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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000340-MR

JIMMY D. MAYFIELD

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE ROBERT E. GILLUM, JUDGE
ACTION NO. 03-CI-00411

ALMA LEE MAYFIELD AND
BRUCE L. MORROW

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; MINTON, JUDGE; MILLER, SENIOR
JUDGE.¹

COMBS, CHIEF JUDGE: Jimmy Mayfield appeals from a December 19,
2003, judgment of the Pulaski Circuit Court which determined
that the appellee, Alma Lee Mayfield, was lawfully married to
Jerry Mayfield (Jimmy's father), at the time of Jerry's death.

¹ Senior Judge John D. Miller, sitting as Special Judge by Assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and
KRS 21.580.

In seeking a reversal of the judgment, Jimmy argues that the marriage of Alma and Jerry was void because it was never recorded as required by KRS² 402.220. In the alternative, he contends that Alma is estopped from claiming any benefit arising from her marriage to Jerry. As we have found no error, we affirm.

On October 10, 1995, Jerry Mayfield and Alma Cook obtained a marriage license and were married that same day at the home of Jerry's brother. The marriage ceremony was performed by an ordained minister in the presence of friends and relatives. Following the ceremony, Jerry and Alma lived together for some period of time. Although they eventually separated, neither obtained a dissolution of the marriage.

As a result of injuries he sustained in an automobile accident, Jerry died on March 17, 2003. He died intestate. In addition to Alma, Jerry was survived by two sons: the appellant, Jimmy Mayfield, and Bruce Morrow. Almost immediately after Jerry's death, a dispute arose concerning Alma's status as Jerry's widow. On April 23, 2003, she filed a lawsuit seeking a declaration that she was Jerry's spouse in order to be appointed as the administratrix of Jerry's estate pursuant to KRS 395.015 and 395.040(1).

² Kentucky Revised Statutes.

An evidentiary hearing was conducted before the trial court on December 17, 2003. No evidence was offered to dispute the exchange of wedding vows between Alma and Jerry. The only conflict in the evidence focused on the fate of the marriage certificate following the ceremony. The minister testified that Alma took the certificate and told him that she "would take care of it." The minister also explained that someone at the wedding had informed Alma that she would lose her disability benefits if the Social Security Administration learned of her marriage. Alma testified that Jimmy took the certificate and that she did not know what became of it after the wedding.

After hearing all of the evidence, the court concluded that Alma and Jerry were indeed legally married at the time of Jerry's death.

When celebration of a marriage is proved as in this case, the law presumes, in the absence of proof to the contrary, mutual consent of the Parties, reality of consent, pass to the parties and everything necessary to the creation of a legal marriage. Further, it is then held that the presumption of legality of a marriage is one of the strongest known to law. *Griffith v. Lunney*, [300 Ky. 66,] 187 S.W.2d 432 (1945). Further, when the celebration of a marriage is once shown, the contract of marriage, the capacity of parties, and, in fact, everything necessary to the validity of the marriage in absence of proof to the contrary will be presumed. *Vest v. Vest*, 28 S.W.2d 782 ([Ky.] 1930). (Judgment at p. 2.)

Following the entry of the judgment, Jimmy filed a motion asking the court to make a specific finding that Alma took possession of the license certificate and that she alone was responsible for preventing the minister from recording the document. That motion was denied, and this appeal followed.

Jimmy argues that the trial court was required to declare the marriage invalid. He bases his argument on the fact that the parties failed to cause the marriage certificate to be duly recorded. He maintains that recording is necessary "for obtaining the legal benefits of marriage." (Appellant's brief, p. 9.)

We disagree that failure to record the certificate of marriage voids or invalidates an otherwise valid marriage. KRS 402.220 reads:

The person solemnizing the marriage or the clerk of the religious society before which it was solemnized shall within one (1) month return the license to the county clerk of the county in which it was issued, with a certificate of the marriage over his signature, giving the date and place of celebration and the names of at least two (2) of the persons present.

Our duty in construing this statute is:

to ascertain and give effect to the intent of the General Assembly. We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used.

