

To: Partner Babette Bolick
From:
Date: September 26, 2009
Re: Sarah Stanford v. Estate of Robert Stanford, File No. 09-2678

Comment [SOL1]: Spelling – should be Bolick

I. ISSUE

Comment [SOL2]: Stanford. Make sure you review carefully your memo for typos.

Under Alabama law, can Sarah Stanford establish that her relationship with Robert Stanford constituted a common law marriage, which requires that she and Robert entered into a present, mutual agreement to be remarried following their divorce in December of 2008, given that: ~~in June 2009~~ they resumed cohabitation in June 2009, and their sexual relationship ~~in July 2009~~; ~~in August~~ they purchased a home ~~listed~~ as husband and wife in August; Robert proposed several times and Sarah refused; for the time being ~~considering due to~~ Robert's ~~recent history of~~ infidelity; and ~~their publicly referring~~ they publicly referred to each other as husband and wife?

Comment [SOL3]: The information following the colons should be vertically aligned.

Comment [SOL4]: Need 2 spaces or a tab between the roman numeral and heading

Comment [SOL5]: Consider using colons and semicolons for this list, see my suggested changes for instance.

Comment [SOL6]: Be more precise

Comment [SOL7]: Doesn't this belong earlier in the chronology, and also didn't only Sarah do this?

II. BRIEF ANSWER

Probably no. Of the three elements of common law marriage, Sarah has a case for meeting two of them. During Sarah's brief reunion with Robert, they cohabitated. The second element is satisfied because the public has been made aware of the reconciliation in published reports. Thus, the only element at issue is present, mutual agreement, which ~~is a criteria~~ Sarah probably ~~does not~~ cannot meet for two reasons. First, she ~~is was~~ hesitant to remarry Robert, by her own admission and Robert's private emails. Secondly, the relationship must be recognized by both parties as present and permanent, exclusive to all others. Humphrey v. Humphrey, 300 So. 2d 121 (Ala. 1974). Sarah has a case for meeting this second ~~criteria~~ criteria because Robert and Sarah have publicly presented themselves as husband and wife, on their ~~title deed~~ and in

Comment [SOL8]: What are these elements? For the reader to understand, you must state them specifically and then dismiss those that are met. Also review word choice and sentence structure.

Comment [SOL9]: Specific length of time?

Comment [SOL10]: Which element are you discussing in this sentence?

Comment [SOL11]: What is that element?

Comment [SOL12]: Isn't it important to note that she communicated this to Robert to show there cannot be present and mutual agreement?

Comment [SOL13]: You should not include cites (and check BB, citation is wrong) in brief answer.

Comment [SOL14]: You need to be very clear when you discuss elements and sub-elements. The only element at stake in your analysis is whether there is present, mutual assent. This in turn requires that the relationship be recognized: (1) as present and permanent; and (2) as exclusive to all others. Just saying "second criterion" is confusing.

Sarah's CNN interview, when she refers to Robert as her husband. These acts could show that the couple already considered their relationship to be one of husband and wife. However, this element must be met after the parties have mutually assented to wed, which has not occurred.

Comment [SOL15] : Make sure there are two spaces between sentences.

III. STATEMENT OF FACTS

In December 2008, Georgia Governor Robert Stanford divorced Sarah after a public revealing of his affair with Evita Peron was revealed. Sarah and her ward adopted daughter, Amber, left Robert. Amber is Sarah's thirteen-year-old niece who has lived with them since her parents died in a car accident eight years earlier.

Comment [SOL16] : I would recommend you compare the structure you have here with what your LRW professors have given you – you should primarily focus on points consistent with your conclusion, and state these points somewhat more concisely. And conclude on Common Law Marriage issue overall.

After his mistress left him and his term in office ended, Robert ~~moved~~ attempted to reconcile with Sarah in June ~~of~~ 2009. Later in June, Robert moved in.

Comment [SOL17] : Didn't she live with Sarah alone first? Why is the niece relevant?

Comment [SOL18] : Make sure you pay attention to punctuation – there are several areas where there are no commas, or where you only insert one space after a period, instead of two. Be consistent!

In early July, Robert's father died, splitting the estate between Robert and his brother. Robert was very saddened by the sudden death, and on July 31, had a fling with another woman. Sarah discovered the affair, and Robert vowed to change.

Comment [SOL19] : Problem here with the structure of your sentence.

Comment [SOL20] : Not the right choice of word.

Robert used ~~the~~ funds from ~~the~~ his father's estate to purchase a home with Sarah. ~~On the title of~~ The deed lists the couple as husband and wife with rights of survivorship.

~~But~~, Sarah is hesitant to accept Robert's proposal, because of Robert's infidelity problems. E-mail correspondence revealed Robert's plans to remarry Sarah. She was very receptive to the reconciliation; as shown by her reference during a recent interview on CNN's *Larry King Live* to Rob as "her husband," but she stated that she could not marry him for the time being because of his history of infidelity.

Comment [SOL21] : In this context, not appropriate to start your sentence with "but."

