

10-1-1960

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Buffalo Law Review

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Recommended Citation

Buffalo Law Review, *Decedents' Estates And Trusts—Meretricious Relationship Bars Claim For Services*, 10 Buff. L. Rev. 175 (1960).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol10/iss1/77>

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MERETRICIOUS RELATIONSHIP BARS CLAIM FOR SERVICES

In the case of *In re Gorden*,⁴⁰ a claim for work, labor and services was filed against the estate of Oliver Gorden by one Anne Clark, who alleged that she was employed by deceased for more than seven years, on the basis of a weekly wage which was never paid her. It was undisputed that claimant occupied the same rooms and the same table with deceased and that they together operated a small country tavern without any employees; nor is it disputed that she joined with him in performing all the work connected both with their domestic life and in the operation of the tavern.

The general rule applied both in New York,⁴¹ and many other jurisdictions, in cases of this nature,⁴² is that if a man and a woman live together as husband and wife, the law will not imply a promise to pay for the services rendered by the woman during such relationship. The rule further states, however, that the meretricious relationship does not preclude the woman from proving an express agreement to compensate her for her services, provided, of course, that illicit relations were not to form any part of the consideration.⁴³

The Surrogate's Court dismissed plaintiff's claim. The Appellate Division,⁴⁴ holding to the general rule expressed above, felt, however, that claimant's services in and around the inn were severable from any personal relationship with deceased and that, therefore, she should be allowed to recover on an implied contract for that particular part of her claim. The Court of Appeals reversed and held that claimant merely performed those services, both in the management of the inn and the house, that would ordinarily be performed by a wife under similar circumstances and therefore, under the rule of *Rhodes v. Stone*,⁴⁵ was legally prevented from recovering on an implied contract. They further held that, although her meretricious relationship with the deceased—which they found to exist—did not prevent her from recovering on an express agreement, she failed to prove such agreement. Clear and convincing proof is required to support claims filed against a decedent's estate.⁴⁶ The dissent felt that because of the modesty of the recovery given claimant in the Appellate Division, and the satisfactory evidence of express promises by deceased to pay for the services of claimant, the decision should not be set aside.

The case appears to add nothing to the substantive law of New York but merely affirms, without qualification, a long standing rule of the lower courts. The Appellate Division certainly presented this court with an opportunity to qualify the general rule by granting the claimant recovery on an implied

40. 8 N.Y.2d 71, 202 N.Y.S.2d 1 (1960).

41. *Rhodes v. Stone*, 63 Hun 624, 17 N.Y. Supp. 561 (1892)); see also *Vincent v. Morialty*, 31 App. Div. 484, 52 N.Y. Supp. 519 (2d Dep't 1898).

42. See 7 A.L.R.2d 137 (1949).

43. *Supra* note 41.

44. 9 A.D.2d 585, 189 N.Y.S.2d 404 (3d Dep't 1959).

45. *Supra* note 41.

46. *In re Burt*, 255 App. Div. 1030, 8 N.Y.S.2d 745 (4th Dep't 1938); *Hyman v. Dworsky*, 239 App. Div. 413, 267 N.Y. Supp. 539 (3d Dep't 1933).

contract for her services in running the inn. The Court of Appeals, however, elected not to soften the application of the rule but reiterated what was no doubt the same formula used in *Rhodes v. Stone*,⁴⁷ to wit, any service which would normally be performed by a wife under similar circumstances cannot be compensated for on the basis of an implied contract against the deceased.⁴⁸

It appears that the rational basis of such a rule would be that the relationship of husband and wife is inconsistent with an understanding of compensation for those services normally performed by one who legally assumes the role which the claimant, in cases of this nature, has willingly chosen. In effect, a woman living meretriciously with a man will be treated as if she were his legal wife in so far as recovery on an implied contract is concerned. However, unlike a legal wife, claimant is not given the statutory assurance of participating in deceased's estate, and because of this latter consequence, some doubt can be raised as to the soundness of the presumption lying at the foundation of the rationale.

It appears, however, that the Court's affirmance of the rule of *Rhodes v. Stone* in regard to claimant's recovery on the implied contract, as well as their reluctance to allow claimant's recovery on an express contract, was dictated by the overriding public policy of discouraging meretricious relationships. Although this may not have been the policy behind the *Rhodes* decision where the relationship was adulterous,⁴⁹ it is apparently the same policy the Legislature adopted in 1933 when it passed legislation declaring that common law marriages would no longer be recognized in New York State.⁵⁰ It is also interesting to note at this point that all but one (Pennsylvania) of the 12 states which follow a rule such as *Rhodes v. Stone* in one form or another, do not recognize common law marriages.⁵¹

LIMITED AGREEMENTS MAY VIOLATE FIDUCIARY'S DUTY OF TRUST

The confidential relationship of principal and agent, or attorney, requires the strictest scrutiny in cases of divided loyalty.⁵² It has been held that where a claimant is serving more than one master, or is subject to conflicting interest,

47. Supra note 41. Claimant was not permitted to collect anything on an implied contract even though, besides cleaning house, she performed the labor of an ordinary farm hand. They, no doubt, were considered to be the usual services of a farmer's wife.

48. If claimant had been working as an employee instead of a defacto wife, she would not have labored from 8 o'clock in the morning until after midnight without demanding pay or without being paid. The records of the inn do not show payments of wages to her, nor do the reports of the State Liquor Authority indicate that she was an employee, although she kept the books and did the paper work for the entire establishment. No entries were made of wages paid, accrued or owing. Claimant was not without experience in business affairs.

49. Common law marriages were recognized in New York at this time (1892). However, deceased was not legally separated from his wife while living with claimant.

50. *Adams v. Adams*, 188 Misc. 381, 67 N.Y.S.2d 752 (Sup. Ct. 1946).

51. Supra note 42.

52. *In re Willet's Estate*, 173 Misc. 199, 17 N.Y.S.2d 578 (Surr. Ct. 1939).