

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

O. C. No. 1589 DE OF 2008

Control No. 083746

Estate Of JAMES N. DENNIS, Deceased

OPINION SUR DECREES

O'KEEFE, ADM. J.

James N. Dennis ("Decedent") died of pancreatic cancer on February 8, 2008, at the age of sixty-three (63). At the time of his death, Mr. Dennis lived with a woman named Delores Parker.

Mr. Dennis was survived by two (2) children named DeShawn Dennis and Ja'Nae Dennis. Ja'Nae Dennis is the daughter of the Decedent and Delores Parker. DeShawn Dennis is the Decedent's son from a previous relationship with a woman named Paulette Strickland.

Mr. Dennis had drafted a holographic will to dispose of his assets, including his house, car, life insurance and clothes, at death. This holographic will, dated June 27, 2007, made several specific bequests but did not contain a residuary clause and did not appoint an executor of the estate.

On April 8, 2008 Delores Parker filed a Petition for Letters of

Administration and to Probate the Holographic Will with the Register of Wills. The assets declared in the Petition include the “personal property” of the Decedent, valued at \$16,000.00, and a house on Medford Road in Philadelphia.

DeShawn Dennis, the Decedent’s son, filed a Caveat to this Petition with the Register of Wills. In this Caveat, DeShawn argued that Delores was not the Decedent’s common law spouse at the time of his death. Accordingly, she would not have any claim to the Letters of Administration. DeShawn further asserted in his Caveat that the purported holographic will submitted to the Register by Delores was a forgery.

On September 24, 2008, a hearing was held before the Register of Wills to consider the merits of DeShawn’s objections to Delores’ request for Letters of Administration. At the hearing, both DeShawn and Delores were represented by counsel. The Deputy Register was presented with the testimony from ten witnesses on the issue of the common law marriage between the Decedent and Delores Parker. The Register also heard evidence on the issue of the authenticity of the holographic will, and received into evidence a copy of the purported will and a letter from the decedent written in his own handwriting.

On November 10, 2008, the Register of Wills issued a Decree dismissing DeShawn’s Caveat, admitting the Decedent’s holographic document dated June 27, 2007 to probate as the Decedent’s Last Will and Testament and appointing Delores Parker to serve as the Administratrix CTA of the Estate of James Dennis, Deceased.

On November 23, 2008, DeShawn appealed this November 2008 decision of the Register of Wills to this Court.

On February 11, 2009, DeShawn filed a Petition for Citation directed to Delores Parker to show cause why this Court should not revoke her Letters of Administration CTA and appoint him as the Administrator of his father's estate. In said Petition, DeShawn argued that Delores Parker failed to prove the existence of the common law marriage between herself and the Decedent during the September 24, 2008 hearing before the Register of Wills.

On April 17, 2009, upon consideration of the aforementioned Petition for Citation, this Court directed Delores Parker to show cause why the Appeal of DeShawn Dennis, with regards to the portion of the Decree of the Register of Wills dated November 10, 2008 which granted Delores the Letters of Administration CTA, should not be sustained and, Letters of Administration CTA be granted to DeShawn.

On June 1, 2009, Delores filed an Answer to DeShawn's Petition for Citation. In her Answer, Delores argued that the Register's decision to appoint her as Administratrix of the Decedent's estate, based on the finding that she was the Decedent's common law wife, was made after a full hearing before the Register. Delores contended that DeShawn's appeal only extended to her status as common law wife and not to the authenticity of the decedent's Will.

On September 29, 2009, a conference was held before me with Milton Savage, Esquire, Counsel for DeShawn and Richard Sotlan, Esquire, Counsel for Delores.

On November 19, 2009, a hearing was held before this Court on the pleadings and petitions in this matter. At said hearing, this Court heard the brief arguments of Mr. Savage and Mr. Soltan in favor of the positions of their respective clients, DeShawn and Delores. No testimony was offered by either side. Mr. Savage offered the Transcript of the September 24, 2008 Hearing before the Deputy Register of Wills, which was entered into evidence as Exhibit A-1.

