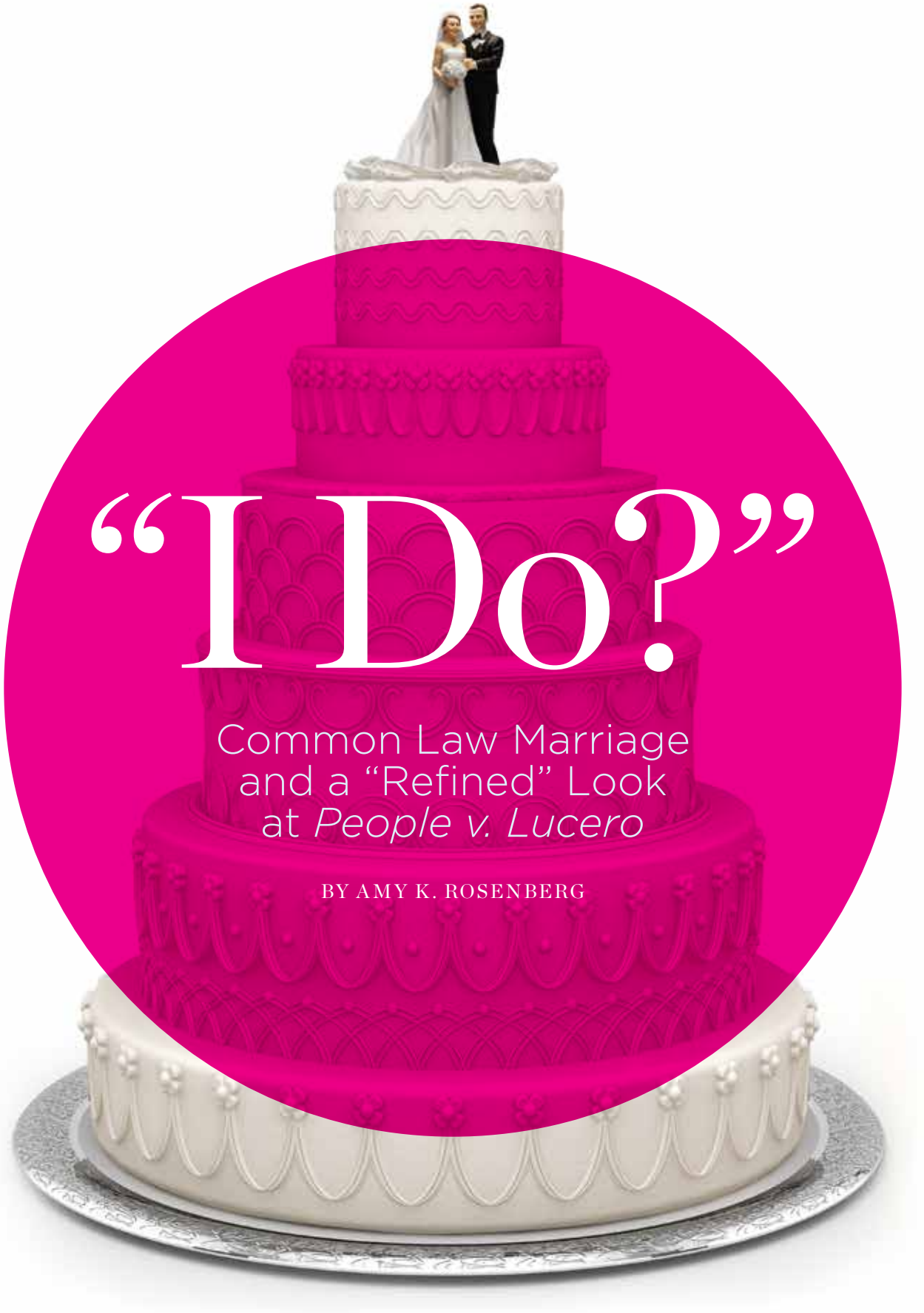

"I Do?"

