

State of New Hampshire
Supreme Court

NO. 2007-0720

2008 TERM

MAY SESSION

In re Estate of Edward James Goudreault

RULE 7 APPEAL OF FINAL DECISION OF
ROCKINGHAM COUNTY PROBATE COURT

BRIEF OF PETITIONER LUANN GOULD

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QUESTIONS PRESENTED

1. Did the court err in basing its decision on evidence that could not establish the elements of a statutory common-law marriage?
Preserved: Trial Transcript, *passim*.
2. Did the court err in finding that Luann Gould was not married to Eddie Goudreault for the purposes of sharing in his estate?
Preserved: Trial Transcript, *passim*.

STATEMENT OF THE CASE

Edward (“Eddie”) Goudreault died intestate on November 9, 2006 of a heart attack at his home in Danville, New Hampshire. He had lived there with Luann Gould and Luann’s nine-year old daughter Shelby, for about six years.¹ *Trn.* at 96.

The couple had never been formally wed, and upon Eddie’s death his parents assumed obligations and inheritances normally accorded next-of-kin. *Trn.* at 129 (brother claimed money in Eddie’s pocket at time of death); *Trn.* at 169 (father given personal items from work); *Trn.* at 215 (father tried to pay bills). Considering herself and the deceased nonetheless married, *Trn.* at 160, Luann filed this Petition to recover her spousal share. After a hearing populated by witnesses for both sides, the Rockingham County Probate Court (*Peter G. Hurd, J.*) denied her relief. This appeal followed.

¹The cohabitation was interrupted briefly in 2005 after Eddie Goudreault filed a domestic violence petition. *Edward Goudreault v. Luann Gould*, Brentwood Family Division Court No. 2005-D-0140, DOMESTIC VIOLENCE PETITION (June 24, 2005). The couple saw each other regularly during its pendency, *Trn.* at 117, 138-39, and the petition was dismissed as unfounded less than two weeks after it was filed. *Edward Goudreault v. Luann Gould*, Brentwood Family Division Court No. 2005-D-0140, DOMESTIC VIOLENCE FINAL ORDERS (July 7, 2005); *Trn.* at 113-115. Upon its dismissal, Luann Gould and Eddie Goudreault resumed cohabitating. ORDER (July 26, 2007). In any event, three years of cohabitation is not disputed.

STATEMENT OF FACTS

I. Luann Gould Was Essentially Married

A. Luann's Testimony

Luann obviously knew she had not participated in a formal wedding ceremony. *Trn.* at 99, 127. She testified, however, that in numerous ways she and Eddie acknowledged each other as man and wife, and held themselves out to the public as a married couple.

Before this suit she had a good relationship with Eddie's family. *Trn.* at 119. Luann had bought holiday gifts for Eddie's father, *Trn.* at 152, enjoyed a close personal connection with Eddie's sister who had called Luann her "favorite sister in law," *Trn.* at 151, and was always happy to see Eddie's mother. *Trn.* at 128. On the same day Eddie died, his mother came to the Home Depot where Luann worked, and, "just like a mother-in-law would do for a daughter-in-law, asked me what Eddie ... needed for Christmas, what size he took, what Shelby had been asking for. She spent about a good 20, 25 minutes with me. And we talked and she wrote down in her book." *Trn.* at 128.

Luann believed the feelings were mutual. In 2005, for instance, Eddie's mother sent a hand-made holiday card which said, "Dear Eddie, Luann and Shelby, may the true spirit of Christmas be with you today and always." The card was signed, "Love ma and pa." *Trn.* at 120. Other holiday greetings from Eddie's family to Eddie always included Luann and Shelby. *Trn.* at 120-21. Luann said that when Eddie died, she needed his family for emotional support, *Trn.* at 129, but that after the funeral they abandoned her. *Trn.* at 128-29.

Luann testified that she and Eddie acknowledged their relationship by simply "the love we shared for each other and the care. We took care of each other as a family." *Trn.* at 151. They,

along with Shelby, traveled together to Maine and to Florida, went to parks, and went skateboarding.. *Trn.* at 119. Luann gave Christmas cars to Eddie and Shelby referring to them collectively as “family.” *Trn.* at 122-23.