The Register of Wills has the exclusive jurisdiction over the grant of letters of administration, 20 Pa. C.S.A §901, and the selection of the person who is initially granted letters of administration is normally within the province of the Register. 20 Pa. C.S.A §711(12) and 901. It is commonplace that the Register of Wills acts in a judicial capacity when he grants letters of administration. *Schulz Estate*, 392 Pa. 32 (1956).

Where a Register's choice is disputed, that dispute may be submitted on appeal to the Orphans' Court. 20 Pa. C.S.A §908 (1); *Brokans v. Melnick*, 391 Pa. Super. 21 (1989); the remedy for any person aggrieved by the Register's decision is an appeal to the Orphans' Court. 20 Pa. C.S.A §711(18). The Orphans' Court has exclusive power over appeals from actions of the county registers of wills, pursuant to 20 Pa. Cons. Stat. § 711(12), *Estate of Keefauver*, 359 Pa. Super. 336 (1986). When an appeal is taken from the register's grant of letters of administration, the authority of the Orphan's Court is limited to a review of his discretion as that of "an inferior judicial officer." *Phillip's Estate*, 293 Pa. 351 (1928).

It is apparent, therefore, that the matter of the appeal from the Decree of

the Register of Wills is not to be tried *de novo*. Instead, the burden is on the petitioner to show an abuse of discretion by the Register. *Martin Estate*, 5 Pa. D & C. 4th at 425. See also *Simmon's –Carton Estate*, 63 Bucks L. Rep. 52, 57 (Bucks Cty. O.C. 1993)(“We recognize that our scope of review is limited to an abuse of discretion”). Thus we are limited to reviewing the record before the Register, and the scope of our review is whether or not the Register abused his discretion. The burden is therefore upon DeShawn to show an abuse of discretion on the part of the Register when he held that Delores Parker was the common law wife of the Decedent and directed that the Letters be granted to her.

The Register of Wills is charged with the duty of granting Letters of Administration to the person so entitled. The Probate, Estates and Fiduciaries Code provides that letters of administration in the estate of a person dying intestate shall be granted to those persons entitled under intestate law. In the instant case, the Register granted letters to the Decedent’s common law wife, Delores Parker.

The Register of Wills has always had the inherent power to annul or vacate letters granted to a person not so entitled. *Phillips Estate, supra*. Section 20 Pa.C.S. § 3155, “Persons entitled”, controls the grant of letters of administration when a Decedent dies intestate:

“(b) LETTERS OF ADMINISTRATION-- Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

(1) Those entitled to the residuary estate under the will.

(2) The surviving spouse.

(3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.

(4) The principal creditors of the decedent at the time of his death.

(5) Other fit persons.”

According to the aforementioned 20 Pa. Cons. Stat. Ann. §3155(b), DeShawn, as the son of the Decedent, is inferior to a surviving spouse under intestacy. DeShawn argued that Delores was never the common law spouse of the Decedent, therefore DeShawns’ claim to the Letters under intestacy is superior to Delores’.

The Register heard and determined this claim to Letters on September 24, 2008. At the hearing before the Register, he was presented with the testimony from ten witnesses. These witnesses included: Vincent Parker and Daniel Parker, the brothers of Delores Parker, Ja’Nae Dennis, the daughter of Dolores and the Decedent, Monwella Gaddy Miles and Linda Knellinger, neighbors of the Decedent and Dolores, Carol Ann Dennis, the sister of the Decedent, Theresa Smith, co-worker and alleged lover of the Decedent, Paulette Strickland, mother of DeShawn and Joycelyn Parker, mother of Delores. All witnesses testified to their personal knowledge of the relationship between the Decedent and Delores Parker.

Also introduced at the hearing was the holographic will of the Decedent.