Common Law Marriage and a "Refined" Look at *People v. Lucero*

BY AMY K. ROSENBERG

This article discusses factors courts consider when determining whether a common law marriage exists. It focuses on three recent Colorado Supreme Court decisions.

This article discusses the Colorado Supreme Court's three recent decisions regarding common law marriage, including two that apply specifically to same sex common law marriage.[1] Each case addresses the application of the historic decision *People v. Lucero*[2] and the "refinement"[3] of its standards to address the shifting demographic realities of cohabitation and marriage.

The *Lucero* Framework

For 33 years *Lucero* provided the framework for determining whether a common law marriage exists and, if so, when it arose. In *Lucero*, a court was called on to determine the marital status of a criminal defendant and the woman alleged to be his wife to assess whether she could testify against him. But *Lucero*'s identification of factors to consider in a threshold determination of marriage have spread beyond that fact pattern and become critical to the administration of decedents' estates and to actions for dissolution of marriage. In probate matters, individuals often claim to have been married to a decedent at common law and, accordingly, entitled to the statutory benefits provided to a surviving spouse in the absence of any contrary agreement.[4] In family law matters, a claimant who can prove to a court the existence of a common law marriage may, in the dissolution of that marriage, become entitled to ongoing support and a portion of the couple's marital property.[5]

Under *Lucero*, common law marriage exists only where the parties intended and agreed to have a lawful marriage as evidenced by their open assumption of the marriage and their repute in the community as married. In construing *Lucero*, the Colorado Supreme Court's most recent rulings expand the factors to be considered in family law and probate matters associated with contested common law marriages. In doing so, they address a larger reckoning about due process, equal protection, and the future of common law marriage itself.

The Demographics Background

Lucero and its progeny must now be applied in light of the growing numbers of unmarried adults residing together and the recognition that same sex couples may legally marry.[6] The number of unmarried cohabitants living together in the United States is greater than ever; from 1996 to 2017, the number nearly tripled, from 6 million to 17 million.[7] Cohabitation without marriage is sometimes seen as an alternative to marriage for members of economically marginalized groups, but cohabiting adults today are older, more racially diverse, better educated, and financially better off than before.[8] In 1996, only 2% of those cohabitants were 65 or older; by 2017, the number rose to 6%, and more of those partners had been previously married.[9] By 2017, 28% of unmarried cohabitants had a bachelor's degree or higher educational level compared to 16% in 1996.[10]

Meanwhile, marriage rates have fallen in the United States. The National Center for Health Statistics reports that marriage began a long decline starting in the mid-1980s and hit an all-time low of 6.5 marriages per 1,000 persons in 2018.[11] Whether unmarried cohabitation has increased because it is more acceptable or because it offers potential cost savings—shared expenses while avoiding liability for a spouse's medical expenses, protecting assets such as pensions, continuing spousal support from a previous marriage, or preserving wealth for children of a previous relationship—the demographic landscape is markedly different from the one the *Lucero* Court encountered.

In re Marriage of Hogsett and Neale

In re Marriage of Hogsett and Neale, announced on January 11, 2021, was the lead case that considered *Lucero*. Hogsett and Neale were same sex partners in a 13-year relationship that began in 2001. When they broke up in 2014, they jointly petitioned the district court for a dissolution of their marriage, seeking approval of their property division agreement and Neale's agreement to pay maintenance to Hogsett.

After the initial status conference, when the parties learned that the court would need to find that a marriage existed before it could dissolve it, the parties agreed to dismiss the petition. Hogsett then attempted to enforce the agreement regarding the property division and maintenance, but Neale maintained that no marriage had existed. Hogsett moved to reopen the dissolution case. When the court denied that motion, Hogsett moved to dissolve a civil union, but then withdrew the petition and filed a second petition to dissolve what she alleged was the couple's common law marriage. Neale moved to dismiss the second petition, arguing not only that the relationship did not meet the *Lucero* test but also that she and Hogsett, as a same sex couple, could not have legally married during their relationship because *Obergefell v. Hodges*,[12] which held that states cannot deprive same sex couples of the fundamental right to marry, had not yet been decided. Accordingly, she argued, the court could not determine that she and Hogsett had been married retroactively as of the date that same sex marriage became legally recognized.