Soon after Luann and Eddie met, Luann sold her own house, and moved into Eddie’s which he had owned before they met and which Luann then furnished and decorated. *Trn.* at 61, 97, 162. Eddie and Luann shared household finances. Eddie paid such things as the electric bill and to upkeep their home, and Luann bought groceries, clothing, furnishings, accessories “for around the home,” and “[w]hatever extras we needed.” *Trn.* at 100, 161-62.

Perhaps most revealing is how Eddie treated Shelby, Luann’s daughter. Eddie referred to Shelby as his “girl,” his “baby,” and his “daughter,” *Trn.* at 117, and they were clearly fond of each other. *Trn.* at 151. As Shelby was only 3 years old when Luann and Eddie began living together, *Trn.* at 63, Eddie was the only father Shelby ever knew. She called him “dad,” and gave him Father’s day cards and Christmas cards calling him that. *Trn.* at 123. Eddie never rejected the moniker – in fact was proud of it – and cherished items Shelby gave him. *Trn.* at 123-24 (referring to shirt with Shelby’s hand prints). Eddie appeared as Shelby’s parent to the outside world, by doing such things as counter-signing Shelby’s homework. *Trn.* at 118; HOME READING LOG, Exh. 5 (May 2006), *Appx.* at 30 & 31 (“Parent Signature:” “Ed Goudreault” and “Edward Goudreault”). Luann testified that Eddie planned on adopting Shelby after they got married. *Trn.* at 151-52.

Luann understood that she and Eddie were going to get formally married in the fall of 2007, *Trn.* at 149-50, and that Eddie told his family and friends of their plans. *Trn.* at 126. Eddie inherited from his sister and mother an heirloom diamond, had it re-set, and gave it to Luann for

engagement “as a ring of love” showing “that I was his and he was mine and that we were gonna be getting married.” *Trn.* at 99, 127, 149.

Eddie and Luann called each other “husband” and “wife” both privately and publicly. Luann testified that she called Eddie “husband” or “hubby” to his face and in introductions. *Trn.* at 97, 124. Likewise Eddie frequently called Luann “wife” in front of friends and acquaintances, and introduced Luann as his wife. *Trn.* at 98, 100, 126. Eddie never refuted these labels, *Trn.* at 98, 124-25, 162, and the couple generally held themselves as out nothing other than husband and wife. *Trn.* at 105-06.

B. Luann’s Friends’ Testimony

Luann’s testimony was corroborated by three friends.

Lauren Dragon testified she was Luann’s best friend, had met both Luann and Eddie when they all worked at Lucent in 1999, and talked to Luann frequently. *Trn.* at 55-56. As a close friend, Ms. Dragon knew the couple had not already had a wedding, but had discussed plans and dates for one. *Trn.* at 70.

Ms. Dragon verified that Luann put her money, time, and know-how into fixing up the home she shared with Eddie, *Trn.* at 61, and that they were saving up to get married. *Trn.* at 58. Ms. Dragon said that Eddie treated Shelby like a daughter, that the girl called him “dad,” and made him Father’s Day cards. She said she was aware that Eddie helped Shelby with her homework and signed it for her. *Trn.* at 63.

Ms. Dragon told the court that Luann called Eddie her “hubby,” *Trn.* at 57, 59, that Eddie never disclaimed the term, *Trn.* at 58-59, 60, and that she heard Eddie call Luann “wife” on many occasions including just a week before he died. *Trn.* at 57-59, 69.

Charlotte Johnston is also a good friend of Luann, having met at work 25 years ago. *Trn.* at 72. Like Luann's other close friends, Ms. Johnston is in touch with Luann frequently, *Trn.* at 72, and knew there had been no wedding. *Trn.* at 82. She understood that Eddie and Luann planned on getting married and had tentative plans for a wedding at a park in Maine in September 2007. *Trn.* at 79-80. She knew the couple was engaged because Luann "told me and I knew he had given her a diamond." *Trn.* at 79.

Ms. Johnston testified that Eddie and Luann lived together as a family, that Shelby called Eddie "daddy," *Trn.* at 81, and that Luann "did things with Eddie and her daughter.... They went places. They acted like husband and wife and child." *Trn.* at 82.

