

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

FILED

December 17, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

LOIS HILL PAYNE, )  
 )  
Plaintiff/Appellee ) 03A01-9903-CH-00094  
 )  
v. ) Appeal As Of Right From The  
 ) MONROE CO. CHANCERY COURT  
DONALD P. PAYNE and )  
TERRY L. PAYNE, ) HON. EARL H. HENLEY  
 ) CHANCELLOR  
Defendants/Appellants )

**For the Appellant:**  
Eugene G. Hale  
Athens, TN 37303

**For the Appellee:**  
J. Lewis Kinnard  
Madisonville, TN 37354

REVERSED and  
REMANDED

Swiney, J.

## OPINION

\_\_\_\_\_ In this case, Lois Hill Payne (“Plaintiff”) sued Donald and Terry Payne (“Defendants”) seeking a judicial declaration that she was the common law wife under Georgia law of Defendants’ father, Cleo (“Tony”) Payne, now deceased; that, as such, she was entitled to a marital share of real property owned by the father and sons as tenants in common; and that a quitclaim deed from Tony Payne to his sons of his interest in this real property was void. The Trial Court found for the Plaintiff on all issues and ordered the property sold for partition. While not precisely as stated by the parties, the issues we address in this appeal are as follows: (1) Did the Trial Court err in determining that a common law marriage existed between the Plaintiff and the late Tony Payne; and (2) If the response to issue number one is “no”, did the Trial Court err in holding the quitclaim deed from Payne to the Defendants was void. For the reasons stated in this Opinion, we reverse the judgment of the Trial Court.

## BACKGROUND

\_\_\_\_\_ Plaintiff met Tony Payne in Florida in 1975, at her job as a bartender. He moved into her Florida home on January 1, 1978, and shortly thereafter obtained a divorce from his wife. Payne and Plaintiff lived together in her mobile home in Florida for ten months, then moved to a farm near Tampa, where they lived together for three and one-half years. Plaintiff testified that she and Payne had gotten married in Florida but never filed the marriage license:

We was all out New Year’s Eve and got married while we was all drinking. Something was said that made me a little mad, and the man that married us was a friend of ours, and I got them back from him and tore them up before they got to the courthouse.

She also testified they bought several other marriage licenses before they moved to Tennessee, but they never went through another ceremony.

While they were living together in Florida, Plaintiff and Payne traveled to Tennessee on two or three occasions, stopping en route in Georgia to spend the night in different motels. Plaintiff testified that on those occasions Payne registered them at the motels as “Tony and Lois Payne.”

Payne and Plaintiff were both originally from Tennessee and wanted to be near their

families, so they decided to move back to Tennessee. In May 1982, Payne and two of his seven children, sons Don and Terry Payne (Defendants), purchased a twenty acre tract of unimproved land as tenants in common. A certificate of deposit belonging to son Don Payne was used as collateral on the loan. Mortgage payments on the property were made by Payne and his sons. In June 1982, Plaintiff and Payne moved from Florida to Tennessee, and Payne and his sons completed the loan documents to close the deal on the property. Plaintiff testified that "I was to have a lifetime dowry there." Payne and Plaintiff began building a house on the property with help from Payne's children. Plaintiff began referring to herself as Lois Payne, "[b]ecause I felt in my heart that I was married to him."

Plaintiff's exhibits at trial included a property insurance bill for 1985-86 listing the property owners as "C. P. Payne and Wife Lois Payne," a federal income tax receipt for 1989 listing the taxpayers as "Cleo P. Payne & Lois J. Payne," who filed the return as "married filing jointly," and a motor vehicle title listing the owners as "C. P. Payne or Lois Payne."

Thirteen years later, on April 14, 1995, Payne, who had learned he was terminally ill with lung cancer, quitclaimed his interest in the real property at issue to his sons, the Defendants. Defendant Don Payne testified that, "we had talked about her living on the place, and I'm not going to say we didn't." Tony Payne died in May 1995. Plaintiff testified that Payne was of sound mind up to the time of his death. She further testified:

Q: Did you and Mr. Payne ever discuss his making out a will?

A: Yeah. But he said he didn't need to do that, said he could trust the boys and they had promised. And both of them told me afterwards that they intended to see that I was taken care of, what their daddy wanted. So I never realized I had a problem.

