IN THE COURT OF APPEALS OF IOWA

No. 0-590 / 99-1306
Filed November 20, 2000

IN THE MATTER OF THE ESTATE OF ALBERT J. SOUCEK, Deceased,

IOWA STATE BANK & TRUST CO., as Executor of the Estate of Albert J. Soucek, Deceased,

Plaintiff-Appellee,

vs.

MERRILEE S. GEORGE,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, William R. Eads, Judge.

Merrilee S. George appeals a district court's determination, in a ruling on the executor's petition for declaratory judgment, that she was not the decedent's common law wife and, therefore, was ineligible to take against the decedent's will. **AFFIRMED.**

R. Eugene Knopf of Walker, Knopf & Billingsley, Newton, for appellant.

Thomas D. Hobart of Meardon, Sueppel & Downer, P.L.C., Iowa City, for appellee.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

ZIMMER, J.

Merrilee S. George appeals from a judgment declaring that she was not the common law wife of Albert J. Soucek and, therefore, was not entitled to a share of his estate. We affirm the district court.

I. Background Facts and Proceedings. Albert Soucek, a retired Iowa City dentist, met Merrilee George at a birthday party in February 1985, when he was sixty-eight and she was thirty-two. Shortly thereafter, Albert and Merrilee became romantically involved and Merrilee moved into Albert's home. The couple lived together continuously until December 1995 when Albert asked Merrilee to leave his house and not return.

Albert died in June 1996, at the age of seventy-nine. His will was admitted to probate and the Iowa State Bank and Trust Company was named as his executor. Albert's will failed to name Merrilee as a beneficiary. Merrilee did not file an action to set aside the will and has never filed a formal claim in the estate. During the summer of 1997, more than one year after Albert's death, Merrilee wrote a letter to the executor requesting reimbursement of $495 for damaged or missing goods which allegedly belonged to her. The executor investigated the claim and issued her a check for $495 along with a release and satisfaction. Merrilee cashed the check, but did not sign the release.

In October 1997, Merrilee filed an election of surviving spouse, claiming she was Albert's common law wife. To resolve her claim, the executor filed a petition for declaratory judgment concerning the question of whether Merrilee was Albert's common law spouse. Following trial, the district court ruled Merrilee

had failed to meet her burden to demonstrate by clear and convincing evidence that she was Albert's common law wife. Merrilee has appealed from that decision.

II. Standard of Review. The district court tried this claim as a law action. Accordingly, our review is for correction of errors. Iowa R. App. P. 4. We will affirm if there is substantial evidence to support the district court's findings. Iowa R. App. P. 14(f)(1).

III. The Merits. Iowa recognizes common law marriage. *In re Estate of Stodola,* 519 N.W.2d 97, 98 (Iowa App. 1994). A common law marriage is as valid as a ceremonial marriage. *In re Estate of Dallman,* 228 N.W.2d 187, 189 (Iowa 1975). The party asserting the existence of a common law marriage, in this case Merrilee, must 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 substantial public declarations that the parties are husband and wife." *Stodola,* 519 N.W.2d at 98 (citations omitted).

We begin our analysis by noting that Merrilee does not claim the district court erred with regard to any evidentiary ruling. Her only contention on appeal is that the district court's decision is unsupported by the evidence.

Our review of the record reveals substantial evidence supported the district court's finding that Albert and Merrilee did not intend to marry. During the time Albert and Merrilee cohabited, he always filed his annual tax returns as a single taxpayer and claimed only himself as an exemption. Merrilee never

changed her last name on her identification cards during their period of cohabitation to reflect her alleged marital status. Neither Albert nor Merrilee told friends or relatives that they were married. After Albert's death, Merrilee did not declare herself to be his spouse on the Iowa Public Employee Retirement System application that she filed. Albert did not mention Merrilee in his will as his spouse. Finally, letters written by Albert to third parties about his relationship with Merrilee do not support an intention to be married. For example, in 1995, Albert wrote a letter to a judge in an attempt to spare Merrilee from a jail sentence for public intoxication. No reference was made to a marriage. Rather, Albert referred to his relationship with Merrilee as a "shared housing relationship."

In support of her contention that the parties intended to be married, Merrilee testified that they often registered as a married couple when they traveled. According to Merrilee she did all the household shopping and cleaning and paid the monthly bills from an account funded by Albert. Albert often allowed Merrilee the use of his credit card and he paid for most of their extensive vacations. Merrilee testified that Albert placed her name on some of his accounts during their period of cohabitation.

Merrilee offered into evidence a number of cards and letters exchanged between her and Albert. In none of these exhibits did Albert ever refer to Merrilee as his spouse or wife. Merrilee refers to herself as Albert's wife in only one card out of at least 100 that she sent to him. It is unclear from the evidence whether Albert ever saw that particular card. Albert and Merrilee obviously

enjoyed each other's company during an extended period of cohabitation. They expressed appreciation and fondness for each other in many ways. Albert also supported Merrilee financially while they lived together. However, the record falls far short of demonstrating by clear and convincing evidence that it was Albert and Merrilee's intention to be married. The record reveals nothing more than an arrangement to cohabit without the benefit of marriage. That arrangement does not establish a common law marriage or entitle Merrilee to share in Albert's estate.

Because the record includes substantial evidence supporting the district court's finding that Albert and Merrilee did not intend to marry, we affirm.

AFFIRMED.