Ms. Johnston said she often heard Luann refer to herself as "wife," *Trn.* at 79, and to Eddie as "husband" and "hubby." *Trn.* at 73. She said she heard such references every once in a while in sentences such as "My husband's golfing again." *Trn.* at 74. Ms. Johnston testified that she also heard Eddie refer to Luann as "wife" and "wifey" several times on the phone to her, and also twice within a week of his death. She understood these references were not in anticipation of a pending wedding, but because "she was already his wife and he was the husband 'cause that's how they lived." *Trn.* at 81. Ms. Johnston said that on one occasion she called for Luann, and when Eddie answered the phone "I asked where she was and he said, 'wifey's out shopping.' I said 'The wifey?'" He goes, "wifey's out shopping." *Trn.* at 75. "[W]hen he repeated it, I said, 'whoa, this guy's getting married.'" *Trn.* at 80.

Carol Wing is a third good friend of Luann, having met shortly after Luann began dating Eddie. *Trn.* at 43, 44, 46. Ms. Wing knew about Luann's ring, and that it "came from Eddie's family." *Trn.* at 52. Ms. Wing heard Luann refer to Eddie as "husband" a number of times both in and out of Eddie's presence, *Trn.* at 45, 48-49, 50-51, and he did not refute it. *Trn.* at 45-46.

C. Luann's Family's Testimony

Luann's testimony was also corroborated by two family members.

Edward Desrochers is Luann's adult son. He testified that he loves both Luann and Eddie, *Trn.* at 38, and that Eddie was "pretty much like a father to me." *Trn.* at 36. Being family, he knew that no wedding had taken place. *Trn.* at 42. Mr. Desrochers said that Eddie referred to Shelby as "his little girl," *Trn.* at 38, and that he saw Luann's engagement ring. *Trn.* at 41.

Mr. Desrochers said that Eddie referred to Luann as his "wife" within a year of his death. Mr. Desrochers had asked Eddie to go out with him to a bar. Eddie replied that "he didn't need to go out because he was already married to my mother." *Trn.* at 37.

Joyce Gould is Luann's mother, and as family was aware that there had been no wedding ceremony. *Trn.* at 21. She testified that Eddie took care of Shelby, brought her to doctor's appointments, and referred to her as "my girl." *Trn.* at 21-22. She said she understood that although a date had not been set, the couple planned to get married in 2006, *Trn.* at 31, and that the ring was for engagement. *Trn.* at 23, 31.

Joyce Gould testified that Eddie treated Luann like a wife, and referred to Luann and Shelby as "my family." *Trn.* at 34. She said that Eddie had expressed his love for Luann to her, *Trn.* at 22, and that he referred to Luann as his wife. On one occasion after playing golf he picked up Shelby and said, "I'm going home to my wife." *Trn.* at 34.

II. Eddie's Family Disputes Couple was Essentially Married

Three members of Eddie's family testified: Daniel Goudreault, Eddie's younger brother, Catherine Moriarty, Eddie's older sister, and Edward Goudreault, Eddie's father. All had seen him within a year of his death, although it appears that Eddie relationship with his father was not particularly close. *Trn.* at 240-42 (father); *Trn.* at 121 (Luann). All of them know Luann and Shelby, and had interacted with them at family functions. *Trn.* at 191, 201, 205. Being family members in the area, all of them knew the couple had never performed a marriage ceremony. *See Trn.* at 189, 204, 206-07, 227.

All three reported that Eddie had no intent to marry Luann. *Trn.* at 189 (Daniel); *Trn.* at 205-07 (Cathy); *Trn.* at 228 (father). They testified that Eddie never referred to Luann as "wife" in their presence, *Trn.* at 190 (Daniel); *Trn.* at 204, 205 (Cathy); *Trn.* at 227 (father), and point to a handful of incidents.

After Eddie died, Luann and Eddie's family gathered at the funeral home to make arrangements including drafting an obituary. *Trn.* at 156. Ultimately the notice identified Luann as Eddie's "devoted girlfriend." RESPONDENT'S REQUEST FOR FINDINGS OF FACT & RULINGS OF LAW ¶27 (July 24, 2007). Eddie's family understood that Luann agreed with the description. *Trn.* at 213, 214. But Luann testified that both she and Eddie's sister suggested the word "fiance," *Trn.* at 155-56, that Eddie's father insisted on "girlfriend," and that Luann merely acquiesced because at the time given Eddie's recent death and her need for family support, she did not have the strength to argue. *Trn.* at 160.

