

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: ESTATE OF JAMES COLEMAN, : IN THE SUPERIOR COURT OF
DECEASED : PENNSYLVANIA

APPEAL OF: DEATRICE COLEMAN : No. 535 EDA 2023

Appeal from the Decree Entered February 3, 2023
In the Court of Common Pleas of Bucks County
Orphans' Court at No(s): 2009-E0186

BEFORE: BOWES, J., NICHOLS, J., and KING, J.

MEMORANDUM BY KING, J.:

FILED FEBRUARY 6, 2024

Appellant, Deatrice Coleman, appeals from the decree entered in the Bucks County Court of Common Pleas Orphans' Court, which dismissed her appeal from the March 19, 2009 decree and opinion of the Register of Wills, and confirmed the decree and opinion of the Register of Wills denying Appellant's petition seeking letters of administration for the estate of James Coleman ("Decedent"). We affirm.

The relevant facts and procedural history of this case are as follows. On August 7, 2008, Decedent died intestate. Theodys Coleman (the son of Decedent and Appellant), subsequently sought and obtained the grant of letters of administration *pendente lite*. In December 2008, Appellant filed a petition seeking letters of administration, claiming Decedent was her common-law husband. In January 2009, Theodys Coleman submitted a notarized renunciation of letters of administration in favor of his mother, Appellant. Nevertheless, following a hearing, the Register of Wills denied

Appellant's petition on March 19, 2009, finding insufficient evidence of a common-law marriage.

Appellant filed a petition to appeal in the Orphans' Court on April 16, 2009. On June 16, 2009, the Court Administrator notified Appellant that the filing was deficient and identified corrective action necessary for the Orphans' court to act on the petition. On September 27, 2012, Decedent's daughter, April Coleman (born from another woman, Kathy Pollard),¹ e-mailed the Orphans' Court requesting a status update on Appellant's petition to appeal to the Orphans' Court. An agent of the court responded the next day, indicating that the case was inactive based on Appellant's failure to amend her petition.

On April 29, 2019, the Court Administrator issued Appellant another notice, indicating that Appellant had attempted corrective action but requesting Appellant to further amend her petition to address the date of Decedent's death, when letters of administration were granted and to whom, and evidence concerning the alleged common-law marriage. Appellant subsequently amended her filing in accordance with the Orphans' Court's directives.

On May 17, 2019, the Orphans' Court issued a citation to April Coleman and Decedent's other children directing them to answer the averments in Appellant's petition by July 1, 2019. April Coleman subsequently filed a *pro*

¹ Decedent has eight children. The mother of six of Decedent's children is Kathy Pollard, and Appellant is the mother of two of Decedent's children.

se response on behalf of her full siblings (born to Kathy Pollard), Darius Coleman, Krystalynn Coleman, Mercedes Coleman, Michael Coleman (also known as Ian Coleman), and Christian Coleman, which denied that Appellant was Decedent's common-law spouse.

On February 17, 2022, April Coleman filed a motion for a hearing. In her motion for a hearing, April Coleman asked the court to grant her letters of administration and to deny Appellant same. Following several continuances, the court held a hearing on November 16, 2022. At the hearing, the court heard testimony from Appellant and three of Decedent's children, Theodys Coleman (born to Appellant and Decedent), and Darius Coleman and April Coleman (born to Decedent and Kathy Pollard). The court deferred ruling on the petition following the hearing pending the submission of briefs from the parties.

On February 3, 2023, the court dismissed Appellant's petition to appeal and confirmed the March 19, 2009 decree of the Register of Wills denying Appellant's petition seeking letters of administration, on the basis of insufficient evidence to establish a common-law marriage. Appellant timely filed a notice of appeal on March 1, 2023. The next day, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant timely complied on March 23, 2023.

Appellant raises four issues for our review:

Whether the [Orphans'] Court erred in precluding the testimony of Appellant regarding the statements of

Decedent prior to his death.

