

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED
DATE: February 17, 2025
TIME: 11:52:17 AM
GUILFORD COUNTY
CLERK OF SUPERIOR COURT
BY: S. Johnson

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
FILE NO. **24E003857-400**

In the Matter of the Estate of)
)
)
GEORGINA ADU POKU,)
)
Deceased.)

**ORDER ON PETITION TO
CONTEST ISSUANCE OF LETTERS
OF ADMINISTRATION**

THIS MATTER coming to be heard on January 30, 2025, and being heard before the undersigned Assistant Clerk of Superior Court of Guilford County after due notice to all parties upon the Petitions to Declare Renunciation to Apply for Letters of Administration and to Contest the Issuance of Letter of Administration filed by Eric K. Sarfo (the "Petitioner") against Philip Adu-Poku (the "Respondent"), with Mr. Adam Linett appearing for the Petitioner and with Mr. Charles Winfree and Mr. Ryan Gladden appearing for the Respondent.

Upon review of the pleadings, after the presentation of evidence and testimony by the parties and other witnesses, and after hearing argument from both sides in open court, the following Order is issued:

FINDINGS OF FACT

1. Georgina Adu-Poku (the "Decedent"), a resident of Guilford County, North Carolina, died on April 13, 2024, owning both real and personal property.
2. The evidence produced by both parties were in agreement that the Decedent was not survived by either of her parents and did not have any children during her lifetime.
3. On August 29, 2024, the Respondent filed a Petition and Assignment of Year's Allowance ("Year's Allowance") as the surviving spouse of the Decedent. On September 6, 2024, the Respondent filed an application for letters of administration to be issued to Respondent as the surviving spouse and sole beneficiary of the Decedent.
4. On September 4, 2024, the Petitioner filed a Petition to Declare Renunciation to Apply for Letters of Administration. This Petition was formally withdrawn by the Petitioner's counsel at the hearing.
5. On September 5, 2024, the Petitioner filed a Petition to Contest the Issuance of Letters of Administration claiming that Respondent had not provided the court with evidence of the Respondent's marriage to the Decedent and further claiming that the Respondent was not divorced from his first wife, Ms. Nora Jean Ekanem, at the time of Respondent's alleged marriage to the Decedent.

6. Respondent timely filed responses to the Petitions filed by the Petitioner and properly noticed the issues raised in the Petitions for hearing.

7. At the hearing, Petitioner's counsel conceded that Respondent's first marriage ended by divorce prior to the alleged marriage to the Decedent, leaving in dispute only Petitioner's argument that the Respondent has failed to present sufficient evidence of his marriage to the Decedent in support of the Year's Allowance and Application for Letters of Administration.

8. The Petitioner's evidence tended to show that the Decedent was survived by several siblings, including the Petitioner and Rockson Asare, who were both present at the hearing.

9. In the pleadings, application for letters of administration, brief, and other filings before the Court, the Petitioner has claimed that the Decedent was survived by a total of seven (7) siblings. However, the Petitioner's testimony and other evidence presented at the hearing tended to show that the Decedent was survived by a total of six (6) siblings.

10. The Respondent's evidence tended to show that the Decedent and the Respondent were both from Ghana, that they met in Ghana in or about 1977, and that they dated each other for several years, first in Ghana and then in Liberia, until the Respondent left Liberia for the United States in about 1981.

11. The Respondent testified that he reconnected with the Decedent in 1984 following his divorce from his first wife, at which time the Decedent was still residing in Liberia and the Respondent was residing in Greensboro, North Carolina.

12. The Respondent testified that he agreed to marry the Decedent and that he directed his mother and first cousin to meet with the Decedent's parents in Ghana to present a dowry and drinks in an offer of customary marriage between the Respondent and the Decedent in accordance with the laws of Ghana.

13. The Respondent testified that he was informed by his mother and by the Decedent that the dowry and drinks had been accepted by the Decedent's parents, thereby completing the customary marriage between the Respondent and the Decedent on July 12, 1984.

