

NOT DESIGNATED FOR PUBLICATION

No. 125,835

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Estate of  
JUDITH A. BIZOE.

MEMORANDUM OPINION

Appeal from Shawnee District Court, STEVEN R. EBBERTS, judge. Oral argument held October 17, 2023. Opinion filed December 8, 2023. Affirmed.

*Henry J. Schulteis*, of Topeka, for appellant.

*Roger N. Walter and Kyler C. Wineinger*, of Morris Laing Law Firm, of Topeka, for appellees.

Before ARNOLD-BURGER, C.J., SCHROEDER and COBLE, JJ.

PER CURIAM: Judith A. Bizoe died intestate. Charles "Chuck" M. Taylor then petitioned the district court to appoint him as the Administrator of Bizoe's estate, alleging he was her common-law husband. Bizoe's children, Heather Mosqueda and Ryan Bizoe, objected, and the matter proceeded to trial. The district court found there was no common-law marriage and denied Taylor's request to be appointed as the Administrator. In his timely appeal, Taylor contends the district court disregarded overwhelming evidence they had a common-law marriage. After a thorough review of the record, we observe substantial competent evidence supports the district court findings. Thus, we affirm.

## FACTS

Bizoe died intestate in Shawnee County, Kansas, on September 9, 2021, leaving behind two adult children. Bizoe was in a long-term relationship with Taylor, who petitioned to be the administrator of her estate claiming he was Bizoe's common-law husband, had an interest in Bizoe's estate, and the estate should pay his attorney fees and expenses.

Bizoe's children objected to Taylor's petition, denying Taylor was Bizoe's common-law husband and claiming they were the sole surviving heirs-at-law. The children requested the district court appoint them as coadministrators of the estate. Bizoe's children also objected to Taylor's petition for allowance of demand because the district court had not resolved whether Taylor was Bizoe's common-law husband.

The district court conducted a trial in June 2022. Each party presented several witnesses. The testimony of each witness is well known to the parties and is briefly summarized. The witnesses all agreed Bizoe and Taylor lived together but disputed they had a common-law marriage. We will address Taylor's witnesses first and then move on to the witnesses who testified the parties were not married.

### *Taylor's testimony*

Taylor testified he met Bizoe in 1964 and they became engaged to each other in 1965. The engagement was called off when Taylor went into the military during the Vietnam War. Taylor and Bizoe each married someone else. Taylor separated from his wife and eventually moved in with Bizoe in September 2005, where they lived together until Bizoe's death in 2021. Taylor explained he and Bizoe considered each other soul mates in 2005. Taylor's divorce from his former wife did not become final until July 2009.

In May 2010, Taylor and Bizoe took a trip to Keystone, Colorado, and "committed [themselves] before God . . . on top of a mountain." When Taylor described his commitment to Bizoe, he stated: "We basically committed ourselves to each other at that time. We were—she had my back. I had her back. Uh, it was just you and me, baby." At trial, Taylor presented pictures of him with Bizoe, who was wearing a ring he had given to her, together on the mountain as evidence of their commitment to each other. Taylor considered their commitment to each other as an agreement to be married, though they were not committed to each other before a pastor or someone authorized to marry the couple. Bizoe wore the ring for the rest of her life.

Taylor explained he and Bizoe attended family events, social outings, and church home group as a couple and the people they knew thought Taylor and Bizoe were married. Taylor claimed they introduced themselves as husband and wife, though "[a]nybody that knew us and knew the specific situation, knew that we were not legally married per se."

