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STATE OF MINNESOTA  
IN COURT OF APPEALS

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Appellate Court File No. A10-1525

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District Court File Nos. 62-FA-10-1242 and 62-FA-08-3291

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IN RE THE MARRIAGE OF:

CHOA YANG XIONG,  
Respondent,

vs.

SU XIONG,  
Appellant.

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**BRIEF and ADDENDUM OF APPELLANT  
SU XIONG**

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CROSBY & ASSOCIATES  
Lawrence H. Crosby  
Attorney Registration No. 192788  
Jay D. Olson  
Attorney Registration No. 296259)  
Roseville West  
2277 Highway 36 West, Suite 234E  
Saint Paul  
Minnesota 55113  
(651) 635-0818

ARNESON & GEFFEN, P.L.L.C  
Jonathan Geffen  
Attorney Registration No. 276753  
333 Washington Avenue N., Suite 415  
Minneapolis  
Minnesota 55401  
(612) 465-8580

LO LAW FIRM  
Sia Lo  
Attorney Registration No. 277691  
539 Bielenberg Drive, Suite 200  
Woodbury  
Minnesota 55125  
(651) 731-0181

COUNSEL FOR APPELLANT,  
SU XIONG

COUNSEL FOR RESPONDENT,  
CHOA YANG XIONG

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF ISSUES

***I: Su Xiong and Choa Yang did not follow the statutory steps necessary to create a legally-acknowledged marriage under Minnesota law.***

The entire case here, other than the incidental requests for Orders for Protection, considers the intertwined issues of whether a statutorily-recognized marriage ever came into being between Su Xiong and Choa Yang, and, if not, on what legal basis might Choa Yang be able to claim status as a putative spouse?<sup>1</sup>

The Family Court did not make the requisite findings that the parties had met Minnesota's requirements to have a legal marriage other than obtaining a marriage license. No vows were exchanged; there were no witnesses and no person present who had the legal right to solemnize their marriage; the marriage license was never signed by the witnesses or celebrant or filed to get a marriage certificate.

Every issue raised in this appeal was specifically delineated and raised in Respondent's Motion for Amended Findings of Fact and Conclusions of Law and Motion for a New Trial. See Addendum for the text of this Motion.

Minnesota Statutes § 517.01 et sequitur.

***II: Choa Yang cannot argue that she is entitled to the spousal rights offered under the putative spouse statute.***

The Family Court held that Choa Yang had the status of a putative spouse in her relationship with Su Xiong from the time the couple got a marriage license until a Legal

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<sup>1</sup> This observation applies here to each issue.

Aid attorney informed Choa Yang that Choa had not legally married Su Xiong.

Minnesota Statutes § 518.055

*In re Marriage of Vryonis*, 202 Cal.App.3d 712, 248 Cal. Rptr. 807 (1988).

**III: *Minnesota does not recognize common law marriage or palimony or any marriage other than the marriage sanctioned by statute.***

The Family Court did not explain how her decision to grant putative spouse status to Choa Yang can be coordinated within Minnesota's statutory rejection of both common law marriage and palimony.

Minnesota Statutes §517.01.

Minnesota Statutes, § 513.075 (1980).

*In re Marriage of Ramirez*, 165 Cal. App. 4th 751 (Cal. App. 4th Dist. 2008).

*Roatch v. Puera*, 534 N.W.2d 560 (Minn. Ct. App. 1995).

**IV: *Failure to follow local laws and customs may not be excused when these relate to as fundamental an institution as marriage.***

*Cheek v. United States*, 498 U.S. 192, 199 (1991).

*Bucko v. First Minnesota Savings Bank, F.B.S.*, 471 N.W.2d 95, 100 (Minn. 1991).

## STATEMENT OF THE CASE

This case included a series of demands for an Order for Protection. Choa Yang Xiong, also known as Choa Yang, initiated OFP proceedings for herself and for her children against Su Xiong, Ramsey County File No. 62-DA-FA-09-88. Su Xiong cross-petitioned for his own order for protection against his cultural wife, Choa Yang, Ramsey County Court File No. 62-Da-FA-09-90. Su Xiong also petitioned for an order for protection against Choa Yang's new boyfriend, Xor Xiong, Ramsey County File No. 62-HR-VC-09-75. Family Court Referee Ann Leppanen heard these cases. These OFP cases continued over several dates including April 16, 2009; June 5, 2009; August 17, 2009.

