

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
File No: 14 DHR 02280

SYLVIA B. THOMPSON,

Petitioner,

v.

N. C. DEPT. OF HEALTH AND HUMAN
SERVICES, VITAL RECORDS,

Respondent.

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FINAL DECISION

THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on July 31, 2014 in Raleigh, North Carolina.

APPEARANCES

For Petitioner:

William E. Collier, III
Attorney at Law
404 Sharon Road
Chapel Hill, North Carolina 27517

For Respondent:

Gerald K. Robbins
N.C. Department of Justice
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ISSUES

Whether the Certificate of Death of George W. Thompson should show the Decedent's marital status as married, and the Petitioner as his surviving spouse.

APPLICABLE LAW

N.C. Gen. Stat. §§ 50-4; 50-1; 50-3; 50-11.1; 130A-2(10); N.C. Gen.Stat. § 130A-116; 130A-118; 130A-115(a); 130A-111; N.C. Gen. Stat. § 31A-1; 150B-1(e); 150B-23;
N.C. R. Evid. § 8C-1, Rule 803 (9) & (10); 10A NCAC 41H .0910(d); 10A NCAC 41H .0101;
10A NCAC 41H .0104(5); 10A NCAC 41H .0103; 10A NCAC 41H .0104(4); 10A NCAC

41H.1402(a); 10A NCAC 41H .0901 (a) & (b); 10A NCAC 41H .0901(c); 10A NCAC 41H .0803; and 10A NCAC 41H .1402.

UPON DUE CONSIDERATION of the arguments of counsel, the sworn testimony of each witness, and the documents and exhibits admitted, and assessing the greater weight of the evidence from the record as a whole, and in light of the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner, Sylvia B. Thompson, requested that the respondent Vital Records Section of the N.C. Department of Health and Human Services alter the death certificate of George W. Thompson to replace “widowed” with “married,” and to enter her name as his “surviving spouse.” Following the final denial of her request on February 26, 2014, Ms. Thompson timely filed a Petition in the Office of Administrative Hearings (OAH) on March 28, 2014, pursuant to 10A NCAC 41H .0910(d).

2. The credible evidence supports the findings of fact in an “Order/Judgment” posthumously annulling the marriage between Petitioner (identified as “Sylvia Ann Ramsey Bolden Thompson”) and George W. Thompson (hereinafter, “Decedent”), entered by the Hon. Joseph M Buckner, Chief District Court Judge of Orange County, that they were in fact married on January 18, 2007, and remained married, although separated, at the time of Decedent's death on April 17, 2009. The practical effect of this judgment was to bar the Petitioner “from claiming an interest” or obtaining anything of value from the Decedent’s estate. Petitioner’s appeal from this decision was dismissed for failure to perfect the appeal in August 27, 2010.

3. The annulment action was brought by the Co-Executrixes of the Decedent’s estate, including the Decedent’s “daughter and sole devisee” under his Will. She was also the “informant” whose information resulted in the preparation of the death certificate in its current form. When contacted about Petitioner’s request, she wrote that she had not been aware of the Petitioner prior to her father’s death, explained that the annulment litigation was pending, and requested that Respondent await the outcome before making a decision about the change. When the referenced Order became final, Respondent felt bound by the annulment not to refer to Petitioner as the Decedent’s spouse, and duly notified Petitioner of this decision and her right to petition OAH on February 26, 2014.

4. It was clear from her testimony that the litigation was emotional and contentious for Petitioner, and that personnel with the Vital Records Section have been exposed to that to a deplorable degree. However, this case turns a legal issue, governing all similar situations, and having nothing to do with the particular personalities involved here.

5. Respondent based its decision on the Orange County trial court’s annulment of the marriage. Unlike a divorce, which terminates a valid marriage, an annulment is a

declaration, on more fundamental grounds, that the marriage was “void *ab initio*” -- “from the beginning.” N.C. Gen. Stat. §50-4; BLACK’S LAW DICTIONARY 8 (4th ed.). A marriage may be declared void, or an annulled, if the parties to the marriage are too closely related, or if one of the parties is under age, already married, or lacks the capacity to give knowing and voluntary consent, either due to personal disability, or the undue influence of the third-party, imposed by threat or coercion. N.C. Gen. Stat. §§ 50-1, 50-3 & 50-4. Judge Buckner concluded that the subject marriage was “procured by undue influence and duress,” and that “George Thompson was ‘incapable of contracting from want of will.’”

6. The breadth of the concept is illustrated by a case in which a woman seeking an annulment due to bigamy was denied because her husband’s pre-existing marriage had been annulled.

It is true that her ground is the allegation that her husband was incapacitated to marry by reason of an existing marriage; but the ground of the decree obtained by him is that he never entered into the marriage, having been forced into it by duress. In neither case was there a valid marriage, if the allegations were found to be true. The subsequent assent of the husband would have made his voidable marriage valid; but, as that was not given, it was void *ab initio*, and imposed no obligation on him. *** There was no legal impediment on defendant at the time of his marriage to plaintiff, and their marriage is valid.

Taylor v. White, 160 N.C. 38, 75 S.E. 941, 942 (1912). However, the legislature is under no obligation to allow the doctrine to interfere with the public good. “A child born of voidable marriage or a bigamous marriage is legitimate notwithstanding the annulment of the marriage.” N.C. Gen. Stat. § 50-11.1; *Rehm v. Rehm*, 2 N.C. App. 298, 305, 163 S.E.2d 54, 59 (1968).

7. A premise of an action for annulment is that there is an existing marriage.

8. “The staff of the Vital Records Section of the Division of Public Health is authorized to administer the statewide vital records program outlined in Article 4 of Chapter 130A of the North Carolina General Statutes.” 10A NCAC 41H .0101.

