

Filed: 8/25/2015 4:08:11 PM  
Dana DeBeauvoir  
Travis County Clerk  
C-1-PB-14-001695  
Blair Hicks

No. C-1-PB-14-001695

ESTATE OF § IN THE PROBATE COURT  
STELLA MARIE POWELL, §  
DECEASED § NUMBER 1  
§ TRAVIS COUNTY, TEXAS  
§

**SONEMALY PHRASAVATH'S  
AMENDED MOTION FOR SUMMARY JUDGMENT**

Sonemaly Phrasavath ("Sonemaly") hereby files this Motion for Summary Judgment and in support thereof, Sonemaly would show the Court the following:

I.  
**Introduction**

Stella Powell ("Stella"), the decedent herein, and Sonemaly were in a committed, same-sex relationship for approximately eight years and were married for almost six years. Like any other married couple, they resided in the same home, celebrated their love for each other before friends and family at a marriage ceremony, and lived openly as spouses. During Stella's final illness, Sonemaly cared for Stella at their home until Stella ultimately lost her battle with cancer at the much too young age of 53.

Sonemaly has filed an application for heirship in this matter as Stella's common law spouse. James Powell and Alice Huseman (collectively, "Respondents"), who are Stella's surviving siblings, have filed an application for heirship that wholly excludes Sonemaly as an heir. Because there is no genuine issue as to any material fact and Sonemaly is entitled to judgment as a matter of law on the issue of her informal marriage to Stella, Sonemaly moves for summary judgment.

Case # C-1-PB-14-001695



000449545

## **II.**

### **Facts**

Sonemaly and Stella met in the summer of 2004 and began a romantic relationship in the summer of 2006. In April 2007, they traveled to Maui, Hawaii, and Sonemaly proposed to Stella on the peak of Mount Haleakala. In May 2007, the couple hosted a party to celebrate their engagement before family and friends. Shortly afterwards, the couple began living together in Austin.

On March 4, 2008, Sonemaly and Stella were married at Chapel Dulcinea in Driftwood, Texas. Zen Priest Barbara Kohen officiated the marriage, which was attended by a small group of friends and family. Thereafter, Stella and Sonemaly executed declarations stating that they, among other things, were each other's domestic partner, were living in an intimate and committed relationship, were residing together, and were jointly financially responsible for each other's basic living expenses. In fact, the couple began living together shortly after their engagement and cohabitated until Stella's death in the summer of 2014.

In October 2013, Stella was diagnosed with colon cancer. During Stella's battle with the disease, Sonemaly acted as Stella's medical power of attorney, cared for her at their home, and accompanied her to treatments in Houston at M.D. Anderson and in Austin. Unfortunately, on June 21, 2014, Stella succumbed to cancer at the age of 53.

## **III.**

### **Summary Judgment Evidence**

The facts described above are established by the following evidence, true and correct copies of which are attached to this motion:

**Exhibit A:** The Affidavit of Sonemaly Phrasavath

**Exhibit A-1:** E-mail dated February 20, 2008, from Stella to wedding guests, including electronic wedding invitation.

**Exhibit A-2:** E-mail dated March 1, 2008, from Sonemaly to wedding guests.

**Exhibit A-3:** Wedding photo.

**Exhibit A-4:** Affidavit of Domestic Partnership executed by Sonemaly and Stella.

**Exhibit A-5:** Anniversary Card from Stella to Sonemaly dated March 4, 2014.

**Exhibit B:** Affidavit of Tim Tierney.

**Exhibit C:** Affidavit of Rasamy Melendrez.

**Exhibit D:** Affidavit of Michael Melendrez.

**Exhibit E:** Affidavit of Bonsack Phrasavath.

**IV**  
**Arguments and Authorities**

Proof of a common-law or informal marriage under Texas law requires evidence of the following factors: 1) an agreement between the parties to be married; 2) that the parties lived together in Texas as spouses; and 3) that the parties represented to others that they were married. TEX. FAM. CODE § 2.401. A summary judgment movant seeking to prove the existence of an informal marriage bears the burden to show that all of these factors are established as a matter of law and that no genuine issue of material fact exists as to these factors. TEX. R. CIV. P. 166a(c). Here, Sonemaly has met this burden.

Sonemaly's affidavit and the attached documents show that there is no genuine issue of material fact regarding whether Sonemaly and Stella agreed to be married. Sonemaly and Stella were married, but their marriage was not recognized as legally effective in Texas at that time of the marriage.

Sonemaly's affidavit and the attached documents show that there is no genuine issue of material fact that Sonemaly and Stella cohabitated as spouses in Texas. If Sonemaly's own testimony on this point is not sufficient, surely the Affidavit of Domestic Partnership, wherein both Stella and Sonemaly state under penalty of perjury that they "maintain the same permanent residence" proves this factor as a matter of law. See Ex. A-4.

Sonemaly's affidavit and the attached documents show that there is no genuine issue of material fact that Sonemaly and Stella represented to others that they were married. First and foremost, they participated in a marriage ceremony attended by their friends and family. See Exs. A. A-1 through A-3. Furthermore, as the attached affidavits show, Sonemaly and Stella consistently held themselves out as married to family, friends, and other third parties from the time of their marriage ceremony until Stella's untimely death. Exs. B through E.

#### Request for Relief

Based on the forgoing, Sonemaly Phrasavath requests summary judgment that she and Stella Powell entered into a common law marriage as of March 4, 2008 and an order determining Stella Powell's heirs based on the determination of the informal marriage. Sonemaly requests all other relief, in law and in equity to which she shows herself entitled.

Respectfully submitted,

**HOPPER MIKESKA, PLLC**

By: 

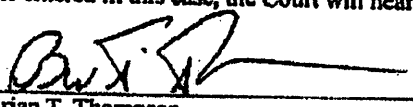
**CRAIG HOPPER**  
State Bar No. 00794947  
**BRIAN T. THOMPSON**  
State Bar No. 24051425  
[chopper@hoppemikeska.com](mailto:chopper@hoppemikeska.com)  
[bthompson@hoppemikeska.com](mailto:bthompson@hoppemikeska.com)

400 W. 15<sup>th</sup> Street, Suite 408  
Austin, Texas 78701  
(512) 615-6195 Telephone  
(512) 615-6194 Fax

ATTORNEYS FOR COUNTER-APPLICANT

**NOTICE OF HEARING**

Pursuant to the Agreed Scheduled Order entered in this case, the Court will hear this matter on September 15, 2015 at 2:00 p.m.

  
Brian T. Thompson