Beckham v. Board of Education, 873 S.W.2d 575, 577 (Ky 1994).

The language of KRS 402.220 does not indicate a legislative intent that compliance with the statute is essential to the creation of a valid marriage. The statute places the duty solely on the person who performed the ceremony to deliver the marriage certificate to the county clerk. Failure to perform that duty may result in a fine. KRS 402.990(13). Thus, we conclude that KRS 402.220 and its companion, KRS 402.230, which outlines the duties of the county clerk with respect to marriage certificates, are designed to create and to maintain public records of marriages. No duty to act nor a penalty for failure to act is imposed on the marrying couple.

The limited purpose of KRS 402.220 is reinforced by negative inference when read in conjunction with KRS 402.020, which enumerates marriages considered to be prohibited or void. While KRS 402.020 includes on its roster a marriage "not solemnized or contracted in the presence of an authorized person or society," it makes no mention of the recording of the marriage certificate as affecting the validity of a marriage. Our research has revealed no indication in any of the statutes relating to marriage that the Legislature intended that the validity of a marriage be conditioned upon the recording of the marriage certificate.

Jimmy next argues that the trial court erred in giving Alma the benefit of the presumptions in favor of the validity of marriage. He contends that such presumptions "do not come into play here, but instead deal with instances where legitimacy is an issue." (Appellant's brief, p. 9.) This argument is refuted by Griffith v. Lunney, supra, cited by the trial court in its judgment.

In Griffith, the decedent left all of his property to his wife. The decedent's mother challenged the admission of the will into probate on the basis that her son and his wife were not lawfully married. As in this case, Griffith involved a challenge by an heir-at-law to the status of the decedent's marriage to his spouse based on a lack of record proof that a marriage had occurred. The court held:

Marriage is favored by the law; and we have written that a marriage may be proven by parole, that a presumption of marriage may arise from reputation, that when a marriage ceremony is shown to have been performed the validity of the marriage, in the absence of proof to the contrary, will be presumed, and that **the presumption of legality is one of the strongest known to the law.** [Citations omitted.] Here, we not only have [the wife's] testimony that a ceremony was performed, but uncontradicted proof that she and Lunney, after December 10, 1930, openly lived together as man and wife and were recognized as such by all their friends and acquaintances. (Emphasis added.)

Id. at 187 S.W.2d, at p. 433. Similarly, the case before us involved ample proof that a ceremony was performed in the presence of several witnesses and that Alma and Jerry lived together as husband and wife following the ceremony. Thus, the trial court did not err in giving Alma the benefit of the presumptions in favor of the validity of her marriage. On the contrary, we are convinced that it would have erred in failing to afford her the benefits of the presumptions under the unequivocal statement of the law in Griffith, supra.

Finally, Jimmy argues that Alma should be estopped from claiming that she and Jerry had a valid marriage because she herself prevented the marriage certificate from being recorded. While the trial court did not find it necessary to determine whether Alma or Jerry took control of the marriage certificate, we do not agree that Jimmy can invoke the equitable doctrine of estoppel in arguing to invalidate the marriage -- even if we were to assume that Alma did intercept the certificate.

According to Jimmy's witnesses, Alma seized the marriage certificate in order to conceal her marriage from the Social Security Administration in order to safeguard her disability benefits. Alma did not attempt to hide the marriage from Jerry's family -- including Jimmy. It was undisputed that

the marriage was celebrated at the home of Jerry's brother before many of Jerry's relatives.

In order to prevail on a theory of estoppel, there must be proof not only of an intent to induce inaction on the party to be estopped, but also of reasonable reliance by the party claiming the estoppel.

Gailor v. Alsabi, 990 S.W.2d 597, 604 (Ky. 1999). Jimmy has not demonstrated that he was deceived by Alma nor that he relied to his detriment on the formal recording of the marriage certificate -- a recording allegedly frustrated by Alma's deliberate retention of the certificate. Thus, the necessary elements of estoppel are not present.

The judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

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