Taylor explained he and Bizoe were each other's primary emergency medical contact. Taylor asserted he did not pay Bizoe directly for bills but would give her cash when she asked and made household improvements and repairs over 16 years costing over \$61,000. Taylor had a life insurance policy that originally named his former wife as the primary beneficiary, but he later changed the primary beneficiary to Bizoe. While Taylor was married to his former wife, his policy identified her and noted her relationship status to Taylor as "wife." Taylor had another life insurance policy in which Bizoe was the primary beneficiary but identified his relationship status with Bizoe as "friend" because "we didn't have a marriage certificate." Bizoe also had a life insurance policy naming Taylor as the primary beneficiary. Both parties filed their federal income taxes as single. Taylor explained this was because Turbo Tax recommended such status. Bizoe also signed a Health Insurance Portability and Accountability Act disclosure authorizing the release of medical information to Taylor and her two children but did not list her

relationship status to the authorized individuals. Taylor was not on the title to Bizoe's house. In fact, Taylor admitted there were no signed documents in which Taylor or Bizoe represented themselves as spouses.

Bizoe's death certificate showed her marital relationship as married and the surviving spouse was Chuck Taylor. Taylor claimed the funeral home never asked what his relationship with Bizoe was insofar as he could remember. But Taylor admitted he was surprised when he saw that he was listed as the spouse on Bizoe's death certificate. A funeral card described Taylor as "The love of [Bizoe's] life" but not as her husband.

*Nikki Salazar's testimony*

Nikki Salazar worked for Envista Credit Union and testified about her experiences with Bizoe and Taylor in doing their banking-related issues, including notes they signed for the purchase of two campers. The payment obligations were kept separate between the two of them although they had joint checking and savings accounts. Salazar stated Taylor and Bizoe appeared to be a couple.

*Darren Brennan's testimony*

Brennan, a prior employer of Taylor, claimed he heard Taylor introduce Bizoe as his wife "on occasion" and thought they were married as Bizoe wore a ring on her finger that looked like a wedding ring. Brennan acknowledged he had assumed Taylor and Bizoe were husband and wife and found out after Bizoe's death that they were not married.

*Ann Yoder's testimony*

Ann Yoder testified she knew Taylor as a subcontractor with the company where she worked and met Bizoe when Taylor brought her to company functions. Yoder always thought Taylor and Bizoe were married. In fact, Yoder stated she thought she had heard Taylor refer to Bizoe as his wife but did not have a precise recollection of that.

*Fernando Garcia's testimony*

Fernando Garcia testified he was friends with Taylor and they had worked with each other. Garcia met Bizoe through Taylor and saw Taylor and Bizoe together, recalled Taylor introduce Bizoe as his wife, and was under the impression Taylor and Bizoe were married. After Bizoe's death, Garcia learned the couple was not married.

*Greg Palmer, Danielle Cowan, and Kristen Scales' testimony*

Greg Palmer, Danielle Cowan, and Kristen Scales were all neighbors to Taylor and Bizoe. Palmer had lived down the street from Bizoe's house for over two decades; Cowan lived across the street for about three years before Bizoe's death. Scales became fast friends with Bizoe just after moving next door and had known Taylor and Bizoe for about two years.

Palmer stated he had a clear recollection of Taylor and Bizoe referring to each other as husband and wife, though Taylor usually called her "my Judy." Palmer testified he specifically asked Bizoe who had installed their new fence and Bizoe said her husband did. Palmer learned the couple was not actually married after Bizoe's death.

Cowan also testified she had heard Taylor and Bizoe refer to each other as husband and wife during conversations. Bizoe had one ring she always wore on her left

ring finger. Cowan assumed it was a wedding ring. Like Palmer, Cowan did not realize the couple was not married until after Bizoe's death.

Scales understood Bizoe and Taylor were high school sweethearts, were engaged at one time, went their separate ways, and came back together about 16 years before Bizoe's death, though they were not legally married. Scales testified Bizoe told her she was married to Taylor in the eyes of God and described the occasion when she and Taylor committed their lives together in Colorado. Scales also identified what Bizoe had described as her wedding box with jewelry and wedding bands inside.

*Richard Kuebler's testimony*

Richard Kuebler knew Taylor and Bizoe from church, where they met twice a week for 15 or 16 years for Bible study. Kuebler was 90 to 95 percent sure Taylor had introduced Bizoe as his wife, but they provided him with different last names. Taylor later told Kuebler he was married but not really married.

