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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

IN THE MATTER OF THE ESTATE OF)
ROBERT BODNAR, Deceased:)

FEB 28 2025

PATRICK R. BODNAR,

JOHN D. HADDEN
CLERK

Appellant,

Rec'd (date)	2-28-25
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Case No. 121,505

vs.

BINA ISLAM,

Appellee.

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE THOMAS RIESEN, SPECIAL JUDGE

REVERSED

Matthew R. Gile
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For Appellant

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For Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Patrick Bodnar, son of the deceased, Robert Bodnar, appeals the court's decision that Robert and appellee, Bina Islam, were parties to a common-law

marriage. Upon review, we find that Bina did not produce clear and convincing evidence of a common-law marriage to Robert and thereby reverse.

BACKGROUND

Robert and Bina met in February 2015 while both were attending a graduate program at the University of Oxford in England. Shortly thereafter, the pair began dating. Bina and Robert graduated from Oxford in 2016. At some point in 2017, Robert purportedly told Bina that they were engaged. However, Robert and his ex-wife Mary, were not divorced until December 31, 2018.

From 2017 to 2021, the couple continued their relationship, at times dating long distance. In July 2021, Bina traveled to meet Robert in Oklahoma and then he and Bina traveled together to Annapolis, Maryland, where Robert's parents were living. Robert's brother, Tom Bodnar, and sister, Anne Poling, were also in Annapolis at this time.

Bina and Robert traveled to Annapolis, in part, to have an Islamic wedding ceremony, also called a nikah. At the nikah, they were issued an Islamic marriage certificate by an imam. Despite completing the nikah, Bina and Robert never obtained a marriage license or certificate issued by any governmental entity. Indeed, according to some evidence below, Robert and Bina selected this specific imam because he was willing to perform the ceremony without a resulting, legally recognized marriage.

After the nikah, Bina and Robert returned to Robert's home in Oklahoma until Bina had to return to the United Kingdom or Pakistan on August 13, 2021, due to visa issues. Bina planned to return to Oklahoma in three or four weeks,

but because of Covid-19 restrictions, she was unable to return until December 3, 2021.

On March 10, 2022, Robert took his own life in Bina's presence. On March 16, 2022, Patrick, Robert and Mary's son, filed a petition for letters of administration seeking to be appointed as administrator and asserting that Robert did not have a spouse or a will.¹ Bina filed a response on March 23, 2022, alleging that she should be legally determined to be the spouse of Robert and filed her own petition for letters of administration. Shortly thereafter, a will, executed on March 8, 2019, was located. The will appointed Anne, Robert's sister, as personal representative.² Anne filed her petition for probate, appointment of personal representative, determination of heirs, and issuance of letters on April 18, 2022. Bina again filed an objection; however, the court appointed Anne as the personal representative of Robert's estate and admitted the will to probate. After months of motion practice, the court entered a scheduling order on August 23, 2022, setting a trial date to determine the marital status between Bina and Robert at the time of Robert's death.

A four-day bench trial was held beginning on January 26, 2023, and ending June 15, 2023. Several witnesses testified, including Bina, Patrick, and Anne. The court ultimately found that Bina and Robert were parties to a

¹ Based on the testimony below, it does not appear Patrick was aware of Robert and Bina's romantic relationship, and he was not invited to the nikah.

² The will does not reference Bina in any capacity.

common-law marriage and that Bina was therefore Robert's surviving spouse. Patrick appeals.³

STANDARD OF REVIEW

"On appellate review, a trial court's determination of the existence of a common law marriage will not be disturbed if it is not clearly against the weight of evidence." *Standefer v. Standefer*, 2001 OK 37, ¶ 11, 26 P.3d 104, 107 (quoting *Mueggenborg v. Walling*, 1992 OK 121, ¶ 5, 836 P.2d 112).

ANALYSIS

Patrick contends that the trial court's decision to find that Bina and Robert were in a common-law marriage was clearly against the weight of the evidence. Oklahoma courts have long held that, "a common law marriage is formed when 'the minds of the parties meet in consent at the same time.'" *Standefer*, 2001 OK 37, at ¶ 11 (quoting *Reaves v. Reaves*, 1905 OK 32, 82 P. 490). Traditionally, a common-law marriage exists in Oklahoma when there is "(1) an actual and mutual agreement between the spouses to be husband and wife; (2) a permanent relationship; (3) an exclusive relationship; (4) proved by cohabitation as man and wife; and (5) the parties to the marriage must hold themselves out publicly as husband and wife." *Matter of Estate of Whitehouse*, 2020 OK CIV APP 59, ¶ 17, 479 P.3d 230, 234 (citing *Matter of the Estate of Stinchcomb*, 1983 OK 120, ¶ 10, 647 P.2d 26). However, *Standefer* clarified that "elements" two through five are mere *evidence* of the required mutual agreement or consent to enter into the

³ The personal representative is not a party to this appeal.

