

Common Law Marriage: Every time I think it's gone, it keeps coming back!

In my thirty years of practicing family law, no concept has caused more confusion than common law marriage. For those of you who thought the Pennsylvania Legislature abolished common law marriage by a statute years ago, you are mostly correct. In 2004 when the appropriate statute was enacted, it abolished common law marriages entered into after January 1, 2005. That means, however, that if two parties entered into a common law marriage before that date, the law recognizes the marriage.

A recent case in the area of employee benefits addresses the common law marriage issue. Employee benefits being one of the two areas where common law marriage comes up, the other being intestacy, meaning people who die without a will. I have dealt with whether people are actually married or not come up in the divorce context, but I have only seen it two times in 30 years, so it does not come up often. The case I reference is *Board of Trustees of the Great Pennsylvania Carpenter's Medical Plan v. William Schwartzmiller and Lisa Schwartzmiller*, No. 17-1442, Slip Op. (W.D. Pa. 3/23/2020),

In that case, the parties married in 1986. In 1990, after the wife had enough of her husband's substance abuse issues, she threw him out of the house. A divorce decree was issued in 1992, which is when things get interesting. The husband took steps to address his issues and asked the wife to take him back. They started dating in 1993, and the husband moved back in with his wife shortly after that. After 1993, the parties had two children, filed joint tax returns, told everyone they were married and signed financial documents as husband and wife. Most importantly, they represented to the husband's Carpenter's Union, that they were married to obtain health insurance benefits for the entire family.

In 2010 the parties separated again. Unfortunately, the husband suffered a stroke in 2012 and could not work after that. In 2014 after he started receiving SSI, the husband applied for a pension through the Carpenter's Union. He told the Union he was divorced since he wanted to maximize the pension benefit and avoid the joint survivor annuity mandatory for married people. This put the husband between a rock and a hard place.

He had told the Union for years he was married to get medical coverage for his family, but then said he was divorced to maximize his monthly pension benefit. The Union sued the husband and wife to get their proper health insurance premiums paid, and the husband sued the Carpenter's Union to get his full pension. Both cases were tried together in Federal Court in Pittsburgh on the issue of whether or not a common law marriage existed between husband and wife.

The judge applied Pennsylvania law on the issue of whether or not a common law marriage existed. Under that analysis, the parties needed to have an express agreement that they were married; specifically, they needed to exchange what is called verba in praesenti, words spoken in the present tense, to show they were married. There are no magic or special words, just words sufficient to prove an agreement to enter into the legal relationship of marriage.

Additionally, the Court looked for other evidence of the parties' present intent to be married. Such evidence may include the exchange of rings, constant cohabitation and reputation of being married, filing joint tax returns and other sworn statements claiming to be married, joint financial dealings and joint real estate transactions, and other things consistent with being married like going on a honeymoon and celebrating anniversaries.

Based on all these facts, the judge found that a common law marriage existed, so the Carpenter's Union's claim for back health insurance premiums was denied, and the wife had a claim against her husband's pension. There are several morals to this story. First, common law marriage is not dead; dying, yes, but not

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dead. Second, if you think you might be common law married to someone, contact a lawyer and ask some questions. Third, read and understand employee benefit forms before you start checking boxes and signing the forms. Most employers now recognize benefits for domestic partners, so this might be less of an issue than it used to be. Fourth, get some clarification on your situation if you were married, then divorced, and moved back in with your former spouse. Finally, what are the implications for same-sex couples who have been living together for years but could not be married until 2014 when same-sex marriage became legal in Pennsylvania? We will leave that one for a future blog post.