

**IN THE CIRCUIT COURT FOR THE 21<sup>ST</sup> JUDICIAL DISTRICT  
AT WILLIAMSON COUNTY, TENNESSEE**

**BEVERLY VANBENTHUYSEN,** )  
 )  
     **Wife,** )  
 )  
 **V.** )  
 )  
 **KEITH VANBENTHUYSEN,** )  
 )  
     **Husband.** )

**CASE NO. 2017-193**

**FILED**  
**JAN - 6 2020**  
Debbie McMillan Barrett  
Circuit Court

**MEMORANDUM AND ORDER**

This matter comes before the Court upon Husband's, Keith VanBenthuyesen ("Husband") motion for partial summary judgment filed September 13, 2019 as to the Wife's, Beverly VanBenthuyesen ("Wife") complaint for divorce. Husband moves the Court to declare the parties' marriage void *ab initio* as a bigamous marriage, and dismiss Wife's complaint. Wife timely filed a response to the motion for partial summary judgment, asserting the parties' marriage is valid under the law of the states – Nevada and Florida – where the parties celebrated the marriage and lived as husband and wife; thus she argues the marriage should be recognized in Tennessee. In the alternative, Wife urges the Court to apply the doctrine of marriage by estoppel. Husband filed a reply, articulating the inapplicability of the marriage by estoppel doctrine to this case. The Court held a hearing on December 19, 2019.

**PROCEDURAL AND FACTUAL HISTORY**

Prior to Husband's marriage to Wife, he married Jill VanBenthuyesen ("first wife") in Florida on December 17, 1988. Husband's first wife filed for divorce against Husband in Polk

County, Florida on April 27, 2001. The Polk County Circuit Court never entered a decree, judgment, or order to finalize the divorce. Subsequently, on January 2, 2003, Husband filed for divorce against his first wife in Okaloosa County, Florida. On March 27, 2003, the Okaloosa County Circuit Court entered a final judgment by default dissolving Husband's first marriage.

On April 7, 2003, Wife and Husband engaged in a marriage ceremony in Las Vegas, Nevada. The parties were Florida residents at the time of the ceremony and moved to Tennessee in 2005.

Husband's first wife filed a Verified Motion for Relief of Judgment and Motion to Set Aside and Vacate Final Judgment of Dissolution of Marriage on December 4, 2003. The basis of her motion was ineffective service of process, meaning the Okaloosa County Circuit Court's personal jurisdiction to grant the divorce did not attach. In response to his first wife's motion to set aside the judgment, Husband filed a stipulation agreeing the judgment should be set aside for lack of proper service. Following Husband's filing of this stipulation, Wife submitted a sworn statement to the Okaloosa County Circuit Court on December 29, 2003, in which she acknowledged the pendency of the first wife's motion and urged the court to not set aside the judgment. The judgment was declared void by the Okaloosa County Circuit Court on March 19, 2004.

In May 2005, the parties moved to Tennessee, where they resided during the remainder of their relationship. Together, the parties lived as husband and wife for 14 years, bore one child (Joshua, age 13), adopted two children (Paisley, age 7) (Jakob, now deceased), filed joint tax returns as a married couple, and owned real property as tenants by the entirety. The parties continued living together as husband and wife until Wife filed her divorce complaint against Husband on April 6, 2017. On July 12, 2019, this Court granted Husband leave to file an

amended answer to the complaint for divorce. In his Amended Answer, he raised the defense that the parties' marriage was void *ab initio* because he was still lawfully married to his first wife.

### **LEGAL STANDARD**

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. "[A] moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis." *Rye v. Women's Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 264 (Tenn. 2015).

Pursuant to Rule 56.03 of the Tennessee Rules of Civil Procedure, a moving party is required to support its motion with "a separate concise statement of the material facts as to which the moving party contends there is no genuine issue for trial." Tenn. R. Civ. P. 56.03. Additionally, each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record. *Id.* "If the moving party fails to meet its initial burden of production, the nonmoving party's burden is not triggered, and the court should dismiss the motion for summary judgment." *K.G.R. v. Union City Sch. Dist.*, 2016 WL 7230385, at \*2 (Tenn. Ct. App. Dec. 14, 2016).

In *Rye v. Women's Care Center of Memphis, M PLLC*, the Tennessee Supreme Court explained the means by which a nonmoving party survives summary judgment:

[T]o survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, "set forth specific facts" at the summary judgment stage "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*

*Elec. Indus. Co.*, 475 U.S. at 586, 106 S. Ct. 1348. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.