Plaintiff testified that after Payne's death, his sons told her that she could continue to live on the property so long as she paid the taxes and insurance and kept the property up. However, the house was soon broken into and she became afraid to live there alone. In November 1995, she moved to a homeless shelter in Etowah, where she was provided a free room in exchange for volunteer service to the shelter. After she left, the condition of the house and property deteriorated, in part because

Plaintiff collected clothes and furniture for the needy and had no place to store them, so she stored them in and around the house. When someone came on the property and uncovered the items, they got wet from rain, which ruined the donations and made the property look unkept.

Defendant Don Payne testified that, although he and his father had talked about Plaintiff living on the property, “. . . when that place became a dump for the whole community up there, we had a problem with it.” He said that he and other relatives spent three days cleaning up the garbage and digging a ditch to bury the junk that had been dropped there. Plaintiff testified that she was ill and could not move the stored items, and could not mow the grass because someone took the three riding lawnmowers.

Defendants obtained counsel, who wrote Plaintiff a letter on January 28, 1997, informing her that Defendants were interested in “doing something with the house” and asking her to advise him if she had any claim of any kind so “we could see if we could get something done about that.” On the same date, the quitclaim deed of April 14, 1995 was recorded at the register’s office, on advice of Defendants’ counsel. Plaintiff did not respond to the letter, and Defendants filed a detainer warrant on April 10, 1997. When subsequently deposed, Plaintiff testified that she claimed an interest described as “what their daddy wanted for me . . . a home as long as I lived as long as I did not remarry.”

Plaintiff then filed this “Complaint for Declaratory Judgment and Partition” in Chancery Court, asking the Court to find that she and Payne were common law husband and wife and that the quitclaim deed was null and void.

### DISCUSSION

\_\_\_\_\_ Our review is de novo upon the record, accompanied by a presumption of the correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Rule 13(d), T R A P.; *Davis v. Inman*, 974 S.W.2d 689, 692 (Tenn. 1998). A Trial Court’s conclusions of law are subject to a *de novo* review. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 28 (Tenn. 1996).

The Trial Court found:

It is admitted that a common law marriage could not have been created in the State of Tennessee or Florida. However, until 1997 cohabitation in the State of Georgia, under certain conditions, could create a common law marriage. During the course of the relationship between the parties, they on different occasions spent nights together at motels in Georgia as they toured between Tennessee and Georgia. In analyzing all of the facts of the cause, the Court is of the opinion that a common law marriage was created, and the Plaintiff is, in fact, the widow of Cleo P. Payne.

When the Trial Court was requested by Defendants to provide “a more detailed finding of fact and conclusions of law as to how this marriage was created and why the deed was invalid,” the Trial Court filed a second Memorandum Opinion which stated:

The Petitioners [sic] allege that Cleo P. Payne and the Plaintiff, Lois Hill Payne, were married in Tampa, Florida in 1992 [sic-1982], but their marriage license was never registered with the proper Florida authorities. This Court holds that the alleged Florida marriage never occurred. The two would buy the license, then they would go through a partying stage and never went through with the marriage; consequently, this allegation is of no validity. The next question arises as to whether a common law marriage existed that would afford Lois Hill Payne widow’s rights in real estate that was owned by Cleo P. Payne, the decedent, and his sons, Donald P. Payne and Terry L. Payne. A number of year ago, money was borrowed by the sons to purchase this property for their father. It is admitted that different ones of the three made payments toward the loan.

It is first necessary to make a decision as to whether or not a common law marriage existed. At the time the events were occurring in the mid 1970’s, Florida and Georgia each held that if a party held another out to be his legal spouse and they cohabited together, then a common law marriage resulted. The Court believes it was 1996 that Georgia changed its law relative to such. In the instant case, however, there was no doubt that these parties held themselves out to be husband and wife, and not only did they do so in the respective states, but their action was corroborated by the fact that they lived together on the disputed land for nearly twenty years. As a result of the facts involved in this case, the Court holds that a common law marriage existed.