The Family Court did not subsequently issue an order for protection against any party here although the initial short-term OFP's were regularly continued by the Family Court.

The Family Court also heard the case related to the question of whether Choa Yang had obtained the status of a putative spouse with respect to her relationship with Su Xiong. The Court File is identified as *Choa Yang Xiong vs. Su Xiong*, Ramsey County Family Court File No. 62-FA-08-3291. The transcripts here note a trial having occurred on August 17, 2009, November 16, 2009, December 18, 2009, and March 22, 2010. The transcripts for these dates include file numbers for two of the related OFP cases.

Following these hearings, the Family Court handed down its FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT AND JUDGMENT

AND DECREE FINDING PUTATIVE SPOUSE STATUS AND DISSOLVING MARRIAGE on April 14, 2010. This same document was filed with the Court Administrator on April 15, 2010. A judgment was also filed April 15, 2010.

The Family Court determined that Choa Yang [Xiong] had become the putative spouse of Su Xiong at the time the parties got their marriage license and that Choa Yang's status continued until Choa Yang's Legal Aid attorney advised Choa that Choa had never been legally married to Su Xiong.

Counsel for Su Xiong timely asked the court to amend its decision. The Trial Court heard the motion for amended findings of fact and conclusions of law issued its ORDER DENYING MOTIONS FOR AMENDED FINDINGS OF FACT AND NEW TRIAL on July 1, 2010.

Su Xiong filed his Notice of Appeal on August 27, 2010.

## STATEMENT OF FACTS

Choa Yang Xiong<sup>2</sup> was born April 2, 1972, in Laos. 11/16/09 Trans. at 10.<sup>3</sup>

Choa Yang came to the United States in 1988, when she was approximately sixteen years old. *Id.*

Su Xiong had arrived earlier in America, having come from a refugee camp in Thailand to the United States. Su Xiong was born June 15, 1964, 11/16/09 Trans. at 70.

Su Xiong completed his high school education and then received an Associate Degree in accounting from Globe College, 11/16/09 Trans. at 71.

Choa Yang and Su Xiong met during the Summer, 1989. 11/16/09 Trans. at 72. They moved in together two weeks later. *Id.* Choa Yang was almost seventeen years old; and she had been in the United States about one year. *Id.* at 73. Su Xiong was about 25 years old years old at the time he began his relationship with Choa Yang.

The testimony is inconsistent with respect to dates here: Kevin Sao Yang testified

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<sup>2</sup> In this Brief Choa Yang Xiong will be identified as Choa Yang rather than as Choa Yang Xiong. Choa Yang did not take Su Xiong's family name until her naturalization ceremony. Hmong men and women, married or not, do not regularly take a husband's family name. There is a cultural horror of marrying a person from one's own clan. One retains one's family name so that the entire community knows what clan a person comes from.

<sup>3</sup> The judicial proceedings here continued on-and-off over a period of months. References to transcripts will indicate the date of the proceeding and the page of the cited transcript. This judicial matter appears to have begun as a series of demands for orders for protection brought by the parties against each other and by Su Xiong against Choa Yang's lover, Sor Xiong. Ultimately, the Ramsey County Family Court declined to enter any order for protection.

that “[w]hen I first came and brought my sister with me, and four months later, you know, they got married.” 12/16/09 Trans. at 18–19. Choa Yang testified that she married Su Xiong in a Hmong ceremony in January, 1989. 11/16/09 Trans. at 14.

In 1989 the Xiong and the Yang families gathered to acknowledge the relationship between Su Xiong and Choa Yang. The celebration here did not comport with a marriage under Minnesota law. Disagreement exists even as to whether the relationship represented a Hmong cultural wedding ceremony.