In its hearing on the second petition, the trial court heard conflicting testimony about the significance of the parties' exchange of rings. According to Hogsett, it occurred during

a "very intimate close marriage ceremony"[13] at a bar, but Neale described it as an exchange of commitment rings without the presence of family members or friends. In addition to that testimony, the trial court considered that the parties referred to each other as "partner"; they had joint banking and credit card accounts; they worked together with a financial advisor; they purchased a custom home together; Hogsett listed Neale as a primary beneficiary and domestic partner on her 401(k) plan, and as next of kin and "life partner" on a medical record; Hogsett certified on a health insurance form that she was "not married"; Neale testified that she did not believe in marriage and did not believe that she and Hogsett were married; and Neale mistakenly believed that the parties needed to have the approval of a court to divide their property.[14]

The district court acknowledged that it had the authority to recognize a valid same sex common law marriage that arose before such marriages were legally recognized in Colorado. Nevertheless, it ruled that no valid marriage existed.

The Court of Appeals found that the trial court had properly applied the *Lucero* factors to conclude that the parties had no common law marriage and noted that a court may find a same sex common law marriage existed under *Lucero* based on the parties' conduct before *Obergefell* was decided. It agreed that many of the evidentiary factors established in *Lucero* to determine whether a common law marriage existed were not available to the parties because of the unconstitutional laws forbidding same sex marriage in effect during their relationship, and the trial court properly had given less weight to those indicia during the parties' pre-*Obergefell* relationship.[15]

Lucero *Refined: The New Test*

In affirming the Court of Appeals decision, the Supreme Court in *Hogsett* acknowledged that *Lucero*'s usefulness in distinguishing between marital and nonmarital unions has eroded over time, and its factors may be overinclusive of couples who do not intend to be married or underinclusive of genuine marriages outside of a "traditional model."[16]

> "In construing *Lucero*, the Colorado Supreme Court's most recent rulings expand the factors to be considered in family law and probate matters associated with contested common law marriages. In doing so, they address a larger reckoning about due process, equal protection, and the future of common law marriage itself."

Some of *Lucero*'s evidentiary factors may still be relevant, such as the parties' cohabitation, reputation in the community as spouses, joint banking and credit accounts, purchase and joint ownership of property, filing of joint tax returns, and use of one spouse's surname by the other or by children raised by the parties. But the Court added the following factors as germane: evidence of shared financial responsibility, such as leases in both partners' names, joint bills, or other payment records; joint estate planning, including wills, powers of attorney, and beneficiary and emergency contact designations; symbols of commitment, such as ceremonies, anniversaries, cards, gifts, and the couple's references to or labels for one another; and the parties' "sincerely held beliefs regarding the institution of marriage."[17]

Hogsett also noted the importance of a couple's intent, stating that common law marriage may be "established by the mutual intent or agreement of the couple to enter the *legal and social* institution of marriage, followed by conduct manifesting that mutual agreement."[18] The key question is "whether the parties mutually intended to enter a *marital* relationship, that is, to share a life together as spouses in a committed, intimate relationship of mutual support and obligation."[19] There must be *some* manifestation of that consent and a flexible inquiry into the totality of the circumstances. Therefore, in assessing whether a common law marriage has been established, a court should accord weight to evidence reflecting a couple's express agreement to marry, but in the absence of such evidence, the parties' agreement to enter a marital relationship may be inferred from their conduct. The agreement to marry need not take a particular form, and a couple's decision not to marry formally does not reflect a lack of intent to enter a common law marriage. [20]

