IN THE COURT OF APPEALS OF IOWA

No. 23-0767
Filed February 21, 2024

IN RE THE MARRIAGE OF CHARLES F. NICHOLS AND MARY E. MOLLOY MAURO

Upon the Petition of
CHARLES F. NICHOLS,
Petitioner-Appellant,

And Concerning
MARY E. MOLLOY MAURO,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

A petitioner appeals the district court's dismissal of his marriage dissolution petition for failing to prove a common-law marriage with the respondent. **AFFIRMED.**

Robert A. Nading II and James T. Munro of Nading Law Firm, Ankeny, for appellant.

Judy D. Johnson of JDJ Law Firm PLLC, Des Moines, for appellee.

Heard by Schumacher, P.J., and Ahlers and Langholz, JJ.

LANGHOLZ, Judge.

"When the Cubs win the World Series." That is when Charles Nichols and Mary Molloy Mauro said they would get married—after Nichols proposed to Molloy Mauro with a banner flown over Wrigley Field on an April Fools' Day in the late nineties. But when the unthinkable happened in 2016—and family and friends began asking about that wedding—Nichols and Molloy Mauro both said "No" and then joked that they would be waiting for the next World Series win to get married. By the time their relationship ended and Nichols filed for divorce, no wedding had yet occurred. And no marriage certificate was ever issued.

But Iowa is one of the few states in the nation to still allow common-law marriages.[1] And so, Nichols argues that at some point over their twenty-some-year relationship, they became common-law married. While he has much evidence on his side—including about twenty years of state and federal "married filed jointly" tax returns—we agree with the district court that he has not carried his burden to prove a common-law marriage. On balance, the parties' shifting assertions of married and single status in various contexts reflect an intent to serve their personal convenience or financial benefit—not a present intent and agreement to be married. Particularly so when their public declarations showed an intent to be married, if at all, only in the distant improbable baseball future.

We thus affirm the district court's dismissal of the dissolution petition. Yet given the close merits of this appeal and the relative financial circumstances of the parties, we decline Molloy Mauro's request to award her appellate attorney fees.

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[1] *See Stone v. Thompson*, 833 S.E.2d 266, 268 (S.C. 2019) (noting fewer than ten states still recognize common-law marriage before abolishing it in South Carolina)

I. Background Facts and Proceedings

Nichols and Molloy Mauro met through a mutual friend on a trip to a Chicago Cubs game in 1995. They were both in their early forties and previously married and divorced. They soon began dating, and their relationship quickly progressed. On April Fools' Day 1996—the Cubs' opening day—the parties attended another Cubs game at Wrigley Field in Chicago. There—among two other couples who accompanied them and countless other "leftfield bleacher bums"—Nichols asked Molloy Mauro to marry him, complete with an airplane flying over the ballpark carrying a banner with his proposal. Molloy Mauro believes she agreed to the proposal in the moment. But the parties never set a wedding date or otherwise made formal wedding plans. Eventually, the pair joked to family and friends they would marry when the Cubs "won the World Series."[2]

For most of their relationship, Nichols worked as a home builder and Molloy Mauro as a property manager for a bank. In 1997, they decided that they should move in together so that Molloy Mauro could sell her house and use the proceeds for Nichols to build them a new home that they could live in and then sell at a profit. They did this with two "investment homes" before eventually moving into a home in Ankeny that Molloy Mauro still lives in. Throughout this venture, the properties—including Molloy Mauro's current residence—were always in only her name as a single person. Some mortgages were under her name alone, while others listed both her and Nichols as single individuals.

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[2] When Molloy Mauro tried to explain the joke, the court assured the parties it could "take judicial notice of the fact the Cubs were not very good." Uncertain that the court appreciated how not very good the Cubs were, Molloy Mauro clarified the Cubs last won the World Series in 1908 and last reached it in the 1940s.

The parties had a joint checking account together to pay for common household expenses from about 1997 until 2006. But they otherwise kept their finances separate. They each separately titled their vehicles in their individual names. And when Nichols bought a lake home in Missouri in 2002, it was titled in his name as a single person—as were deeds of trust securing financing on the property. Still, Nichols put up a sign at the top of the driveway to the home reading "Mary and Charlie Nichols."

Nichols soon started spending considerable time at the lake house—Thursday through Sunday at least twice each month—with Molloy Mauro joining him at the lake house three or four times each year. Her children and grandchildren would also sometimes join them there. But Nichols considered their Des Moines area homes to be his residences throughout their relationship. Eventually, Nichols began paying solely for the expenses of the lake house and Molloy Mauro became solely responsible for expenses for the Ankeny house.

