

negligent infliction of emotional distress as set forth specifically in paragraph 3 is sustained.

E. Preliminary Objection V, the demurrer to the claim for filial consortium as specifically set forth in paragraph 70 is sustained.

The plaintiffs are granted leave to file an amended complaint pursuant to this Order and Opinion within twenty (20) days of service of the same upon counsel for the plaintiffs.

Exceptions are granted the plaintiffs and defendant Dr. Druck-enbrod.

SMITH VS. SMITH, C.P. Fulton County Branch, No. 170 of 1987-C

*Divorce - Common-Law Marriage - Demurrer*

1. Evidence of reputation and cohabitation is admissible to establish the intention of the parties but of itself does not create a marital relationship.
2. It is necessary to express intent to marry in words of the present.
3. A complaint does not establish the existence of a common-law marriage.

*James M. Schall, Esq., Attorney for Plaintiff*

*Michael B. Finucane, Esq., Attorney for Defendant*

KAYE, J., February 16, 1988:

#### OPINION AND ORDER

The plaintiff, Sharon Anne Amos Smith, filed a divorce complaint in the Office of the Prothonotary of Fulton County on July 15, 1987. The divorce complaint alleges, *inter al.*, that though the plaintiff and defendant, William Howard Smith, were never formally married, they had a "valid marriage by reason of their intentions as evidenced by cohabitation and reputation." Complaint ¶ 4.

Defendant has filed preliminary objections to the divorce complaint. Two (2) objections to the complaint have been filed. First, the defendant claims that the complaint failed to state a cause of action. Referring to paragraph four (4) of the complaint, *supra*, the defendant argues that alleging a "valid marriage" fails to allege the basis for a valid marriage. In the alternative, the defendant alleges paragraph four (4) of the divorce complaint is vague. The defendant demands that a more specific complaint be filed.

Briefs were received in early December, 1987, with argument upon preliminary objections held on December 22, 1987. Upon completion of these matters, the matter is ripe for disposition.

The burden of proof of a common law marriage is upon the person asserting it, As

...the courts have regarded common law marriage as a fruitful source of fraud and perjury, common law marriages are to be tolerated but not encouraged. Therefore, the law imposes a heavy burden on one who grounds his or her claims on an allegation of common law marriage...

*In re Estate of Kovalchick*, 345 Pa. Super. 229, , 498 A.2d 374, 376 (1985), [citations omitted]

The law recognizes that a civil contract of marriage is often difficult to prove, and has thus permitted it to be established by circumstantial evidence.

"Thus, an inference of marriage can be drawn, the courts have held, where two absolutely essential elements co-exist: constant cohabitation and general, as distinguished from partial or divided, reputation of marriage. "*Estate of Gavula*, 490 Pa. 535, 540 n.7, 417 A.2d 168, 171, n.7 (1980).

However, the presence of those elements merely establishes a rebuttable presumption of marriage, and does not create a marriage. *Pierce v. Pierce*, 355 Pa. 175, 49 A.2d 346 (1946). Generally, it is necessary that there be *verba in praesenti*, to establish a marriage, *In re Wagner's Estate*, 398 Pa. 532, , 159 A.2d 495, 498 (1960); *Commonwealth v. Smith*, 511 Pa. 343, 513 A.2d 1371 (1986).

In *Wagner's Estate, supra*, for instance, one of the parties to the putative marriage was dead, and the Dead Man's Act precluded the survivor from testifying as to the occurrence of the words necessary to create a marriage. Under those circumstances, reputation and cohabitation were held admissible to establish the intention of the parties. However, this is merely circumstantial evidence of the parties' intentions, and does not *ipso facto* create a marital relationship. See, e.g. *In re Manfredi's Estate*, 399 Pa. 283, , 159 A.2d 697, 700 (1960); *Bowden v. W. C. A. B.*, 31 31 Pa. Cmwlth. 1033, , 376 A.2d 1033, 1034 (1977).

In the instant case, as we understand it, both parties are indeed alive, and can testify to whether or not *verba in praesenti* passed between them which would create the marital relationship. In the event that there is conflicting testimony, reputation and cohabitation, as well as other pertinent evidence, may be considered by the fact finder in determining if the burden of proof is met.

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**LEGAL NOTICES, cont.**

distribution and notice to the creditors of Valley Bank and Trust Company, Executor under the Will of John A. Eckenrode, late of Guilford Township, Franklin County, Pennsylvania, deceased.