Whether Appellant produced evidence sufficient to establish a common law marriage.

Whether the [Orphans'] Court erred in its finding that Appellant did not live in a state of constant cohabitation.

Whether Appellant [should] have been appointed administrat[rix].

(Appellant's Brief at 4).²

When an appellant challenges a decree of the Orphans' Court:

[O]ur standard of review requires that we be deferential to

² Both the Orphans' Court and April Coleman suggest on appeal that the doctrine of laches applies in this case to bar Appellant relief, based on the significant delay in adjudicating Appellant's petition to appeal from the decree of the Register of Wills. "The doctrine of laches is an equitable bar to the prosecution of stale claims and is the practical application of the maxim that 'those who sleep on their rights must awaken to the consequence that they have disappeared.'" **Fulton v. Fulton**, 106 A.3d 127, 131 (Pa.Super. 2014) (internal citation omitted). "[T]o prevail on an assertion of laches, respondents must establish: a) a delay arising from petitioner's failure to exercise due diligence; and, b) prejudice to the respondents resulting from the delay." **Id.** (internal citation omitted). "The question of whether laches applies is a question of law; thus, we are not bound by the trial court's decision on the issue." **In re Estate of Moskowitz**, 115 A.3d 372, 380 (Pa.Super. 2015), *appeal denied*, 634 Pa. 749, 130 A.3d 1291 (2015). Notably, the defense of laches is waivable. **See id.** (holding appellants waived any defense or argument based on laches for failure to raise such defense in response to estate's pleadings). **See also In re Estate of Scharlach**, 809 A.2d 376 (Pa.Super. 2002) (holding appellee waived defense of laches for failure to raise it in any pleading before Orphans' Court). Here, the Orphans' Court raised the issue of laches at the beginning of the November 16, 2022 hearing. Rather than delve into whether the doctrine applied, the court instructed the parties to brief the issue in their post-hearing briefs. Significantly, however, April Coleman did not assert the defense of laches in her response to Appellant's petition to appeal from the decree of the Register of Wills. Thus, we hold that April Coleman waived any claim of laches, and we proceed to review Appellant's issues raised on appeal.

the findings of the [O]rphans' [C]ourt.

[We] must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the [O]rphans' [C]ourt sits as the fact-finder, it determines the credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion. However, we are not constrained to give the same deference to any resulting legal conclusions. Where the rules of law on which the court relied are palpably wrong or clearly inapplicable, we will reverse the court's decree.

In re Estate of Schwartz, 275 A.3d 1032, 1033-34 (Pa.Super. 2022) (citing ***In re Staico***, 143 A.3d 983, 987 (Pa.Super. 2016), *appeal denied*, 641 Pa. 190, 166 A.3d 1221 (2017)).

In her first issue, Appellant argues that she and Decedent agreed to be married, lived together as husband and wife from 1979 until Decedent's death, had two children together, and raised those children and six other children fathered by Decedent. Appellant asserts that at the beginning of the hearing, the court erroneously prohibited her from testifying about Decedent's statements concerning their agreement to marry, relying on the Dead Man's Act. Appellant insists the Act³ does not apply in this case because the interests

³ Our Supreme Court has explained that the Dead Man's Act

renders incompetent testimony in a civil action by a witness to occurrences prior to the death of a party whose interest is adverse to that of the witness unless the issue or inquiry be *devisavit vel non*, or be any other issue or inquiry respecting the property of a deceased owner, and the controversy is between parties respectively claiming such

(Footnote Continued Next Page)

of Appellant and Decedent are not adverse. Appellant maintains that this is not a situation where a purported common-law spouse is advancing a claim to take against the will, where the decedent's interests as set forth in the will would be adverse to the party proposing the common-law marriage. Rather, because Decedent died intestate, Appellant submits that there is no conflict between the estate and Appellant; the only conflict is between Appellant and the intestate heirs.