marital relationship, and not required categories of proof. *Standefer*, 2001 OK 37, ¶ 11 (emphasis supplied). The party seeking to establish a common-law spousal relationship has the burden to demonstrate the existence of the marriage by clear and convincing evidence. *Id.*

Our Supreme Court has described the clear-and-convincing standard “as the measure of degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.” *Sides v. John Cordes, Inc.*, 1999 OK 36, 981 P.2d 301, 306, n.15. Further, the Court has cited Oklahoma Civil Jury Instruction 3.2, which provides that the trier of fact “must be persuaded that the proposition on which the party has the burden of proof is **highly probable and free from serious doubt.**” *Id.* (citing OUJI-Civil 3.2.) (emphasis added); *see also In re N.L.*, 2015 OK CIV APP 24, ¶ 11, 347 P.3d 301, 303. Upon review, we find that Bina failed to prove the existence of a common-law marriage by clear and convincing evidence. While we have no doubt that Bina and Robert intended to enter an ecclesiastical marriage, we find serious doubt in this record that the parties reached an agreement to enter into a relationship governed by our civil law.

On appeal, Patrick argues that Bina did not present any evidence that she and Robert agreed to enter a civil contract for matrimony. In support of his argument, Patrick cites Oklahoma Supreme Court case *Williams v. Williams*, 1975 OK 163, 543 P.2d 1401. The *Williams* Court noted that a matrimonial ceremony may have two resulting aspects: “(1) a civil contract between the parties granted by law and (2) [a]n ecclesiastical obligation imposed by God as

interpreted by the beliefs and conscience of the parties.” *Id.* ¶ 3. Therefore, according to Patrick, *Williams* stands for the proposition that the civil contract of marriage is separate and apart from religious or ecclesiastical marriage and that the state could only have an interest in governing the civil aspect of marriage. *Williams* also recognizes the possibility, as is the case here, that the parties might intend to be bound in matrimony pursuant to religious covenants without entering into a legally binding civil contract.

Title 43 O.S. § 1 defines marriage as a “personal relation arising out of a civil contract to which the consent of the parties legally contracting and of entering into it is necessary.” While perhaps most couples who subscribe to a particular religion intend to have their union recognized by both God and the state, there was a dearth of evidence below that Robert, who of course can no longer speak for himself, wished to have his relationship with Bina to be governed by the state of Oklahoma. Indeed, there was convincing evidence presented to the contrary.

Most notably, Anne testified regarding a text thread between herself, Tom, and Tom’s wife that occurred on July 6, 2021, the day before the nikah. Tr. (June 14, 2023), 24-27, *Respondent’s Exhibit 57*.⁴ Tom, in response to Anne’s inquiry as to why Bina and Robert decided to use a mosque in Washington, D.C., for their nikah ceremony as opposed to one much closer to their parents’ house in Annapolis, Maryland, stated:

⁴ The authenticity of this exhibit was not objected to by any party.

It was the only imman (Muslim priest) they could find.... They want a blessing but no legal marriage

Holy blessing so moms are happy with them living together but no legal marriage so they don't have to combine bank accounts, taxes, she doesn't have to immigrate to US.

Id. at 36 (verbatim). Anne responded that there were a few mosques that were closer to their parents' house. *Id.* Tom replied, "Yes, but they weren't willing to do a religious ceremony without a legal marriage." *Id.* Anne decided not to attend the nikah when she found out "it was just a blessing" *Id.* at 27. Anne further testified that Bina had explained that the reason for the ceremony was because "in Muslim culture for the woman to have intimate relations with a man they need to have a blessing." *Id.* at 28. Anne also asserted that she never heard her brother refer to Bina as his wife, *id.* at 29, and also testified that Robert told her that he never wanted to marry again. *Id.* at 12.

Bill Chikirivao, a close friend of Robert's, testified that Robert told him that he did not want to be married to Bina. Tr. (January 27, 2023), 107. Bill also testified that after his divorce, Robert stated that he would never get married again. *Id.* at 110. Bill also asserted that he overheard an argument between Bina and Robert during which Bina exclaimed "you won't even marry me!" and also that after another fight between the couple Robert indicated to Bill that he was glad they never married and he hoped Bina would return to London. *Id.* at 114-15. Lastly, he affirmatively testified that at the time of Robert's death, to his knowledge, their status was "boyfriend and girlfriend." *Id.* at 188.

Angela Bodnar, Patrick's mother, attended the nikah and also testified at trial. She testified that Robert told her, while at the mosque for their nikah ceremony, that he and Bina were not married. Specifically, he stated, "we are not married, this is paperwork they need to do the nikah, but if we had wanted to get married we would have gotten a license and got married." *Id.* at 142. Angela also testified about a conversation she had on her husband's phone with Anne, in which Angela stated that Bina and Robert were drawing up paperwork to have separate money and property. *Id.* at 148, *Personal Representative Exhibit 2*.

