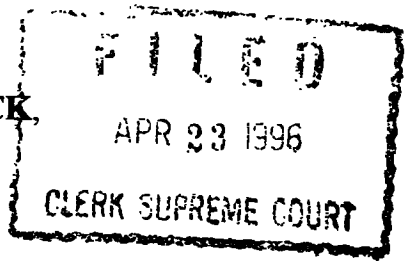
IN THE COURT OF APPEALS OF IOWA

No. 5-518 / 94-1090



IN THE MATTER OF THE ESTATE OF ROGER J. WENCK,

FERN LEIGH,

Petitioner-Appellant,

vs.

ALICE A. SCHRAD,

Respondent-Appellee.

Appeal from the Iowa District Court for Calhoun County, Allan L. Goode, Judge.

Appeal from district court order finding appellant was not the common-law wife of the decedent. **AFFIRMED.**

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant.

Mark S. Brownlee of Kersten & Carlson, Fort Dodge, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

CADY, J.

This is an appeal from a trial court order finding appellant had failed to prove the existence of a common-law marriage. Both parties agree this matter was tried in equity and our review is de novo. Iowa R. App. 4. We affirm.

The appellant, Fern Leigh, filed a petition for declaratory judgment against the estate of Roger Wenck and claimed she was Roger's common-law wife. The administrator of Roger's estate denied Fern's claim and a trial was held. The trial court found Fern and Roger had cohabited more or less continuously for several years. However, it concluded Fern did not prove there was a common-law marriage as there was no persuasive evidence to prove there were public declarations of a marital relationship.

Iowa recognizes common-law marriage. *In re Estate of Stodola*, 519 N.W.2d 97, 99 (Iowa App. 1994). A common-law marriage is as valid as a ceremonial marriage. *Id.* 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. *Id.*

Although we are not bound by them, we give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses. Iowa R. App. P. 14(f)(7). The trial court found Fern's testimony lacked credibility and corroboration when she claimed she and Roger had made public declarations of a marital relationship. The record supports this finding. At most, the testamentary and documentary evidence establishes Fern and Roger were close friends. Roger performed farm labor for Fern in exchange for a place to stay and

some financial support from Fern. Evidence such as Roger's arrest records and hospital records indicate he represented himself as a single person. Evidence of Fern's use of Roger's surname is of little weight given that she did not assume the use of the name until after Roger's death. Her claim they introduced and referred to one another as husband and wife was not supported by any credible evidence other than her own self-serving testimony.

Fern did not meet her burden to prove she and Roger had a present intent and agreement to be married, nor did she prove they had made general and substantial declarations that they were husband and wife. The trial court was correct in finding there was no common-law marriage. Because we agree Fern failed to satisfy her burden of proof based on our review of all the evidence, it is unnecessary to consider appellee's objections to the affidavits introduced by Fern to support her claim.

AFFIRMED.