Appellant acknowledges that under the Probate, Estates and Fiduciaries ("PEF") Code at 20 Pa.C.S.A. § 2209, a person who is or claims to be the surviving spouse shall not be a competent witness regarding the creation of her status as the surviving spouse, where the proffered surviving spouse seeks an election to take against the will. Appellant stresses that the PEF provides no similar provision where a decedent dies intestate. Appellant concludes the court erred by prohibiting her testimony regarding Appellant and Decedent's agreement to marry, and this Court must grant relief. We disagree.

As a preliminary matter, we observe that a Rule 1925 statement of errors must concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues; issues not

property by devolution on the death of such owner, in which case all persons shall be fully competent witnesses.

In re Estate of Stauffer, 504 Pa. 626, 629 n.1, 476 A.2d 354, 355 n.1 (1984) (citing 42 Pa.C.S.A. § 5930).

included in the Rule 1925 statement are waived on appeal. ***In re A.B.***, 63 A.3d 345 (Pa.Super. 2013). “Rule 1925 is a crucial component of the appellate process because it allows the trial court to identify and focus on those issues the parties plan to raise on appeal.” ***Kanter v. Epstein***, 866 A.2d 394, 400 (Pa.Super. 2004), *cert. denied*, 546 U.S. 1092, 126 S.Ct. 1048, 163 L.Ed.2d 858 (2006). Even if the trial court correctly guesses the issues the appellant raises on appeal and writes an opinion pursuant to that supposition, any issues not raised in the concise statement are still waived. ***Id.***

Instantly, Appellant raised two issues in her Rule 1925(b) statement, neither of which challenged the court’s restriction on her testimony or mentioned the Dead Man’s Act. (***See*** Rule 1925(b) Statement, filed 3/23/23, at 1-2). Consequently, Appellant’s first issue on appeal is waived for failure to preserve it for our review. ***See In re A.B., supra; Kanter, supra.***

In her second and third issues combined, Appellant argues that she presented sufficient evidence to prove a common-law marriage. Appellant asserts that she presented her own testimony, as well as testimony from her son, Theodys Coleman. Appellant maintains that Theodys testified that he always believed his parents were married, and that he was aware his last name was changed from his mother’s maiden name of Robinson to his father’s last name of Coleman. Appellant claims she submitted evidence of this name change. Appellant contends she filed a name change petition for Theodys, in which she represented that she and Decedent were husband and wife.

Appellant claims she also presented: (1) a 2005 federal income tax return showing she and Decedent filed jointly as married; (2) a 2007 federal income tax return showing she and Decedent filed jointly as married; (3) a notice of award of social security widow's benefits to Appellant; (4) Decedent's application to Prudential Insurance naming Appellant as his spouse; (5) a request for a change form from Prudential Insurance naming Appellant as Decedent's wife; and (6) a notice from a pension administrator naming Appellant as Decedent's wife.

Appellant highlights her testimony that both she and Decedent held themselves out in public as married. Appellant insists they filed joint income tax returns as husband and wife, they refinanced their home together, and Appellant was jointly liable for the mortgage payments with Decedent. Appellant submits that she and Decedent also represented themselves as a married couple to the Bucks County Department of Children and Youth in proceedings concerning some of Decedent's children with Kathy Pollard, after which those children came into the custody of Appellant and Decedent. Appellant suggests that she also represented to her employer that Appellant was her husband and Decedent received medical benefits through Appellant's employment. Likewise, Appellant avers that when Decedent was employed, Appellant enjoyed medical benefits through Decedent's employment. Appellant submits that the only evidence contrary to her own is that of Decedent's children by Kathy Pollard, where they testified that they did not

believe Appellant and Decedent were married.

