

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

December 5, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-0918**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE ESTATE OF WILLIE C. BOYD,  
DECEASED:**

**DIANNE BOYD,**

**APPELLANT-CROSS-RESPONDENT,**

**V.**

**CORA COLEMAN AND MARY BOYD,**

**RESPONDENTS-CROSS-APPELLANTS.**

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APPEAL and CROSS-APPEAL from orders of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Order reversed; order affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Dianne E. Boyd appeals from an order declaring that she was not the wife of the deceased, Willie C. Boyd. Dianne claims the trial court erred when it made that finding. Cora Coleman and Mary Boyd, Willie's mother and sister, respectively, cross-appeal from the same order. Coleman and Mary claim that the trial court erred when it allowed the introduction of new evidence, which demonstrated that Willie had designated Dianne as the beneficiary of his employer's pension and stock option plans. Because Dianne was the wife of Willie, we reverse on the appeal; however, because the trial court did not erroneously exercise its discretion in deciding the motion following the hearing, we affirm on the cross-appeal.

## I. BACKGROUND

¶2 On July 24, 1997, Willie died intestate. On May 27, 1998, his mother and sister filed a petition with the probate court seeking that Coleman be appointed special administrator for the administration of Willie's estate. Dianne filed a petition with the probate court alleging that she was the surviving spouse and, therefore, was entitled to Willie's entire estate, including pension and stock option benefits from his employer.

¶3 In March 1999, a bench trial was conducted to resolve the factual issue of whether Dianne was married to Willie. Evidence was introduced that a marriage license was applied for, that a marriage ceremony and reception took place in July 1981, and that the wife of the celebrant filed the signed marriage license. However, there was also evidence from the Register of Deeds that no marriage license for Willie and Dianne was on file. The trial court found that Dianne was not the wife of Willie, and ordered Willie's employer, Interstate Forging Industries, to pay any benefits to Coleman.

¶4 Following the order, Dianne filed two documents from Interstate with the court, which indicated that Willie had designated Dianne as his beneficiary on both his pension plan and the stock option plan. In June 1999, a motion hearing was held. After reviewing the documents and hearing testimony from a representative of Interstate, the trial court ruled that it could not order Interstate to pay the benefits to Coleman. It struck that part of the order. Both sides now appeal.

## II. DISCUSSION

### A. *Appeal.*

¶5 Dianne claims the trial court's determination that she was not married to Willie because the Register of Deeds did not have their marriage license on file was clearly erroneous. We agree.

¶6 The trial court acknowledged that Dianne and Willie intended to marry, filled out an application for marriage, and had a ceremony. The trial court also noted that the wife of the celebrant testified that she filed the documents with the Register of Deeds. The trial court even stated that it believed Dianne was married to Willie. Despite the overwhelming evidence that Dianne and Willie in fact were married, the trial court refused to so find based on the sole fact that the Register of Deeds could not find a record of the marriage in its indexes.

¶7 Coleman bases her case on the fact that our statutes require a marriage license in order for this state to recognize the union. *See* WIS. STAT. § 765.05 (1981). She argues that because neither Dianne nor the Register of Deeds could produce that marriage license, no marriage existed. We disagree.

¶8 This case is not a common law marriage case. If it were, we would have to agree that Dianne was not legally married to Willie, as common law marriages are not recognized in this state. *See Wolf v. Fox*, 178 Wis. 369, 190 N.W. 90 (1922). That is not the case here. Here, Dianne presented: (1) the application for marriage; (2) evidence from several witnesses that a marriage ceremony took place in July 1981, and that these witnesses attended the ceremony; (3) evidence from the celebrant's wife that she filed the documents after the ceremony with the Register of Deeds; and (4) evidence that the marriage ceremony was properly witnessed.<sup>1</sup> There is no challenge to the credibility of the evidence presented by Dianne and her witnesses. In its decision, the trial court acknowledged that it believed Dianne was married to Willie. The only fluke in an otherwise legally contracted marriage is the fact that the Register of Deeds was unable to locate the marriage license, which the celebrant's wife swore that she filed. Because "every reasonable presumption is indulged in favor of the validity of the marriage," *Campbell v. Blumberg*, 260 Wis. 625, 630, 51 N.W.2d 709 (1952), we must conclude that the trial court's finding in this case was clearly erroneous.

¶9 The evidence overwhelmingly demonstrates that Dianne and Willie followed the proper statutory procedures to become legally married. The evidence shows that they applied for the marriage license, that a marriage ceremony took place, that the documents were filed, and that Dianne and Willie lived for almost twenty years as husband and wife. Under the facts presented here, it would be a travesty to declare that the inability of the Register of Deeds to locate a single

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<sup>1</sup> The celebrant of the marriage ceremony was deceased when this case was presented to the trial court and, therefore, he was unable to testify.

document renders the Boyd's marriage void. Accordingly, we reverse the trial court's order so ruling.

*B. Cross-Appeal.*

¶10 On the cross-appeal, Coleman contends that the trial court erroneously exercised its discretion when it reversed its earlier ruling after reviewing new documents presented after the trial in this case. The new documents included evidence that Willie had designated Dianne as his sole beneficiary for both his pension plan and the stock option plan from Interstate. We conclude that the trial court did not erroneously exercise its discretion when it so ruled.

¶11 Coleman characterizes Dianne's post-trial motion as one alleging newly discovered evidence. She argues that the trial court should have denied the motion because these documents were known to Dianne long before the hearing in this case and could have been presented as evidence during the trial. The trial court, however, did not address the motion as one for newly discovered evidence. Rather, it treated the motion more like a motion to re-open the case. As a result, so do we.

¶12 Under WIS. STAT. § 806.07(1)(h), the trial court may relieve a party from a judgment for "[a]ny other reasons justifying relief from the operation of the judgment." The two documents presented in the motion to re-open clearly and unequivocally demonstrated that Dianne was the beneficiary of the pension plan and the stock option plan from Interstate. Coleman argued that the trial court should not consider the documents because they should have been presented at trial. The trial court ruled that despite the post-trial presentation of these documents, it was without authority to order Interstate to pay benefits to someone

other than the beneficiary designated by Willie. We agree with the trial court's ruling. The beneficiary designation documents were authentic and legally binding. Interstate cannot pay Willie's benefits to anyone other than Dianne, regardless of whether or not they were legally married. The documents naming Dianne as beneficiary control regardless of the result of the trial. Accordingly, we affirm on the cross-appeal.

*By the Court.*—Order reversed; order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