*Rye*, 477 S.W.3d at 265.

“If adequate time for discovery has been provided and the nonmoving party's evidence at the summary judgment stage is insufficient to establish the existence of a genuine issue of material fact for trial, then the motion for summary judgment should be granted.” *K.G.R.*, 2016 WL 7230385, at \*3 (citing *Rye*, 477 S.W.3d at 265). “A grant of summary judgment is appropriate only when the facts and the reasonable inferences from those facts would permit a reasonable person to reach only one conclusion.” *Giggers v. Memphis Hous. Auth.*, 277 S.W.3d 359, 364 (Tenn. 2009) (citing *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000)).

#### **UNDISPUTED FACTS**

The following facts are undisputed for purposes of Husband's Motion for Partial Summary Judgment:

1. Husband married his first wife on December 17, 1988.
2. Husband and his first wife were never divorced.
3. Husband's first wife filed for divorce against Keith in Polk County, Florida on April 27, 2001. No order, decree, or judgment was entered in Polk County.
4. On January 2, 2003, Husband filed for divorce against his first wife in Okaloosa County, Florida. The Okaloosa Court did not have personal jurisdiction over the first wife, as she was never served with the petition.
5. Okaloosa County entered a Final Decree by default divorcing Husband and his first wife on March 27, 2003.

6. Husband and Wife engaged in a marriage ceremony in Nevada on April 7, 2003. At that time, they were Florida residents.
7. On December 4, 2003, Husband's first wife filed a Motion for Relief from the Judgment in Okaloosa County on the grounds of ineffective service of process. Husband filed a stipulation on December 8, 2003, agreeing that the judgment should be set aside based upon the Okaloosa Court's lacking personal jurisdiction over the first wife.
8. Wife has been on notice, since at least December 2003, that her purported marriage to Husband was bigamous.<sup>1</sup> On December 17, 2003, Wife submitted a sworn statement to the presiding judge in Okaloosa County in which she acknowledged Husband's first wife's pending motion, and urged the Okaloosa Court not to set aside the divorce judgment.
9. The Okaloosa County Circuit Court entered an order on March 19, 2004, setting aside, vacating, and voiding the March 27, 2003 default judgment that divorced Husband from his first wife.
10. The parties moved to Tennessee in May 2005.
11. Husband's first wife died on February 11, 2014.

### **DISCUSSION**

In Husband's motion for partial summary judgment, he argues the parties' marriage was void *ab initio*, as it was a bigamous marriage. Thus, Husband contends Wife's divorce complaint must be dismissed based upon the invalidity of their marriage. In response to Husband's motion,

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<sup>1</sup> In her response to Husband's Statement of Uncontested Material Facts, Wife failed to either admit or deny paragraph 14, which read: "The plaintiff, Beverly Ann VanBenthuyzen, was on notice, since at least December, 2003, that her purported marriage to the defendant was bigamous." At the hearing on December 19, 2019, the Court questioned Wife's counsel about the lack of response. Counsel represented to the Court that the lack of response was due to inadvertence, and stated that paragraph 14 is admitted. The Court deems it so.

Wife asserts (i) the validity of the parties' marriage depends upon the laws of Nevada or Florida, and (ii) if this Court applies Tennessee law, the doctrine of marriage by estoppel applies. Husband filed a reply, arguing that the marriage by estoppel doctrine is inapplicable here, as Wife knew her marriage with Husband was bigamous since December 2003.

**A. Tennessee Marriage Law: *Guzman* and *Farnham***

Bigamous marriages are not recognized in Tennessee. *Guzman v. Alvares*, 205 S.W.3d 375, 379 (Tenn. 2006). Tennessee Code Annotated section 36-3-102 provides in relevant part: "A second marriage cannot be contracted before the dissolution of the first." Tenn. Code Ann. 36-3-102. In cases involving a second marriage, there is a rebuttable presumption that the previous marriage ended in divorce. *Guzman*, 205 S.W.3d at 380. The party challenging the validity of the marriage has the burden of establishing "cogent and convincing" evidence that the subsequent marriage is invalid. *Id.* The Tennessee Supreme Court has held bigamous marriages are void from their inception, and cannot be ratified by the parties. *Id.* at 381. The law treats the parties to a bigamous marriage as if the marriage never occurred. *Id.* Even in applying this black letter law, the Tennessee Court of Appeals has recognized the legal validity of a technically bigamous marriage under circumstances in which the marriage was valid in the state where it was solemnized and the state where the parties lived together as husband and wife. *Farnham v. Farnham*, 323 S.W.3d 129, 140 (Tenn. Ct. App. 2009).

