

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

DAVID GIRIO AND	:	NO. CV-2024-00202
SUZANNE GIRIO-JUDGE,	:	
PERSONAL REPRESENTATIVES OF	:	
THE ESTATE OF RICHARD GIRIO,	:	CIVIL ACTION-EJECTMENT
Plaintiffs,	:	
	:	
v.	:	
	:	
DOROTHY ANDERSEN,	:	
Defendant.	:	Motion for Summary Judgment

OPINION AND ORDER

This matter came before the Court on August 13, 2024, for oral argument on Plaintiffs’ Motion for Partial Summary Judgment, filed July 11, 2024. A response to that Motion was filed by the Defendant on August 13, 2024. The Court hereby issues the following OPINION and ORDER on that Motion.

I. Background:

Defendant Dorothy Andersen (hereinafter “Andersen”) filed a notice of election to take against the Will of Richard Girio in the Estate of Richard Girio, to Lycoming County Orphan’s Court docket 41-2023-0758. Andersen asserted that she was the surviving common law spouse of the decedent.

The appointed co-executors of the Estate of Richard Girio (hereinafter the “Estate”) filed a Petition seeking to vacate that election, asserting that Andersen was not a spouse. Further, the co-executors filed a Complaint in Ejectment to the caption set forth above, seeking to eject Andersen from residential real property owned by the Estate, situate at 30 Hemlock Road, Williamsport, Lycoming County, Pennsylvania, 17701 (hereinafter the “Premises”). Andersen filed her Answer and New Matter in this matter on April 10, 2024, asserting that she possessed a marital interest in the Premises as the common law spouse of Richard Girio. Andersen did not dispute title ownership of the Premises by the Estate, nor did she assert any leasehold interest. A fair reading of her Answer and New Matter reveals that her sole claim for continued possession of the Premises is her claim of a marital interest.

The Court conducted a conference on May 30, 2024, on both this matter and the Estate Petition to revoke the marital election. At that conference, counsel for both parties concurred that the outcome of the ejectment Complaint would turn on the outcome of the Petition to revoke the marital election. The Court entered its Order of May 30, 2024, in this matter, based upon that conference.

The Court conducted an evidentiary hearing on the Estate Petition to revoke the marital election on May 30, 2024. After post-trial briefing by the parties, the Court entered its Opinion and Order of July 8, 2024, filed to Orphan's Court docket 41-2023-0758. The contents of that Opinion and Order are incorporated herein by reference. The Court made the following findings of fact, and reached the following conclusions of law:

Findings of Fact:

1. Richard Girio died testate on December 8, 2023.
2. A Last Will and Testament was filed and named his son, David Girio, and his daughter, Suzanne Girio-Judge, as executors of his estate (hereinafter the "Estate").
3. David Girio and Suzanne Girio-Judge were issued Letter Testamentary to act as executors of the Estate by the Register of Wills of Lycoming County on or about December 18, 2023.
4. On January 12, 2024, Andersen filed an Election of Spouse To Take Against Will and Conveyances.
5. Beginning in approximately June of 2003, Richard Girio and Andersen commenced a committed relationship, which included cohabitation over many years.
6. On approximately October 31, 2001, Richard Girio made a gift of two (2) rings to Andersen. Andersen did not make a gift of rings to Richard Girio at that time.
7. On approximately October 31, 2001, Richard Girio and Andersen privately made vows of love to each other. Andersen recalls the vows as "I love you and I want to spend the rest of my life with you." Andersen's testimony regarding those vows did not include words of present intent to marry.
8. Richard Girio and Andersen attended a public ceremony in Rome, Italy, where the Pope gave a general Papal Blessing to the members of the crowd. No vows were a part of that public ceremony.
9. Andersen testified that neither she nor Richard Girio told anyone about their vows.

10. Andersen testified that she and Richard Girio never secured a marriage license.
11. Andersen testified that neither she nor Richard Girio participated in any public wedding ceremony nor public exchange of wedding vows.
12. Andersen testified that neither she nor Richard Girio celebrated any wedding anniversary.
13. Richard Girio and Dorothy Andersen did not represent themselves publicly as husband and wife. They did, however, encourage their family members to refer to them as family, such as “call me Uncle Dick, or call me Aunt Dot.”
14. Andersen made periodic contributions to Richard Girio for household expenses.
15. Andersen and Richard Girio maintained separate bank accounts and generally did not co-mingle their personal funds.
16. For many years during her committed relationship with Richard Girio, Andersen accepted monthly checks from the Social Security Administration on the account of her former spouse.
17. Investment accounts held by Richard Girio listed his marital status as “divorced.”
18. Both Richard Girio and Andersen filed tax returns as single persons.
19. Richard Girio did not refer to Andersen as his wife in his conversations with his children.
20. Richard Girio was formerly married, and divorced.
21. Richard Girio was a practicing Catholic throughout his life. His former marriage was not annulled by the Catholic Church.