TROSTLE: First and final account, statement of proposed distribution and notice to the creditors of Citizens National Bank of Southern Pennsylvania, Co-Executor of the last will and testament of Anna Larue Trostle a/k/a A. Larue Trostle, late of Waynesboro, Franklin County, Pennsylvania, deceased.

Rhonda R. King  
Deputy Clerk of Orphan's Court  
Franklin County, Pennsylvania

8/11, 8/18, 8/25, 9/1/89

NOTICE IS HEREBY GIVEN That The Mayor and Town Council of the Borough of Greencastle, Franklin County, Pennsylvania, adopted an ordinance at its regularly scheduled public meeting on August 7, 1989 adopting a resolution of the Greencastle, Franklin County, Authority, amending the Articles of Incorporation of said Authority extending its term of existence for a period of fifty (50) years from the date of approval of this amendment by the Secretary of the Commonwealth, pursuant to 53 P.S. Section 305 A(2).

Further, the registered office of the Greencastle, Pennsylvania 17225. The Articles of Amendment described above shall be filed with the Secretary of the Commonwealth of August 21, 1989, pursuant to the Pennsylvania Municipality Authorities Act of 1945, 53 P.S. Section 301, et seq., as amended.

KENNETH E. MYERS  
Secretary, Borough of Greencastle,  
Franklin County, Pennsylvania

8/18/89

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on September 13, 1984, for the purpose of obtaining a certificate of incorporation. The

**LEGAL NOTICES, cont.**

name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is Hamner, Inc., with its principal place of business at 6557 Buchanan Trail East, Waynesboro, Pennsylvania 17268. The purpose for which the corporation has been organized is for the maintenance of small and heavy equipment, to buy and sell trucks and equipment and any other lawful purpose for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Martin and Kornfield  
17 North Church Street  
Waynesboro, PA 17268

8/18/89

NOTICE is hereby given that MIKLARPET BROADCASTING, INC., has filed its Articles of Incorporation with the Department of State of the Commonwealth of Pennsylvania on the 6th day of July, 1989 under the provisions of the Business Corporation Law, approved on the 5th day of May, A.D., 1933, P.L. 364. Its registered office in the State of Pennsylvania is located at c/o 8737 Kuhn Bridge Road, Greencastle, Pennsylvania 17225. The Character and nature of the business it proposes to do within the Commonwealth is: To engage in any lawful act an activity permitted by the laws of the Commonwealth of Pennsylvania.

8/18/89

**NOTICE OF WINDING-UP  
PROCEEDING  
PVI, INC.**

NOTICE IS HEREBY GIVEN that PVI, Inc., a Pennsylvania corporation with principal offices located at 11057 Creek Road, Fannettsburg, Pennsylvania 17221, has filed a Certificate of Election to Dissolve and is winding-up its business. All communications or inquiry should be submitted to: Edward I. Steckel, Esquire, 412 Chambersburg Trust Building, Chambersburg, Pennsylvania 17201.

8/18, 8/25/89

However, we are now at the pleading stage, and we do not think that plaintiff's complaint properly establishes that a common law marital relationship came into existence. However, although Pennsylvania is a fact-pleading jurisdiction, we note that under Pa. R.C.P. No. 1920.72 (a), the only compulsory allegation of the creation of the marital relationship is the somewhat conclusory statement that "[t]he plaintiff and defendant were married on [date] at [City], [State/County]", and an allegation in this language by plaintiff would be sufficient to comply with the pleading requirement. While it may appear somewhat paradoxical, it appears that plaintiff has pleaded both too little and too much: to little in failing to plead that the parties expressed in words or in language in the present tense that they intended to be married, and too much in pleading evidence that purportedly supports an intention to be married. Accordingly, we will grant defendant's demurrer, and will allow plaintiff to amend her complaint, if she is able to do so.

In view of this disposition, it is unnecessary to determine the motion for a more specific complaint.

**ORDER OF COURT**

NOW, February 16, 1988, defendant's demurrer is sustained. Plaintiff is granted thirty (30) days from this date to file an amended complaint.

**SNYDER VS. DONEGAL MUTUAL INSURANCE COMPANY  
ET AL., C.P., Franklin County Branch, Eq. Doc. Vol. 7, Page  
496**

*Equity - Homeowners Insurance - Fire Loss - Business Property - Joinder of  
Necessary Party - Mortgagee*

1. A mortgagee claiming under an insurance policy must, in order to commence an action, be able to show his security has been impaired and that it has not been restored.
2. The joinder of a mortgage depends on the present status of its security interest.