



Tenn. Op. Atty. Gen. No.

Tenn. Op. Atty. Gen. No. 97-138, 1997 WL 654162 (Tenn.A.G.)

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Office of the Attorney General

State of Tennessee

*1 Opinion No. 97-138

October 9, 1997

Validity of Marriage That Was Performed by a Universal Life Church, Inc., Minister

Honorable Tim Burchett

State Representative

18th Legislative District

207 War Memorial Building

Nashville, TN 37243-0118

QUESTION

Are couples in Tennessee legally married when the person who conducted the ceremony was an ordained minister in the Universal Life Church, Inc.?

OPINION

The presumption in favor of marriage is very strong. The burden to rebut this presumption rests upon the party challenging the validity of the marriage and is not easily sustained. The marriage's validity depends upon the context in which it is challenged, the specific facts involved, and the proof presented. Upon proper proof, a court could determine that the marriage was void if it determined, under the specific facts, that it was appropriate to examine the minister's qualifications to solemnize a marriage under [Tenn. Code Ann. § 36-3-301\(a\)](#) and the minister did not meet the statutory qualifications.

ANALYSIS

In Op. Tenn. Atty. Gen. U97-041, we opined that a person ordained by the Universal Life Church, Inc., which apparently has ordained anyone who filled out a mail order application, without a background check, verification or obtaining of any information, did not appear to meet the criteria of [Tenn. Code Ann. § 36-3-301\(a\)](#) in order to be qualified to solemnize marriages. You have asked a follow-up question, regarding whether marriages conducted by such person are valid in this state. The answer depends upon the context in which the marriage's validity is challenged, the specific facts involved, and the actual proof presented.

As the instant analysis will reflect, Tennessee courts have considered the validity of marriages in many different contexts, e.g., divorce actions; annulments; will contests by surviving heirs, including those alleged to be illegitimate children; wrongful death actions where the deceased's recovery is claimed by multiple persons; third party challenges involving benefits to survivors, such as workers' compensation benefits; actions for insurance recovery; contest to a marriage by family members; and criminal prosecution such as bigamy and non-support.

The public policy of "Tennessee and ... the civilized world is to sustain marriages, not to upset them." [Madewell v. United States, 84 F. Supp. 329, 332 \(E.D. Tenn. 1949\)](#). [\[FN1\] Marriage, "being of vital public interest, is subject to state and legislative power and control, with respect to its inception, duration and status, conditions and termination, except as restricted by constitutional provision." Crawford v. Crawford, 198 Tenn. 9, 14, 277 S.W.2d 389 \(1955\)](#), citing 35 Am.Jur., p. 186. In the "interest of social order, the presumption in favor of [marriage] is very strong, and the pressure of that presumption is felt at every stage of the inquiry." [Gamble v. Rucker, 124 Tenn. 415, 417, 137 S.W. 499 \(1911\)](#). Where there is "direct proof of the performance of a ceremony and consummation of a marriage ... this evidence raises a prima facie case of a legal marriage." [Duggan v. Ogle, 25 Tenn. App. 467, 472, 159 S.W.2d 834, 838 \(1941\)](#), cert. denied. The burden to rebut such presumption rests upon the party challenging the validity of the marriage. [Duggan, 25 Tenn. App. 472-473; Whipple v. McKew, 166 Tenn. 31, 60 S.W.2d 1003 \(1933\)](#). Such burden is not easily sustained as the evidence required has been described as "strong, distinct, satisfactory and conclusive" [Duggan, 25 Tenn. App. at 473, 159 S.W.2d at 838](#), as well as "cogent and convincing." [Gamble, 124 Tenn. at 417; Aghili v. Saadatenejadi, 1997 W.L. 311544, p. 4 \(Tenn. App. 1997\); Hall v. Hall, 13 Tenn. App. 683, 688 \(1931\)](#), cert. denied (1932). Indeed, if any evidence supports the presumption, the Court will sustain it. [Duggan, 25 Tenn. App. at 472, 159 S.W.2d at 838](#).

*2 As indicated above, Tennessee courts' review of a marriage's validity have depended upon who was challenging the marriage, the competent proof presented, the context of the challenge, and detailed review of the specific facts. In cases where a party established proof of attempts to comply with the marriage statutes, engaged in a ceremony followed by a subsequent relationship of substantial duration, and the parties thought they were married, courts have refused to disturb the marriage. See [Johnson v. Johnson, 41 Tenn. 626, 631 \(1860\)](#) (marriage ceremony occurred before license was obtained; after 25 years of marriage, wife's attempt to have marriage declared void and her original property restored to her was rejected); [Duggan v. Ogle, 25 Tenn. App. 467, 473, 159 S.W.2d 834, 838 \(1941\)](#) (where both reputed wife and infant children, and deceased's parents claimed wrongful death damages, court accepted wife's testimony of secret marriage, parents and family members became aware of relationship, and relationship continued for several years, court rejected indirect proof from court clerk who could not locate the license; the direct proof of the performance of the ceremony and consummation of the marriage was accepted as a prima facie case and the parents were estopped from denying the marriage); [Hale v. State, 179 Tenn. 201, 205, 164 S.W.2d 822 \(1942\)](#) (husband estopped in prosecution for non-support where a ceremony occurred, cohabitation continued for twelve years and parties held themselves out to be married); and [Douglas v. Douglas, 6 Tenn. App. 12 \(1927\)](#) (heirs' challenge to validity of marriage was rejected where license was

issued in one county and ceremony by mistake occurred in a separate county and couple lived as man and wife for five years until his death).