Choa Yang herself proposes that the 1989 gathering represented a typical Hmong cultural marriage. 11/16/09 Trans. at 14. Choa Yang testified that a typical Hmong cultural wedding involves the presence of at least one “Mej Koob” from the woman’s family and another “Mej Koob” from the man’s family. *Id.* at 14. The purpose of the Mej Koob is to “come in and negotiate regarding the meal, the wedding, and how much the dowry will be.” *Id.* at 14-15. Then the Mej Koob pronounce the couple husband and wife and then they have a feast or meal. *Id.*

Su Xiong testified that the celebration could not be described as a distinctively Hmong cultural wedding. 11/16/09 Trans. at 77. For example, no one prepared any documentation of the “wedding gifts.” *Id.* Mr. Xiong also testified that the Mej Koob who attended the ceremony came as volunteers, and “[t]hey just came to help.” *Id.* at 80. These Mej Koob who attended were not the ones who had been asked to attend. *Id.* Su Xiong related that certain Mej Koob disagree here over whether there was even a proper

cultural marriage. *Id.* at 79.<sup>4</sup>

Kevin Sao Yang<sup>5</sup> testified that Qua Xang Vang served as Mej Koob for Su Xiong. 12/18/09 Trans. at 30. He also testified that Su Xiong's Mej Koob did not need to be from the Xiong Clan. 12/18/09 Trans. at 30.

Su Xiong avers that he never paid the traditional dowry. 11/16/09 Trans. at 81. Su Xiong testified that he never received a receipt showing that he paid a dowry, "When you give something they have to give you a receipt for the dowry." 11/16/09 Trans. at 83.

Choa Yang herself acknowledged that she knew that the cultural ceremony did establish a legal marriage:

According to our Hmong culture after we got married I was considered his wife, and I was considered a married woman.

But when we were outside in the community, like for example at school or other places, um, I was - - I would tell them that I was his girlfriend, he would tell them the same thing that I was his girlfriend also.

*Id.* at 16.

During cross-examination Choa Yang repeated this understanding, "According to the Hmong culture [sic] were married. We were husband and wife. But according to American culture, yes, we were girlfriend and boyfriend." 11/16/09 Trans. at 50.

Choa Yang and her family knew that the cultural ceremony held in 1989 did not

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<sup>4</sup> The text of the transcript here is convoluted, but the sense of the actual testimony indicated that here is a typical structure to a Hmong cultural wedding ceremony and this structure had not been followed

<sup>5</sup> Kevin Sao Yang is Choa Yang's brother.

establish a legally-binding marriage between Su Xiong and Choa Yang. 11/16/09 Trans. at 18. Ms. Xiong's mother, father, and her brothers encouraged her to get legally married. *Id.*

Choa Yang's brothers Kevin Sao Yang and Lee Seng Yang told Choa Yang that she needed to get a valid legal marriage. After the cultural wedding ceremony Kevin Sao Yang spoke to Choa Yang and Su Xiong and advised them that the couple needed to get a marriage license. 12/18/09 Trans. at 21. Kevin Sao Yang later testified, "[T]hey say in America if they, you know, someone gets married they have to have the certificate." 12/18/09 Trans. at 29.

Another brother, Lee Seng Yang also participated in discussions with Su Xiong; Lee Seng Yang stated that his sister, Choa Yang would get a legal marriage certificate when Choa Yang had become "of age." 12/18/09 Trans. at 45.

Lee Seng Yang and his other brother Cha Da knew that in the United States the couple had to have a marriage certificate to be legally married. 12/18/09 Trans. at 55. Lee Seng Yang also testified that Su Xiong's family promised to get the marriage certificate once Choa Yang turned eighteen, but when the time came "they did not do it." *Id.* at 56. Lee Seng Yang and his family began to push the Xionsgs for a formally-recognized legal marriage. 12/18/09 Trans. at 56. Lee Seng Yang testified that he told Choa Yang that "she needed to go through a legal marriage ceremony and get a

marriage certificate.” *Id.*<sup>6</sup>

In 1993, Su Xiong and Choa Yang obtained a marriage license. Choa Yang testified herself that it was Su Xiong’s idea to get the marriage license. 11/16/09 Trans. at 16. However, Choa Yang also testified that they went to get the marriage license in 1993 “because my family told us to.” 11/16/09 Trans. at 18. Su Xiong’s testimony agrees with this assertion, “Her parents asked us - - told us to go and do a marriage license.” 11/16/09 Trans. at 85.