9. “‘Vital records’ means birth, **death**, fetal death, **marriage**, **annulment** and divorce records registered under the provisions of Article 4 of this Chapter.” 130A-2(10) (emphasis mine).

10. The exceptions to the North Carolina rules of evidence barring “hearsay” – the assertions or declarations of persons not appearing as witnesses, offered as proof of the truth of the matter asserted -- include a provision that relies specifically on the accuracy of “vital records,” and a second exception under which vital records may be referenced.

(9) Records of Vital Statistics.--Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of Public Record or Entry.--To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or

nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

N.C. R. Evid. § 8C-1, Rule 803 (9) & (10); *Livermon v. Bridgett*, 77 N.C.App. 533, 335 S.E.2d 753 (1985), *cert. denied*, 315 N.C. 391, 338 S.E.2d 880 (1986).

11. To achieve the accuracy, reliability and consistency in the creation of vital records on which the public relies, the statutes provide specific uniform procedures. All records must “be prepared in conformity with [statutory] regulations, or instructions issued by the State Registrar.” 10A NCAC 41H .0104(5). “No forms shall be used in the reporting of vital events except those furnished or approved by the State Registrar.” 10A NCAC 41H .0103. The completed forms must “not contain improper or inconsistent data.” 10A NCAC 41H .0104(4). Death certificates and reports of divorce and annulment must contain the data required by the federal agencies “responsible for national vital statistics,” as well as additional information that the State Registrar may require. N.C. Gen.Stat. § 130A-116; 10A NCAC 41H.1402(a).

12. Prior to official registration by the Vital Records Section (generally, 30 days), a local authorized registrar, such as a register of deeds, may make corrections on the vital record form. Thereafter, “only the Vital Records Section is empowered to correct errors on a certificate.” 10A NCAC 41H .0901 (a) & (b).

13. Once information is deemed vital is appropriately recorded, it is retained. If an error or omission is corrected, whether by the Vital Records Section or a local registrar, “the words ‘Corrected Certificate’ shall be placed upon the face of the corrected certificate along with a notation indicating the items or sections corrected; the date of the correction; and the signature of the local registrar, the local registrar's deputized agent, or the State Registrar as appropriate.” 10A NCAC 41H .0901(c). When any birth or death certificates are amended, the original version is retained. N.C. Gen.Stat. § 130A-118. When a person enters the federal Witness Protection Program, her or his birth certificate is “amended and the court order ... placed in the sealed file.” 10A NCAC 41H .0803.

14. A North Carolina death certificate “shall contain those items prescribed and specified on the standard certificate of death as prepared by the federal agency responsible for national vital statistics.” N.C. Gen. Stat. § 130A-116.

15. The “Standard Certificate of Death” devised for the National Vital Statistics System by the federal Centers for Disease Control requires the Decedent’s “marital status at time of death” be classified as either “Married;” “Married, but separated;” “Widowed;” “Divorced;” “Never Married;” or, “Unknown.” Registrars are instructed that,

“If the Decedent was married **at the time of death**, enter “**Married.**” ***

NOTE: “Annulled and not remarried” and “never previously married” are

considered “Never Married.” “Married previously” is classified as how the previous marriage terminated (“Widowed” or “Divorced”).

(Emphasis mine.) *Funeral Directors’ Handbook on Death Registration and Fetal Death Reporting* (2003 Revision), http://www.cdc.gov/nchs/data/misc/hb_fun.pdf (viewed 10/14/2014).

16. N.C. Gen. Stat. § 130A-115(a) requires that, “A death certificate for each death which occurs in this State shall be filed with the local registrar of the county in which the death occurred within five days after the death.” There is no exception or provision for altering it due to a posthumous annulment of the Decedent’s marriage.

17. A North Carolina death certificate must state the vital facts required as they exist on the date of the Decedent’s death.

18. N.C. Gen. Stat. § 130A-111 requires that a “certificate of divorce and annulment,” be created and filed with the State Registrar and the Clerk of Court in the county where the divorce or annulment was granted. 10A NCAC 41H .1402.

19. North Carolina law makes no provision for expunction of marriage records due to annulment. N.C. Gen. Stat. § 31A-1.

20. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

21. The Decedent’s “Marital Status” should be termed “Married, but separated,” and the Petitioner’s maiden name entered as that of the “Surviving Spouse,” on the subject Certificate of Death.

Upon the foregoing Findings of Fact, the undersigned makes the following,

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.

2. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 150B-1(e) and 150B-23.

3. The trial judge is not required to find all the facts shown by the evidence, but only enough material facts to support the judgment. *Green v. Green*, 284 S.E.2d 171,174, 54 N.C.App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844,847, 10 N.C.App. 545, 549 (1971).

4. As a person who, by law, should have been named in a vital record, the Petitioner is a person aggrieved by the Respondent’s decision, and has standing to seek relief in the Office of Administrative Hearings. N.C. Gen. Stat. §150B-23(a)

5. The Decedent's "Marital Status" should be termed "Married, but separated," and the Petitioner's maiden name entered as "Surviving Spouse" on the Certificate of Death of George W. Thompson. N.C. Gen. Stat. § 130A-116.

FINAL DECISION

NOW, THEREFORE, based on the foregoing findings and conclusions, it must be, and hereby is **ORDERED** that the Certificate of Death of George W. Thompson be corrected to show the Decedent's "Marital Status" as "Married, but separated," and that the Petitioner's maiden name entered as that of the "Surviving Spouse."

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. Gen. Stat. § 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 17th day of October, 2014.

Hon. J. Randolph Ward
Administrative Law Judge