

**IN THE COURT OF APPEALS OF IOWA**

No. 9-145 / 08-0184  
Filed April 22, 2009

**KIM A. WARNER, a/k/a  
KIMBERLY A. WARNER,**  
Plaintiff-Appellant,

**vs.**

**KIMBERLY SUE LAYLAND,  
TAMARA JO MILLER, and DAVID G. CASADY,**  
Defendants-Appellees.

---

Appeal from the Iowa District Court for Warren County, Sherman W. Phipps, Judge.

Kim Warner appeals from the district court's ruling denying her petition for declaratory judgment determination of marital status. **AFFIRMED.**

Stephen A. Hall of Hall & Schlenker, Indianola, for appellant.

Scott Riemenschneider of Wilson, Deege, Dollar, Despotovich & Riemenschneider, West Des Moines, for appellees.

Considered by Mahan, P.J., and Miller and Potterfield, JJ.

**POTTERFIELD, J.**

Kim Warner appeals from the district court's ruling that she did not prove the existence of a common-law marriage with Robert Casady.

**I. Background Facts and Proceedings**

Kim Warner and Robert Casady met in 1993. Robert moved in with Kim and her thirteen-year-old twin daughters in late fall of the same year. They cohabitated continuously until the time of Robert's death on September 8, 2006. When Robert moved into Kim's home, he was married to Carolyn Casady. Carolyn had a brain tumor and had been confined to a nursing home before Robert met Kim. Carolyn remained in the nursing home, unable to recognize her family, until her death on October 10, 2001.

The summer after Carolyn's death, Robert proposed marriage to Kim during a camping trip with friends and family. Kim's response is disputed, though she told family and friends that she was engaged to be married and wore the ring Robert gave her. No formal marriage ceremony ever took place.

Robert and Kim made substantial improvements to Kim's townhouse before they bought a house together on November 20, 2003. They took the new property as single persons but in joint tenancy with full rights of survivorship. Kim retained her homestead, which remained vacant. Robert and Kim took out four mortgages on the home they purchased together on November 17, 2003, November 20, 2003, December 27, 2003, and October 21, 2004, as single persons, both signing each of these mortgages. Kim also took out a mortgage on her townhouse on April 17, 2006, as a single person. She alone signed that mortgage, but both signed the note securing the mortgage.

Robert managed the couple's finances and put Kim on his credit card account so that she received a card with her name on it. Robert authorized U.S. Cellular to give Kim, his "life partner," full access to his account. Robert purchased a AAA membership in 2005 that listed Kim as an "S" member, meaning spouse or significant other. Robert also included Kim's two children as dependents. After Robert and Kim began living together, Robert placed title to all vehicles in both of their names. Robert and Kim received mail addressed to them jointly as "Robert and Kim Casady," "Mr. and Mrs. Robert Casady," and "Bob and Kim Casady." Robert and Kim also received mail addressed individually.

In April 2004, when Robert and Kim filed their 2003 income tax returns, they chose "married filing jointly" as their filing status. The parties' tax preparer testified that Kim and Robert understood the significance of electing a married filing jointly status and that Robert explained that he and Kim had been together for so long they were married. The tax preparer informed them they would have to get a divorce to change their marital status. Robert and Kim chose to file joint tax returns for the years 2003, 2004, and 2005. Kim also filed a joint return after Robert's death for the 2006 tax year.

After electing married filing jointly as her filing status in April 2004, Kim announced to her two daughters, her sister, and two coworkers that she and Robert were married. Robert's coworker also testified that Robert considered himself to have a common-law marriage with Kim after they filed their taxes together. These announcements appear to be related to the advice given by the tax preparer.

Sometime in 2003 or 2004, Robert's health began to deteriorate. In the fall of 2004 and in 2005, he submitted various documents involving his electrician's benefits indicating that he was single. On September 22, 2004, Robert filed a health and welfare plan enrollment form with the electrician's union stating that he was single. On November 19, 2004, Robert indicated on his pension plan that he was single and named Kim as the beneficiary of the plan, stating that she was his friend. On November 19, 2004, Robert signed a cash distribution form without Kim's signature on which he declared he was single. On July 28, 2005, Robert signed another cash distribution form without Kim's signature on which he declared he was single. Robert signed a third cash distribution form without Kim's signature on December 5, 2005, and again declared he was single. The cash distribution forms require spousal consent for distributions to married individuals. Kim did not know about these forms or the withdrawals until after Robert's death.