Appellant further complains that the court improperly applied the “constant cohabitation” test. Appellant asserts that she cohabitated with Decedent for 25 years. Appellant concedes that Decedent was not monogamous throughout his relationship with Appellant. Nevertheless, Appellant asserts “[t]hat the situation was polygamous should not defeat [A]ppellant on the question of constant cohabitation.” (Appellant’s Brief at 15). Appellant acknowledges that Decedent had other children with Kathy Pollard during Appellant’s relationship with Decedent. Appellant claims Decedent never lived with Kathy Pollard, however, or identified her as his wife. Although Appellant admits to the “unconventional nature of the family or families associated with [D]ecedent” (*see id.* at 14), Appellant concludes the evidence of a common-law marriage was overwhelming in this case, and this Court must grant relief. We disagree.

Section 1103 of the Domestic Relations Code discusses the viability of common-law marriage in Pennsylvania and provides:

§ 1103. Common-law marriage

No common-law marriage contracted after January 1, 2005, shall be valid. Nothing in this part shall be deemed or taken to render any common-law marriage otherwise lawful and contracted on or before January 1, 2005, invalid.

23 Pa.C.S.A. § 1103. Prior to its abolition, “[a] common-law marriage [could] only [have been] created by an exchange of words in the present tense, spoken with the specific purpose that the legal relationship of husband and

wife is created by such exchange.” ***Bell v. Ferraro***, 849 A.2d 1233, 1235 (Pa.Super. 2004). “The burden to prove a common-law marriage rests on the proponent of the marriage and such a claim must be reviewed with great scrutiny.” ***Id.*** ***See also In re Estate of Rees***, 480 A.2d 327 (Pa.Super. 1984) (explaining that words *in praesenti* are usually required to establish common-law marriage relationship). “The common-law marriage contract does not require any specific form of words, and all that is essential is proof of an agreement to enter into the legal relationship of marriage at the present time.” ***Staudenmayer v. Staudenmayer***, 552 Pa. 253, 262, 714 A.2d 1016, 1020 (1998).

Generally, words in the present tense are required to prove common-law marriage. Because common-law marriage cases arose most frequently because of claims for a putative surviving spouse’s share of an estate, however, we developed a rebuttable presumption in favor of a common-law marriage where there is an absence of testimony regarding the exchange of *verba in praesenti*. When applicable, the party claiming a common-law marriage who proves: (1) constant cohabitation; and, (2) a reputation of marriage which is not partial or divided but is broad and general, raises the rebuttable presumption of marriage. Constant cohabitation, however, even when conjoined with general reputation are not marriage, they are merely circumstances which give rise to a rebuttable presumption of marriage.

Id. at 262-63, 714 A.2d at 1020-21 (internal citations, quotation marks, and footnotes omitted).

The rule permitting a court to find common-law marriage based on reputation and cohabitation alone is one of necessity, applied only in cases

where other proof is unavailable. ***Estate of Rees, supra***. “The ‘necessity’ that would require the introduction of evidence concerning cohabitation and reputation of marriage is the inability to present direct testimony regarding the exchange of *verba in praesenti*.” ***Staudenmayer, supra*** at 263, 714 A.2d at 1021. In other words, the rebuttable presumption in favor of common-law marriage based on sufficient proof of cohabitation and reputation of marriage is permitted as a remedial measure, where the parties are otherwise unable to testify regarding the necessary “words of present intent.” ***Id.*** at 264, 714 A.2d at 1021.

Instantly, the Orphans’ Court found insufficient evidence to establish a common-law marriage between Appellant and Decedent. The court explained:

Appellant testified that she “felt married” to Decedent since she was eighteen years old and “really married” once they moved into and resided together at 619 Winder Drive.⁵ Additionally, she testified that they filed joint tax returns, received medical coverage from each other, raised several biological and stepchildren together, and held themselves out to the community as husband and wife “all the time.”

⁵ Appellant never applied for a marriage license nor exchanged vows with Decedent. In response to the [c]ourt’s inquiry about why she did not apply for a marriage license and become married after she changed her last name to Coleman, she responded, “that was just us.”