The Tennessee Supreme Court has explained that in cases in which marriage is technically unlawful, it is nevertheless sometimes presumed to be valid by use of the doctrine of estoppel to prevent fraud, as well as to preserve rights of innocent third parties who would be adversely affected by the parties' conduct, but the doctrine is not available to protect the rights of persons who knowingly enter upon an immoral relationship. [Crawford v. Crawford, 277 S.W.2d 389, 190 Tenn. 9 \(1959\)](#). Generally "the party seeking to invoke the doctrine of estoppel had ... believed in the validity of the marriage and evidenced that belief by cohabitation." [Rambeau v. Farris, 212 S.W.2d 359, 186 Tenn. 503 \(1948\)](#). Where "there has been a marriage ceremony, insufficient to constitute a valid statutory marriage ab initio [from the beginning] the parties thereto nevertheless acquire the rights and incur the liabilities of married persons with respect to each other." [Madewell v. United States, 84 F. Supp. 329, 333 \(D.C. Tenn. E.D. 1949\)](#) (overturning Veterans' Administration's denial of wife's claim for widow's insurance benefits), citing [Allen v. Allen, 8 Tenn. App. 48 \(1928\)](#); and Johnson v. Johnson, 41 Tenn. 826 (1860). [FN2]

*3 The presumption of marriage and the doctrine of estoppel have been applied against third parties in cases involving employee survivor benefits. See, e.g., [Huey Bros. Lumber Co. v. Anderson, 519 S.W.2d 588, 590 \(1975\)](#) (presumption and estoppel used by Supreme Court to allow widow to recover against deceased husband's employer in workers' compensation case); [Kinnard v. Tennessee Chemical Co., 157 Tenn. 206, 7 S.W.2d 807 \(1928\)](#). Subsequent cases have suggested the workers' compensation decisions are based more upon dependency than relationship. [Perry v. Sun Coal Co., 183 Tenn. 141, 191 S.W.2d 181 \(1945\)](#).

Cases in which courts have refused an attempt to establish marriage based upon estoppel or presumption often involved no attempt at statutory compliance. [FN3] In [Payne v. Payne, 142 Tenn. 320, 319 S.W.2d 4 \(1919\)](#), the Court declined estoppel where the wife found out the marriage was void and subsequently took no action. The wife invoked estoppel after the death of her spouse. The Court rejected her request because she continued to live with the man after she found out he had a prior, still valid marriage. In [Moore v. Moore, 1986 W.L. 8426 \(Tenn. App. 1986\)](#) (appeal denied), the plaintiff wife sued the husband for damages resulting from alleged outrageous conduct and asked the Court to determine whether or not the parties were legally married, and if so, to award her an absolute divorce. The defendant husband likewise sought divorce. There, no license had been presented by either of the couple to the officiant nor had a license been signed or returned. The parties apparently lived together only five days. The Court found that the marriage was void because the officer who attempted to solemnize the marriage ceremony "was without authority to do so." The ceremony was thus a nullity. In [Horn v. Shelton, 6 Tenn. Ct. Civ. App. 530 \(1916\)](#), estoppel was not available against heirs where a woman lived with a married man before his wife died and cohabitated with him after their own ceremony; the marriage certificate was obtained from a former clerk who had no authority to issue it; the illegality of the "marriage" was known to the woman, who was denied a widow's share of recovery.

In a recent case, the Court of Appeals for the Middle Section reiterated the standard of proof required to rebut the presumption of marriage. In [Aghili v. Saadatenejadi, 1997 W.L. 311544 \(Tenn. App. 1997\)](#), the Court reiterated that "Tennessee protects the institution of marriage by presuming that regularly solemnized marriages are valid." Aghili, at p. 4, citing [Cole v. Parton, 172 Tenn. 8, 11-12, 108 S.W.2d 884, 885 \(1937\)](#). Thus, "persons challenging a marriage must provide cogent and convincing evidence that the marriage is invalid." Id., citing [Huey Bros. Lumber Co. v. Anderson, 519 S.W.2d 588, 590 \(Tenn. 1975\)](#); [Moody v. T.H. Hayes & Sons, Inc., 189 Tenn. 666, 675, 227 S.W.2d 20, 24 \(1950\)](#). The trial court had concluded that the marriage was void ab initio, after considering the husband's petition for divorce or annulment and the wife's counterclaim for divorce. The husband's grant of summary judgment was reversed where the wife presented proof as to the validity of the marriage ceremony under Islamic law and the proof offered by the husband did not satisfy evidentiary requirements. The husband had claimed that the officiant did not have the authority to administer Islamic blessings to solemnize a wedding. The husband also had retained the signed marriage certificate rather than filing it, since it was a document required to be filed with the Islamic Republic of Iran in order to make an official record of the marriage in Iran. The husband had refused to file the certificate unless the wife would sign another premarital agreement and relinquish her dowry. The husband, who challenged validity of the marriage, failed his burden to prove by cogent and convincing evidence that the marriage was invalid. Op. at 2-4.

