

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 125,617

In the Matter of the Common-Law Marriage of  
MARGARET M. HEIDKAMP and EDWARD RITTER.

SYLLABUS BY THE COURT

1.

The Kansas Supreme Court has jurisdiction to review a district court determination that a couple had a common-law marital relationship and to either approve or disapprove that determination.

2.

The essential elements of a common-law marriage in Kansas are: (1) capacity of the parties to marry; (2) a present marriage agreement between the parties; and (3) a holding out of each other as husband and wife to the public.

3.

The party asserting a common-law or consensual marriage bears the burden of proving the existence of the marriage.

Appeal from Johnson District Court; RHONDA K. MASON, judge. Opinion filed March 31, 2023.  
Affirmed.

*Kelsey E. Johnson*, of Overland Park, was on the brief for appellant Margaret Heidkamp.

No other parties appear.

The opinion of the court was delivered by

ROSEN, J.: This is an uncontested action and uncontested appeal in which Margaret M. Heidkamp seeks judicial confirmation that she lived in a common-law marital relationship with Edward Ritter, who is deceased.

Margaret (Peggy) Heidkamp met Edward (Ed) Ritter in 1993, and the two started dating. While the two were visiting Dublin in November of 1996, Ed proposed to Peggy and gave her an engagement ring. The two had the understanding, albeit a legally incorrect one, that they were in a common-law marital relationship after being together for seven years. They believed they did not have to do anything further to formalize their marital status.

On September 8, 2003, the two mutually agreed they were a married couple, and Peggy moved into the same residence as Ed. Their discussion at that time led them to conclude their relationship was permanent and they should consider themselves husband and wife. At no time after 2003 did the two ever live apart from each other or have any romantic relationships with other people. The couple had no children together.

The couple jointly paid for all utilities at their primary residence. Utility bills listed Peggy's last name as "Ritter." Insurance declarations were issued to the couple jointly. They jointly agreed on where to make charitable contributions and made joint charitable contributions up to the time of Ed's death. Beginning in September 2003, Peggy and Ed started paying a monthly stipend of \$300 from a joint banking account to Peggy's parents. That amount increased over time, and the couple provided additional financial and other support to her parents.

The couple jointly owned multiple real estate interests over the course of their relationship and continuing into 2022, including their primary residence. They also jointly held several bank accounts and credit cards. While each of them held individual banking accounts, they both had access to the other's accounts and could transfer funds to and from each other's personal accounts. They shared passwords with each other on all banking accounts. Both Ed and Peggy had IRA accounts, and they listed each other as spouses and primary beneficiaries on their accounts.

Ed and Peggy traveled extensively together and attended each other's family gatherings at holidays, where they presented themselves as a married couple. Their families considered them both to be part of their families. Peggy's nieces and nephews considered Ed to be their uncle. Ed's mother, Diana Ritter, considers Peggy to be her daughter-in-law and named Peggy her power of attorney, the executor of her will, the trustee of her trust, and the sole beneficiary of her estate. Peggy's father considered Ed to be his son-in-law. Acquaintances of both Ed and Peggy considered them to be a married couple. Medical professionals at appointments they attended together referred to Peggy as Ed's wife and Ed as Peggy's husband.

Ed died on February 10, 2022, at the age of 67. Ed's mother, Diana Ritter, survived him. The death certificate listed Ed's marital status as "married," and his residence at the time of his death was the house he shared with Peggy. The death certificate named Peggy as his surviving spouse.

On June 10, 2022, Peggy filed in district court a petition to declare relationship as common-law spouse. The district court conducted an evidentiary hearing, and no witnesses or parties appeared to oppose Peggy's petition. Diana Ritter entered a voluntary

appearance but waived both notice and appearance at the evidentiary hearing, and, in fact, testified on Peggy's behalf.

After hearing the testimony of Peggy, family members, and family acquaintances, the court concluded that Peggy and Ed were married at common law. The court specifically found that "they were of legal age and had the capacity to be married and held themselves out to the community as a married couple." The court concluded that Peggy and Ed "were in a valid common-law marriage under the statute and common law of Kansas as of September 8, 2003," and the relationship continued until his death.

