

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

HILLSBOROUGH COUNTY

9TH CIRCUIT – PROBATE DIVISION – NASHUA

In the Matter of:

ORDER ON MOTION FOR DETERMINATION OF COMMON-LAW MARRIAGE

On July 20, 2022, the Court held a hearing on a *Motion for Determination of Common-Law Marriage*, see Index #6, submitted by the executrix of the estate, _____, seeking a Court order, pursuant to RSA 457:39, finding that she is the surviving spouse of the decedent, (“_____”).¹ Attending the hearing were: Attorney David M. Beliveau, and his client, _____; along with witnesses, _____ (“_____”), mother of the decedent; _____ (“_____”), friend of the decedent; _____ (“_____”), friend of the decedent; _____ (“_____”), friend of the decedent; and _____ (“_____”), son of _____.

After review of the motion and consideration of the testimony at the hearing, the Court **GRANTS** the *Motion for Determination of a Common-Law Marriage*, see Index #6 and so finds that the late _____ and _____ were common-law husband and wife as defined in RSA 457:39. As such, for purposes of the estate administration, _____ shall be considered the surviving spouse of the decedent, _____.

Although New Hampshire generally “does not recognize the validity of common-law marriages,” In re: Estate of Buttrick, 134 N.H. 675, 677 (1991) (quotations omitted), RSA 457:39 provides an exception to the general rule. Id. That statute provides in the context of the settlement of an estate, that “[p]ersons cohabitating in and acknowledging each other as husband and wife, and generally reputed to be such, for the period of three years, and until the decease of one of them, shall thereafter be determined to have been legally married.” Id. Accordingly, an individual satisfying the provisions of RSA 457:39 may be deemed to be the spouse of the decedent and entitled to a share of the estate. See, e.g., In re: Estate of Buttrick, 134 N.H. at 677. A Court must therefore evaluate whether the individual seeking spousal status under RSA 457:39 has demonstrated that for the three years preceding the demise of the decedent, the couple:

- (1) cohabitated;
- (2) acknowledged each other as husband and wife; and
- (3) were generally reputed to be husband and wife in their community.

¹ The decedent’s full name was _____. All who testified at the hearing, including his mother, referred to him as _____ and it appears to the Court that that is how he referred to himself during his life. As such, it will refer to him as to respect his personal preferences.

In Re: Estate of Bourassa, 157 N.H. 356, 357 (2008). “[A]cknowledgement of another as one’s spouse under RSA 457:39 involves the declaration or avowal of the relationship.” Id. (brackets and quotation omitted). Reputation as husband and wife may be shown by proof that members of the community generally believed or understood that the couple in question were husband and wife. See In Re: Estate of Buttrick, 134 N.H. at 677-78 (discussing evidence deemed to be sufficient to support a finding of reputation).

In this case, there are no objections proffered to the *Motion*. It is undisputed that [redacted] and [redacted] cohabitated as a couple for many decades before [redacted]’s death – well beyond the three years required by the statute. When [redacted] and [redacted] began their relationship, [redacted] had two young children, namely [redacted], who was age three, and [redacted], who was then nine months old. There was testimony that [redacted] met [redacted] in 1989, when he was at Northeast Rehabilitation Hospital recovering from an accident. When he was ready to leave the hospital, he moved into her home in February 1990. They lived for five years at Kessler Farm Drive in Nashua and subsequently built their home in New Boston, where they lived together for 28 years.

At the hearing, the Court received testimony supporting the remaining elements of the statute. [redacted], mother of the decedent, testified that she felt that they were married. She testified that they raised [redacted] and [redacted] as their own children. She stated they did everything together and acknowledged each other as husband and wife in the presence of others. For example, she stated that if she went to the doctor with [redacted] and [redacted], [redacted] would introduce [redacted] as his wife. [redacted] testified that she had known the couple nearly her entire life. [redacted] worked for her father before he had his accident and met [redacted]. She testified that she had known [redacted] for approximately 34-36 years and got to know [redacted] after the accident in 1989. She was slightly older than [redacted]’s children, [redacted] and [redacted], but grew up with their family. She testified that [redacted] and [redacted] referred to each other as husband and wife and were known in their community to be husband and wife. Her mother, [redacted], testified similarly.

[redacted] testified that he had known [redacted] and [redacted] since 2012. He was president of a rental association on Styles Road in New Boston, New Hampshire, where [redacted] and [redacted] had lived for approximately 28 years. He was President of the rental association, [redacted] was the Treasurer, and [redacted] was the Secretary. He became close to them when they worked together on a water system within the association in 2012, and remained friends thereafter. He testified credibly that [redacted] introduced [redacted] as his wife, and they always came to association meetings together. Importantly, he testified credibly that he never knew they were not married. Instead, he believed that they were husband and wife, as they acknowledged to him that they were husband and wife. Finally, [redacted] testified that he had referred to [redacted] as dad. He stated that as a child growing up at his hockey and baseball games, [redacted] and [redacted] always introduced each other to the other player’s parents as husband and wife. It was not until his teen years that he learned that they were not officially married. He had believed that they were officially husband and wife until they told him that they had not made their relationship official. He testified that everyone in the community believed that they were husband and wife as they referred to one another as husband and wife.

Based on the testimony before the Court, it concludes that [redacted] has offered sufficient evidence to satisfy the elements of RSA 457:39. See generally, In Re: Estate


of Buttrick, 134 N.H. at 607-678. Based on the credible testimony presented to it, the Court finds that _____ has demonstrated:

- (1) That _____ and _____ cohabitated for a period of at least three years and until _____'s death;
- (2) They acknowledged each other as husband and wife in the community; and
- (3) They were generally reputed to be and believed to be in the community to be husband and wife.

Accordingly, the Court determines that for purposes of the estate administration, _____ and _____ were common-law husband and wife. “ _____ ”

So Ordered.

July 27, 2022
Date



Judge Beth H. Kissinger