

19CA1637 Estate of Yardley 11-25-2020

COLORADO COURT OF APPEALS

Court of Appeals No. 19CA1637
Jefferson County District Court No. 18PR30992
Honorable Todd L. Vriesman, Judge

In re the Estate of Jason Christopher Yardley, deceased.

Julia Rueanne Hulse,

Appellant,

v.

Jason Maurice Yardley,

Appellee.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE NAVARRO
Tow and Lipinsky, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced November 25, 2020

Gill & Ledbetter LLP, H.J. Ledbetter, Castle Rock, Colorado, for Appellant

Wilson Law Office PC, Brian Herbert Wilson, Jr., Bailey, Colorado, for Appellee

¶ 1 Appellant, Julia Rueanne Hulse, appeals the district court’s order removing her as personal representative of the estate of decedent, Jason Christopher Yardley.¹ Hulse also appeals the court’s order declaring that a common law marriage did not exist between Hulse and Yardley. She argues that the court abused its discretion by misconstruing and misapplying *People v. Lucero*, 747 P.2d 660 (Colo. 1987), when the court found that she had failed to produce objective evidence of a common law marriage. We agree. We therefore reverse the orders and remand for further proceedings.

I. Procedural Overview

¶ 2 On August 24, 2018, Yardley’s mother died. Eight days later, Yardley also died. He left no will. He was survived by Hulse and the father, who lived in Alaska.

¶ 3 In November 2018, Hulse applied for formal appointment as personal representative of Yardley’s estate, claiming to be his common law wife. After she was appointed, the father filed an

¹ Appellee, Jason Maurice Yardley, the decedent’s father, shares a name with the decedent. To avoid confusion, we refer to the decedent as “Yardley” and appellee as “the father.” Collectively, we refer to Hulse and Yardley as “the couple.” We intend no disrespect.

objection. He argued that he was unaware of a common law marriage and that he should be appointed as personal representative.

¶ 4 The district court held an evidentiary hearing on June 5, 2019, to determine whether a common law marriage existed. The court decided that Hulse failed to prove a common law marriage between her and Yardley and, accordingly, removed her as personal representative.

II. The District Court Abused Its Discretion by Finding That No Common Law Marriage Existed Between Hulse and Yardley

¶ 5 Central to the district court's ruling was the alleged absence of "objective evidence" of a common law marriage between Hulse and Yardley. While the court acknowledged that there was some evidence of a mutual public acknowledgement of the couple's marital relationship, the court characterized much of that evidence as "subjective" and, thus, insufficient. Because we conclude that the court misapplied *Lucero*, we hold that the court abused its discretion.

A. Standard of Review

¶ 6 Whether a common law marriage exists involves issues of fact and credibility, which are within the district court's discretion.

Lucero, 747 P.2d at 665. We review the court's factual findings for clear error and its determination of whether a common law marriage existed based on those findings for an abuse of discretion. *Marriage of Hogsett*, 2018 COA 176, ¶ 15. A district court abuses its discretion when, among other things, it misconstrues or misapplies the law. *Estate of Yudkin*, 2019 COA 25, ¶ 8 (*cert. granted in part* Sept. 30, 2019); *People v. Glover*, 2015 COA 16, ¶ 10.

B. Common Law Marriage in Colorado

¶ 7 The party claiming the existence of a common law marriage bears the burden to prove it by a preponderance of the evidence. *Lucero*, 747 P.2d at 664 n.6. "A common law marriage is established by the mutual consent or agreement of the parties . . . followed by a mutual and open assumption of a marital relationship." *Id.* at 663. In other words, a mutual agreement is not enough. To establish a common law marriage, "such conduct in

a form of mutual public acknowledgement of the marital relationship” is essential. *Id.*

¶ 8 “The very nature of a common law marital relationship makes it likely that in many cases” an express agreement to be married will not exist. *Id.* at 664. Because the “parties’ understanding may be only tacitly expressed,” the difficulty of proof is apparent. *Id.* The agreement’s existence may be inferred, however, from evidence of (1) cohabitation and (2) a general reputation in “the community in which the couple lives” that the parties hold themselves out as married. *Id.* at 664-65.

¶ 9 In evaluating those two factors, the parties’ specific behavior that may be considered includes maintaining joint banking accounts, purchasing and jointly owning property, using common surnames, and filing joint tax returns. *Id.* at 665.² As the supreme court in *Lucero* made clear, however, this is not an exhaustive list. *See id.* (“[T]here is no single form that any such evidence must

² A couple’s use of common surnames would seem to be less widespread — and thus less relevant — today than at the time *People v. Lucero*, 747 P.2d 660 (Colo. 1987), was decided. Still, this factor remains pertinent to the common law marriage determination unless and until our supreme court holds otherwise.

take.”). Rather, “any form of evidence that openly manifests the intention of the parties that their relationship is that [of marriage] will provide the requisite proof from which the existence of their mutual understanding can be inferred.” *Id.*; *In re Est. of Little*, 2018 COA 169, ¶ 20.