Conduct manifesting the parties' agreement to marry need not take the form of mutual public acknowledgment or open marital cohabitation in every case. In some cases, especially those involving same sex partners, the parties' choice not to "broadly publicize" the nature of their relationship may be explained by reasons other than lack of mutual agreement to be married; in such cases, "a general requirement to introduce

'*some* objective evidence of the relationship' will sufficiently guard against fraudulent assertions of marriage."[21] Thus, parties asserting a common law marriage need not prove that they had detailed knowledge of and an intent to "obtain all the legal consequences" of marriage; in the absence of evidence of a couple's express agreement to marry, mutual intent may be inferred from their conduct, judged in context.[22]

The opinion acknowledges the *Lucero* Court's observation that common law marriage has served to protect the interests of parties who acted in good faith as "husband and wife," and it pointed to common law marriage as a potential "path to marriage" for marginalized groups such as undocumented immigrants who may wish to avoid divulging information about their marital status to government authorities, as well as to same sex partners who may only now marry formally.[23]

Notably, *Hogsett* acknowledges the additional ambiguity implicit in the Court's revised standards, stating that it is "more difficult today to say that a court will know a marriage when it sees one."[24] At worst, this difficulty raises the possibility that common law marriage can be imposed in the absence of a clear mutual agreement and intent to be married.

In re Marriage of LaFleur and Pyfer

Timothy Pyfer filed a dissolution of marriage action in 2018, alleging that he and Dean LaFleur established a common law marriage in a November 30, 2003 ceremony conducted by an officiant before the couple's family and friends. The parties did not live together consistently following the ceremony and before Pyfer initiated the dissolution action.

The district court's order acknowledged that although the parties' ability to marry in Colorado was not recognized until 2014 or later, the right to be married had existed before that time. It evaluated evidence that Pyfer proposed to LaFleur; testimony that the parties did not regularly wear wedding rings; Pyfer's testimony that he held himself out as married to family and friends and to the person with whom he had an "extramarital-extrarelationship affair"; LaFleur's nondisclosure of the marriage to his coworkers; LaFleur's trial testimony that he never intended to be married and would not have participated in the ceremony if it were to be recognized as a lawful marriage and legally binding as to his assets; and LaFleur's apparent knowledge that Pyfer had identified him as a spouse.[25] Even if LaFleur did not want all of the legal obligations attendant to marriage, the court determined that he intended to be joined with Pyfer "for the rest of his life" on the ceremony date and that he had "acquiesced" when he accepted the proposal and participated in the ceremony.[26]

LaFleur appealed the district court's determination that the parties were married at common law. Pyfer appealed the district court's allocation of marital assets and marital debt and its award of maintenance. LaFleur argued that the parties could not have been married pursuant to the 2003 ceremony because, as a matter of law, same sex marriages were illegal in Colorado until October 7, 2014. He cited his testimony that he had made clear to Pyfer his intent never to marry; that Pyfer had told a third party that LaFleur would "absolutely have no part of a wedding"; and that if same sex marriages had been recognized in 2003, he would not have had the ceremony.[27] LaFleur also asserted that he made his intent clear to Pyfer, that he agreed to participate in the commitment ceremony because it was not a wedding, and that he edited the ceremony's script to remove any references to "marriage."[28] Pyfer had testified that the parties did not take each other's surnames or share bank accounts, real estate, vehicles or other assets; cover each other on health insurance; or file taxes as married. LaFleur did not refer to Pyfer as a spouse when LaFleur refinanced his home in February 2012 and again on October 14, 2014. The second refinance, he argued, was significant because same sex marriage had been legalized only a week before the second refinance was concluded. Finally, in deciding whether to apply *Obergefell* retroactively to same sex cohabiting parties, LaFleur argued, the Court should give equal consideration to his fundamental right not to be married and Pyfer's right to choose to enter into a marriage.