Choa Yang testified that Su Xiong misled her about the legal effect of going to get the marriage license. 11/16/09 Trans. at 17. However, Choa Yang admitted that she went together with Su Xiong to get the marriage license. 11/16/09 Trans. at 57. She also admitted that Su Xiong handed her the papers, 11/16/09 Trans. at 17, and that she was given the opportunity to read the license. 11/16/09 Trans. at 58. She understood that the document she and Su Xiong had gotten was, in fact, a marriage license. 11/16/09 Trans. at 17. Choa Yang stated that she “glanced at [the document] with the big writing says marriage license . . .” *Id.*

Choa Yang also admitted that her brother told her that she needed to go to Court and testify in order to get legally married. 12/18/09 Trans. at 89, 91-92. However, Choa Yang remembered that, while she did raise her hand when she got the marriage license,

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<sup>6</sup> Lee Seng Yang did not always differentiate between a marriage certificate and a marriage license. 12/18/09 Transcript at 35.

she never said anything verbally. *Id.* at 96. The exact quote follows: “But I never get to say anything verbally.”

Su Xiong testified that Choa Yang was engaged in the process:

And when she got there they gave her information listing the Judges, you know, that she would have to contact and to perform the ceremony and, you know, and raise her hand and be sworn in.

But she just but [sic] those papers - - those papers in and kept it all the time.

11/16/09 Trans. at 85.

The clerk gave Su Xiong and Choa Yang a couple of documents. 3/22/10 Trans. at 23, including the marriage license, Exhibit 3. The other document represented a list of judges. *Id.* Su Xiong testified, “One had us to call around so see which judge is cheaper so that could perform our marriage ceremony.” *Id.* Mr. Xiong then testified, “I said that if she wants to get married we’ll set up time to go and have that done, but she’s the one that was in charge of the paper and she didn’t want to do it.” *Id.* at 24.

Choa Yang allows that she never had two witnesses or have an officiant sign the marriage license. 11/16/09 Trans. at 61. The marriage license itself has lines where these individuals are to sign.

Kevin Sao Yang admitted that he never asked Su Xiong whether Choa Yang and Su Xiong were legally married. 12/18/09 Trans. at 23. Similarly, Kevin Sao Yang testified that Su Xiong never told Kevin Sao Yang that Su Xiong and Choa Yang had legally married. 12/18/09 Trans. at 36.

Choa Yang indicated that she believed that different rules applied to Hmong marriages. The following exchange between Choa Yang and Counsel for Mr. Xiong indicates that while she knew American marriage customs, she had the right to follow another set of rules:

Q: Did it make - - when you saw [wedding ceremonies] on television, did it make you wonder why they were having such a ceremony if in your mind it wasn't required?

A: I never thought that because we got married culturally, the way we get married in our culture and not only Su and I, we didn't have money and I thought us getting married culturally, that's how we get married, and since we got the paper everything was done with.

Q: So you had been at the cultural marriage back in 1989. You admitted that was not a legal marriage, correct?

A: That is true, but I can't - - that's how you guys get married, you wear the dresses you guys get married that way is that how you have the ceremony, but Hmong when we get married culturally the way we do then we get the paper after, that's it.

11/16/09 Trans. at 56-57.

What Choa Yang means by "get the paper" is unclear.

Choa Yang suggests that she believed that she became legally married Su Xiong in 1993:

[T]hat year Su told me this he wanted us to go get a marriage license. And he said that we had to go to the city hall. When we got there he was talking to them. After he spoke to the people there he told me that we were officially married, all the paperwork was done. And he said we were married culturally and legally, so everything was done. He handed me a piece of paper in an envelope and that was the end of it.

11/16/09 Trans. at 16-17.

Choa Yang did not read the marriage license. 11/16/09 at 19. All this time Choa Yang knew the document was a marriage license. *Id.* Choa Yang testifies that even if she did read the marriage license, she would not have understood what the document meant because she lacked the reading and comprehension skills. *Id.* Choa Yang also testified that she did not know what the words “solemnize” or “officiant” mean. 11/16/09 at 19.