The second incident was a birthday party at Catherine's house in 2005. *Trn.* at 228. During dinner the subject of marriage arose and Eddie was asked when he might get married.

Trn. at 207 (Cathy); *Trn.* at 228 (father). His reply was: “Why buy the cow when you get the milk for free?” *Trn.* at 208 (Cathy); *Trn.* at 228 (father). Apparently upset at being referred to in this way, Luann got angry, collected Shelby, and left. *Trn.* at 208 (Cathy); *Trn.* at 229 (father). Eddie’s father, however, did not believe the remark was serious. He testified, “I thought it was pretty funny too because it was just a joke.” *Trn.* at 228-29.

The third incident took place in October 2004, over two years before Eddie died. Luann attended a gathering of Eddie’s family and Eddie’s mother asked Luann when they might get married. Eddie’s sister Catherine testified that Luann said, “[D]on’t even bring it up. That’ll never happen.” Catherine testified, however, “they weren’t getting along so great at the time.” *Trn.* at 209-210.

Finally there are the circumstances surrounding Eddie giving Luann her engagement ring. The ring had been in Eddie’s family for many years. Catherine testified that Eddie was looking for a Christmas gift for Luann, and that Catherine suggested the heirloom diamond, which would be cheaper than buying something new. Thus Eddie’s mother gave it to him, and Eddie took it to a jeweler to have the stone reset. *Trn.* at 206. Catherine said that Eddie made it clear to her that it was not intended as an engagement gift. *Trn.* at 206. But from what Luann told her friends and family, she obviously understood it quite differently. *Trn.* at 99, 127, 149.

III. Eddie's Friends Split

Two of Eddie's friends testified.

Brian Denney said he had known Eddie for 20 years, and they played hockey and golf together regularly. *Trn.* at 6. Robert Grasso said he had been a boyhood friend of Eddie's, and that although they had had a falling out during the 1980s and 1990s, they had re-connected after many years in 2005 during the weeks when Eddie had briefly separated from Luann. *Trn.* 171-2; 174. Both knew Eddie and Luann were not married, *Trn.* at 9-10, 12; 173, but differed on what they thought were Eddie's intentions.

Both Mr. Denney and Mr. Grasso testified that Eddie, Luann, and Shelby lived together like family, and that Eddie acted like a father to the child and was very fond of her. *Trn.* at 7-8 (Mr. Denney); *Trn.* at 177 (Mr. Grasso).

Mr. Grasso said that when they were at his house for a Super Bowl party in 2006, Eddie introduced Luann as his girlfriend, *Trn.* at 174-75, but Mr. Denney testified that Eddie called Luann "wife" at least twice, as in, "on a couple of occasions at the golf course when he was leaving, he did say he had to go home to the wife," *Trn.* at 8, 16.

IV. Official Documents

A batch of evidence based in documents is not in dispute. Luann and Eddie did not place an engagement notice in the newspaper, *Trn.* at 150, and they had no marriage licence. FINDING OF FACT ¶ 31, *Appx.* at 32.

Eddie's death certificate reports him as having never been married, and upon Eddie's death both the police and the medical examiner filed reports in which Eddie was referred to as being single. FINDING OF FACT ¶¶ 2, 25, 26; *Trn.* at 132. Although Luann recalled talking to these people, she had no idea what they wrote or their source of information. *Trn.* 142-45, 159.

Most of the official documents reflected transactions that long pre-dated Eddie's relationship with Luann. Thus, the deed to the house was in Eddie's name, FINDING OF FACT ¶ 3; WARRANTY DEED (May 1, 1992), *Appx.* at 23; *Trn.* at 134, as were the utility bills. FINDING OF FACT ¶ 6; *Trn.* at 94-95 (stipulation). Similarly, Eddie's employment-based life insurance, health insurance, and retirement benefits, remained unchanged from when he first acquired them long before he met Luann. *Trn.* at 164, 168 (testimony of supervisor); *Trn.* at 158. Likewise pre-existing bank accounts and car titles remained in Eddie's name. FINDING OF FACT ¶¶ 11, 12, 15. The couple also had separate car insurance policies, although with the same company. FINDING OF FACT ¶ 22; *Trn.* at 157.