The Supreme Court accepted jurisdiction under C.A.R 50 and addressed the issue of the inception of a valid same sex common law marriage in light of *Obergefell*. The Court found that a court may recognize a common law same sex marriage that arose in Colorado before the state recognized the partners' right to marry because (1) *Obergefell* struck down state laws prohibiting same sex marriage, and statutes declared unconstitutional are void ab initio; and (2) to the extent that *Obergefell* did not merely recognize an existing fundamental right to marry, but also announced a new rule of federal law, the decision applies retroactively to marriages (including common law marriages) predating that decision.

Having found that Pyfer and LaFleur were not barred from being married in 2003, the Court applied the new *Hogsett* standards. It found the following factors persuasive as evidence of an express agreement to marry: the parties had a ceremony "officiated by a reverend"; family, friends, and attendants were present; the parties wore tuxedos; they exchanged vows and rings; and they signed a "Certificate of Holy Union."[29] Further, a mutual agreement to enter a marital relationship could be inferred from their cohabitation and LaFleur's financial support of Pyfer. While it would have been significant if one had used the other's surname, their failure to do so did not suggest that they did not intend to be married. Similarly, the parties' failure to file joint tax returns was not instructive because they could not have filed jointly at that time under federal law. And while Pyfer held himself out as married to family and friends with Lafleur's knowledge, but LaFleur did not tell his coworkers that he was married, testimony reflected that LaFleur worked in an environment that did not welcome same sex couples, so his failure to make his relationship known in his workplace did not necessarily support any lack of mutual agreement be married.

The Court upheld the district court's finding that the parties had a valid common law marriage but reversed the division of property and award of spousal maintenance, remanding those issues for further proceedings.

The Dissent

Justice Samour dissented, criticizing the majority's approach as "at best, strained beyond the breaking point, and at worst internally inconsistent," "legally untenable," and "likely

to foster further confusion in this area of the law."[30] He noted that because same sex marriage was prohibited in 2003, the parties could not possibly have "*intended or agreed* to enter the *legal* relationship of marriage."[31] Accordingly, in his opinion, the majority failed to meaningfully embrace the requirement that married individuals must agree to enter into a *legal* marital relationship and downgraded that requirement to one that affords preeminence to an intent and agreement to enter into *any* type of marital relationship (legal or otherwise). He added that the majority "curiously rules that, while it is true that the parties must have intended and agreed to enter into the *legal* and social *institution* of marriage, they need not have intended and agreed to incur the consequences of a legally sanctioned marriage."[32]

In re Estate of Yudkin

In re Estate of Yudkin addressed common law marriage in the context of a probate proceeding. Yudkin died intestate in 2016 survived by his former wife, Shtutman, the mother of Yudkin's only biological child. Shtutman applied for appointment as personal representative of Yudkin's estate and was appointed without notice to Dareuskaya, who objected, claiming she was Yudkin's surviving common law spouse and thus entitled to statutory priority to serve as personal representative and to inherit his estate.

Yudkin and Dareuskaya had lived together in Yudkin's home for eight years before his death. Dareuskaya testified that, six years before Yudkin's death, he presented her with a wedding ring and told her they could be husband and wife if she agreed, and that she agreed, she wore the ring, and she and Yudkin held themselves out as married. The magistrate found that most of the community members called as witnesses provided credible evidence that the two "agreed to and did hold themselves out to be married."[33]

Based on other evidence, however, the magistrate concluded that no common law marriage existed. The couple maintained separate bank accounts; they did not jointly own automobiles or real estate; and they filed their state and federal income taxes separately in every year of their purported marriage. The magistrate did not find credible Dareuskaya's testimony that she did not believe she could represent to the government that she was married.

> "Therefore, in assessing whether a common law marriage has been established, a court should accord weight to evidence reflecting a couple's express agreement to marry, but in the absence of such evidence, the parties' agreement to enter a marital relationship may be inferred from their conduct."