C. The Evidence and the District Court’s Ruling

¶ 10 At the hearing, the parties presented evidence of the following.

¶ 11 Hulse testified that the couple began dating in the summer of 2002, and by late fall they had moved in together. In 2010, the couple moved in with Yardley’s mother. Yardley proposed marriage to Hulse in February 2009. On September 4, 2012, the couple conducted a pagan-style wedding ceremony. The couple did not obtain a marriage license, and no one else attended the ceremony. Hulse did, however, inform the couple’s respective mothers, her brother, and the couple’s close friends about the wedding. According to Hulse, at this point the couple believed they were married at common law.

¶ 12 Hulse also presented testimony from seven witnesses who were among the couple’s community of friends. The witnesses testified to the following:

- The friends had each known the couple for a long time.
- The friends and the couple regularly socialized and considered themselves to be close.
- The friends rarely encountered Hulse or Yardley when one was without the other.
- When introducing themselves, the couple would say, “This is my husband, Chris” or “This is my wife, Julia.”
- When someone referred to Hulse and Yardley as “boyfriend” or “girlfriend,” the couple would correct that person and inform them that they were married.
- One friend testified that she was regularly invited to holiday celebrations with Hulse’s family and that Yardley would always be present at those celebrations.
- After the private marriage ceremony, Yardley sent a friend of the couple a text message informing her that “it was official they had done their ceremony and [Hulse] was his wife.”
- Each friend individually formed the belief, based on the above, that the couple were married.

- Some friends further testified that the couple had a reputation among their group as being married.

¶ 13 Finally, Hulse presented two documents as further evidence of the marriage: Yardley's death certificate listing Hulse as his "spouse," and a title certificate indicating that the couple owned a car as joint tenants with a right of survivorship.

¶ 14 For his part, the father testified that he was unaware of a common law marriage between the couple. He said that he had met Hulse only three times before Yardley's death and at no point during those meetings did the couple indicate they were married. On cross-examination, the father testified that he had not seen Yardley at all during the two years leading up to Yardley's death. And, when the father had been in contact with Yardley, the father saw him only once a year. Further, the father explained that, when he and Yardley were in contact, "[Yardley] didn't talk very much about his private life."

¶ 15 The father also presented testimony from three family members. Two of whom — Yardley's cousin and his uncle — testified that they were unaware of a common law marriage. They also said that they were not in regular contact with the couple.

¶ 16 The only family member who testified that she kept in regular contact with Yardley was his aunt, Karen Smart. She testified that she visited Yardley’s mother and would often encounter Yardley. Smart said that she met Hulse only once before Yardley’s death and Smart was unaware of a common law marriage.

¶ 17 Prior to Smart’s testimony, however, one of Hulse’s witnesses testified that, when Yardley was in the hospital before his death, Smart informed the hospital staff that Hulse was Yardley’s common law wife “[who] could make the medical decisions for him.” Smart denied making that statement. In her rebuttal testimony, Hulse — who had been at the hospital — claimed that Smart did indeed refer to her as Yardley’s common law wife.

¶ 18 After the close of evidence, the district court found that Hulse had failed to meet her burden of proving a common law marriage. Applying the *Lucero* test, the court found that the couple cohabitated, but that evidence of their mutual public acknowledgment of the marital relationship was lacking. The court stressed that *Lucero* required some “objective” evidence of a marriage to guard against fraudulent claims. In assessing the witnesses’ credibility, the court reasoned that, while it did not “find

any particular witness to be incredible and [not to] be believed in [their] entirety . . . sometimes witnesses were contradicted by other witnesses.”³ The court, however, characterized the testimony from the couple’s community of friends as merely “subjective” evidence.

¶ 19 While the court acknowledged that Hulse presented a death certificate and a car title, the court accorded them little, if any, weight because (1) Hulse had provided the information for the death certificate and (2) the title showing that the couple owned a car as joint tenants “doesn’t prove anything with regard to a marriage.” The court explained that Hulse had not presented evidence of joint tax returns, bank accounts, health insurance, employment forms, the use of common surnames, or the exchange of wedding rings. As a result, the court concluded that there was “no objective . . . evidence here” that “can lead me to conclude that . . . this is . . . anything more than . . . a vague assertion” of a common law marriage.

¶ 20 Hulse moved for reconsideration under C.R.C.P. 59(a). The district court reiterated that she had not met her burden to prove a

³ The court did not specify how the witnesses contradicted one another or how it resolved such contradictions.