*4 Similarly, the cases from other jurisdictions, cited in our prior opinion, which examined the qualifications of Universal Life Church, Inc. ministers to solemnize marriage, depended upon the context, specific facts, and proof presented. In [Cramer v. Commonwealth, 202 S.E.2d 911 \(Va. 1974\)](#), cert. denied, [419 U.S. 875](#), statutes required ministers to produce proof of religious ordination before they would be authorized by the court to celebrate the rights of matrimony. [202 S.E.2d at 913](#). A reporter who had a Universal Life ordination card requested authorization to perform marriages and was questioned by the clerk of court as to his authority. The Court then issued a show cause order and subsequently concluded that Universal Life Church, Inc. ministers did not have appropriate religious ordination, and rescinded their authority. In *State v. Lynch*, defendant Lynch was convicted of bigamy and appealed. After living together for one year, defendant and first wife participated in the ceremony allegedly solemnized by the wife's father, a Roman Catholic layman who had credentials of ordination as a minister in the Universal Life Church, Inc. The ceremony occurred in the father's home; the rings which were exchanged were borrowed from relatives and returned to them later. They resided together for approximately four years until the woman returned to the home of her father. Defendant was charged with bigamy after a subsequent marriage. The Court found that the first marriage was void and that the state had failed to prove a prior marriage beyond a reasonable doubt, the standard in criminal cases. [272 S.E.2d at 353](#), [301 N.C. at 486](#). Subsequently, the North Carolina legislature passed an act which validated prior marriages performed by Universal Life ministers, unless a court had invalidated the marriage previously. The legislature did not change the statutory requirements. See [N.C.G.S. § 51-1-.1 \(1984\)](#).

In [Ranieri v. Ranieri, 539 N.Y.S.2d 382, 386, 146 A.D.2d 34, 40 \(N.Y. 1989\)](#), wife

sought action declaring marriage was void and husband filed counterclaim seeking declaration that both marriage and antenuptial agreement were void. According to the agreement, defendant husband would pay the plaintiff \$90,000 within 90 days of the marriage; the parties cohabitated after marriage for 84 days. Both parties acknowledged that a minister of the Universal Life Church did not meet the statutory definition of New York law to perform a marriage ceremony. [539 N.Y.S.2d at 383](#); [146 A.D.2d at 36-38](#). The Court recognized that two prior New York decisions had concluded that ministers of the Universal Life Church lacked the requisite qualification under New York statutes. Detailed facts from the prior cases reflected the activities of the minister related to solemnization of marriage. [539 N.Y.S.2d at 386- 7](#); [146 A.D.2d at 40-41](#). By contrast, In the [Matter of Last Will and Testament of Cobert C. Blackwell, 531 So.2d 1193, 1194 \(Miss. 1988\)](#) involved a challenge by the wife to the will of her husband of three months. The obviously outdated will devised real property to his deceased first wife. Brothers and sisters of the husband counterclaimed that decedent was not lawfully married. The Supreme Court held that the minister "was enough of a 'spiritual leader,' and the Universal Life Church is enough of a 'religious body'" that the marriage was valid. [531 So.2d at 1196](#). A strong dissent was filed. [531 So.2d at 1196-1201](#).

*5 Thus, while courts will rely upon the presumption of the validity of marriage, and will apply estoppel where appropriate, a court could find a marriage void where it was solemnized by a minister who did not meet the statutory qualifications and the party challenging the marriage had the right to challenge it and presented sufficient evidence.

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[\[FN1\]](#). See generally, "Informal Marriages In Tennessee - Marriage by Estoppel, by Prescription and by Ratification," 3 Vanderbilt Law Review 610 (1949); "Use of Presumptions In Proving the Existence of Marriage Relationships in Tennessee," 5 Memphis State Law Review 409, 410-411 (1975).

[\[FN2\]](#). The principles of presumption and estoppel are not generally applied by courts to presume a marriage which is prohibited by law or against public policy. See, e.g., [Bennett v. Anderson, 20 Tenn. App. 523, 101 S.W.2d 148 \(1936\)](#).

[\[FN3\]](#). This analysis largely omits discussion of "common law" marriage and marriage allegedly based solely upon cohabitation and reputation, where no statutory ceremony occurred. See generally, 3 Vanderbilt Law Review, 610, supra.

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