To be sure, there was evidence admitted at trial in support of Bina's claim of a common-law marriage.⁵ However, the evidence discussed above casts serious doubt as to whether Robert ever intended to enter into a state-recognized

⁵ Bina testified at length and insisted that she and Robert intended to be married. Salman Ahmed, Bina's neighbor in London who participated in the nikah via video call, testified that he believed the couple to be married. Bina's younger brother testified that he was aware of the couple's engagement as early as 2018, but that the wedding had to be postponed due to health problems of Bina, and then the Covid-19 pandemic. Bina testified that Robert put a down payment on land near Keystone lake—which the evidence suggested the parties intended to take title to as joint tenants—was a "haqmhr," which is akin to an Islamic dowery. A June 7, 2021, text from Robert to Bina was introduced in which Robert stated: "You come here. Your fiancé will take you jewelry shopping. We will prepare our home. Make sure we have a photographer and then we'll go to the ceremony and become husband and wife forever." Tr. (January 26, 2023), 87, *Respondent's Exhibit 3*. Bina then introduced their "Islamic marriage certificate" which was issued by the mosque after their nikah. The certificate reads "this agreement of marriage is in accordance with the word of Allah the holly Quran and the Sunnah of the Prophet Muhammad agreed on this date 9th of July 2021." *Id.* at 93, *Respondent's Exhibit 1* (verbatim) (capitalization modified). Bina discussed a letter she received from Robert's uncle, Ernest Taylor, which stated that he was "so glad" Robert and Bina were "marrying." *Id.* at 97, *Respondent's Exhibit 22*. Tom also testified via a deposition entered into evidence that, after the nikah, Robert held Bina out as his wife. Tr. (January 27, 2023), 75. Joby Hughes, Robert's lawyer and friend, also testified that Robert told him that he and Bina were married. *Id.* at 75. While we acknowledge this evidence, and more, offered by Bina, we do not find it—especially in light of the contemporaneous text messages discussed above explaining the purpose of choosing the specific mosque that was used for the nikah—to amount to clear and convincing evidence that Robert intended to enter into a marriage governed by the State of Oklahoma.

marriage with Bina. We find that, on balance, the evidence shows that Robert never intended to marry again after his divorce and that the couple went out of their way to participate in a ceremony with no legal ramifications.

This conclusion is underscored by testimony about how the couple intended to keep their money and property separate, which is confirmed by the lack of documentary evidence that would normally support a finding of common-law marriage. Oklahoma courts have held that often the most persuasive evidence of the existence of a common-law marriage is documentary evidence wherein the couple listed each other as “spouse” on legal documents. *See Matter of Phifer’s Estate*, 1981 OK CIV APP 21, 629 P.2d 808, 809 n.9, (holding that there was no common-law marriage between parties where there was “ample documentary evidence that the deceased considered himself to be an unmarried man right up to the time of his death. These included income tax returns, mortgages, loan applications and deeds.”)

In the present case, documentary evidence of the couple’s married status is notably lacking. For example, Robert filed his taxes separately for the year 2020, and no evidence was presented at trial that he and Bina ever filed taxes jointly or that Robert acknowledged Bina as his spouse to any government entity. *Personal Representative’s Exhibit 2*. *See also Oklahoma Dep’t of Mental Health & Substance Abuse v. Pierce*, 2012 OK CIV APP 73, ¶ 19, 283 P.3d 894, 899 (citing the fact that the parties continued filing taxes separately even after signing an affidavit acknowledging their common-law marriage as evidence that there was no common-law marriage). Further, despite apparently wishing to be added to

the deed of the Edmond home, Bina never obtained joint ownership of their Edmond home and there was no evidence presented at trial that Bina and Robert jointly owned other property together.⁶ While there was evidence presented at trial that Bina signed a receipt as Bina Bodnar and that she had a bill sent to their home addressed to Bina Bodnar; upon review, there is a general lack of documentary evidence that would support Bina's argument that she and Robert were in a common-law marriage.

There was clear and convincing evidence presented below that Bina and Robert intended to be in an ecclesiastical marriage. However, the evidence was equally clear that the parties specifically avoided entering into a marriage recognized by law. This was demonstrated by their decision to carefully select a mosque with an imam who was willing to officiate their ceremony without requiring legal formalities, by the many witnesses who testified about Robert's intent to never marry again, and by the lack of documentary evidence supporting Bina's claim. Upon review, we find that the trial court's finding that the parties were married under the law of the State of Oklahoma was against the clear weight of the evidence and thereby reverse.⁷

REVERSED.

⁶ The purchase of the Keystone lake plots was never completed.

⁷ Because we find in favor of Patrick on the issue of common-law marriage, we need not address his second proposition of error—that the court erred when it failed to determine that Bina either destroyed, hid, or failed to preserve evidence because Robert's laptop was missing—or his third proposition of error—that the trial court erred when it deprived him of an opportunity to reply to Bina's closing argument.

WISEMAN, P.J., and FISCHER, J., concur.

February 28, 2025