In *Guzman v. Alvares*, the Tennessee Supreme Court reviewed a marriage to determine whether it was bigamous. 205 S.W.3d at 377. The facts of *Guzman* can be summarized as follows: The wife filed for divorce against her first husband in September 1985, in Mexico. *Id.* at 378. The court granted the divorce in April 1986 and, *per* Mexican law, the judgment was referred for automatic review to the Supreme Court in Mexico. *Id.* The Supreme Court entered

its final decree of divorce in March 1987, and prohibited the wife from remarrying for two years after the issuance of the divorce decree. *Id.* The wife never received a copy of the final decree or order. *Id.*

Four months after the first court granted the divorce, but seven months before the Supreme Court rendered its decree, the wife entered into a subsequent marriage. *Id.* Sixteen years later, the wife filed for divorce against her second husband. *Id.* at 379. The second husband filed an answer and counterclaim for annulment, in which he asserted the wife's prior Mexican marriage existed at the time of their U.S. wedding. *Id.* In support of his assertion, he attached a copy of the final decree of divorce entered by the Supreme Court in Mexico. *Id.* Additionally, he presented expert testimony that the divorce was not final as a matter of Mexican law until the Supreme Court rendered its final decree of divorce. *Id.* at 380.

The trial court in *Guzman* applied the marriage by estoppel doctrine, and granted the divorce. *Id.* at 379. In part, the trial court found the proof did not show the wife or her second husband knew that her prior marriage was still valid at the time they married. *Id.* The Court of Appeals affirmed the judgment of the trial court. *Id.*

The Tennessee Supreme Court reversed, concluding the second husband established the marriage was bigamous, and held the doctrine of marriage by estoppel did not apply. *Id.* at 383. In reaching its determination, the Supreme Court reasoned the second husband carried his burden of proof to establish that when the parties married, his wife was still legally married to her first husband due to their divorce not being final. *Id.* at 380. The court also noted that there was no evidence of the parties' entering into a lawful marriage after the wife's divorce from her first husband became final. *Id.* Accordingly, the Court found the evidence presented was sufficient to establish the marriage was bigamous. *Id.*

Three years after *Guzman* was decided, the Tennessee Court of Appeals in *Farnham v. Farnham* recognized a technically bigamous marriage as valid in Tennessee. The marriage at issue in *Farnham* was solemnized in the state of Florida, and the parties thereafter lived in Florida, Massachusetts, and Tennessee. 323 S.W.2d at 131-32. The wife in *Farnham* entered into a subsequent marriage prior to the actual entry of the divorce decree from her previous marriage, but after the judge declared the parties divorced at their divorce hearing. *Id.* at 131. After 17 years of marriage, the wife filed for divorce from her second husband. *Id.* at 130. In response, the husband sought to have the parties' marriage declared void *ab initio* on the grounds that the marriage was bigamous. *Id.* The trial court denied the husband's motion, on the basis that the technically bigamous marriage was valid under Florida law and Massachusetts law. *Id.* at 138. The trial court found that Florida law recognizes marriage by estoppel even as to technically bigamous marriages. *Id.* at 133. Additionally, Massachusetts law includes a savings clause provision for marriages that are technically bigamous at inception so long as the disability is removed during the time the parties hold themselves out as husband and wife in the state. *Id.* at 133-34. Expressing its opinion as to the distinction between the case before it and *Guzman*, the trial court noted the impediment to the marriage in *Guzman* was never corrected by the state of Tennessee or any state. *Id.* at 134. The Court of Appeals agreed with the trial court's decision that the marriage was valid under the laws of Florida and Massachusetts; the Court framed the issue before it as "whether the marriage should be recognized in Tennessee." *Id.* at 138. The Court of Appeals answered this issue in the affirmative, and recognized the marriage as valid in Tennessee. *Id.* at 139.