Many official records reflect the legal truth that Eddie and Luann were not married, regardless of how they held themselves out to the public. Both Luann and Eddie filed their income tax as single, FINDING OF FACT ¶¶ 7, 18; *Trn.* at 94-95 (stipulation); *Trn.* at 146-47, because legally they were and because their tax-preparer told them to. *Trn.* at 146. As the house was in Eddie's name so were town property taxes. FINDING OF FACT ¶ 5. Likewise, because Luann had not been legally married, her driver's license used her own last name, not changed to Eddie's. FINDING OF FACT ¶ 29; *Trn.* at 132.

V. Strangers

There were only two pieces of evidence regarding people who were not closely associated with Luann or Eddie.

Catherine Moore was Luann's co-worker at Home Depot. *Trn.* at 87. Luann never talked with her about her marital status, and Ms. Moore said she had no reason to know one way or the other. *Trn.* at 87, 93. She believed Luann was married because she had heard Luann refer to a husband on occasion, and say she was going home to cook dinner for her husband and daughter. *Trn.* at 87.

The only time Ms. Moore met Eddie he was a stranger to her. *Trn.* at 93. In August 2006, Ms. Moore was at work at Home Depot. Her testimony was:

Q. Okay. And did he say – what did he say to you when you met him?

A. Well, he was walking around and he was all like looking around. I thought he was lost.

Q. As most people do at Home Depot, by the way.

A. Right. Looking for something. So I said, "Can I help you?" He said, "I'm looking for my *wife*." I said, "Well, what does she look like?" And he said, "She works here." And I said, "Who's that?" And he said, "Luann." I goes, "Oh, she's out in garden." And that was it.

Trn. at 88 (emphasis added).

The only other unassociated evidence was payment and service records from a veterinary clinic which cared for the couple's dog. *Trn.* at 102. The six records, which were admitted into evidence, run from January 2002 to August 2003. One of them lists the dog's owner as "Edward Goudreault." The rest list the owner as "Edward & Luann Goudreault." *Plaistow Animal Medical Center* (2002-2003), Exh. 1, *Appx.* at 24; *Trn.* at 102-05.

SUMMARY OF ARGUMENT

Luann Gould first sets forth the requirements for statutory common-law marriage in New Hampshire. She then details both the majority and minority holdings in *Estate of Buttrick*, and concludes that the law in New Hampshire requires viewing only certain evidence to establish the statutory criteria. Luann then reviews the evidence offered, suggests that much of it is not probative, and argues that the remaining evidence that is relevant establishes that a marriage existed.

ARGUMENT

I. Evidence Necessary to Establish Statutory Common-Law Post-Death Marriage

A. Post-Death Statutory Common-Law Marriage Statute is in Derogation of Legal Truth

True common-law marriage means that:

Whatever the form of ceremony, or even if all ceremony was dispensed with, if the parties agreed presently to take each other for husband and wife, and from that time lived together professedly in that relation, proof of these facts would be sufficient to constitute proof of a marriage binding upon the parties, and which would subject them and others to legal penalties for a disregard of its obligations.

Meister v. Moore, 96 U.S. 76, 82-83 (1877) (common law marriage exists unless expressly nullified by statute) (quoting *Hutchins v. Kimmell*, 31 Mich. 126 (1875)). New Hampshire, among many American jurisdictions, does not recognize true “common law marriage.”

Dunbarton v. Franklin, 19 N.H. 257 (1848). Statutory law provides in limited circumstances, however, a defined entity – statutory common-law marriage. *See e.g.*, RSA 457:36 (informally solemnized wedding not void); RSA 457:40 (“In all civil actions, except actions for criminal conversation, evidence of acknowledgment, cohabitation, and reputation is competent proof of marriage.”). Relevant here, is:

Persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of 3 years, and until the decease of one of them, shall thereafter be deemed to have been legally married.

RSA 457:39. The statute allows after death a declaration of having been married for those who were not legally married while alive.² It is a declaration of having been married when the couple *knew* they were never actually wed. The statute allows a court to deem marriage something the couple (and often others) clearly knew was not the legal truth.

²The import of the statute is that successfully showing post-death that a couple was married allows the survivor to share in the estate of the deceased. RSA 561:1.