The will, dated June 27, 2007, read as follows, in pertinent part:

“I JAMES N. DENNIS wish for my life Insurance monies to go to my common law wife of 22 years. Delores L. Parker, and Daughter Ja Nae N. Dennis and my Son De Shawn P. Dennis.”

On November 10, 2008, upon consideration of the testimony and exhibits before him, the Register issued a Decree, admitting the Decedent’s holographic document dated June 27, 2007 to probate as the Decedent’s Last Will and Testament and appointing Delores Parker to serve as the Administratrix CTA of the Estate of James Dennis, Deceased.

The Register did not file an opinion in support of his decree. Consequently, the court does not have a written justification from the Register for his decision. However, the notes of testimony offered at the hearing before the Register was reviewed by this Court. This Court is of the opinion that the notes of testimony offered are properly before this Court for its inspection.

This Court finds nothing in the record of the proceedings before the Register to indicate that the Register abused his discretion or that his finding that Delores was the Decedent’s common law wife at the time of his death was not supported by substantial evidence, as argued by the DeShawn. In fact, the testimony before the Register amply supports a finding that Delores was the common law of the Decedent at the time of his death, and that, as the surviving spouse of the Decedent she had a paramount right to the Letters of Administration.

Although Pennsylvania law no longer permits couples to enter into

common law marriage, Pennsylvania courts do recognize common law marriage agreements entered into prior to January 1, 2005. Ms. Parker alleges in her petitions that she and the Decedent entered into a common law marriage twenty three years prior to his death, in 1985. In determining the validity of Ms. Parker's claim to being the Decedent's surviving spouse, this Court acknowledges that common law marriages are a fruitful source of perjury and fraud. Wagner Estate, 398 Pa. 531, 533 (1960).

Common law marriage may be proven by eye-witness testimony, including the testimony of either of the parties to the contract, if competent, and admissions by a party, either by words or acts, which would raise an implication of marriage. McGrath's Estate, 319 Pa. 309, 314. Further evidence may be submitted for or against the existence of a common law marriage includes the wearing of wedding rings, In re Estate of Garges, 474 Pa. 237, 243 (1977), and introducing each other as husband and wife, McGrath, 319 Pa. at 317.

Where the common law marriage contract is difficult to prove, this Court acknowledges that a presumption of marriage arises where there has been constant cohabitation and a general reputation of marriage. Manfredi Estate, 399 Pa. 285, 291 (1960). However, constant cohabitation conjoined with general reputation does not equal a marriage – it merely gives rise to a rebuttable presumption of marriage. Staudenmayer v. Studenmayver, 552 Pa. 253, 263 (1998). The presumption is rebuttable by evidence of actions inconsistent with marriage, showing no intent to be married.

This Court finds that the evidence presented before the Register and this Court supports a finding that the Decedent and Ms. Parker resided together continuously for the duration of their relationship. The Decedent's daughter, Ja'Nae Dennis, brother-in-law, Vincent Parker, neighbors Monwella Gaddy Miles and Linda Knellinger, along with Ms. Parker's uncle, Daniel Parker and the Decedent's sister, Carol Ann Dennis, all testified before the Register that the Decedent and Ms. Parker lived together, continuously, for twenty three years - from 1985 until Mr. Dennis' death in 2008. Although DeShawn testified to the contrary, his testimony referenced the years prior to 1985, before the Decedent and Ms. Parker began their relationship.

DeShawn's testimony was contradicted by the testimony of the couple's neighbors, Monwella Gaddy Miles and Linda Knellinger. These neighbors testified to the fact that the Decedent and Ms. Parker had a reputation in the community as a married couple, and held themselves out as husband and wife. N.T. 46. Ms. Miles testified before the Register that she lived next door to the Dennis family in Bensalem for fourteen years. N.T. 28. Ms. Miles stated that during this time the Decedent and Ms. Parker lived together continuously and uninterruptedly in the house next to hers. N.T. 29. Ms. Knellinger lived up the road from the Decedent and Ms. Parker on Medford Road for the four years prior to the Decedent's death. N.T. 44. During that time, Ms. Knellinger testified that she knew of the Decedent and Ms. Parker to be residing together continuously. N.T. 44. The testimony and evidence therefore support the notion that the Decedent and Ms. Parker shared a home continuously during the length of their relationship.

