

WEDNESDAY, OCTOBER 7, 2009
11:00 A.M.

NO. 3

#25065

THE ESTATE OF PAUL A. DUVAL,
Deceased.

KAREN HARGRAVE,
Petitioner and Appellee,

vs.

NATHALIE DUVAL-COUEUIL and
ORIELLE DUVAL-GEORGIADIS,
Respondents and Appellants.

Mr. Gerald M. Baldwin
Attorney at Law
PO Drawer 31
Custer SD 57730
Ph 673-3331

(FOR APPELLANTS)

Mr. Patrick M. Ginsbach
Mr. James G. Sword
Farrell, Farrell and Ginsbach
Attorneys at Law
441 N River St
Hot Springs SD 57747-1499
Ph 745-5161

(FOR APPELLEE)

The Honorable Jeff W. Davis
Seventh Judicial Circuit
Custer County

(PRO 08-08)

20-20-10

STATEMENT OF THE ISSUES

- I. Did the trial court err when it held that Decedent Paul A. Duval and petitioner Karen Hargrave, while they were domiciled in South Dakota, had entered into a common-law marriage when they traveled to other jurisdictions that recognize common-law marriage?

Trial Court Decision

The trial court stated as a conclusion of law that "South Dakota Courts recognize the validity of marriage as contracted in another jurisdiction and recognize common-law marriages where they have been validly contracted in another jurisdiction that still permits common law contract of marriage."

Contrary Authority

Garcia v. Garcia, 25 S.D. 645, 127 N.W. 586 (1910) (holding that the courts of South Dakota are without authority to annul a marriage legal and valid in a state where the same was contracted *and where the parties were domiciled*).

- II. Did the trial court err when it held that it would recognize Duval and Hargrave as husband and wife on the basis of the relationship the parties had under the law of Mexico?

Trial Court Decision

The trial court stated as a conclusion of law that, "[u]nder the federal law of Mexico and the State of Nuevo Leon, Hargrave and the Decedent possess a common law marriage or concubinage."

Contrary Authority

Rosales v. Battle, 113 Cal. App. 4th 1178, 1183, 7 Cal. Rptr. 3d 13, 16 (2003) (to be recognized as a marriage under the law of Mexico, the marriage must be performed before the officials established by the law and in conformance with the formalities established by the law).

Nevarez v. Bailon, 287 S.W.2d 521 (Tex. Civ. App. 1956) (applicant alleged that she was the "common-law" wife of the decedent based on a 13-year relationship in Mexico; the court held that there is no common-law marriage recognized in the Republic of Mexico from such a relationship, only concubinage; and that since the parties had not entered into a valid marriage in Mexico, there was no marriage to be recognized by the courts of Texas).

III. Did the trial court err when it held that Hargrave had met her burden of establishing the elements of a common-law marriage under the law of Oklahoma?

Trial Court Decision

The trial court stated as a conclusion of law that "Karen Hargrave is the common law wife of the Decedent, both under Mexico and Oklahoma law."

Relevant Authority

Brooks v. Sanders, 2008 OK CIV APP 66, 190 P.3d 357 (setting forth the elements of common-law marriage in Oklahoma).