B. *Estate of Buttrick* – Evidence Necessary for Proof of Post-Death Marriage

There are a number of older cases construing the statute. But *Estate of Buttrick*, 134 N.H. 675 (1991), is both recent, closely on point, and generally acknowledged as being the controlling New Hampshire law on the topic. See 3 C. Douglas, NEW HAMPSHIRE PRACTICE, Family Law § 4.02 (2006). A detailed reading of both its three-member majority and two-member dissent makes apparent that 1) in making its decision the Probate Court in Luann’s and Eddie’s case focused its attention on the wrong information contained in documents and witnesses’ testimony, and 2) that the Probate Court’s decision is contrary to the relevant evidence presented.

In *Buttrick*, Charlene Miller sought to share in the estate of Clifton (Kip) Buttrick, who had died intestate. The lower court found, based on evidence less comprehensive than here, that they should be considered married; and this Court affirmed. There is no mention in *Buttrick*, for example, of both names being on official documents such as deeds, mortgages, insurance policies, bank accounts, vehicle titles, or utility bills. In *Buttrick* there was no exchange of rings, no period of engagement, and no evidence that the woman took the man’s name. The evidence consisted only of friends who knew they were not married but believed they were a close couple, a co-worker who at first thought Charlene Miller was married but who learned from their employer – who presumably had access to tax or insurance records that are in conformity to employees’ actual legal status – that she was not, a family member who heard Charlene Miller refer to Clifton Buttrick as “hubby,” and mail addressed to the couple as “Kip and Charlene Buttrick.” *Buttrick*, 134 N.H. at 677-78. As the dissent explains, the only evidence showing post-decease statutory common-law marriage was:

the testimony of the petitioner's brother, which was that some individuals thought the petitioner and the decedent were married, along with the testimony of a person who was in the community for only three months a year, and evidence of two Christmas cards, addressed to the petitioner and the decedent.

Buttrick, 134 N.H. at 681. The dissent criticized the majority for finding sufficient evidence of a statutory common-law marriage when the record contained contrary evidence which it characterized as "the personal beliefs of the petitioner's and decedent's family, friends, neighbors, and business associates." *Id.* The dissent castigated the majority and also

[t]he probate court, in reaching its determination of community reputation [for] conclud[ing] that not everyone in the community who knew the individuals and had an opinion as to their reputation had to agree unanimously or even to reach a general consensus on what that reputation was."

Buttrick, 134 N.H. at 680-81. Given what the dissent regarded as insufficient relevant evidence, it would have reversed.

The import of the *Buttrick* dissent to Luann's and Eddie's case is the light it sheds on the majority opinion concerning what evidence is relevant to determining the existence of a statutory common-law marriage. First, as the dissent points out, the majority rule is that unanimous evidence as to the couple's reputation is not necessary. Second, there can be significant evidence contrary to the couple's status without undermining a holding of statutory common-law marriage. Third, the most relevant evidence is from those who know the couple "through social or business contact," *Buttrick*, 134 N.H. at 680, and not those "few persons in the immediate neighborhood." *Id.* Fourth, documentary and employer records, which must be presumed to tell the actual legal truth, are not helpful in establishing how the couple held themselves out to the world. *See also*, *Thomson v. Thomson*, 163 S.W.2d 792 (Mo. App. 1942) (statutory common-law marriage found in face of deeds and documents signed singly by deceased).

II. Evidence In Luann’s and Eddie’s Case

Given *Buttrick*, Much of the evidence in Luann’s and Eddie’s case could not be of much help in proving or disproving the existence of a marriage.

A. Acknowledging Each Other as Husband and Wife

The law requires proof that the couple “acknowledg[ed] each other as husband and wife.”

RSA 457:39

Because acknowledgment to each other occurs in the privacy of a relationship, only the outward signs of domesticity is useful evidence. *Brown’s Adm’r v. Brown*, 215 S.W.2d 971, 975 (Ky. 1948) (“His conduct speaks louder, and more convincingly, than his words.”). Even Eddie’s sister, who claimed to know him best, admitted that Luann and Eddie had their own intimate relationship to which she was not privy. *Trn.* at 218. There are only a few signs of domesticity in Luann’s and Eddie’s case: the obvious cohabitation, the undisputed co-parenting of Shelby, and the “woman’s touch” Luann gave to their shared home. *Trn.* at 162. Nothing in the documents or in the testimony of any witness tended to cast doubt on this.