Dareuskaya argued in the Court of Appeals that once the magistrate found an agreement to be married and repute to be married in the community, he could not consider evidence related to how the parties owned their property or filed their taxes. The Court agreed, finding that once the magistrate made these findings "the inquiry ends there," and no further inquiry should be made into the parties' conduct.[34]

On appeal to the Supreme Court, Shtutman argued that the Court of Appeals misapplied *Lucero* in that cohabitation and reputation in the community are not necessarily dispositive of the parties' agreement to be married at common law, and that the magistrate never factually found the parties had agreed to be married. The Supreme Court could not determine whether the magistrate found that Yudkin and Dareuskaya mutually agreed to enter into a marital relationship and whether the factors the magistrate applied under *Lucero*'s standards accounted for legal and social changes to marriage under the newly acknowledged *Hogsett* elements. The magistrate found that the parties had "agreed to and did hold themselves out to be married to the community of their non-family coworkers, friends and neighbors" but that it was unclear from the phrasing of the order whether the magistrate had separately concluded that the parties had agreed to *be* married.[35] The Supreme Court thus remanded the matter with instructions to return the case to the trial court for reconsideration in light of *Hogsett*'s standards.

What Now?

While *Lucero* and its progeny formulated a detailed factual inquiry for determining the existence of common law marriage in Colorado, the more fundamental question of whether common law marriage should continue to be recognized looms large. *Hogsett*'s majority opinion alludes to whether common law marriage remains a sustainable construct, acknowledging that Colorado and only nine other jurisdictions continue to allow for its formation.[36] Justice Hart's special concurrence with the Supreme Court majority calls for the prospective abolition of common law marriage,

and Judge Furman's special concurrence in the Court of Appeals opinion similarly advocates for abolishing common law marriage, citing, among other factors, the significant costs associated with legal proceedings to determine whether parties are married.

However, even if common law marriage is abolished prospectively, the number of disputes over property rights between current or former living cohabitants and decedents' surviving cohabitants will almost certainly increase, if only as the result of increasing numbers of individuals who live together, often without express agreements regarding their property rights. And in probate matters, notwithstanding the existence of common law marriage, claimants could still assert legal or equitable rights to a decedent's estate based on contractual and equitable theories. In other civil litigation, courts would likely continue to see disputes based on similar theories. But if common law marriage were abolished, to the extent such disputed matters arise, courts would be freed from wrestling with the the threshold determinations of a couple's marital status and its attendant fact-laden inquiries.

Meanwhile, the opinions discussed above do not alter *Lucero*'s imposition of the preponderance of the evidence burden of proof on the party who claims the existence of a common law marriage. On the other hand, neither do they impose an affirmative duty on parties to a relationship to publish that they are not married. But more subtly, they raise the question whether a party to a relationship will be required to make repeated public affirmations of the party's status as unmarried to establish that the relationship is not a marriage, and whether affirmations by only one party are sufficient to do so. Given that many individuals choose not to be married to address their own financial welfare, avoid the criminal and civil consequences of failing to support a spouse, or avoid negative entanglements with public assistance programs,[37] requiring parties to a relationship to defend themselves from misperceptions that they are married raises the question whether common law marriage is a protective or punitive construct and whether it can be applied predictably.

Probate courts will continue to address claims brought by individuals who hold themselves out as spouses following a cohabitant's death, and those claimants may or may not find the new landscape under *Hogsett* to be more friendly to their assertions. The party with the greater resources is exposed to claims of varying merit, while the party with fewer resources is vulnerable to a partner's "sincerely held" beliefs that he or she did not believe in marriage or intend to be married.

> "While *Lucero* and its progeny formulated a detailed factual inquiry for determining the existence of common law marriage in Colorado, the more fundamental question of whether common law marriage should continue to be recognized looms large."

Educating Clients

In light of the Court's refined test for common law marriage, attorneys must educate clients about the hazards of ambiguous relationships and their rights and obligations as unmarried cohabitants, including statutory rights, such as those conferred through beneficiary designations or joint tenancy, and their exposure to equitable causes of action involving unjust enrichment and implied contracts.