Furthermore, it has been established that the Decedent and Ms. Parker had a general reputation of being husband and wife. The Register heard testimony from several witnesses, including the neighbors and family of the Decedent and Ms. Parker, that the two called each other husband and wife (N.T. 30), attended neighborhood parties as a couple (N.T. 42-43), and that together with their daughter Ja’Nae held themselves out as a family unit. Decedent’s sister, Carol Ann Dennis, testified that the Dennis family has considered Delores the Decedent’s wife and a member of their family for the last twenty- three years. N.T. 73-74. She testified that the Dennis family “always called them” husband and wife. Id.

The Register heard a plethora of testimony that the couple shared a general reputation as a family, and that those who knew them referred to them as such. The couple’s daughter, Ja’Nae Dennis, testified that her Dennis cousins called her mother “Aunt Dee-Dee”. Ms. Parker’s brother, Vincent Parker, told the Register that the Decedent would introduce Vincent as his “brother-in-law.” Ms. Parker’s Uncle, Daniel, testified that within the Parker family, the Decedent and Ms. Parker were viewed “as a family, a unit, husband and wife and children.” N.T. 49. Ms. Parker’s mother, Jocelyn Parker, testified before the Register that the Decedent and Ms. Parker “addressed each other and thought of each other as husband and wife.” N.T. 60. S he further stated that Delores wore a ring, given to her by the Decedent, to symbolize their relationship. N.T. 61.

DeShawn contends that Delores Parker has not provided clear and convincing evidence of her common law marriage to the Decedent. He asserts that there is a

profound lack of evidence of the marriage, and, combined with the unrebutted testimony of a sexual relationship with another woman and the absence of any official record or piece of mail addressed to the Decedent and Ms. Parker as husband and wife, the Court must conclude that the Decedent and Ms. Parker did not live together as husband and wife. This Court finds that each of DeShawn's arguments fail, and that DeShawn has not proven that the Register abused his discretion by directing that Letters of Administration be granted to Delores Parker as the Decedent's common law wife.

This Court finds that the weight of the evidence supports the notion that the parties were in fact common law married. Testimony was presented before the Register of Wills that the Decedent and Ms. Parker introduced each other as husband and wife. The final will of the Decedent refers to Ms. Parker as his "common law wife of 22 years." Evidence was introduced that the Decedent and Ms. Parker exchanged wedding rings to symbolize their union, and that they continued to wear said rings as a token of their marriage. Furthermore, the Decedent's uncle (N.T. 52), mother-in-law (N.T. 61) and sister (N.T. 78) all testified that they regularly addressed mail to the Decedent and Ms. Parker as "Mr. and Mrs. James Dennis".

The Court further finds that the testimony of Teresa Smith, that she met the Decedent at the post office in 1986 and began a sexual relationship with the Decedent in 1988 which continued until the time of his death, has not been substantiated by any corroborating evidence or testimony. The Register heard from nine other witnesses on the subject of the relationship between the Decedent and

Ms. Parker, and none of them, including DeShawn himself, even mentioned a relationship between the Decedent and Ms. Smith.

This Court finds that the evidence and testimony submitted was sufficient to support the finding of the Register of Wills that a valid common law marriage existed between the Petitioner and Decedent. This Court finds that the Register did not abuse his discretion when he directed that Letters of Administration C.T.A. be granted to Delores Parker, as the common law wife of the Decedent. Accordingly, for all of the above reasons, this Court is of the opinion that the appeal from the November 10, 2009 Decree of the Register should be dismissed.

Appropriate Decrees will be entered in accordance with the foregoing discussion, findings and holdings.

Dated: _____

O'KEEFE, ADM. J.