*Joseph Ebert's testimony*

Joseph Ebert met Taylor about 15 years ago as they had both worked in the roofing industry. Ebert also owned property close to Taylor and Bizoe, had been to the couple's house, and would run into them around town. Ebert testified he had heard Taylor refer to Bizoe as his wife and stated there was nothing to make him think the couple was not married. Ebert saw Taylor after Bizoe had passed away and learned the couple was not actually married.

However, several other witnesses gave testimony reflecting there was no common-law marriage between Taylor and Bizoe.

*Heather Mosqueda's testimony*

Heather Mosqueda, Bizoe's daughter, met Taylor about 15 years before her mother's death when he moved in with Bizoe. Mosqueda testified everyone knew Taylor and Bizoe were a couple but had never heard them refer to each other as husband or wife. Mosqueda explained Bizoe wanted Taylor to ask her to marry him and wanted a formal marriage ceremony, which never happened. In fact, every Christmas and Valentine's Day, Bizoe would be disappointed because Taylor did not give her a ring or propose to her.

Bizoe eventually received a ring from Taylor which she wore regularly but referred to it as a promise ring. Mosqueda also explained Bizoe had complained about living paycheck to paycheck with little help from Taylor.

After Bizoe's death, Mosqueda recalled the funeral home asking Taylor his relationship status with Bizoe, to which he said Bizoe was his significant other. Taylor was more specifically asked if they were married, and he answered "practically." Mosqueda explained the funeral home added Taylor as the spouse on Bizoe's death certificate because there was not an option for "significant other."

Mosqueda testified her mother told her several times she was not married to Taylor. Though Mosqueda's close relationship with her mother became more distant after her own marriage, Mosqueda explained her mother would not have married Taylor and not told her. Mosqueda also testified Bizoe never mentioned she would not be leaving her assets to her children.

*Suzanna and Rhett Mosqueda's testimony*

Bizoe's grandchildren, Suzanna and Rhett Mosqueda, testified they each had a close relationship with Bizoe. Both grandchildren were under the impression Bizoe and

Taylor were in a dating relationship and said Bizoe would have told them if she married Taylor. Suzanna never heard Taylor or Bizoe refer to the other as husband or wife, and Rhett never believed they were married.

*Ryan Bizoe's testimony*

Bizoe's son, Ryan, testified he saw his mother and Taylor every weekend. Bizoe discussed with Ryan her issues with Taylor and complained about not receiving help around the house. On major holidays, especially Valentine's Day and Christmas, Bizoe had hoped for and expected a formal commitment from Taylor, but it never happened. Bizoe was concerned Taylor was careful to keep their lives separate and was afraid Taylor "would just come out and walk away from her life as fast as he came back into her life."

According to Ryan, Bizoe never considered herself married to Taylor and would correct Taylor if he introduced her as his wife. Ryan considered Taylor to be Bizoe's live-in boyfriend for 16 years.

Just like his sister, Ryan stated he heard Taylor define his relationship with Bizoe as a "significant other" to the funeral home and clarified he was "practically" married to Bizoe. Ryan also testified Taylor told him there was a time when he asked Bizoe to marry him, and Bizoe said no.

*Sherry Bizoe's testimony*

Ryan's wife, Sherry Bizoe, testified she had a very close relationship with Bizoe. Sherry understood Bizoe and Taylor lived together as boyfriend and girlfriend. Sherry recalled two occasions when Taylor referred to Bizoe as his wife in public; both times

Bizoe replied "we are not married" and told Taylor if he wanted to carry that title he had to commit to marriage. Bizoe did not refer to Taylor as her husband.

*Jerry Griggs' testimony*

Jerry Griggs, Bizoe's brother, testified he had a very close relationship with his sister and saw her often. Griggs also had a good relationship with Taylor but considered Taylor and Bizoe to be dating as boyfriend-girlfriend. Griggs stated Bizoe would have told her siblings and other family members if she had plans to get married and that was never discussed. Griggs said Taylor and Bizoe had never referred to each other as husband and wife and he never saw Bizoe wear a wedding ring.