Comment [SOL22] : Please make sure that you are consistent with your verb tense.

Comment [SOL23] : This comes out of the blue... you should introduce the reader to Robert's proposals first and indicate what Sarah told Robert specifically.

Comment [SOL24] : Are you sure? The facts your LRW professor gave you do not seem to support this

An ~~car~~ accident ended Robert's life before he could persuade ~~her~~ Sarah to marry him. Robert has no will ~~or heirs~~; thus the entirety of ~~the his~~ estate ~~was~~ will be claimed by his brother unless Sarah can establish a common law marriage with Robert.

IV. DISCUSSION

In order to ~~satisfy the question of~~ establish a claim for common law marriage, Sarah must prove that ~~s~~She and Robert had ~~relationship with~~ (1) ~~the~~ legal capacity to be married, (2) ~~the marriage was publicly recognized~~ public recognition of their marriage, and (3) ~~that she and Robert had~~ presently and mutually agreed to be married.

Skipworth v. Skipworth, 360 So. 2d 975 (Ala 1978). In this case, legal capacity ~~element~~ is met because the Stanfords ~~are single~~ were not married at the time of their ~~post-divorce reconciliation~~; giving them the capacity to be wed. Public recognition ~~also~~ is not at issue ~~based on the newspaper clippings and the CNN interview~~. Thus, the only issue ~~under contention is the third element~~, present, mutual agreement.

Present, mutual agreement ~~is~~ was defined in Skipworth as requiring two elements: ~~a present agreement to be married~~; and a mutual understanding of a ~~relationship that is permanent and exclusive to all others~~. Id. at 975. In other words, our client must demonstrate that she and Robert had plans to marry. Sarah must also prove that her and Robert's relationship was already constant and publicly considered committed.

In Alabama, several cases have direct parallels with the one at hand. ~~The precedent in~~ Humphrey v. Humphrey is ~~the case with the strongest argument~~ against Stanford's claim ~~analogous to Sarah's case~~. 300 Co. 2d 376 (Ala. 1974). In ~~this~~

Comment [SOL25]: Check your BB citation. Don't you need a pincite and a period after Ala.

Comment [SOL26]: Be more specific with your facts.

Comment [SOL27]: Think of rephrasing, sentence structure issue.

Comment [SOL28]: Well done – we clearly understand what the elements are.

Comment [SOL29]: Try to be more concise.

that case, the couple, Roy and Eunice, ~~had~~ divorced a few months prior to Roy's death. During that time, the couple continued to live together. But, the court found that a common law marriage did not exist because: "Eunice and Roy . . . did not have a present intention again to become man and wife since they had already previously agreed to ceremoniously remarry in the future." The court elaborates that "cohabitation is not sufficient to supply the mutual asset required for common law marriage; there must be present assent." Id. at 121. The Humphreys had plans to remarry a few months after a messy, public divorce. Id. For the Humphreys, the ceremony was a necessary change in their relationship status. Id. Eunice continued to function as a single woman; purchasing a car with her maiden name and bailing the deceased out of jail with her maiden name. Id.

Comment [SOL30]: "This" case = Sarah's case, and "that" case = Humphrey.

Comment [SOL31]: Cite needed.

Comment [SOL32]: Punctuation!

Comment [SOL33]: Consider a cite here.

Comment [SOL34]: It might be better to lay out these facts first and then the reasoning of the court.

Comment [SOL35]: Cite needed here.

Comment [SOL36]: Inconsistent shift in verb tense.

Comment [SOL37]: This is too vague, the reader needs more clarity here.

Comment [SOL38]: See comment above: for logical flow, these facts belong earlier in the paragraph.

These facts played into the court's reasoning ,that "Marriage, common-law or ceremonial, is not transitory," it "contemplates a present permanent status." Id. at 378. In other words, planning to wed and living together does not establish a common law marriage, instead the parties must objectively function as if they are already wed.

Comment [SOL39]: Cite.

Skipworth, a newer-more recent case, uses the same standards as Humphrey. Mary Burke-Skipworth and Clarence (Bill) Skipworth were divorced in 1965 after a long separation. Shortly following the divorce the Skipworths "forgave each other."

Comment [SOL40]: New paragraph because you are starting the analysis of a different case.

Formatted: Indent: First line:

Comment [SOL41]: Just pick one name to simplify.

Comment [SOL42]: What is long? Be specific with your facts.

The relationship ~~would~~ continued until Bill's death in 1976. Skipworth, 360 So. 2d at 975. The couple had planned to remarry in December of 1976, but Bill's death in October prevented it. Id. at 975. Unlike Humphrey, the court found in favor of common law marriage. Id. The Skipworths met the present agreement standard. Id. "A mutual

understanding to enter at that time into a marriage relationship permanent and exclusive of all others. This agreement must be followed by public recognition of the existence of the ‘marriage’ and cohabitation or mutual assumption openly of marital duties and obligations.” Id. at 976-77. This means that the relationship was clearly defined, and understood to be exclusive and binding. Bill and Mary continued to present themselves as a married couple to their doctors, friends, and relatives. Id. at 977. The couple also purchased a double grave and headstone. Id. It was primarily for legal reasons the couple had a planned a ceremony. Id.