Conclusions of Law:

1. Although the Court finds that Richard Girio and Andersen lived together in a committed relationship from June of 2003, until the death of Richard Girio, the fact of cohabitation does not itself establish a marriage at common law.
2. Although the Court finds that Richard Girio made a gift of two (2) rings to Andersen, a gift of rings does not itself establish a marriage at common law.
3. Although the Court finds that, on approximately October 31, 2001, Richard Girio and Andersen privately made vows of love to each other, those private vows of love do not establish a marriage at common law. Andersen recalls the vows as “I love you and I want to spend the rest of my life with you.”

Andersen's testimony regarding those vows did not include words of present intent to marry, and thus do not support the conclusion that Richard Girio and Andersen exchanged marriage vows.

4. Unlike *In re Estate of Carter*—where the alleged common-law spouse testified that he proposed, with a ring, and asked the decedent ““Will you marry me?” to which [the decedent] replied, ‘Yes.’” and soon thereafter received “a ring in return” from the decedent—the evidence presented at the May 30th hearing indicate that Richard Girio made a gift of two (2) rings to Andersen, and Richard Girio and Andersen made vows of “I love you and I want to spend the rest of my life with you.” 159 A.3d at 980-81 (the Superior Court further observed, in *In re Estate of Carter*, that the “ring in return” was engraved with the date of the completion of the ring exchange, the alleged common-law couple celebrated their anniversary “each year thereafter,” and both of their families treated the couple as spouses thereafter). Thus, unlike *In re Estate of Carter*, where our Superior Court determined that a “present intent to marry” reasonably existed, the evidence here does not show that such an intent reasonably existed between Richard Girio and Andersen.
5. Furthermore, given the concerns cited by the *Staudenmayer* Court about the “fruitful source of perjury and fraud” pertaining to claims of common law marriages, our Superior Court noted that—while “the declaration of common law marriage is [frequently] sought for use as a sword against competing claims to an estate—the petition by the alleged common-law spouse in *In re Estate of Carter* “not only was uncontested but indeed was supported by [decedent’s] family”; therefore, the Superior Court concluded that those concerns cited by the *Staudenmayer* Court were not present in the facts of *In re Estate of Carter*. *Staudenmayer*, 714 A.2d at 1019 (citing *In re Wagner’s Est.*, 159 A.2d 495, 497 (Pa. 1960)); *In re Est. of Carter*, 159 A.3d at 981. Here, however, the Executors (i.e., the son and daughter of Richard Girio) not only do not support Andersen’s claim as a common law spouse, they vehemently contest that claim.
6. For the reasons more fully set forth in the Findings of Fact hereinabove, the Court concludes that, although Richard Girio and Andersen resided together in a committed relationship from June of 2003 until the death of Richard Girio, they did so as two single persons, and they never entered into a marriage at common law.

II. Question Presented:

Whether the Estate is entitled to partial summary judgment on the Estate claim for possession of the real property situate at 30 Hemlock Road, Williamsport, Lycoming County, Pennsylvania, 17701.

III. Response:

The Estate is entitled to partial summary judgement on its claim for possession.

IV. Discussion:

Reviewing the record in the light most favorable to Andersen, the Court finds that the Estate is entitled to summary judgment for possession of 30 Hemlock Road, Williamsport, Lycoming County, Pennsylvania, 17701, because there is no genuine issue of any material fact for trial on that issue.

Andersen did not claim record title to the Premises, nor did she claim to be a tenant under any written or oral lease. Rather, she claimed to be the common law spouse of Richard Girio, and entitled to claim against his will. Since her claim has been fully and fairly litigated and resolved in favor of the Estate, there is no remaining issue for trial on the Estate's claim for possession of the Premises.

It is not clear from the face of the Complaint whether the Estate asserts any claim for rent. It is undisputed that Andersen resided at the Premises as the guest of Richard Girio, during his lifetime. It is equally clear that she never agreed to pay rent to the Estate. Count I of the Complaint seeks only judgment in ejectment. Count II of the Complaint appears to assert the novel claim of breach of leasehold interest, while the Plaintiffs assert that no such lease exists. At Count II, Plaintiffs again seek judgment in ejectment, but include a claim "if the court deems appropriate, compensatory damages for the loss of rents if applicable."

While it is unclear to the Court whether the Complaint states a cause of action for more than exclusive possession of 30 Hemlock Road, Williamsport, Lycoming County, Pennsylvania, 17701, it is very clear that exclusive possession is the only relief sought in the Motion for Summary Judgment. Given the findings more fully set forth above, there is no material issue of fact for trial, on that claim.

ORDER

AND NOW, this 15th day of August 2024, the Court finds that the record in this matter does not reveal a genuine issue of any material fact for trial on Plaintiffs' claim for judgment in ejectment, and for exclusive possession of 30 Hemlock Road, Williamsport, Lycoming County, Pennsylvania, 17701. For that reason, Plaintiffs' Motion for Partial Summary Judgment, filed July 11, 2024, is granted, effective thirty (30) days from the date of filing of this Order.

By the Court,

William P. Carlucci, Judge

WPC/aml

cc: Douglas N. Engelman, Esquire
Joseph F. Orso III, Esquire