Robert took early retirement in November 2004 and later asked a union official about whether he would be required to add Kim to his health and welfare plan if they were married and, if so, how much the premium would increase. He was told that he would not have to add a spouse to the plan.

When Robert died, Kim informed the funeral director that she had a common-law marriage with Robert. However, the funeral director testified he did not believe it was his place to determine whether such a marriage existed. Because Kim and Robert did not have a marriage certificate, the funeral director would not put "married" on the death certificate. Robert's death certificate

reflected instead that he was a widower. Kim did not object to Robert's obituary referring to her as his "loving companion."

The defendants claim that Kim talked about marrying Robert during his last days in the hospital. Kim denies that those were her intentions. Kim asserts that she and Robert always desired to have a wedding ceremony to make their marriage official. Kim testified that she was unfamiliar with the law relating to common-law marriage and felt that without a marriage certificate, she could not claim to be married on certain documents.

The district court found that Kim failed to prove: (1) a present intent and agreement that she and Robert were married; and (2) a public declaration that she and Robert were husband and wife. Kim appeals, arguing that she proved all elements required to establish a common-law marriage.

## **II. Standard of Review**

We review claims of common-law marriage de novo. *In re Marriage of Martin*, 681 N.W.2d 612, 616 (Iowa 2004).

## **III. Common-Law Marriage**

Claims of common-law marriage are carefully scrutinized, and the party claiming a common-law marriage exists bears the burden of proving its existence. *Id.* at 617. To prove a common-law marriage, Kim must show: (1) present intent and agreement to be married; (2) continuous cohabitation; and (3) general and substantial public declaration that the parties are husband and wife. *In re Estate of Stodola*, 519 N.W.2d 97, 98 (Iowa Ct. App. 1994). "When one party is deceased, the party asserting the marriage must prove the elements of a common law marriage by a preponderance of clear, consistent, and convincing

evidence.” *Conklin by Johnson-Conklin v. MacMillan Oil Co.*, 557 N.W.2d 102, 105 (Iowa Ct. App. 1996).

Though the district court found that Kim failed to prove the first and third elements, we must only find that she failed to prove one of the three elements to affirm the district court. We agree with the district court that Kim failed to prove the third element by a preponderance of clear, consistent, and convincing evidence.

“The public declaration or holding out to the public is considered to be the acid test of a common law marriage.” *Martin*, 681 N.W.2d at 618. However, all public declarations do not have to be entirely consistent with marriage. *Id.*; see *Stodola*, 519 N.W.2d at 100 (finding the existence of a common-law marriage where the parties represented their status as married on insurance and retirement beneficiary forms although there also were instances when the parties represented themselves as single persons); *In re Fisher’s Estate*, 176 N.W.2d 801, 806-07 (Iowa 1970) (noting inconsistencies, yet still finding a common-law marriage existed when the parties represented themselves as married for purposes of a life insurance application). “A substantial holding out to the public in general is sufficient.” *Martin*, 681 N.W.2d at 618 (finding no common-law marriage despite a general reputation of marriage where there were inconsistent public acts and declarations).

Kim cannot show by a preponderance of clear, consistent, and convincing evidence that she and Robert were holding themselves out to the public as married. Though Kim told certain individuals that she and Robert were common-law married after filing joint taxes, these statements cannot be considered

general and substantial, let alone clear, consistent, and convincing. No witnesses had ever heard Kim or Robert refer to one another as husband or wife. Rather, the record shows that Robert referred to Kim as his friend, girlfriend, or companion. Several witnesses that knew the couple well, including family and close friends, testified that they did not believe that Kim and Robert held themselves out as being married. In addition, Robert's own children, with whom he was close, did not believe that Robert was married. There can be no secret common-law marriage. *Id.* Though Kim and Robert filed their taxes jointly, a tax return is not a public document, nor is it sufficient to establish a common-law marriage. After a thorough review of the record, we agree with the district court that "the overwhelming evidence is that the parties did not hold themselves out to the public as married."

**AFFIRMED.**