Comment [SOL43] : Need to be more specific about the facts. Also, same comment as above, you want to put the facts of the case before the court’s holding and reasoning.

In Cosby v. Cosby, the Alabama Court of Appeals, ~~court~~ addressed a case of common law marriage and this case affirmed the precedent established by the Supreme Court in the 1970s. 426 So.2d 446 (Ala. Civ. App.1983). Elizabeth and Thomas Cosby were divorced in July 1980, but shortly after that divorce Thomas informed Elizabeth that, “in God’s eyes they were still married.” Id. at 446 The couple was not planning on a future ceremony since they believed they were ~~married, thus they needed no re-marriage~~ already married and therefore needed not remarry. Id. Mrs. Cosby Elizabeth received mail and cashed paychecks under her husband’s name, and the couple was even photographed together at a child’s wedding as husband and wife. Id.

Comment [SOL44] : Cite the case in full at the first mention of the case. Also review/change the structure of your sentence.

Comment [SOL45] : Make sure that you are consistent – if you have called Mr. Cosby Thomas before, continue calling him Thomas throughout. Same for Elizabeth above

Comment [SOL46] : This sentence is not clear. You should rephrase.

Comment [SOL47] : What conclusion can we then draw from this case? Make sure you reiterate your conclusions so the reader can follow your argument.

The primary issue Unlike the couples in Cosby and Skipworth, ~~is that~~ Robert and Sarah did not have a mutual agreement to be wed or a mutual understanding of a their relationship as a marriage. Without such agreement, it is very difficult to meet the court’s courts’ standards for present mutual agreement. In fact, the only case in which the couples did not have mutual plans for a future ceremony was

Comment [SOL48] : There are several courts, so this is plural and possessive.

Cosby; which the couple considered themselves still married “in God’s eyes,” a mutually understood permanent relationship. Thus, Sarah and Robert’s relationship seems to more closely follow the relationship in Humphrey, instead of the couples in Skipworth, and Cosby.

Comment [SOL49] : Punctuation issue, and wrong word use. Start a new sentence.

In Humphrey, just as in Sarah’s case, the community was well aware of the divorce, like Sarah’s case. Also, for both parties the reconciling happened much closer to the spouse’s passing. The Humphrey’s relationship needed the ceremony to change into a married relationship. In contrast, Sarah refused Robert’s proposal because it was a change to their relationship. Robert’s proposal, a few weeks prior to his death, followed a one-night affair; it was because of his issues with fidelity Sarah did not trust him. In Sarah’s own words, “I was not ready to make that leap.” To establish common law marriage the couple must “show present intention not future intention.” Piel v. Brown, 361 So.2d 90 (94). In Cosby, and Skipworth all of the relationship proceeded and functioned as a married relationship.

Comment [SOL50] : This is confusing and needs to be rephrased with more clarity.

Comment [SOL51] : Use transition words like this to guide your reader through your points.

Comment [SOL52] : What does this mean?

Comment [SOL53] : I thought there were several proposals?

Comment [SOL54] : These points are not flowing in a logical order. When we meet to go over these comments, I can show you how you can organize your points in a logical and systematic fashion.

Comment [SOL55] : Can you use one or two important facts to support this?

Secondly, the relationship was not exclusive to all others. Robert’s affair was only a few weeks prior to his passing; severely limiting the grounds to establish a mutual understood permanent relationship. Objectively, in Sarah’s favor there are grounds for her case to be made from her publicly naming Robert as her spouse and the names on the title appear to be pretty permanent.

Comment [SOL56] : There are several issues here: (1) font size shifts; (2) problems with the sentence structure; and (3) logically, your points are shifting around – you can concede a weakness in the facts, but then you must explain how that does not control the ultimate conclusion, whereas here we are left wondering what conclusion to draw.

Because of the facts listed, Sarah does not have mutual assent at its most basic level. Sarah has grounds for claiming common law marriage, but her fundamental lack of mutual assent makes it a case that is too much a risk to reasonably presume victory.

Comment [SOL57] : Be consistent; you have called this throughout your writing sample present, mutual agreement so you need to continue naming this “present, mutual agreement” rather than “mutual assent” (so the reader does not wonder whether this is a different concept).

Comment [SOL58] : Split infinitive.

V. CONCLUSION

Sarah lacks a viable claim to establish a common law marriage with respect to her post-divorce relationship with Robert because she fails to meet the criteria established by the courts for present, mutual agreement. Her hesitancy in entering into a permanent, codified relationship pre-empts her claims as a common law spouse. Sarah should be advised of the risks of pursuing her claim of common law marriage because the elements present here are not satisfied.

Comment [SOL59] : This is not the right word to use in this context.

Comment [SOL60] : Better: Because Sarah refused Robert's offer to remarry before his death, the couple lacked the present, mutual agreement to establish a common law marriage.