However, the evidence clearly demonstrated a lack of consistency in cohabitation and an unclear divided reputation of marriage. The [c]ourt found Darius Coleman and April Coleman, son and daughter of [Decedent and Kathy Pollard], credible in their testimony that it was well known to the community that Decedent openly and simultaneously maintained relationships with both Appellant

and [their mother] Kathy Pollard as well as dual households and dual families within the same township. Darius Coleman testified that he saw his father for three days and then not for four days. He explained how, "there was the family over here; there was the family over there, and we visited back and forth. There were times when my brother and sister came to our apartment to spend the night and there were times when we went to their apartment to spend the night. The only common denominator was my father, not my mother, not his mother, our father. That was the only tie that bound us." Similarly, Appellee, April Coleman, testified that, "Growing up, my dad did maintain two homes. He spent time with us. He spent with them. I spent holidays, summers, weekends at my Dad's house at 619 Winder Drive. We had a blended family, and we were always sisters and brothers until my dad got sick. ... My dad always made us aware that we were siblings. He always did everything for one of us that he did for the other."

Moreover, when describing the visitation of his Father with Kathy Pollard and then with Appellant..., Darius testified that, "I would get to go and I would see my father interact with my brother's mom and I would see my father interact with my mom, so it was something that became normal until I made it un-normal in my own life." Additionally, [April Coleman] testified that, "I grew up knowing [Appellant]. I spent a lot of time there with [Appellant]. I knew who my mother was, and I knew who [Appellant] was. I knew that my dad played ping-pong." While the evidence indicated that [Appellant] lived with Decedent at 619 Winder Drive for many years, the other testimonial evidence undermined her claim that Decedent lived together continuously with her, therefore she failed to satisfy her burden as to constant cohabitation.

Likewise, Appellant failed to satisfy her burden as to a general reputation in the community as husband and wife. Despite the number of years living in Bristol Township, no friends, co-workers, or members from the community testified that Appellant and Decedent held themselves out as a married couple in the manner of how they conducted their lives. Moreover, just as the Register of Wills noted in its Opinion dated March 19, 2009, Decedent's participation in the applications and forms was uncorroborated by any

testimony from any public or lending officials who could have been deposed or subpoenaed. Likewise in the present *de novo* trial, Appellant did not offer evidence of disinterested witnesses to corroborate any of the documents she provided, to indicate that she and the Decedent had been married.

The [c]ourt found the documentary evidence and testimony insufficient to establish common law marriage by cohabitation and general reputation. While Appellant offered evidence that she and Decedent refinanced their home in 2006, the Deed, which shows [Decedent] as the sole grantee and owner, was never changed. Furthermore, the [c]ourt reviewed Decedent's application to The Prudential Insurance Company of America, naming Appellant as his spouse on the form, dated 1979, in which [Appellant] is listed under the space labeled "spouse proposed for coverage." Finally, an additional exhibit reviewed was a request for change form of insurance, dated 1981, which listed her as a beneficiary under the policy and only contains [Decedent's] signature.

[Appellant] also testified that she and Decedent filed tax returns as "married filing jointly" from 2005 until 2008-2009. At a later stage of the hearing, she testified that they had begun filing married joint taxes in 1981-1982, around the time they moved into the house. Regardless of the year they began filing tax returns allegedly as "married filing jointly," there were only two federal income tax returns from 2005 and 2007 produced at trial, despite their purported marriage of over twenty years. For the reasons set forth above, the [c]ourt did not find Appellant's testimony credible on this issue.