14. All persons alleged to have been present for the marriage ceremony on July 12, 1984, have deceased, including the Decedent, the Respondent's mother and first cousin, and both of the Decedent's parents.

15. The Petitioner presented uncontested evidence that there is no record of a registration of the alleged customary marriage between the Decedent and the Respondent in Ghana.

16. Pastor Joseph Gyamfi, a native of Ghana, presented uncontroverted testimony that it is common practice in Ghana for marriages to occur based on consent of the head of the bride's family, and the acceptance of a dowry and customary drinks from the groom's family. He also testified that the actual attendance by the bride and groom themselves was not necessary. He also testified that most such customary marriages do not result in the recording of an official certificate of marriage.

17. Pastor Gyamfi, who ministers at the church where the Decedent attended, also testified that if the Decedent had been co-habiting with the Respondent, without the benefit of marriage, then she would have been denied communion in her church, which the Decedent did receive.

18. On or about June 30, 1989, the Decedent and Respondent submitted records to the U.S. Immigration and Naturalization Service in support of their marriage which they each alleged to have occurred on July 12, 1984, in Ghana. The records submitted through their immigration attorney in support of their marriage included an affidavit dated July 17, 1984, and purportedly sworn to and signed by the Decedent's father, Yaw Sarfo, before a court official in Kumasi, Ghana ("Statutory Declaration by Yaw Sarfo").

19. On its face, the Statutory Declaration of Yaw Sarfo states, among other things, that the Decedent and the Respondent were married at a ceremony which took place in Ghana on July 12, 1984, in accordance with customary marriage laws of Ghana in which the Decedent's father accepted the dowry and customary drinks offered by the Respondent's family and gave his daughter, the Decedent, in marriage to the Respondent, Philip Adu-Poku.

20. Petitioner's contended that the Statutory Declaration of Yaw Sarfo contains numerous typographical errors and that Yaw Sarfo could not have signed his name to it because he was illiterate and could not write his name.

21. The Petitioner and his brother, Rockson Asare, also gave testimony that they were living with their parents in Ghana in July of 1984, that the Decedent did not come home to Ghana from Liberia in July of 1984, and that they are not aware that any customary marriage ever took place between the Decedent and the Respondent in Ghana.

22. In virtually identical, sworn statements submitted at the hearing, four of the decedent's surviving siblings, namely, Ama Nyarko, Akwasi Asare, Samuel Owusu, and Osei Yaw Akoto, each testified that they never acknowledged the Respondent as the Decedent's spouse and each denied that the Respondent ever married the Decedent.

23. At times, the Petitioner testified that he never acknowledged the Respondent as the Decedent's spouse.

24. However, the Petitioner also testified that he and the Petitioner's family had acknowledged the Respondent as the Decedent's spouse during the Decedent's lifetime and that, until some months after the Decedent's death, he and the Petitioner's family believed that the Decedent and the Respondent had been married at some point after coming to the United States.

25. The evidence presented by both parties tended to show that before immigrating to the United States in 1986, the Decedent abandoned the use of her prior name, Georgina Adjei, and assumed the new name of Georgina Adu-Poku while living in Liberia, which name she used and was known by from that time until her death in 2024, including on driver's licenses, passports, visas, and other legal documents.

26. The Petitioner and his siblings admitted that the Decedent had changed her name to Georgina Adu-Poku by the time she immigrated to the United States, but offered no explanation for the change of the Decedent's last name to the Respondent's last name. Petitioner presented no evidence that Decedent used any name other than Georgina Adu-Poku after July of 1984.

27. The Decedent was issued a Certificate of Naturalization by the U.S. Department of Justice on February 23, 1996, which certificate was issued to her as "Georgina Adu-Poku" and which certificate listed her marital status as "Married." There was no dispute about the authenticity of this Certificate of Naturalization.

28. The Respondent's evidence tended to show that the Decedent and the Respondent lived together from the time that the Decedent immigrated to the United States in 1986 until her death in 2024. This evidence was uncontroverted.