For individuals who do not intend to be married, cohabitation agreements should specifically state the parties' intent and understanding regarding their marital status. Such an agreement can include a statement that a marriage, if it occurs in the future, will be a statutory rather than a common law marriage. If a cohabitation agreement provides that it will serve as a marital agreement in the future if the parties marry, it should be drafted in light of the requirements the Uniform Premarital and Marital Agreements Act, including financial disclosures and required advisory language.[38]

Married individuals or those planning to be married according to either a statutory or common law form should have marital agreements that establish their rights and obligations. Marital agreements should include agreement on the date the marriage arose to avoid disputes over the inception of marital property rights and spousal rights to a decedent's estate. Evidence of the marriage and its date can be confirmed by filing pertinent information in the public record.

Hogsett and *LaFleur* in particular make it clear that public perceptions continue to matter. Individuals who do not intend to be married are well advised to avoid formal ceremonies that look like weddings unless there is a contemporaneous public acknowledgment that the parties are not entering into a marriage. Ceremonies

can carry significant evidentiary weight, even if the parties to them have different views of their import. While factual similarities exist between *Hogsett* and *LaFleur* in terms of the parties' different recollections of ceremonies and ring exchanges, distinctions can be made between an experience that occurs without witnesses and an occasion featuring the trappings of a wedding, however the parties' community defines that particular convention.

Conclusion

The Supreme Court's most recent rulings have increased challenges for judges who must resolve contested common law marriage disputes and for the litigants and attorneys who appear before them. Cohabitants need to understand the expanded evidentiary elements applicable to a determination of common law marriage and the hazards of treating common law marriage as a polite social fiction.

Married or not, cohabitants should have written evidence of their agreements regarding their marital status and should consistently live out the terms of their agreements. Cohabitants who forego such written agreements risk generating multiple and varied perceptions of their status within their communities. Some cohabitants may believe that their interests are best served by ambiguity. But in all cases that reach a court, the consequences of a lack of clarity and consistency will continue to be time-consuming and expensive. And the outcome may be imposition of marriage—retroactively—when the parties were unaware of or did not intend that possibility. CL

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NOTES

1. *In re Marriage of Hogsett and Neal*, 478 P.3d 713 (Colo. 2021); *In re Estate of Yudkin*, 478 P.3d 732 (Colo. 2021); *In re Marriage of LaFleur and Pyfer*, 479 P.3d 869 (Colo. 2021).

2. *People v. Lucero*, 747 P.2d 660, 663–65 (Colo. 1987). Common law marriage is established by the mutual consent or agreement of the parties to be husband and wife, followed by a mutual and open assumption of a marital relationship. The Court has almost uniformly required that such consent or agreement be manifested by conduct giving evidence of the parties' mutual understanding. Conduct in the form of mutual public acknowledgment of the marital relationship is not only important evidence of the existence of the mutual agreement but is essential to the establishment of the marriage.

The two factors most clearly showing an intention to be married are cohabitation and a general understanding or reputation in the community in which the couple lives that the parties hold themselves out as "husband and wife." Those specific behaviors include maintaining joint banking and credit accounts, the purchase and joint ownership of property, the use of the man's surname by the woman, the use of the man's surname by children born to the parties, and filing joint tax returns. This and any other evidence that openly manifests the parties' intent that their relationship is that of husband and wife will provide the requisite proof from which the existence of their mutual understanding can be inferred.

3. *Hogsett*, 478 P.3d at 715.

4. CRS §§ 15-11-102, -202 et seq.

5. CRS §§ 14-2-201 et seq.

6. Colorado legalized same sex marriage on October 7, 2014. *Kitchen v. Herbert*, 961 F.Supp.2d 1181 (D.Utah 2013), *aff'd*, 755 F.3d 1193, 1229–30 (10th Cir. 2014). The Tenth Circuit Court of Appeals found that, pursuant to the US Constitution's Due Process and Equal Protection Clauses, "those who wish to marry a person of the same sex are entitled to exercise the same fundamental right as is recognized for persons who wish to marry a person of the opposite sex." *Obergefell v. Hodges*, 576 U.S. 644 (2015), invalidated laws prohibiting same sex marriage nationwide.