Although a common law marriage cannot be established by conduct within the State of Tennessee, it can be proved by a showing of the required elements in a jurisdiction where such a marriage is sanctioned. *In re Estate of Glover*, 882 S.W.2d 789, 789-90 (Tenn. Ct. App. 1994). The Trial Court’s comment that “they lived together on the disputed land for nearly twenty years” cannot be the basis for finding a common law marriage, since “a common law marriage cannot be established by *conduct within the State of Tennessee.*” *Id.* The Trial Court in this case was thus required to find a common law marriage existed between these parties in Florida or Georgia, if at all. No common law marriage entered into after January 1, 1968 is valid in Florida. F.S.A. § 741, 211 (Laws 1967). Plaintiff

admits that the parties never resided in Georgia. Their contact with the Georgia was limited to two or three nights spent in Georgia motels while traveling through Georgia.

In Georgia, “[i]n order for a common law marriage to come into existence, the parties must be able to contract, must agree to live together as man and wife, and must consummate the agreement.” *In Re: The Estate of Teresa K. Wilson*, No. A98A2230 (Ga. App., filed February 17, 1999). “When the alleged marriage is unlicensed and nonceremonial, the burden is on the proponent to prove that a common law marriage existed.” *Baynes v. Baynes*, 219 Ga. App. 848, 849, 467 S.E.2d 195 (Ga. 1996). Further, the Georgia Court of Appeals has recently held that:

When the relationship between the parties begins as an illicit arrangement, the burden is on the party asserting the validity of the marriage to show that the illicit relationship ended and that the parties did actually enter a marriage contract. In the case of a common law marriage, “This may be done by . . . such circumstances as the act of living together as man and wife, holding themselves out to the world as such, and repute in the vicinity and among neighbors and visitors that they are such, and indeed all such facts as usually accompany the marriage relation and indicate the factum of marriage . . . . Of particular import is that ‘such legal relationship cannot be partial or periodic.’

*Wright v. Goss*, 229 Ga. App. 393, 394, 494 S.E.2d 23 (1997), *cert. denied* Feb. 20, 1998.

In the case before us, Plaintiff testified that she and Payne stayed overnight several times between 1979 and 1982 in motels in the State of Georgia, and that she saw him register them as a married couple at the motels. The testimony of the Plaintiff shows they were, at that time, still involved in an illicit relationship. This is clear from her response when asked to explain why, if she and Payne were holding themselves out as a married couple, her name was not placed on the 1982 deed to the property:

Because Mr. Payne told me he would see that I was always taken care of, that I would always have a home as long as I didn’t marry someone else.

This discussion between Plaintiff and Tony Payne shows the *absence* of an intent by Tony Payne to enter a marriage contract with Plaintiff as of 1982, when they moved to Tennessee. Rather, the uncontested proof is that Tony Payne wanted to provide Plaintiff “a home as long as she didn’t marry someone else.”

Further, as mentioned earlier in this Opinion, Plaintiff and Tony Payne had on several occasions obtained a marriage license but never followed through with a marriage ceremony. As found by the Trial Court, Plaintiff and Tony Payne would buy a marriage license, go through a “partying stage” and never

get married. While this is not dispositive of whether there was or was not a common law marriage under Georgia law, it is relevant to whether they held themselves out to the world as already being married.

Since the parties were still involved in an illicit relationship and had not contracted to be man and wife when they moved to Tennessee in 1982, they were not married according to Georgia common law at that time. There is no evidence that they ever resided or stayed overnight in Georgia after they moved to Tennessee in 1982. Accordingly, because Plaintiff has failed to prove “that the illicit relationship ended and that the parties did actually enter a marriage contract” *in Georgia*, we find the Plaintiff has failed to prove the existence of a common law marriage under the laws of Georgia.

As shown in the record before us, Tony Payne was of sound mind up to the time of his death. He could have taken legally enforceable steps to provide a home for Plaintiff upon his death, but he did not do so. His trust in his sons’ promise to provide a home for Plaintiff, if that promise was made, apparently was misplaced.

Because we find that Plaintiff was not the common law wife of Tony Payne, we need not determine in this case whether the quitclaim deed to Defendants is valid. Plaintiff has no legally enforceable interest in the property regardless of the validity of that deed. Absent any legally enforceable interest in the property, Plaintiff has no standing to contest the validity of the quitclaim deed.

### CONCLUSION

                     The judgment of the Trial Court is reversed and the case is remanded to the Trial Court for all appropriate purposes consistent with this Opinion and for collection of the costs below. The costs on appeal are assessed against Plaintiff.

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D. MICHAEL SWINEY, J.

CONCUR:

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HOUSTON M. GODDARD, P.J.

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HERSHEL P. FRANKS, J.