Despite their independent finances, the parties filed their state and federal income taxes as "married filing jointly" from 1998 until 2018. Nichols also used Molloy Mauro's health insurance provided through her employer during most of their relationship. A benefits summary from Molloy Mauro's employer sometimes lists Nichols as her "spouse," other times as a "domestic partner," and sometimes as both for purposes of health insurance, life insurance, and retirement accounts. Molloy Mauro testified she first told her employer Nichols was her spouse but she changed his designation to domestic partner in the early 2000s once her benefits offered that option. But she was unsure why the summary shows that some designations reverted to "spouse" again in 2012.

According to Molloy Mauro, their relationship began deteriorating around 2005 as the parties spent more and more time apart. And when the Cubs won the World Series in 2016, both parties said they were not going to get married yet. Instead, they told friends and family who asked that they would be waiting until the Cubs won another World Series. But according to Nichols, he was just talking about getting married "formally" and having a party because they already considered themselves married.

The "last straw" for Molloy Mauro was when Nichols sold his lake house and used the proceeds to buy a new vehicle and an RV, all without first discussing the decision with her. By this time, both parties were retired. And Molloy Mauro described their relationship then as "like a roommate." Nichols would split his time between traveling with the RV and staying at the Ankeny home. According to Molloy Mauro, Nichols last spent the night at the home in December 2022.

In January 2023, Nichols filed this dissolution petition, asserting that he and Molloy Mauro had entered a common-law marriage and seeking an equitable division of the parties' property. Molloy Mauro disputed that they were married. After unsuccessfully moving to dismiss the petition, Molloy Mauro sought an evidentiary hearing and declaratory ruling that the parties were not married. The court treated her filing as a motion to bifurcate consideration of whether a common-law marriage existed, granted the motion, and set the preliminary issue for a one-day trial in April 2023.

In a thoughtful opinion weighing all the evidence introduced by the parties, the district court agreed with Molloy Mauro that Nichols failed to prove a common-law marriage. It thus dismissed his dissolution petition. And Nichols now appeals.

II. Common-Law Marriage

We review the district court's dismissal of a dissolution petition for failing to prove a common-law marriage de novo. *In re Marriage of Martin*, 681 N.W.2d 612, 616 (Iowa 2004). While the district court's fact findings do not bind us, we give them weight—especially those based on witness-credibility determinations. *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984); Iowa R. App. P. 6.904(3)(g). This is because we—unlike the district court—are limited to reviewing the cold record and are thus "denied the impression created by the demeanor of each and every witness." *Vrban*, 359 N.W.2d at 423.

A party seeking to establish a common-law marriage has the burden to prove three elements: "(1) present intent and agreement to be married by both parties; (2) continuous cohabitation; and (3) public declaration that the parties are husband and wife." *Martin*, 681 N.W.2d at 617 (cleaned up). If established, "a common law marriage is as valid as a ceremonial marriage." *Id.* But it is not favored by any public policy. *Id.* And so, "such a claim of marriage will be regarded with suspicion," *In re Marriage of Winegard*, 278 N.W.2d 505, 510 (Iowa 1979), and "carefully scrutinized." *Martin*, 681 N.W.2d at 617.

Molloy Mauro does not contest that she and Nichols continuously cohabitated. So we focus on the other two elements—scrutinizing whether Molloy Mauro's and Nichols's actions and words show both the mutual present intent to be married and the public declaration of that married status to the world. *See id.*

The required present intent and agreement can be implied "where one party intends present marriage and the conduct of the other party reflects the same intent." *Id.* But "an intent to be married at some future time" does not cut it. *Id.*;

see also State v. Grimes, 247 N.W. 664, 665 (Iowa 1933) (holding that written agreement "to live as Husband and Wife untill such time that we are Lawfully married" lacked the required present intent). Neither do "fluctuating" actions and declarations about the relationship status "largely based on personal convenience or benefit." *Martin*, 681 N.W.2d at 618. Such shifting conduct "is inconsistent with the concept of marriage" and "undermines support for a present intent and agreement to be married." *Id.*

But even when the parties have the required present intent and agreement, they must also hold themselves out as married to the public. "[T]here can be no secret common law marriage." *Id.* Thus "public declaration or holding out to the public is considered to be the acid test of a common law marriage." *Id.* Some inconsistency in public declarations is not fatal to meeting this element so long as "[a] substantial holding out to the public in general" is proved. *Id.*

Nichols relies on much of the same evidence to prove both the present-intent-and-agreement and public-declaration elements. And indeed, that evidence puts some weight on the scales in his favor. For about twenty years, the parties filed their state and federal tax returns—signed by both "under penalties of perjury"—using the "married filed jointly" status. Molloy Mauro sometimes listed Nichols as a "spouse" on paperwork to get him medical insurance or to be a beneficiary of her retirement accounts. One of their bank accounts—open for about ten years of their relationship—was a joint checking account for managing common household expenses. Nichols may have infrequently told people he was married to Molloy Mauro if they asked. Molloy Mauro's children and grandchildren spent time with Nichols, including at his lake house, and called him "Pops." And a

sign at the top of the driveway at that lake house—put up by Nichols—read "Mary and Charlie Nichols."