7. Gurrentz, "Cohabiting Partners Older, More Racially Diverse, More Educated, Higher Earners," US Census Bureau (Sept. 23, 2019), https://www.census.gov/library/stories/2019/09/unmarried-partners-more-diverse-than-20-years-ago.html?utm_campaign=2019.

8. *Id.*

9. *Id.*

10. *Id.*

11. US Congress Joint Economic Committee, U.S. Marriage Rates Hit New Recorded Low (Apr. 29, 2020), https://www.jec.senate.gov/public/index.cfm/republicans/2020/4/marriage-rate-blog-test.

12. *Obergefell*, 576 U.S. 644.

13. *Hogsett*, 478 P.3d at 716.

14. *Id.* at 717.

15. *Id.*

16. *Id.* at 723.

17. *Id.* at 724–25.

18. *Id.* (emphasis added).

19. *Id.* at 727 (emphasis in original).

20. *Id.* at 726.

21. *Id.* at 724 (emphasis added).

22. *Id.*

23. *Id.* at 719.

24. *Id.* at 724.

25. *In re Marriage of LaFleur and Pyfer*, No. 2018DR030057, Transcript of District Court Order at 4–6 (July 31, 2018). The Court noted that Pyfer listed LaFleur as his spouse on one vehicle, and Pyfer testified he had to obtain LaFleur's Social Security number for that purpose.

26. *Id.* at 7.

27. *In re Marriage of Pyfer and LaFleur*, No. 18 CA 2252, Opening Answer Brief of Respondent-Appellee at 10, 22.

28. *Id.* at 16. LaFleur's assertions about the nature of the ceremony were made public to a *Westword* reporter. When Pyfer suggested a commitment ceremony, LaFleur went along because, in his words, "it wasn't legally binding. I thought, what could it hurt?" He readily admitted that the ceremony looked like a wedding. "Even the decorations were called into question, LaFleur recall[ed]. Like, 'Aren't those wedding bells hanging over your head?' But how do you decorate for a commitment ceremony? It was just a decoration.'" Roberts, "Gay Denver Man Forced to Divorce Boyfriend He Never Married," *Westword* (Sept. 28, 2018), https://www.westword.com/news/gay-denver-man-forced-to-divorce-boyfriend-he-never-married-10834780.

29. *LaFleur*, 479 P.3d at 884.

30. *Id.* at 889.

31. *Id.* at 888 (emphasis in original).

32. *Id.* at 889. (emphasis in original).

33. *Yudkin*, 478 P.3d at 735. *See* CRS § 13-90-102, which may prevent a witness from testifying as to a decedent's oral statements.

34. *In re Estate of Yudkin*, 482 P.3d 448, 451 (Colo.App. 2019).

35. *Yudkin*, 478 P.3d at 736-737. (emphasis in original).

36. *Hogsett*, 478 P.3d at 720.

37. CRS § 14-6-101 provides that willful failure to provide reasonable support for a spouse or willful failure to provide proper care for a spouse who is ill constitutes a class 5 felony. CRS § 14-6-110 provides that spouses, or either of them, are liable for "expenses of the family and education of the children" and can be sued jointly or separately for them. Medicaid regulations as to the Community Spouse Resource Allowance treats a married couple's assets as jointly and equally owned and may result in a required "spend down" of the half allocated to the spouse who is applying for long-term care services. *See* Colorado Medicaid Eligibility for Long Term Care: Income and Asset Limits (Dec. 7, 2020), https://www.medicaidplanningassistance.org/medicaid-eligibility-colorado.

38. CRS §§ 14-2-301 et seq.