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Summary of Williams v. Williams, 120 Nev. Adv. Op. 64

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MARRIAGE—PUTATIVE SPOUSE DOCTRINE

Summary

Husband appealed the decision of the district court granting annulment and awarding wife one-half of jointly held property and spousal support.

Issue and Disposition

Issues

- 1) Whether the putative spouse doctrine applies in annulment proceedings for purposes of property division.
- 2) If so, whether the putative spouse doctrine permits an award of spousal support when both parties acted in good faith.

Disposition

- 1) Yes. As a matter of first impression, the putative spouse doctrine does apply in annulment proceedings for the purposes of property division.
- 2) No. Absent an equitable basis of bad faith, fraud or a statutory basis, the putative spouse doctrine does not permit an award of spousal support in annulment proceedings.

Factual and Procedural History

Richard and Marcie Williams underwent a marriage ceremony in 1973. At that time, Marcie believed she was divorced from her former husband. However, neither Marcie nor her former husband had obtained a divorce. Richard and Marcie believed they were married and lived together for 27 years as husband and wife. In 2000, Richard discovered that Marcie was not divorced from her former husband. Five months later the couple permanently separated. Approximately six months after their separation, Richard filed a complaint for an annulment. Marcie answered and counterclaimed for one-half of the property and spousal support as a putative spouse.

The district court found that both parties believed they were legally married, acted as husband and wife, and conceived and raised two children; Marcie stayed home to care for and raise the children. The court also found that Marcie had limited ability to support herself. Based upon these facts, the court awarded Marcie one-half of all the jointly-held property and spousal support. The court did not, however, indicate whether its award was based on the putative spouse doctrine or an implied contract and quantum meruit theory.

¹ By Justen Ericksen.

Commentary

State of Law Before *Williams*

This is a case of first impression in Nevada.

Law in Other Jurisdictions

The court stated “[w]e have not previously considered the putative spouse doctrine, but we are persuaded by the rationale of our sister states that public policy supports adopting the doctrine in Nevada.” The court noted that a majority of states have recognized some form of the doctrine through case law or statute. For example, California², Colorado³, Illinois⁴, Louisiana⁵, Minnesota⁶ and Montana⁷ have codified the putative spouse doctrine.

Most of the states listed above allow maintenance after termination of the relationship. To illustrate, in Colorado “[a] putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status.”⁸ But neither California nor Louisiana, where the putative spouse doctrine has been most explored in case law and scholarly writing, specifically allow spousal support in their statutory language.⁹

The putative spouse doctrine has been introduced in other states through case law. A Nebraska court explained that “the civil effects of a legal marriage will continue to flow to parties who contracted the marriage in good faith. In other words, the putative spouse will have many of the rights of an actual spouse.”¹⁰ A Washington court noted that a putative wife has equitable interests in the common property acquired during an illegal marriage, and a court has inherent power to balance the equitable interests of the putative wife of an illegal marriage and the legal wife.¹¹ Interestingly, as the Nevada Supreme Court noted, it found no case in which spousal support was awarded absent statutory authority, fraud, bad faith or bad conduct.

Whether introduced via statute or case law, courts in each of these states continually expound upon the doctrine. For example, courts in Louisiana broadly

² CAL. FAM. CODE § 2251 (West 1994).

³ COLO. REV. STAT. ANN. § 14-2-111 (West 2003).

⁴ 750 ILL. COMP. STAT. ANN. 5/305 (West 1999).

⁵ LA. CIV. CODE ANN. art. 96 (West 1999).

⁶ MINN. STAT. ANN. § 518.055 (West 1990).

⁷ MONT. CODE ANN. § 40-1-404 (2003).

⁸ COLO. REV. STAT. ANN. § 14-2-111 (West 2003). *See also* 750 ILL. COMP. STAT. ANN. 5/305 (West 1999); MINN. STAT. ANN. § 518.055 (West 1990); MONT. CODE ANN. § 40-1-404 (2003); TEX. FAM. CODE ANN. § 8.060 (Vernon 2004).

⁹ *See* CAL. FAM. CODE § 2251 (West 1994); LA. CIV. CODE ANN. art. 96 (West 1999).

¹⁰ *Hicklin v. Hicklin*, 244 Neb. 895, 901 (1994).

¹¹ *See In re Marriage of Himes*, 136 Wash. 2d 707 (1998).

construe the putative spouse provision of the state's Civil Code, applying it to issues involving legitimacy of children, workers' compensation benefits, insurance payouts, community property, and inheritance.¹²

Effect of *Williams* on Current Law

Nevada does not recognize common-law marriages or palimony suits. The court noted that in the putative spouse doctrine, the parties have actually attempted to enter into a formal relationship with the solemnization of a marriage ceremony, a missing element in common-law marriages and palimony suits. As a majority of other states have recognized, the sanctity of marriage is not undermined, but rather enhanced, by the recognition of the putative spouse doctrine.

Remaining Questions

As the Nebraska court noted, "the civil effects of a legal marriage will continue to flow to parties who contracted the marriage in good faith. In other words, the putative spouse will have many of the rights of an actual spouse."¹³ But states differ as to what constitutes a "civil effect." As the putative spouse doctrine develops in Nevada, courts will be required to define exactly what rights putative spouses enjoy.

Conclusion

The court held that an annulment proceeding is the proper method for documenting the existence of a void marriage and resolving the rights arising out of the void relationship. It also adopted the putative spouse doctrine and concluded that common-law community property principles apply by analogy to the division of property acquired during a putative marriage. But, the putative spouse doctrine does not permit an award of spousal support in the absence of bad faith, fraud, or statutory authority.

¹² See *Cortes v. Fleming*, 307 So.2d 611, 613 (La. 1973).

¹³ See *Hicklin* at 901.