Choa Yang testified repeatedly about her ignorance and inexperience regarding American laws and customs and her lack of proficiency in English.

However, Choa Yang passed an English proficiency test before she graduated from high school. 11/16/09 Trans. at 50-51. Choa Yang also by her own admission had worked as a personal care attendant for ten years after graduating from high school. 11/16/09 Trans. at 51-52. Choa Yang had passed a driver’s license examination written in English, 11/16/09 Trans. at 52. She also passed her citizenship test administered in English. *Id.* at 53.

A Cambodian man, Marachit Lim, testified that he communicated directly with Choa Yang during her relationship with Su Xiong. 3/22/10 Trans. at 32. Their mutual conversations were always in English. *Id.* Marachit Lim and Choa Yang did not have any trouble speaking with each other. *Id.* at 35. Marachit Lim speaks no Hmong. *Id.* at 32.

There is also no evidence that Su Xiong made any effort to keep Choa Yang

ignorant or uneducated during their relationship. After Choa Yang moved in with Su Xiong, she continued her high school education; and she graduated from Harding High School in 1992. 11/16/09 Trans. at 11.

During the time that Su Xiong and Choa Yang lived together they filed joint tax returns as a married couple over a period of years, 11/16/09 Trans. at 91. Su Xiong asserts that he did this because it lowered their taxes. *Id.* at 91. Su Xiong has worked as an office worker and a tax preparer.<sup>7</sup> 11/16/09 Trans. at 71. Su Xiong and Choa Yang also bought and sold a home as a married couple. 11/16/09 Trans. at 95-99. Su Xiong purchased an insurance policy naming Choa Yang as his spouse. 12/18/09 Trans. at 11. However, Su Xiong testified that he never had the opportunity to review the insurance document before he signed it. *Id.*

Choa Yang's reliance on certain of these documents to establish her "marriage" to Su Xiong is questionable when Choa Yang declares she did not read the purchase agreement for the home they purchased, 12/18/09 Trans. at 110-111, or the tax returns they filed. *Id.* at 112-113. With the same diffidence, Choa Yang had only glanced at her own marriage license.

Choa Yang's high school transcript was produced at the hearing on this matter. According to this transcript, Ms. Xiong received a B and a C- in eleventh grade English. See Exhibit 13, 3/22/10 Trans. at 9. During the first semester of her Senior year, Choa

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<sup>7</sup> Su Xiong denied that he was a professional tax preparer.

Yang received an A in an English class which is nowhere designated as an ESL class.

Exhibit 13, 3/22/10 Trans. at 12. Choa Yang graduated in the top half of her high school class. Id.

Also, Choa Yang wrote out checks while they lived together. 3/22/10 Trans. at 20. The implication is that these checks were written in English.

Vang Xiong is a clan leader for the Xionsg. Van Xiong relates that he did not believe that Su Xiong and Choa Yang were legally married. 3/22/10 Trans. at 49. Vang Xiong stated that clan leaders encourage their young couples to go to the Court to become legally married. 3/22/10 Trans. at 50.

Clan leader Vang Xiong knows that a man and a woman have to *use* the marriage license to get properly married: Vang Xiong responds to the question, "What does a couple do with the marriage license?" —

In US law they have to go to get the form, marriage license form, fill it up, meet a judge. If they go to church - - The Hmong normally don't go to church, at least at that part of culture. And normally it's some people they go to church they have to have pass for some other people that be witness for them to represent them, yeah, this couple are couple. And the people who don't go to church, like me for example, I have to bring it older man and the other party have to bring another older man together and represent to the judge, say, Okay this is true correct, and go from there.

3/22/10 Trans. at 53.

Vang Xiong references completing the marriage license, having witnesses for the marriage, and using a judge for the ceremony.

Choa Yang is coy about her present relationship with Su Xiong: At one point,

Choa Yang held that she had been “culturally divorced” from Su Xiong. 12/18/09 Trans. at 85. “It’s legal now in the Hmong culture.” *Id.* However, Choa Yang later testifies that “[Su Xiong and I] have not been divorced in the culture.” 12/18/09 Trans at 102. However, during the order for protection hearing held on June 5, 2009, Choa Yang’s brother claims to have granted her a Hmong cultural divorce for his sister’s benefit. 6/5/09 Trans. at 27.

