

IN THE TRIBAL SUPREME COURT OF
THE MISSISSIPPI BAND OF CHOCTAW INDIANS

FILED

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CHOCTAW SUPREME COURT
BY: J. P.
COURT CLERK

IN THE MATTER OF THE ADMINISTRATION OF
THE ESTATE OF BRENDA SUE WILLIAMS WILSON,
DECEASED

MORRIS WILLIS
APPELLEE

V.

CAUSE NO. SC 2009-02

LAURA JOHN, ADMINSTRATRIX
APPELLEE

Before Chief Justice Pro-tem Peggy Gibson, Associate Justice Brenda T. Pipestem and
Associate Justice Robert D. Jones

Per Curium

OPINION AND ORDER

The case before us concerns a claim by Appellant Morris Willis as the common law husband of Brenda Williams Wilson, deceased. The lower court judge, Honorable Jeffrey T. Webb, found that no common law marriage existed between Appellant Willis and Ms. Wilson.

Although the matter before the court involves the estate of Brenda Wilson, the issue on appeal is whether the court adopted the proper standard of proof in its determination of the existence of common law marriage under Choctaw Tribal Code (CTC), Chapter 1, Section 9-1-7, Marriage Under this Title (prior to November 12, 2008) which reads:

- Marriages entered into within this Tribal territorial jurisdiction, after the effective date of this Title, to be valid, shall be in conformity with one of the following:
- (a) tribal licensing procedures for marriages, as set forth hereafter in this title;
 - (b) tribal custom ceremonial marriage;
 - (c) engaging in a mutually manifested course of conduct over a period of not less than two years by two parties domiciled in Choctaw Indian Country who are at least 21 years of age; their conduct and representations

expressive of their intention to be regarded within the Indian community as husband and wife; or
(d) the laws of the State of Mississippi.

Appellant Willis alleges that his 10 year relationship with Ms. Wilson constituted a common law marriage. Willis testified that his long-term relationship with Wilson began around 1998, that they lived together from 1998 until Ms. Wilson's death, and that he considered Wilson to be his wife.

Both Willis and Wilson are members of the Mississippi Band of Choctaw Indians, and they both owned separate residences in their own individual names within the jurisdiction of the Choctaw Tribe during the time periods when they cohabitated in one or the other's home.

Although the Choctaw Tribal Code no longer recognizes common law marriages, the court ordered on February 6, 2009, that the Tribal Council Ordinance No. 16-MMMM, which removed common law marriage from the Choctaw Tribal Code, did not abolish common law marriages entered into legally prior to November 12, 2008, the effective date of the amendment. To determine the validity of Willis' claim of a common law marriage between Willis and Wilson, the lower court conducted a hearing, and Willis' claim was denied because "under the circumstances, it can not be found that it has been shown clearly, consistently and convincingly that Brenda and Morris agreed to be husband and wife."

The issue Willis raises on appeal is whether the court utilized the proper standard of proof in its determination of the existence of common law marriage. However, the argument presented by Appellant focuses solely on the lack of a complete transcript and relies on this Court's decision in *Tubby v. Shoemaker*, SC 2007-12, to request that this Court vacate the lower court decision and remand for a new trial.

Focusing on the issue as presented by Appellant, we will review whether the lower court utilized the proper standard of proof in its determination of the existence of common law marriage between Willis and Wilson.

Choctaw common law marriage was codified by Tribal ordinance, therefore, the CTC identifies the elements required to be proven in order to sustain a claim of common law marriage. There is no question as to whether Willis and Wilson cohabitated for more than two years in Choctaw Indian Country, and that they were at least 21 years of age. The elements that had to be proven by the Wilson were whether Willis and Wilson were engaged in a mutually manifested course of conduct and [made] representations expressive of their intention to be regarded within the Indian community as husband and wife. Whether Willis can prove these elements depends on the standard of proof required by the court. The CTC is silent on what standard of proof should apply. Therefore, this is a case of first impression for the Court.

Following Choctaw Tribal Code, §1□1□4, Law Applicable in Civil Actions¹, Judge Webb looked to Mississippi case law for guidance. *Ladnier v. Ladnier's Estate*, 109 So.2d 338 (1959), provided the court with persuasive authority to determine the standard of proof – clearly, consistently, and convincingly -- to be used to prove the elements of common law marriage under the CTC.²

In *Ladnier*, the Mississippi Supreme Court established common law marriage as follows:

To establish the existence of a common law marriage, it is necessary to show an agreement between the parties that they intended themselves to be husband and wife, and this agreement must be followed by cohabitation.

But a claim of common law marriage is regarded with suspicion and will be closely scrutinized, and in order to establish a common law marriage, all the essential elements of such a relationship must be shown to exist.

It is, of course, among the essentials of a valid common law marriage that both parties must intend in good faith to live together in the relation of husband and wife, and that the union shall be permanent and exclusive of all others. The agreement between the parties must be unequivocal and free from any reservations, mental or otherwise, to the full extent that, when consummated by cohabitation, nothing less than a decree of divorce pronounced by a court of competent jurisdiction can dissolve the relation.

The existence of a common law marriage may be shown by the acts and timely declaration of the parties. But a claim of common law marriage is regarded with suspicion and will be closely scrutinized. *Thus, in order to establish a common law marriage, all the essential elements of such a relationship... must be shown by clear, consistent, and convincing evidence, especially must all the essential*

¹ In all civil actions the Choctaw Court shall apply applicable laws of the United States and authorized regulations of the Secretary of the Interior, and ordinances, customs, and usages of the Tribe. Where doubt arises as to the customs and usages of the Tribe, the court may request the advice of persons generally recognized in the community as being familiar with such customs and usages. *Any matter not covered by applicable federal law and regulations or by ordinances, customs, and usages of the Tribe, shall be decided by the court according to the laws of the State of Mississippi.* (emphasis added).

² Compare, *In the Matter of the MARRIAGE OF Lillrae SMITH, and Leonard C. Begay, Sr., Deceased*, No. SC-CV-45-05 (Navajo Nation, July 19, 2006) (where Navajo statute states that petitioner must prove “to the satisfaction of the court that he or she and his or her alleged spouse were recognized as man and wife in their community” (citations omitted), but is silent on standard of proof for element of common law marriage, Court determined statutory element must be supported by substantial evidence).

elements of such relationship be shown when one of the parties is dead.

Id. at p. 382-383 (citations omitted)(emphasis added).

Although not raised on appeal, the Court also takes notice that the elements of common law marriage in Mississippi as outlined in *Ladnier* are consistent and not in contravention with the elements of CTC common law marriage.


Further, the Appellant's concern regarding the incomplete transcript is not relevant to the issue raised on appeal. The Appellant raised a question of law, not fact.

Judge Webb's decision to adopt the standard of proof for the establishment of a common law marriage as outlined in *Ladnier v. Ladnier's Estate*, 109 So.2d 338 (1959) is affirmed and the Appellant's request to vacate the court's decision and remand for a new trial is denied.

So ordered this the 21st day of February 2013.


Chief Justice Pro Tem


Associate Justice


Associate Justice

CERTIFICATE OF SERVICE

I do hereby certify that I have this, the 22nd day February 2013 caused to be forwarded via U.S. mail, a true and correct copy of the above and foregoing document to the below listed counsel of record.

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