*Daryl Allen's testimony*

Daryl Allen, Bizoe's cousin, briefly testified he never perceived Taylor and Bizoe to be married, never heard them refer to each other as husband and wife, and would have known if they got married.

*Kelly Lyda's testimony*

Kelly Lyda testified she was best friends with Bizoe for over 30 years and would talk to Bizoe on the phone almost every day. Lyda and Bizoe knew everything about each other, and Bizoe had never said she was married to Taylor. Lyda explained Bizoe had received a little ring from Taylor, but Bizoe complained, "I guess this is all I get." Lyda suggested Bizoe had initially wanted to marry Taylor but eventually gave up on the idea. They never referred to each other as husband and wife and always identified themselves as Judy Bizoe and Chuck Taylor.

### *Kennee Betz' testimony*

Kennee Betz briefly testified she met Bizoe in 1988 and became friends. Bizoe introduced Taylor as her boyfriend to Betz and in other small groups. And on at least one occasion, Bizoe told her she and Taylor were not married.

### *The district court's findings*

After taking the matter under advisement, the district court issued a memorandum decision and order, finding:

"A great deal of conflicting testimony was heard at trial about [Bizoe's] and [Taylor's] relationship. The Court finds that [Taylor] has not met his burden to show that a common law marriage existed because there is uncontested evidence that: (1) throughout their relationship [Taylor] represented that he was unmarried on his Federal Income Tax Returns, (2) [Taylor] indicated [Bizoe] was a friend on a 2010 life insurance application, and (3) [Taylor] revealed that he was [Bizoe's] significant other on a phone call with the morgue."

The district court explained Taylor could not marry Bizoe prior to 2009 because Taylor was still married to another woman but had capacity to marry Bizoe after his divorce. The district court acknowledged conflicting testimony about whether Taylor and Bizoe agreed to be married in 2010 and whether Taylor and Bizoe introduced each other as husband and wife. The district court ultimately found, after "[w]eighing all the evidence presented at trial," Taylor's case was undermined by his own representations and Taylor failed to establish he and Bizoe had a present agreement to be married or that they held each other out as husband and wife. As such, the district court found there was no common-law marriage, denied Taylor's petition to be appointed administrator of Bizoe's estate, and, instead, appointed Bizoe's children as coadministrators. We will add additional facts as necessary.

## ANALYSIS

Taylor argues the district court disregarded undisputed evidence of a common-law marriage. Taylor contends he presented overwhelming evidence he agreed with Bizoe to be married in Colorado in 2010 and they held themselves out as a married couple.

There are three elements to establish a common-law marriage: "(1) capacity of the parties to marry; (2) a present marriage agreement between the parties; and (3) a holding out of each other as husband and wife to the public." *In re Marriage of Heidkamp and Ritter*, 317 Kan. 125, 128, 526 P.3d 669 (2023). Taylor, as "[t]he party asserting a common-law or consensual marriage[,] bears the burden of proving the existence of the marriage." 317 Kan. at 128.

"An appellate court generally reviews a district court's findings of fact to determine if the findings are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law. Substantial competent evidence is such legal and relevant evidence as a reasonable person might regard as sufficient to support a conclusion.

"In evaluating the evidence to support the district court's factual findings, an appellate court does not weigh conflicting evidence, evaluate witnesses' credibility, or redetermine questions of fact. [Citation omitted.]" *Hodges v. Johnson*, 288 Kan. 56, 65, 199 P.3d 1251 (2009).

The parties agree capacity was not an issue after Taylor was divorced in 2009.

### *No present agreement to be married*

"[T]he marriage agreement need not be in any particular form," but there must be "a present mutual consent to the marriage between the parties." *In re Estate of Antonopoulos*, 268 Kan. 178, 192, 993 P.2d 637 (1999). The existence of a present

marriage agreement may be shown by circumstantial evidence. *Fleming v. Fleming*, 221 Kan. 290, 291, 559 P.2d 329 (1977).