“‘mutual’ and ‘open’ presentation to the community of ‘marriage.’”

In particular, the court (1) did not find useful the evidence of the couple’s marriage ceremony because it was private, rather than “‘open’ and public”; (2) could not find that the marital relationship was mutual because no one in Yardley’s family testified that he had acknowledged a marriage to Hulse; and (3) “no objective evidence” showed that Yardley considered himself married to Hulse.

Therefore, the court denied the motion.

D. Analysis

¶ 21 Hulse contends that the district court misconstrued *Lucero* when discounting her evidence as merely subjective and, thus, insufficient to show a common law marriage. We agree.

¶ 22 In *Lucero*, the supreme court explained that a party’s after-the-fact claim to be common law married is not sufficient. Rather, “such conduct in a form of mutual public acknowledgment of the marital relationship” is necessary to “to guard against fraudulent claims of common law marriage.” 747 P.2d at 663-64. “[A]dding the requirement of open marital cohabitation gives the assurance that some objective evidence of the relationship will have to be introduced in every case” to establish that the parties

considered themselves married. *Id.* at 664 (quoting Homer Clark, *Law of Domestic Relations* 48 (1968)).

¶ 23 Hence, the “objective evidence” discussed in *Lucero* is any evidence of “open marital cohabitation” — in other words, “any form of evidence that openly manifests the intention of the parties that their relationship is that” of a married couple. *Id.* at 664-65. Such objective evidence includes — *but is not limited to* — maintaining a joint banking or credit account, jointly owning property, using common surnames, or filing joint tax returns. *See id.* at 665. The district court was mistaken to the extent it considered objective evidence of common law marriage to include only those examples.

¶ 24 Objective evidence also includes evidence of community members’ observations and understanding of the couple’s relationship. *See id.* at 664-65. Relevant community members include “the neighbors and acquaintances with whom the parties associate in their daily life.” *Id.* at 665 (quoting *Taylor v. Taylor*, 10 Colo. App. 303, 304-05, 50 P. 1049, 1049 (1897)); *see also id.* (describing the relevant public as the “persons in the community in which the couple lives”).

¶ 25 As a result, the district court erred when it discounted as merely subjective evidence the testimony of the couple's community of friends. As mentioned, these community members testified to, among other things, hearing the couple refer to each other as husband and wife, knowing about the couple's wedding ceremony, and rarely seeing Hulse or Yardley when one was without the other. Based on those observations, these community members understood that Hulse and Yardley were married. And some friends testified that the couple had a reputation as being married.

¶ 26 Moreover, the district court misapplied *Lucero* when it seemed to disregard the title certificate indicating that the couple jointly owned a car. The court decided that the title certificate "doesn't go to the major issue that we have here and that is, are they married." To the contrary, the supreme court in *Lucero* opined that joint ownership of property does bear upon whether a common law marriage exists. *See id.* So, the title certificate provided additional objective evidence of a common law marriage.

¶ 27 Finally, we highlight the facts of *Lucero* itself. There, the evidence of a common law marriage consisted solely of the putative wife's testimony that (1) she and the putative husband considered

themselves to be married; (2) they held themselves out as married to their friends; and (3) they had lived together for five years and had a child. *Id.* at 662. The supreme court concluded that “the trial court was offered evidence that, if believed, *would have established the existence of a common law marriage.*” *Id.* at 665 (emphasis added).⁴

¶ 28 Comparatively, Hulse presented more evidence here. To reiterate — in addition to testifying that she and Yardley cohabitated and considered themselves to be married — she produced the car title already discussed and the testimony of seven witnesses from the couple’s community of friends. The friends testified that the couple (1) referred to themselves as husband and wife; (2) held a wedding ceremony; (3) would correct someone if they referred to the couple as “boyfriend” or “girlfriend”; and (4) had a reputation among their community as being married. The district court did not reject any of this evidence as incredible; the court did not make any specific credibility findings. Instead, the court found

⁴ Because the trial court gave no indication of its reasoning and did not say whether it found the putative wife credible, however, the supreme court remanded for further findings. *Lucero*, 747 P.2d at 665.

the evidence insufficient because the court mistakenly believed it was not objective evidence of a common law marriage.

¶ 29 Given all this, we conclude that the district court misapplied the law to the facts, thereby abusing its discretion.

III. Conclusion

¶ 30 The order finding no common law marriage between Hulse and Yardley is reversed. The order removing Hulse as personal representative is also reversed. The case is remanded for further proceedings consistent with this opinion. On remand, the district court shall make specific findings about which testimony the court credits or discredits and then apply the legal standards articulated herein to the facts as found by that court. *See id.*

JUDGE TOW and JUDGE LIPINSKY concur.