In reaching its decision, the Court of Appeals discussed the distinction between the facts in *Farnham* and *Guzman*. *Id.* The court explained:



The overriding problem with the “marriage” at issue in *Guzman* was that there was no evidence that it was ever recognized as valid as a marriage by estoppel or under any other theory of Mexican law. Stated differently, the validity of the marriage in *Guzman* was entirely dependent on the application of Tennessee law and as the Supreme Court observed, Tennessee does not permit a marriage by estoppel in the case of a void, bigamous marriage. For these reasons, the Tennessee Supreme Court refused to apply principles of estoppel to validate a marriage that was void under the laws of the jurisdiction where it was entered into. To the contrary, the present case involves a marriage that is recognized as valid under Florida law, where it was celebrated, as well as Massachusetts law, where the parties also lived together as husband and wife.

*Id.* at 140.

In the matter presently before this Court, like in *Guzman*, Husband has carried his burden of establishing the parties’ marriage was bigamous. It is undisputed, based upon Husband’s statement of undisputed material facts and Wife’s response thereto, that Husband and his first wife were never divorced. By statutory definition in Tennessee, the fact that Husband and Wife entered into a marriage subsequent to an existing marriage between Husband and another woman, makes this a bigamous marriage. *See* Tenn. Code Ann. § 36-3-102. Although the Okaloosa Circuit Court entered a divorce decree in March 2003, it was void for want of personal jurisdiction due to ineffective service of process. Just as in *Guzman*, the parties did not enter into a lawful marriage after the date Husband’s prior marriage ended. In *Guzman*, that event was the entry of the final decree; here, the death of Husband’s first wife in February 2014.<sup>2</sup> In applying the law set out in *Guzman*, the Court finds this marriage is void *ab initio* under Tennessee law. As such, the doctrine of marriage by estoppel is inapplicable. The next question to be addressed by this Court is whether Husband and Wife’s bigamous marriage was valid in Nevada and thus recognizable in this state consistent with the rule stated in *Farnham*.

#### **B. Nevada Marriage Law**

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<sup>2</sup> During the December 19, 2019 hearing, the Court questioned counsel as to the date the parties learned of the first wife’s death. Counsel for both parties indicated this information is unknown, and is not part of the record.

In response to Husband's motion for partial summary judgment, Wife asserts the laws of Nevada and Florida should be applied by this Court to determine the validity of the parties' marriage in Tennessee. The Tennessee Supreme Court's guidance in *Guzman* leads this Court to conclude that if the marriage was never recognized in the jurisdiction where it was performed, the validity of the marriage depends entirely upon application of Tennessee law. Therefore, as the parties' marriage took place in Nevada, the Court must determine whether the undisputedly bigamous marriage is valid in Nevada.

Nevada domestic relations law prohibits bigamy. *See* Nev. Rev. Stat. § 122.020(1). Pursuant to Nevada statute, persons capable of marriage are "two persons, regardless of gender, who are at least 18 years of age, not nearer of kin than second cousins or cousins of the half blood, and *not having a spouse living . . .*" *Id.* (emphasis added). There is no provision to cure a bigamous marriage in the Nevada code.<sup>3</sup>

The Nevada Supreme Court has recognized the validity of the "putative spouse doctrine"<sup>4</sup> in Nevada law but only for purposes of property division. *Williams v. Williams*, 97 P.3d 1124, 1128-29 (Nev. 2004). The court noted that a majority of states recognize the putative spouse doctrine when dividing property acquired during the marriage, and reasoned the application of the putative spouse doctrine was consistent with Nevada's community property law. At the same time, however, the court observed that while a minority of states had also applied the doctrine to awards of spousal support, they had done so only under the authority of state statutes.

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<sup>3</sup> N.R.S. 122.200 provides: "Any person who shall make a false statement in procuring a marriage license with reference to any matter required by N.R.S. 122.040 and 122.050 to be stated under oath shall be guilty of a gross misdemeanor." N.R.S. 122.040 requires applicants for a marriage license to state under oath their names and ages. N.R.S. 122.050 sets out the required form for a marriage license.

<sup>4</sup> Under the "putative spouse doctrine" an individual whose marriage is void due to a prior legal impediment is treated as a spouse so long as the party seeking equitable relief participated in the marriage ceremony with the good-faith belief that the ceremony was legally valid. *Williams v Williams*, 97 P.3d 1124, 1126 (Nev. 2004).

Consequently, the court expressly rejected the putative spouse doctrine as a basis for awarding spousal support. *Id.* at 1131.