Taylor points to the testimony of his next-door neighbor, Scales, but very broadly contends Scales testified "concerning the marriage commitment in Colorado and [Taylor's] wedding ring given to [Bizoe] on the mountain." Taylor then directs our attention to the exhibits admitted into evidence during the trial as establishing "overwhelming evidence that the parties made an agreement to be married." Taylor merely lists the exhibits and then fails to make a substantive argument or even explain what overwhelming evidence is in the exhibits. Thus, Taylor waives and abandons such points on appeal. See *State v. Arnett*, 307 Kan. 648, 650, 413 P.3d 787 (2018) (issue not briefed deemed waived or abandoned).

Even if we were to consider Taylor's exhibits admitted into evidence, his argument is unpersuasive. Taylor directs our attention to several photographs of him and Bizoe, claiming the photographs show Bizoe on the mountain with the wedding ring Taylor gave her. While the existence of a present marriage agreement may be shown by circumstantial evidence, photographs of Bizoe wearing a ring in the mountains with Taylor do not establish a present agreement to be married. Taylor argued as much in his closing argument, and the district court took the matter under advisement to consider all the evidence. Taylor is essentially asking us to reweigh the evidence—something we cannot do. *Hodges*, 288 Kan. at 65.

Taylor's argument relies heavily on Scales' testimony and disregards conflicting testimony from other witnesses. While Scales did testify Bizoe believed she was married to Taylor in the eyes of God when she committed herself to Taylor in Colorado, other witnesses provided contradictory evidence. Betz testified Bizoe said she was not married to Taylor; Heather Mosqueda testified Bizoe received a promise ring and wanted to get

married, but it never happened; and Lyda, Bizoe's best friend, testified Bizoe initially wanted to marry Taylor but eventually gave up on the idea.

Taylor's testimony reflects he identified Bizoe as a friend on his life insurance policy, he and Bizoe both filed their federal incomes taxes as single, and he was surprised when he saw Bizoe's death certificate listed him as her husband.

Substantial competent evidence supports the district court's finding there was not a present agreement to be married.

*Insufficient evidence they held themselves out as a married couple*

Taylor next asks us to review the testimony of neighbors, family, and business associates to find Taylor and Bizoe held themselves out as a married couple in public. Taylor then suggests the district court focused on three select facts and disregarded overwhelming evidence he and Bizoe had a common-law marriage. Taylor claims the district court hyper-focused on (1) the status listed on Taylor and Bizoe's federal tax returns; (2) Taylor's life insurance policy showing Bizoe was a "friend"; and (3) Taylor telling the funeral home he was not legally married to Bizoe. Taylor again asserts the district court disregarded other overwhelming evidence of a common-law marriage without specifying what his overwhelming evidence was. Taylor's argument is conclusory and asks us to reweigh the evidence, which we cannot do. *Hodges*, 288 Kan. at 65.

The district court noted in its memorandum decision and order it weighed the evidence presented at trial and acknowledged there was a great deal of conflicting testimony. The witnesses who testified on Taylor's behalf, including Taylor himself, all explained Taylor and Bizoe at the very least appeared as a couple. A few of Taylor's witnesses testified they were unsure but thought Taylor and Bizoe had referred to each

other as husband and wife and believed they were a married couple. On the other hand, nine witnesses—seven who were members of Bizoe's family and two longtime friends of Bizoe—all testified there was no marriage. The evidence reflects Bizoe had hoped for a formal proposal and marriage, but, because Taylor had never proposed, he had not earned the title of husband.

Substantial competent evidence supports the district court's finding Taylor and Bizoe did not hold themselves out as husband and wife. Taylor failed to establish a common-law marriage with Bizoe, and his request to be appointed as the administrator of Bizoe's estate was properly denied.

*Appellees' request for attorney fees*

After oral argument, the appellees timely filed a motion for attorney fees, claiming they should be awarded fees because Taylor's appeal was "offensively frivolous." However, given the facts and the law, even though Taylor's claim was not successful, we do not find his appeal frivolous. We deny the appellees' motion for attorney fees.

Affirmed.