common-law marriage. Thus, a continuous cohabitation of the parties and holding out to the public as husband and wife "constitutes circumstantial evidence which tends to create a fair presumption that a common-law relationship existed." *Conklin*, 557 N.W.2d at 105 (citing *In re Marriage of Winegard*, 257 N.W.2d 609, 617 (Iowa 1977)). Although Gary now claims he did not intend to be married to Ronda, any representations Gary makes subsequent to the establishment of the common-law marriage cannot invalidate such marriage any more than such representations would invalidate a ceremonial marriage. *Stodola*, 519 N.W.2d at 100.

We will not elevate every long-term cohabitation to the status of a common-law marriage. However, under the unique facts presented in this case, and the

inferences drawn from the conduct of the parties, we find the relationship exceeded that of mere cohabitation. Therefore, given the substantial evidence supporting the common-law marriage, and given the fact Gary never affirmatively denied certain behaviors consistent with marriage, we conclude, Ronda met her burden of proof. We agree with the district court's conclusion of law that Ronda and Gary were common-law husband and wife.

II. Rehabilitative alimony. The district court awarded rehabilitative alimony to Ronda for three years, or until her death—whichever occurs first—in the amount of \$300. Alimony is an allowance to an ex-spouse in lieu of a legal obligation to support that person. *In re Marriage of Elbert*, 492 N.W.2d 733 (Iowa App. 1992). In awarding alimony, courts are to consider the factors delineated in Iowa Code section 598.21(3) (1995).

Rehabilitative alimony is appropriate here to allow Ronda to gain training and experience, while becoming self-sufficient in an effort to maintain her standard of living during the marriage. We note Ronda had only a high school diploma with no advanced educational skills. In June of 1994 Gary took over his father's company, Mink Marketing, Ltd., which required Gary to travel for extended periods of time. Gary's job was becoming increasingly demanding and the parties agreed Ronda should leave her employment to take care of the house and the children. Ronda also assisted Gary in his business by setting up his files, typing, making deliveries to the post office, receiving UPS items for him, answering the phone and taking messages

for Gary when he was on the road. In doing so, Ronda gave up her work, its attendant retirement benefits, and a possible promotion to enable Gary to fulfill his demanding work obligations and further his career. We therefore affirm the district court's alimony award.

III. Attorney fees. The district court ordered Gary to pay \$2300 toward Ronda's attorney fees. We affirm. Ronda requests Gary pay her attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We have determined that Gary pay \$1000 of Ronda's attorney fees on appeal; costs taxed to Gary.

Having carefully reviewed all the arguments on appeal, we affirm the decision of the district court.

AFFIRMED.