Peggy thereupon filed notices of appeal to the Court of Appeals. The notices stated:

"This appeal, to the Kansas Court of Appeals, is for certification purposes only based on the grounds that ' . . . the IRS and federal courts are not bound by lower state court decisions but must instead merely give those decisions proper regard. On matters of state law, deference is given to decision rendered by the state's highest court.' *In re Estate of Keller*, 273 Kan. 981, 985 (Kan. 2002), citing *Commissioner v. Estate of Bosch*, 387 U.S. 456, 465 (1967)."

After the appeal was docketed in the Court of Appeals, this court transferred the case from the Court of Appeals under K.S.A. 20-3018(c).

*The validity of the Heidkamp-Ritter marriage.*

The district court found, based on uncontroverted evidence, that Ed and Peggy lived in a common-law marital relationship. Although she prevailed in district court, she has appealed to this court to affirm the ruling.

Such an appeal is necessary based on the United States Supreme Court's holding in *Commissioner v. Estate of Bosch*, 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886 (1967). *Bosch* held that the Internal Revenue Service and federal courts are not bound by lower state court decisions. On matters of state law, deference is given to decisions rendered by the state's highest court. 387 U.S. at 465.

This court has jurisdiction to consider this uncontested appeal because of the *Bosch* requirement that the highest state court in Kansas must affirm a ruling in this kind of case in order to have legal effect on federal courts and agencies. "States have responded to *Bosch* by considering appeals where no adverse parties were involved and where the appellants asked the court to affirm the lower court." *In re Estate of Keller*, 273 Kan. 981, 985-86, 46 P.3d 1135 (2002). This court has followed the lead of those other states and may consider an appeal in an uncontested action determining the rights upon the death of a party. 273 Kan. at 986. The court may approve or disapprove the district court's determination that a common-law marriage existed. See *In re Cohen*, No. 101,187, 2009 WL 862463 (Kan. 2009) (unpublished opinion).

Common-law marriage establishes a legally cognizable status that does not depend on religious or civil ceremony for its validity but is created by the consent of the parties. See Feighny, *Common Law Marriage: Civil Contract or "Carnal Commerce"*, 70 J.K.B.A. 20, 21 (April 2001). The institution has a long history in Kansas. See, e.g., *State v. Walker*, 36 Kan. 297, Syl. ¶ 1, 13 P. 279 (1887) (mutual present assent to immediate marriage by persons capable of assuming that relationship is sufficient to constitute a valid marriage at common law in Kansas).

The district court applied a test set out in *Driscoll v. Driscoll*, 220 Kan. 225, 227, 552 P.2d 629 (1976). Under this test, the essential elements of a common-law marriage are:

- (1) capacity of the parties to marry;
- (2) a present marriage agreement between the parties; and
- (3) a holding out of each other as husband and wife to the public.

The party asserting a common-law or consensual marriage bears the burden of proving the existence of the marriage. *Driscoll*, 220 Kan. at 227.

If the district court's findings are supported by substantial competent evidence and the court properly applied the rules, this court will affirm the district court. See *In re Estate of Antonopoulos*, 268 Kan. 178, 192-93, 993 P.2d 637 (1999); *In re Estate of Mazlo*, 211 Kan. 217, 218, 505 P.2d 762 (1973).

Here, the district court had a large body of uncontested evidence before it and made detailed findings based on that evidence. The evidence supports concluding that the components necessary to establish a common-law marriage existed in the relationship between Peggy and Ed.

In 2003, they mutually agreed they were married. At that time, they were both over the age of 18, they were not married to anyone else, and their conduct demonstrated the mental capacity to enter into a marital relationship. They presented themselves to the public at large as a married couple, and the public considered them to be a married

couple. They conducted their financial and personal affairs in a manner consistent with a marital relationship.

We agree with the findings and conclusions of the district court, affirm the judgment of the district court, and confirm the existence of a common-law marriage between Margaret M. Heidkamp and Edward Ritter.

Affirmed.