29. The Respondent's evidence tended to show that the Decedent and Respondent held themselves out as husband and wife to their friends, family, and communities in the United States and in Ghana for nearly forty years. This evidence was uncontroverted.

30. The Respondent's evidence tended to show that in 2003 the Decedent and Respondent purchased a home together in Greensboro, North Carolina, taking title thereto as husband and wife, and also obtained a loan for the purchase thereof as husband and wife. The duly recorded documents, identifying the Decedent and Respondent as husband and wife, were admitted into evidence.

31. The Respondent presented uncontroverted testimony that Respondent was permitted to perform the customary rites of an in-law as the Decedent's spouse at the funeral celebrations held for the Decedent's mother and the Decedent's father in Ghana and in the United States without objection by the Decedent's siblings or extended family.

32. In addition to the in-law rites offered by the Respondent at the funerals of the Decedent's parents, the Respondent also testified about other efforts he made on behalf of the Decedent's family, such as travelling to Ghana to help care for her mother during her last illness and helping the Petitioner flee to Germany, acts not customarily performed for mere acquaintances.

33. Brian Green, the funeral director of Hargett Funeral Home, which assisted with the disposition of the Decedent's remains, testified that he met with the Respondent, the Petitioner, and other close friends and family members of the Decedent at least twice to prepare and review the information to be included in the Decedent's death certificate. He testified that he explained to the Decedent's family the importance of having correct information on the Death Certificate. Mr. Green further testified that the Petitioner and others present raised no objection to the Respondent's status as the Decedent's surviving spouse on the death certificate on either occasion.

34. The Respondent presented uncontested evidence that he was presented and fully recognized as the Decedent's spouse at the celebrations held for the Decedent in Greensboro, North Carolina on May 4, 2024, and in Ghana on June 13, 2024, without objection by the Decedent's siblings or extended family in attendance.

CONCLUSIONS OF LAW

1. The Clerk of Superior Court of Guilford County has original jurisdiction of estate proceedings of Georgina Adu-Poku (the “Decedent”), a resident of Guilford County, North Carolina, who died on April 13, 2024, including, without limitation, jurisdiction over the granting of letters of administration, the ascertainment of heirs, and the assignment of a year’s allowance pursuant to N.C.G.S. §§ 28A-2-4(2), (4), 30-20(a), and 28A-3-1(1).

2. Philip Adu-Poku (the “Respondent”) has alleged that he is the surviving spouse of the Decedent, that he is entitled to a year’s allowance, that he is entitled to the issuance of letters of administration, and that he is the sole beneficiary of the Decedent’s estate.

3. Eric K. Sarfo (the “Petitioner”) has alleged that there is insufficient evidence that the Decedent and the Respondent were ever married, that he is a sibling of the Decedent, that he is entitled to the issuance of letters of administration, and that he and the Decedent’s remaining siblings are entitled to share in the distribution of the Decedent’s estate.

4. It is uncontested that no registration of the marriage or marriage certificate has been located for the marriage alleged to have occurred between the Respondent and the Decedent.

5. In addition to direct proof of a marriage ceremony, North Carolina courts also rely upon circumstantial evidence to determine whether a marriage has taken place between two parties. *Howard v. Sharpe*, 69 N.C.App. 555, 317 S.E.2d 426 (1984); *Green v. Eastern Const. Co.*, 1 N.C.App. 300, 161 S.E.2d 200 (1968); and *Shankle v. Shankle*, 26 N.C.App. 565, 216 S.E.2d 915 (1975). The North Carolina Court of Appeals has held that:

“Circumstantial evidence, however, may be used to prove a ceremonial marriage in North Carolina, and direct evidence of a marriage is not required: ‘By the common law . . . in civil cases, except in actions for criminal conversation . . . reputation, cohabitation, the declarations and conduct of the parties, are competent evidence of marriage between them.’” *Shankle*, 26 N.C.App. at 568–69, 216 S.E.2d. at 918.