But as the district court aptly pointed out, that "sign is the only evidence in the more than a quarter century Charlie and Mary were involved that her given name was used with his surname." And we have no evidence that Molloy Mauro ever blessed putting up the sign—or even noticed it—on her infrequent visits a few times per year. Nichols also admitted in his testimony that there "[a]re no examples" of when he ever introduced Molloy Mauro as his wife, he was unaware of Molloy Mauro ever introducing him as her husband, and she never used his last name.

The only non-party witnesses to testify at the trial backed this up. Molloy Mauro's sister, a mutual friend who originally introduced Molloy Mauro and Nichols, and one of Molloy Mauro's friends all testified that they never heard them refer to each other as husband or wife or use "Mr. or Mrs.," and all thought they were not married. The mutual friend—who tended to spend more time with Nichols—agreed under questioning that Nichols did not "conduct himself as a married man" when they were together without Molloy Mauro. And he summed up the parties' relationship this way: "Charlie did his thing. Mary did her thing. They lived together."

The tax filings and other paperwork stating that the parties were married still give us pause. Such formal, presumably carefully considered, statements of marital status could be highly relevant to the parties' intent. *See Martin*, 681 N.W.2d at 618. But Nichols's evidence does not have the field to itself. On some of her insurance and beneficiary paperwork, Molloy Mauro did not list Nichols or

named him as a "domestic partner" rather than a spouse. On multiple real estate deeds to and from Molloy Mauro—including one signed by Nichols on behalf of the grantor corporation—she is named as a "single" or "unmarried" person without any signature by a spouse. *See* Iowa Code § 561.13(1) (2023) (invalidating "[a] conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married" without the spouse's signature). So too on mortgage documents—again including some in which Nichols signs in a capacity other than her spouse. *See id*. And Nichols hand-wrote and signed a notarized statement in January 2018 to obtain his pension payments that said, "I, Charles Nichols, of sound body and mind, and single, am not married to Mary Molloy. I have been married only once and divorsed [sic] only once."

Looking at all this documentary evidence of marital status, like the district court, we see no present intent and agreement of either party to be married. Rather, the evidence shows that the parties varied in their representations of marital status "largely based on personal convenience or benefit."[3] *Martin*, 681 N.W.2d at 618. Nichols himself candidly admitted this intent on cross-examination:

> Q. Charlie, isn't the truth of this matter that when it benefitted you to be married, it was something that you did; is that correct? A. That's correct.

[3] This finding is consistent with unpublished decisions of our court rejecting claims of common-law marriage on similar facts. *See Shane v. Walters*, 22-0565, 2022 WL 17829360, at *2 (Iowa Ct. App. Dec. 21, 2022) (rejecting claim despite affidavit of common-law marriage to get health insurance when other documents asserting single status countered that evidence); *In re Marriage of O'Connor-Sherrets*, No. 08-0293, 2008 WL 4877763, at *2 (Iowa Ct. App. Nov. 13, 2008) (rejecting claim despite affidavit swearing to be married because evidence supported finding it was signed "not as a formal declaration of their intent to be husband and wife, but rather solely for their personal benefit, in essence defrauding the health insurance company").

> Q. And when it benefitted you to be single, then you held yourself out as single? A. That's correct.
>
> Q. This is really about personal financial gain, rather than marriage, isn't it, Charlie? A. That's correct.

Such strategically contradictory conduct "is inconsistent with the concept of marriage." *Martin*, 681 N.W.2d at 618; *see also Laws v. Griep*, 332 N.W.2d 339, 340–41 (Iowa 1983) (reasoning that marriage is more than just "a stable and significant relationship," but an institution "defining the fundamental relational rights and responsibilities of persons in organized society" and requiring a commitment to "accept the legal responsibilities of marriage" in return for "marital legal rights" (cleaned up)).

