

July 31, 1997
L-97-28

TO : Nancy Russell
Hearings Officer
Bureau of Hearings and Appeals

FROM : Steven A. Bartholow
Deputy General Counsel

SUBJECT : Common Law Marriage - South Carolina

This is in response to your request that this office review the law of South Carolina with respect to the evidence required to establish a common law marriage.

As you know, an applicant's relationship to the employee for purposes of entitlement to an annuity under the Railroad Retirement Act is determined in accordance with section 2(d)(4) of the Act, which provides, in part, as follows:

In determining for purposes of this subsection and subdivision (3) of subsection (c) whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, * * * individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act.

Section 216(h)(1)(A) of the Social Security Act in turn provides as follows:

- (i) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.
- (ii) If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the

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devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

The deceased employee was domiciled in South Carolina at the time of his death. Accordingly, whether the claimant and the employee were married for purposes of determining entitlement to a spouse or widow's annuity under the Act turns upon whether she would be recognized as the employee's wife or widow under South Carolina law.

Case law clearly establishes that South Carolina recognizes common law marriage. South Carolina courts have held that the party claiming the common law marriage must prove the marriage arose by a preponderance of the evidence. Ex Parte Blizzard, 193 S.E. 633, 634, (S.C. 1937); Kirby v. Kirby, 241 S.E.2d 415, 416, (S.C. 1978). However, where the evidence establishes long cohabitation and a reputation in the community as husband and wife, a presumption of common law marriage arises. Campbell v. Christian, 110 S.E. 2d 1, 4, (S.C. 1959); In Re Greenfield's Estate, 141 S.E.2d 916, 920, (1965); Jeanes v. Jeanes, 177 S.E. 2d 537, 539, (S.C. 1970).

Thus, in Ex Parte Blizzard, the South Carolina Supreme Court denied letters of administration to a woman who claimed she and the decedent had established a common law marriage prior to the decedent's ceremonial marriage to a second woman. The Court found that she had failed to prove a common law marriage by the preponderance of testimony, noting proof of a common law marriage must be by "strong and competent testimony." 193 S.E. at 634. The Supreme Court did find such a preponderance of evidence in favor of the common law marriage in Kirby. The parties had lived together for a total of 20 years, including 16 years subsequent to the man's divorce from a third party. They had four children, two born before his divorce and two afterward. During this time, the woman bought a farm with her own funds, and the man contributed his funds toward various improvements. Upon their separation, the man claimed an equitable interest in the farm to the value of his contribution. The woman responded that as they were common law husband and wife, the improvements were presumed by law to be gifts, which need not be reimbursed. While at trial the man attempted to refute the existence of a common law marriage, the court noted that he nevertheless testified that while living with her, he had considered the woman to be his wife. Moreover, after the divorce, the woman testified that they agreed to obtain a ceremonial marriage, although they never got around to it. Citing Blizzard, the Supreme Court found the preponderance standard had been met.

South Carolina's intermediate appellate courts have found marriage had not been established by a preponderance of evidence in the following cases: Weathers v. Bolt, 361 S.E.2d 773, (S.C. Court of Appeals, 1987)(man could not claim share of estate as widower, where he testified that he did not know whether his prior marriage had ended in divorce at the time he began a seven year cohabitation with decedent); and Cathecart v. Cathcart, 414 S.E. 2d 811, (S.C. Court of Appeals, 1992)(former husband's petition to terminate alimony on grounds that his wife had formed a common law marriage was denied where former wife and second man both testified they had no intent to marry, did not file

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joint tax returns, did not maintain joint bank accounts, and received mail at different addresses).

On the other hand, the Supreme Court in Campbell found that the woman's testimony that "we weren't married" did not defeat her claim to be a widow by common law marriage. In view of "considerable evidence" that they had lived together as man and wife (including testimony of one of five children and of a lifetime acquaintance of the deceased man), the Court found that the woman's testimony related to the performance of a marriage ceremony, rather than the existence of a marriage by common law. 110 S.E. 1, at 3,4. The Court noted that her admission was not sufficient to overcome "the presumption of their marriage by cohabitation and repute." Id. at 5. The Supreme Court also applied "the strong presumption in favor of marriage from cohabitation * * * coupled with social acceptance" to validate a common law marriage in Greenfield's Estate. 141 S.E. 2d 916, at 919. The deceased man's collateral heirs challenged the woman's standing as widow on grounds that she had used her maiden name in all business transactions, and that the man had stated to several witnesses that he had no wife. However, the Court found that during their ten years of cohabitation, the woman had undertaken the "usual duties and responsibilities of a wife" and that she and the decedent had received guests and had been received as guests in others' homes as husband and wife. Id. at 917. Noting that reputation as a married couple

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could be limited to a relatively small portion of a larger community, the Court found that testimony presenting conflicting opinions of the couple's marital status was properly reconciled by the trial court's view that some witnesses mistakenly believed that only ceremonial marriages are valid. Id. at 919.

Finally, the Supreme Court held in Jeanes v. Jeanes that a divorced husband's obligation to pay alimony to his former wife terminated due with her subsequent common law marriage to a second man. Citing Greenfield's Estate for the "strong presumption in favor of marriage by cohabitation", the Court stated it did not "find in the record any strong, cogent, satisfactory or conclusive evidence tending to show that * * * [the former wife and a second man] are not, in fact, married." 177 S.E.2d 537, at 539, 540. Uncontradicted evidence showed they had lived together for two years, had listed themselves as husband and wife in the telephone directory and on insurance and income tax forms. Although both parties to the marriage testified that they did not live together as husband and wife, the Court agreed with the lower court's conclusion that this testimony lacked credibility. See also, Owens v. Owens, 466 S.E. 2d 373, (S.C. Court of Appeals, 1996) (wife granted a divorce from common law husband, where presumption of marriage had not been rebutted by clear, distinct and satisfactory evidence); and Day v. Secretary of Health and Human Services, 519 F.Supp.872, (U.S.D.C., D. of S.C., 1981), at 877,(claimant would be wife under South Carolina law for purposes of benefits under the Social Security Act, where she and the insured employee had lived as husband and wife after removal of an impediment to formation of a common law marriage).

Based upon the foregoing, if you find the preponderance of evidence establishes that the claimant and the railroad employee cohabited and gained a reputation as husband and wife, you may find she and the employee entered into a common law marriage. In weighing the evidence, you may consider both the credibility of the informant, and the informant's understanding of marriage arising under the law as distinguished from one established by performance of civil or ecclesiastic ceremony.