6. Respondent presented competent evidence that he was married to the Decedent in July of 1984 under the customary marriage laws of Ghana. The sworn statement of the Deceased’s late father, Yaw Sarfo (admissible as a statement of family history under N.C. Evidence Rule 804(b)(4)) establishes the elements of the marriage. Furthermore, the Respondent’s own testimony that the Deceased acknowledged that the ceremony occurred is similarly admissible.

7. Respondent has presented competent evidence that he and the Decedent cohabitated for nearly forty years, that they held themselves out as husband and wife before their friends, families, and the wider community, that they took title as husband and wife to the real property they used as their residence for more than twenty years, and that they executed a deed of trust against their residence as husband and wife.

8. Respondent has presented competent evidence that the Decedent used the Respondent’s last name as part of her legal name for nearly forty years, that the Decedent declared

herself to be married to the Respondent in applications submitted to the United States Immigration and Naturalization Services, and that the Declarant was determined to be married by the United States Department of Justice at the time of her naturalization.

9. Respondent has presented competent evidence, as admitted by the Petitioner's own testimony, that the Respondent was recognized by the Decedent's family as the spouse of the Decedent during her lifetime and at services held with the Decedent's family immediately following her death, though the Petitioner's family was uncertain as to exactly when or where the marriage had taken place.

10. Respondent has presented competent evidence that he was with the Decedent when she passed, was listed as the surviving spouse on the Decedent's death certificate in consultation with the Decedent's family, and made arrangements for the disposition of the Decedent's remains, including travelling with the Decedent's body to Ghana.

11. The court concludes that the evidence presented is sufficient to prove that a marriage occurred between the Respondent and the Decedent by the greater weight of the evidence and raises a presumption of its validity that must be rebutted by the Petitioner. *Howard*, 69 N.C.App. at 558, 317 S.E.2d at 428; *Green*, 1 N.C.App. at 304, 161 S.E.2d at 203; *Overton v. Overton*, 260 N.C. 139, 143, 132 S.E.2d. 349, 352 ("If a ceremonial marriage is in fact established by evidence or admission it is presumed to be regular and valid, and the burden of showing that it was an invalid marriage rests on the party asserting its invalidity.").

12. North Carolina courts have held that the presumption of a valid marriage may be rebutted by some evidence proving that the marriage ceremony could not have resulted in a valid marriage. *See, e.g., Overton v. Overton*, 260 N.C. 139, 132 S.E.2d. 349 (where the evidence before the court was that the purported bride was underage when the marriage took place in New York, that she did not participate in the marriage ceremony, and that New York marriage laws required direct participation by the bride in the marriage ceremony to result in a valid marriage).

13. The Respondent has alleged that his marriage with the Decedent was entered into in accordance with the customary marriage laws of Ghana. North Carolina courts look to the laws of the place where a marriage was contracted to determine whether the marriage was validly entered into in compliance with laws in existence there. *State v. Ross*, 76 N.C. 242, 245 (1877); *Shepenyuk v. Abdelilah*, 290 N.C.App. 188, 192, 891 S.E.2d 620, 624 (2023); *Fungaroli v. Fungaroli*, 53 N.C. App. 270, 279, 280 S.E.2d 787, 793 (1981). Therefore, this court must look to the laws of Ghana to determine whether the marriage would be valid if the marriage took place as alleged by the Respondent.

14. Under Ghanaian law, the essentials of a valid marriage under customary law are as follows:

(1) *Agreement by the parties to live together as man and wife;*

(2) *Consent of the family of the man that he should have the woman to his wife; that consent may be indicated by the man's family acknowledging the woman as the wife of the man;*

(3) *Consent of the family of the woman that she should be joined in marriage to the man; that consent is indicated by the acceptance of drink from the man or his family, or merely by the family of the woman acknowledging the man as the husband of the woman; and*

(4) *Consummation of the marriage, i.e. that the man and woman are living together in the sight of all the world as man and wife.*

Yoatey v. Quaye, GLR 573, 578–79 (1961).