In pertinent part, the *Williams* court wrote:

Under the putative spouse doctrine, when a marriage is legally void, the civil effects of a legal marriage flow to the parties who contracted to marry in good faith. That is, a putative spouse is entitled to many of the rights of an actual spouse.

...

However, when a person receives reliable information that an impediment exists, the individual cannot ignore the information, but instead has a duty to investigate further. Persons cannot act "blindly or without reasonable precaution." Finally, once a spouse learns of the impediment, the putative marriage ends.

*Id.* at 1128.

...

[A]ll states that recognize the putative spouse doctrine divide assets acquired during the marriage in an equitable fashion. We conclude that the application of community property principles to a putative marriage . . . is the better approach to the division of property in such cases.

97 P.3d at 1129.

In the instant case, [husband] and [wife] each acted in good faith. Neither [party] knowingly defrauded the other, and there is no evidence of misconduct or bad faith.

We can find no case, and [wife] has cited to none, in which spousal support was awarded to a putative spouse absent statutory authority, fraud, bad faith or bad conduct. . . .

The putative spouse doctrine did not traditionally provide for an award of spousal support. Extensions of the doctrine have come through statute or findings of fraud and bad faith. As neither is present in this case, we decline to extend the doctrine to permit an award of spousal support when both parties act in good faith.

97 P.3d at 1131.

Based upon the Court's review of Nevada domestic relations law, the Court concludes the parties' marriage was invalid in Nevada as a bigamous marriage, and no applicable savings clause exists under Nevada law. Moreover, the putative spouse doctrine as adopted in Nevada would apply only to the equitable division of property acquired during the marriage, and would not create an obligation or right with respect to spousal support. Therefore, the validity of the marriage depends upon the application of Tennessee marriage law.<sup>5</sup> As set forth *supra* in this Memorandum and Order, the marriage is bigamous under Tennessee law, making the marriage by estoppel doctrine wholly inapplicable. Accordingly, the Court finds the marriage is void *ab initio*, and Husband's Motion for Partial Summary Judgment is hereby **GRANTED**.

### **CONCLUSION**

For the reasons stated above, Husband's Motion for Partial Summary Judgment of September 13, 2019 is hereby **GRANTED**. Wife's petition for entry of divorce is therefore **DISMISSED**. The partition of jointly-owned property and the issues of child custody and support remain to be decided.

The Court specifically finds the parties shall be granted permission to submit applications for T.R.A.P. 9 interlocutory appeal, as each factor set forth in Rule 9(a) of the Tennessee Rules of Civil Procedure 9(a) is met in this case.<sup>6</sup>

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<sup>5</sup> At the hearing, Wife's counsel invited this Court to expand and modify Tennessee law on this issue based upon considerations of public policy; the court declines Wife's counsel's invitation. The trial court's role is to determine the facts and apply those facts to the applicable law to make a reasoned determination of the issues. The role of the court of appeals is to review the trial court's decision for error and correct errors that are not harmless. The Tennessee Supreme Court, as the appellate court of last resort, is where authority to refine and develop the common law resides.

<sup>6</sup>Rule 9(a) of the Tennessee Rules of Appellate Procedure provides the following factors for the trial court to consider in determining whether to grant an interlocutory appeal: (1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence, and the probability that review upon entry of final judgment will be ineffective - Here, the Court finds this factor is met, as the validity of the marriage is an outcome determinative issue in this case; (2) the need to prevent needless, expensive, and protracted

It is so **ORDERED** this 6th day of January, 2020.

  
JOSEPH A. WOODRUFF, Circuit Court Judge

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litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment, the probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed; - Here, the Court finds the granting of an appeal has the potential to reduce the duration and expense of potential litigation; and (3) the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of final judgment. - The Court finds this factor is met, as this is an issue of first impression in Tennessee.

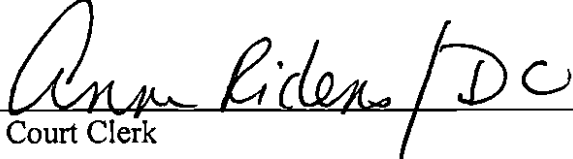
**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify a true and exact copy of the foregoing *Memorandum and Order* was mailed, postage prepaid, and/or emailed, and/or faxed, to:

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This the 6th day of January 2020.

  
\_\_\_\_\_  
Circuit Court Clerk