

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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MALA HARRIS,
Plaintiff,

Index No. 27079/00

-against-

By: DORSA, J.

RAYMOND JESSE HARRIS,
Defendant.

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MEMORANDUM

In response to defendant's motion for summary judgment, this court directed by short form order that a hearing be held on the issue of whether a valid marriage existed between the parties cognizable in the State of New York.

A hearing was held before this court on September 27, 2002. Defendant called three witnesses; plaintiff, defendant and Jeffrey Luber, a handwriting expert. Plaintiff testified on her own behalf.

Findings of Fact

The plaintiff, Mala Harris, a.k.a. Mala Ramgobin, was born in Trinidad and came to the United States in 1989 on a visitor's visa. At the time of the hearing she described her status as "pending," although she admitted that she was not a resident alien and had no green card. Raymond Jesse Harris was born in the United States.

At the time that defendant first met plaintiff in the summer of 1994 and they began dating he was still married to another woman. He briefly broke off his relationship with Mala, in an effort to reconcile with his wife. The reconciliation was unsuccessful, he divorced his wife and began living with plaintiff in his Tarrytown apartment in October 1996.

Defendant maintains that within a month of her moving in, plaintiff began talking about marriage or what she, he says, frequently referred to as the "next step." Defendant maintains that he told her he wasn't interested in marriage, that he had just gotten divorced.

Nevertheless, he agreed to start the process of getting married and about 45 days after she moved in they went together to apply for a marriage license. They applied and received a first license, which they let expire. They applied for a second license in March of 1997 and received a license which was set to expire on May 26, 1997.

In the complaint for divorce filed by plaintiff, she alleges that she and defendant were married on May 25, 1997, the day before the license was due to expire. Plaintiff admits that she and defendant were never pronounced husband and wife before a clergyman, leader of an ethical society or government official,

that day or any other day. Plaintiff maintains that she thought going to the clerk's office and getting the license back, along with signing it was all that was necessary in the United States for them to be married. In the eight years that she had been in the United States at that point, she claimed never to have been invited to a wedding or seen one on television.

Plaintiff admits that she told her mother to sign the license before she did and that her mother was not present when she and defendant signed nor did her mother travel with them to the clerk's office. Finally, plaintiff admits that she never saw any clergyman or pastor sign the license, but acknowledges that what purports to be Pastor Boria's signature is on the license.

After her mother, she and defendant signed the license, defendant took it, and she didn't see it again. Later they received a marriage certificate in the mail from New York City.

Defendant maintains that he and plaintiff discussed the need for an actual ceremony in order for there to be a marriage; that plaintiff knew, understood and admitted to him that they weren't married because there was no ceremony. In fact, he says, after May 25, 1997 they spoke of taking the "next step" sometime in the future. The defense introduced a tape recording in which plaintiff is heard to say in May or June of 2000 "now all we have to do is

take the next step."

Each party has a different version of the events surrounding and including their trip to South Carolina. Plaintiff maintains that the trip, a business trip for defendant with his company Jewel Way, took place after May 25, 1997. Plaintiff maintains that they signed the register as husband and wife, but has no receipts, documents or any other affidavits to substantiate her claim.

Defendant maintains that the trip was for his company, Jewel Way, but that the trip was in 1996 just before he left that company. Defendant maintains that although they stayed together in a hotel, they did not register as husband and wife and he did not introduce her to anyone as his wife.

The defense called Jeffrey Luber as an expert in handwriting analysis. Mr. Luber testified that he was an employee of the Suffolk County crime lab with the title, "Questioned Documents Examiner." The witness was qualified, without objection, as an expert in document examination and handwriting analysis. After conducting an examination of the marriage license in question and comparing "known" handwriting samples with the suspected signature, Mr. Luber concluded that "most probably" Mala Harris (a.k.a. Mala Ramgobin) hand printed the name Doolin Ramgobin and wrote the name Doolin Ramgobin, [plaintiff's mother] on the marriage license.

Both parties admit to behaving in a dishonest and fraudulent manner on other matters.

While living with defendant in Tarrytown in 1997, plaintiff worked at a Grand Union using her sister's name and social security number. Plaintiff claimed she didn't know she was breaking the law in doing so.

Defendant admits that he signed the name of the pastor on their marriage license, namely Pastor Bruce Boria. Defendant admits that in October 2000 he forged plaintiff's signature to a check for \$10,000 which he then negotiated on plaintiff's account at First National bank. Defendant admits that he signed an Immigration and Naturalization Service document for Mala claiming she was his wife.

Conclusions of Law

"DRL §11 provides that a marriage, to be valid, must be solemnized by one of the persons enumerated in the statute. The effect of this provision is to abolish, in New York the doctrine of common law marriage." (Practice Commentaries, DRL §11, C11:1, The Requirement for Solemnization, p. 105, paragraph 2).

Furthermore, DRL §12, provides in pertinent part:

"No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the

parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony." (Emphasis added).

It is undisputed that no ceremony, wherein plaintiff and defendant declared their intention to be husband and wife, ever took place before any of the persons enumerated in the statute. Furthermore, even if this court were to accept plaintiff's contention that a "ceremony" took place by virtue of the parties having signed the license, plaintiff admits that her mother (if indeed it is her mother's signature) signed the license outside of defendant's presence, thereby never witnessing what plaintiff characterizes as a "ceremony." Furthermore, borrowing from the principles of criminal law, plaintiff's mistake of law, provides no defense (Leggio v. Leggio, 190 Misc2d 571 (2002)) to this essential requirement in order for the marriage to be valid (People v. Heine, 12 AD2d 36, 208 NYS2d 188, (2nd Dep't. 1960), affirmed on opinion at the Appellate Division, 9 NY2d 925, 217 NYS2d 93 (1961)).

Nevertheless, plaintiff maintains that the parties' marriage is valid by virtue of their trip to South Carolina, a state which recognizes common law marriage.

"Notwithstanding the final abolition of common law marriage in

New York in 1933, New York will recognize as valid a common law marriage validly contracted in a jurisdiction which permits such marriages. However, whether or not a common law marriage was validly contracted in a foreign jurisdiction is determined, not by the principles of New York Law, but by the law of the jurisdiction where it is claimed that the marriage occurred." (Practice Commentaries, DRL §11, C11:7, Common Law Marriages, p. 117, para. 4).

"To establish a common law marriage in South Carolina, the proponent must establish an intention on the part of both parties to enter into a marriage contract" (Jennings v. Hurt, 160 AD2d 576, 578 (1990), citing Ex Parte Blizzard, 185 SC131, 133, 193 SE 633, 635. The mutual agreement necessary to create such a marriage must be conveyed with such a demonstration of intent and with such clarity on the part of the parties that marriage does not creep up on either of them and catch them unawares. One can not be married unwittingly or accidentally," Id at 577, 578 (citing Collier v. City of Milford, 206 Conn242, 251, 537 A2d 474.

Here, as in Jennings v. Hurt, plaintiff has failed to establish that there was a mutual intent on the part of both parties, during their brief weekend stay in South Carolina to enter into or create a marriage contract.

Upon all of the foregoing, and after hearing testimony and receiving evidence the court finds that plaintiff has failed to prove that a valid marriage existed between the parties cognizable in the State of New York.

Accordingly, defendant's motion for summary judgment pursuant to CPLR §3211(A)(2)(7) and CPLR §3212 is granted and it is further

ORDERED, that the complaint is dismissed.

Dated: February 14, 2003
Jamaica, NY

JOSEPH P. DORSA
J.S.C.