15. The court finds that the marriage that is alleged to have occurred between the Respondent and the Decedent on July 12, 1984, complies with the requirements of customary marriage under Ghanaian law. Specifically, the Respondent directed members of his family to seek a marriage on his behalf from the Decedent's family by offering them customary gifts (dowry and drinks); the Decedent's parents accepted the offered gifts, consented to the marriage, and generally acknowledged the Respondent as the Decedent's spouse; and the Decedent and the Respondent consummated their marriage by cohabiting and holding themselves out as husband and wife for nearly forty years thereafter.

16. Petitioner's evidence that the customary marriage between the Decedent and the Respondent was never registered with the courts in Ghana is immaterial to the validity of the marriage. The Marriages Act of Ghana does not require that customary marriages be registered in order to be valid. Therefore, evidence that the marriage was not registered is not proof that the alleged marriage was conducted improperly and does not establish that the marriage failed to comply with Ghanaian law.

17. The Respondent has admitted that he was not physically present at the marriage ceremony that is alleged to have occurred on July 12, 1984. Unlike the legal requirements of New York marriage laws that were before the court in *Overton*, customary marriages under Ghanaian law may be conducted by proxy. *McCabe v. McCabe*, 1 FLR 410, 1 FCR 257 (1994) (holding that the customary marriage voluntarily entered into by proxy and with the consent of the parties was valid under Ghanaian law notwithstanding the fact that neither the bride nor the groom were physically present at the ceremony). Therefore, even if neither the Respondent nor the Decedent were present at the marriage ceremony, their customary marriage would still be valid so long as the other requirements of customary marriage were satisfied by their respective family members acting on their behalf.

18. The Petitioner and his siblings have all given testimony that they were not present at any marriage ceremony alleged to have occurred between the Respondent and the Decedent on July 12, 1984, or at any other time. However, the knowledge, presence, or participation of siblings in such a ceremony is not a requirement of customary marriage under the laws of Ghana. Even if the court were to find that the Petitioner and his siblings did not know anything about nor participate in the marriage ceremony that Respondent alleges, it would not affect the validity of the alleged marriage.

19. The Petitioner raised concerns regarding many typographical errors contained in the Statutory Declaration of Yaw Sarfo, dated July 17, 1984. Additionally, the Petitioner and most of his siblings (but not Ama Nyarko) gave testimony that Yaw Sarfo was illiterate and had no capacity to read or write. The Petitioner also presented testimony that his father customarily signed documents by affixing his right thumbprint and not by written signature. Even if the court were to discount the Statutory Declaration of Yaw Sarfo and give it little or no evidentiary weight, the other circumstantial evidence of the marriage between the Respondent and the Decedent before the court would continue to serve as sufficient proof that a marriage between the Respondent and the Decedent took place. *See Shankle*, 26 N.C.App. at 568–69, 216 S.E.2d at 918 (finding circumstantial evidence of a ceremonial marriage to be sufficient even in the absence of direct evidence or testimony regarding the marriage ceremony itself).

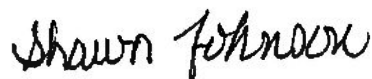
20. Taking all the evidence into consideration, the court finds that the Respondent has met his burden of establishing that a valid marriage occurred between the Deceased and the Respondent by competent and credible evidence and that the Petitioner has not presented sufficient competent and credible evidence to rebut Respondent's evidence.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Petitioner's Petition to Contest Issuance of Letters of Administration is DENIED.
2. Respondent's Application for Letters of Administration is GRANTED.
3. The Clerk of Superior Court will issue Letters of Administration to Philip Adu-Poku to administer the Decedent's estate in accordance with North Carolina law.
4. Respondent's petition for a year's allowance as the surviving spouse of the Decedent will be allowed, and processed according to North Carolina law.
5. Respondent's motion for attorney's fees is deferred until it is properly noticed and calendared by Respondent for hearing.

SO ORDERED, this the 17th day of February, 2025.

2/17/2025 11:51:45 AM



Shawntane M. Johnson
Assistant Clerk of Superior Court
Guilford County, North Carolina