Moreover, Eddie gave Luann an engagement ring. Whatever Eddie told his family about his intentions, it differed from what he led Luann to believe. Luann understood the ring in the only way it could possibly be understood – as an intent to marry. *Sokolowski v. Allied-Signal, Inc.*, 735 F.Supp. 163, 165 (E.D.Pa. 1990) (“engagement ring does not demonstrate a common-law marriage, but only the intention to be married in the future.”); *Matter of Estate of Hunsaker*, 968 P.2d 281, 286 (Mont. 1998) (engagement ring demonstrates couple “agreed to a marital relationship”).

Similarly, although Eddie may have tended to underplay among his family his intentions

toward Luann, the family's testimony does not cast doubt on Luann's understanding. Eddie's father, for instance, reported that the cow and milk statement was a joke. *Trn.* at 228-29.

The Probate Court, however, relied on a litany of documents that were not in both names – deed, mortgage, tax, utility, insurance, will, bank account, car title. As these documents are legal or have legal implications, the fact they betrayed no legal marriage is unsurprising. The court did not point to any other evidence undermining the couple's domesticity, and thus failed to rely on the only available evidence relevant to acknowledgment.

B. Generally Reputed to be Husband and Wife

The law also requires proof that the couple were "generally reputed" to be husband and wife. RSA 457:39.

Family members, close friends, and employers with access to legal records, all *knew* that Luann and Eddie had never had a wedding and were therefore never formally married. Reputation of something that is contrary to the truth cannot be offered by those who *know* the truth: one cannot hold oneself out as something contrary to the truth among those who know. As in *Buttrick*, those people are too close to offer relevant evidence. *Brown's Adm'r v. Brown*, 215 S.W.2d 971 (Ky. 1948) (testimony of disinterested witness more probative than man's assertion out of presence of woman). Thus the testimony in this regard of Luann's family, Luann's friends, Eddie's family, Eddie's friends, and Eddie's supervisor, cannot be relied on as to Luann and Eddie's reputation.

The only competent evidence of reputation were those who know the couple "through social or business contact." *Buttrick*, 134 N.H. at 680; *In re Greenfield's Estate*, 141 S.E.2d 916 (S.C. 1965). Here, there were only two such people. One was Catherine Moore, the Home

Depot employee with no prior knowledge of Luann’s marital status, who testified that Eddie came into the store and said, “I’m looking for my wife.” *Trn.* at 88. The other stranger was the veterinarian, whose records listed the owner of their dog as “Edward & Luann Goudreault.” *Plaistow Animal Medical Center* (2002-2003), Exh. 1, *Appx.* at 24.

The Probate Court, while acknowledging Ms. Moore, ignored the veterinarian, and instead relied on the testimony of all the members of Eddie’s family who *knew* he was not married. The court also seemed to ignore the testimony of Luann’s family and friends, and also one of Eddie’s friends, who routinely heard the couple refer to each other as husband and wife.

Thus, the Probate Court reached its erroneous conclusion because it relied on evidence that is not probative of the elements of statutory common-law marriage. Even if the evidence relied on was relevant to its conclusions, the court’s decision was against its weight.

CONCLUSION

In accord with the foregoing, Luann Gould requests that this Court find, based on the record, that she was a statutory common-law wife and should share in the couple's resulting marital estate.

Respectfully submitted,

Luann Gould
By her Attorney,

Law Office of Joshua L. Gordon

Dated: May 27, 2008

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Luann Gould requests that Attorney Joshua L. Gordon be allowed 15 minutes for oral argument because the court below reached an erroneous conclusion based on non-relevant evidence, and because the court below made a decision contrary to established law.

I hereby certify that on May 27, 2008, copies of the foregoing will be forwarded to Thomas K. MacMillan, Esq., and to Joseph J. Tropiano, Esq., Special Administrator.

Dated: May 27, 2008

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APPENDIX

1. WARRANTY DEED (May 1, 1992) 23

2. *Plaistow Animal Medical Center* (2002-2003) 24

3. HOME READING LOG, Exh. 5 (May 2006) 30

4. RESPONDENT’S REQUEST FOR FINDINGS OF FACT & RULINGS OF LAW
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5. NOTICE OF DECISION (July 31, 2007) 38

6. ORDER (July 26, 2007) 39