

NOT DESIGNATED FOR PUBLICATION

No. 110,930

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

KATE U. OKPALA,
Appellant,

and

CHIKA BON CHIGBO,
Appellee.

MEMORANDUM OPINION

Appeal from Crawford District Court; A.J. WACHTER, JR., judge. Opinion filed September 5, 2014. Affirmed.

Kate U. Okpala, appellant pro se.

Robert S. Tamassi, of Wheeler & Mitchelson, Chartered, of Pittsburg, for appellee.

Before MCANANY, P.J., GREEN and BUSER, JJ.

Per Curiam: Kate Okpala appeals the judgment of the trial court concluding that she had failed to show that a common-law marriage existed between her and Chika Bon Chigbo. Finding no reversible error, we affirm.

Okpala and Chigbo met in April 2007. Okpala claims that she and Chigbo have been married since May 2007, which is when Chigbo paid a dowry to Okpala's family in Nigeria. Chigbo obtained a divorce in June 2007 and began living with Okpala in 2008. The couple lived together until their separation in late 2011. Okpala testified that both

parties agreed that they were husband and wife. Attached to her petition, Okpala provided a typewritten letter that Chigbo allegedly wrote to Okpala's parents that ends with a typewritten signature "Chika Chigbo" "son-in-law" and she also attached a tax return where Chigbo filed as "married filing separately." Okpala admitted that she was not legally married to Chigbo in the United States but testified that they were legally married in Nigeria. Moreover, Okpala further admitted that she had applied for student loans and for United States citizenship as an unmarried person in 2010.

Chigbo testified that there was no common-law marriage. Chigbo maintained that Okpala had prepared the previously mentioned letter to her parents, but he did admit to the authenticity of the tax return. Chigbo further admitted to adding Okpala to his health insurance as his spouse, but he claimed that he did that just to help her get health insurance.

After listening to the arguments and considering the evidence, the trial court took the matter under advisement. The parties disputed who should get to keep their house. The trial court found that Okpala had altered the original contract for deed to make it appear that she and Chigbo had purchased the house as husband and wife and thus held themselves out to the public as married. Based on Okpala's alteration of the contract, the trial court found Okpala's testimony lacked credibility. The trial court also found evidence that Okpala had held herself out as a single person on her Pell grants, student loans, and her application for citizenship. As a result, the trial court concluded that Okpala had failed to present sufficient evidence that an agreement existed between the parties to be married or that the parties had held themselves out to the public as a married couple. After concluding that the parties were not married, the trial court equitably divided their property.

Did the Trial Court Err in Concluding that the Parties Did Not Enter into a Common-Law Marriage?

Okpala argues that the trial court erred in failing to rule that the parties had a common-law marriage. Okpala maintains that she and Chigbo were married by a judge but that they did not get a marriage license. Okpala argues that the trial judge ignored credible evidence that showed that she and Chigbo were married.

A trial court's finding that a common-law marriage does exist is a factual finding. See *In re Adoption of X.J.A.*, 284 Kan. 853, 877-78, 166 P.3d 396 (2007). An appellate court reviews the trial court's findings of fact to determine if the findings are supported by substantial competent evidence and thus sufficient to support the trial court's conclusions of law. *Hodges v. Johnson*, 288 Kan. 56, 65, 199 P.3d 1251 (2009). Substantial competent evidence is such legal and relevant evidence as a reasonable person might regard as sufficient to support a conclusion. 288 Kan. at 65. In reviewing findings of fact, an appellate court does not weigh conflicting evidence, evaluate witnesses' credibility, or redetermine questions of fact. *In re Adoption of Baby Girl P.*, 291 Kan. 424, 430-31, 242 P.3d 1168 (2010).

In Kansas, there are three elements required to establish a common-law marriage: (1) capacity of the parties to marry; (2) a present marriage agreement between the parties; and (3) the parties' holding themselves out to the public as being husband and wife. *Anguiano v. Larry's Electrical Contracting*, 44 Kan. App. 2d 811, 814, 241 P.3d 175 (2010). The party asserting a common-law marriage has the burden of proving it. 44 Kan. App. 2d at 814. We must determine whether there was substantial competent evidence to support the trial court's finding that Okpala and Chigbo did not enter into a common-law marriage.

The trial court ruled that Okpala and Chigbo did not have an agreement to marry and did not hold themselves out to the public as being husband and wife. On the other hand, Okpala maintains that substantial evidence existed to show a common-law marriage. While there was some evidence to show that the parties held themselves out as being married, *i.e.*, Chigbo claiming Okpala as his spouse on his health insurance and Chigbo's 2010 tax return where he filed as "married filing separately," there was substantial competent evidence to support the trial court's conclusion that no present marriage agreement existed between the parties.

The trial court determined that Okpala had held herself out as a single person on her student loans and Pell grants, on her application for citizenship, and on her taxes. Okpala admitted to holding herself out as an unmarried person in these circumstances. The trial court further determined that Chigbo's exhibits and testimony were more credible than Okpala's evidence. Okpala presented bills that showed both of their names, but they did not necessarily show that they were married or that they were holding themselves out as married. In contrast, Chigbo presented uncontested evidence that Okpala consistently held herself out as a single person on multiple official documents.

Finally, the trial court determined Okpala's testimony and evidence lacked credibility. In its order of judgment, the trial court stated: "Petitioner's alteration of the original contract makes it extremely difficult for this court to accept the credibility of petitioner's testimony and any other evidence not corroborated independently."

"[An appellate court] is not concerned with the credibility of witnesses or the weight of their testimony, and the trier of facts, not the court of appellate review, has the responsibility of determining what testimony should be believed." *Nordstrom v. Miller*, 227 Kan. 59, Syl. ¶ 9, 605 P.2d 545 (1980).

Thus, substantial competent evidence existed to support the trial court's conclusion that no present marriage agreement existed between the parties.

Affirmed.