Likewise, there was conflicting testimony as to whether Appellant and Decedent shared bank accounts or maintained separate accounts. Pertinently, Appellant testified that they had these accounts her whole life yet she failed to produce any such records. Additionally, while Appellant offered evidence regarding how she has received survivor retirement benefits from Decedent's pension administrator as well as benefits from the United States Social Security Administration, both letters were issued well after the Decree from the Register of Wills finding that

Appellant was not the common law spouse of Decedent and there was no evidence presented at trial to support what particular information either the employer or agency relied upon when making the determination to issue benefits to Appellant. Thus, Appellant's documentary evidence fell well short of establishing ... that the parties truly contracted a common law marriage under Pennsylvania law. Accordingly, the [c]ourt correctly concluded that the Register of Wills did not err in finding that Appellant was not a proper person to serve as Administratrix of Decedent's Estate and the Register of Wills properly denied a Grant of Letters of Administration to Appellant because she did not satisfy her heavy burden of establishing a common law marriage....

(Trial Court Opinion, filed 4/6/23, at 6-9) (internal citations and some internal footnotes omitted).

The record supports the court's analysis. Here, Appellant admitted that she and Decedent did not exchange vows or have any ceremony to memorialize their relationship. Based on the court's ruling concerning application of the Dead Man's act, the court precluded Appellant from testifying to any statements Decedent might have made concerning their alleged exchange of words in the present tense to marry. **See Staudenmayer, supra.** In such absence, however, Appellant was permitted to introduce testimony and evidence concerning constant cohabitation and a general reputation in the community to raise a rebuttable presumption of common-law marriage. **See id.**

As the court noted, the testimony at the hearing was conflicting concerning whether Decedent constantly cohabitated with Appellant. In contrast to Appellant's testimony, Decedent's children Darius and April

Coleman confirmed that Decedent played “ping pong” and split his time between his household with Appellant, and his household with Kathy Pollard. The court found the testimony of April and Darius Coleman more credible than Appellant’s testimony on this point. Although Appellant complains the court improperly applied the “constant cohabitation” test, she cites no law on this issue and fails to explain how the court erred in this respect. Essentially, Appellant asks us to reweigh the testimony concerning constant cohabitation in her favor, which we will not do. ***See In re Estate of Schwartz, supra.***

Likewise, the record supports the court’s findings that Appellant failed to establish a reputation in the community that Appellant and Decedent were husband and wife. To the contrary, the evidence showed it was open to Decedent’s children and others in the community that Decedent maintained households with both Appellant and with Kathy Pollard. As the court observed, Appellant did not introduce testimony from anyone other than herself and one of her children on this point. On this record, we cannot say that the court erred or abused its discretion in deciding that Appellant failed to raise a rebuttable presumption concerning her common-law marriage to Decedent. ***See id.*** Thus, Appellant’s second and third issues on appeal merit no relief.

In her final issue, Appellant argues that if this Court agrees there was sufficient evidence of a common-law marriage, then this Court must grant her letters of administration. Appellant claims that a ruling against common-law marriage essentially suggests that she and Decedent engaged in fraud to

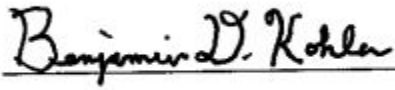
taxing authorities, a life insurance company, to Decedent's employer, to medical insurance companies, and to Decedent's pension administrator. Appellant further contends that in the absence of a ruling confirming common-law marriage, Decedent's estate still lacks a personal representative.⁴ Appellant emphasizes that she has been the sole person to seek responsibility to administrate the estate.

Instantly, we note that Appellant does not actually present an issue to be reviewed in this argument, but she merely suggests alleged implications of the court's decree. Notably, Appellant cites no law in this argument section. **See** Pa.R.A.P. 2119(a) (regarding required argument section in appellate brief). To the extent Appellant argues this Court must grant her letters of administration if it agrees there was sufficient evidence of a common-law marriage, we have already decided that Appellant did not satisfy her burden to prove a common-law marriage. Thus, this purported claim of error merits no relief. Accordingly, we affirm.

Decree affirmed.

⁴ April Coleman has represented that she is ready and willing to administer Decedent's estate.

Judgment Entered.

A handwritten signature in cursive script that reads "Benjamin D. Kohler". The signature is written in black ink and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 2/6/2024