True, as Nichols points out, sometimes later inconsistent assertions do not defeat a common-law marriage. After all, there is "no such thing as a common law divorce." *In re Est. of Weems*, 139 N.W.2d 922, 924 (Iowa 1966). So a mere change of mind cannot end a common-law marriage that was properly entered into—with all its required elements met—at an earlier point in time. *See In re Est. of Stodola*, 519 N.W.2d 97, 100 (Iowa Ct. App. 1994) ("Once married by common law, one is married and subsequent representations of a single status do not invalidate the marriage by common law anymore than such representations would invalidate a marriage by ceremony."). But where, as here, the required intent has been lacking "from the beginning," as shown by the pattern of shifting, self-serving assertions, then that inconsistency proves parties never entered a common-law marriage. *Martin*, 681 N.W.2d at 618. The district court thus correctly found that the parties' conflicting assertions of marital status for their own benefit—whether

financial or simply convenience—"undermine[] support for a present intent and agreement to be married." *Id.*[4]

Finally, we turn back to where we started and the parties' most public declaration of their marital plans. Since that April Fools' Day at Wrigley Field, all their friends and family knew that they were not going to get married until the Cubs won the World Series. And when that happened in 2016, as their relationship was already on the decline, they went to the bullpen for another marital precondition and pushed any eventual marriage further out to a second title. It matters not whether these declarations manifested an intent to never marry or just to do so at some unlikely point in a "Cubbie blue"-colored future. Since before the Cubs' last trip to the Series in the 1940s, it has been clear that "an intent to be married at some future time" destroys a claim of common-law marriage. *Id.* at 617; *see Grimes*, 247 N.W. at 665. So too here. The very public engagement and intent for a future marriage precludes a finding of a present intent to be married at any time during the parties' relationship.

Nichols suggests that Molloy Mauro and the district court misunderstand their running joke—that it was funny because the parties were already married and that in any event they were only talking about a formal wedding and party. *Cf. In*

[4] In rejecting Nichols's claim of a common-law marriage, the district court found Molloy Mauro's claims that she did not understand the significance of filing her taxes married were "a little dubious" considering her extensive financial experience in her career and personal life. On appeal, Nichols makes much of this credibility finding. Indeed, at trial, Molloy Mauro seemed to acknowledge she may have defrauded taxing authorities, insurers, and possibly others by claiming married status if they were not married. But whether inadvertently signing off or intentionally seeking financial benefit, neither shows an intent to commit to marriage. And the district court did not otherwise question Molloy Mauro's credibility. Neither do we.

re Est. of Fisher, 176 N.W.2d 801, 806–07 (Iowa 1970) (finding present intent to be married from the weight of other evidence despite acknowledging that the parties were planning a future wedding ceremony). But the already-married humor makes little sense. And that understanding was not shared by Molloy Mauro or any of the other witnesses. Thus, some secret alternative understanding—known only to Nichols—does not make this evidence of an improbable future wedding irrelevant or move it to Nichols's side of the scales.

Bottom line, Nichols failed to carry his burden to prove either the present-intent-and-agreement or the public-declaration elements. He thus cannot establish a common-law marriage with Molloy Mauro. And so we affirm the district court's dismissal of his dissolution petition.

III. Appellate Attorney Fees

Molloy Mauro requests appellate attorney fees. It is unsettled whether we can award attorney fees in an appeal from the dismissal of a dissolution petition for failing to establish that the parties were married.[5] *Compare Thorn v. Kelley*, 134 N.W.2d 545, 548 (Iowa 1965) (holding that trial and appellate courts lacked authority to award fees after dismissal of dissolution petition when they were not requested as temporary relief under Iowa Code section 598.11), *with Martin*, 681 N.W.2d at 619–20 (holding that the *trial court* could award fees requested under

[5] At oral argument, Molloy Mauro suggested for the first time that attorney fees could also be available under the "rare" common-law authority for an opposing party who "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co. of Des Moines, Inc.*, 510 N.W.2d 153, 158 (Iowa 1993) (cleaned up). Even if such a belated request is properly before us, this is not the rare case in which common-law fees would be warranted.

section 598.11 "to prosecute or defend an action to establish and dissolve a common law marriage . . . as long as there is a fair presumption of the existence of a common law marriage, even if the court subsequently decrees that no such marriage existed"); s*ee also Shane*, 2022 WL 17829360, at *3 (declining to award appellate attorney fees in an appeal from a dissolution dismissal after assuming that they would be available). But we need not decide this question.

Even assuming we have the same authority to award attorney fees here as in other dissolution appeals, attorney fees are not available as a matter of right. *In re Marriage of McDermott*, 827 N.W.2d 671, 687 (Iowa 2013). In exercising our discretion to decide "whether to award appellate attorney fees, we consider the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal." *Id.* (cleaned up). Here, the parties' respective financial situations and the close merits of the appeal counsel against an award of appellate attorney fees. We thus decline Molloy Mauro's request to do so.

AFFIRMED.