There is no evidence in the Family Court record that Su Xiong and Choa Yang were ever married in conformity with Minnesota Statutes. Obtaining a marriage license is the only step taken by Su Xiong and Choa Yang toward being married. There is no public record to establish any marriage between Su Xiong and Choa Yang.

#### **STANDARD OF REVIEW**

”[W]here the trial court is weighing statutory criteria in light of the found basic facts, the trial court’s conclusions of law will include determination of mixed questions of law and fact, determination of ‘ultimate’ facts, and legal conclusions. In such a blend, the appellate court may correct erroneous applications of the law. As to the trial court’s conclusions on the ultimate issues, mindful of the discretion accorded the trial court in the exercise of its equitable jurisdiction, the reviewing court reviews under an abuse of discretion standard.” *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990). See also, *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

Statutory construction is a question of law, which the appellate court reviews de

novo. *Brookfield Trade Ctr., Inc., v. County of Ramsey*, 584 N.W.2d 390 (Minn. 1998)

“When interpreting a statute, we first look to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)).

“A statute should be interpreted, whenever possible, to give effect to all of its provisions; ‘no word, phrase, or sentence should be deemed superfluous, void or insignificant.’” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). And “[w]e are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicted interpretations.” *Id.*

## INTRODUCTION

The United States Supreme Court has held that statutory classifications which directly and substantially interfere with the right to marry must be subject to rigorous scrutiny, *Zablocki v. Redhail*, 434 U.S. 374 (1978), but "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed." *Id.* at 386.

Minnesota has the right to ask its people to adhere to the marriage laws of the State. If these laws are followed, then those who marry in this way should have a clear

understanding that they are properly and legally married. For those who choose not to follow the laws of Minnesota, their relationships may not be deemed marriages.

An Alaska case is instructive: "Parties who enter into a relationship that is neither a lawful marriage nor a bona fide putative marriage must be treated as unmarried . . . ."

*Rosson v. Rosson*, 635 P.2d 469, 470 n.4 (Alaska 1981). Similarly, "Mere cohabitation does not trigger any marital rights," *Salzman v. Bachrach*, 996 P.2d 1263, 1269 (Colo. 2000).

When an attempt is made to establish a marriage without the usual formalities, the claim must be reviewed with "great scrutiny." *Staudenmayer v. Staudenmayer*, 552 Pa. 253, 262-263 (Pa. 1998).

Minnesota holds to the principle that the validity of a marriage is to be determined by the law of the place where the ceremony was performed. *Adolf Lando v. Ida Lando*, 112 Minn. 257, 127 N.W. 1125 (1910).

***I: Su Xiong and Choa Yang did not follow the statutory steps necessary to create a legally-acknowledged marriage under Minnesota law.***

According to Minnesota Law —

Marriage, so far as its validity in law is concerned, is a civil contract between a man and a woman, to which the consent of the parties, capable in law of contracting, is essential. Lawful marriage may be contracted only between persons of the opposite sex and only when a license has been obtained as provided by law and when the marriage is contracted in the presence of two witnesses and solemnized by one authorized, or whom one or both of the parties in good faith believe to be authorized, so to do.

Marriages subsequent to April 26, 1941, not so contracted shall be null and void.

Minnesota Statutes § 517.01.

The only statutory requirements met by Su Xiong and Choa Yang with respect to marriage were that the prospective persons here were identifiably male and female and that they had gotten a marriage license.

No witness offered testimony that Su Xiong and Choa Yang consented to be married. Or that the parties here understood the essential meaning of a marriage contract or covenant.

Choa Yang was not 18 years of age at the date she participated in her Hmong cultural ceremony with Su Xiong. No one offered proof that her father had given legal authorization for his daughter to marry.

Minnesota law has very specific requirements identifying the limited set of persons who are authorized to conduct a marriage ceremony.

Marriages may be solemnized throughout the state by an individual who has attained the age of 21 years and is a judge of a court of record, a retired judge of a court of record, a court administrator, a retired court administrator with the approval of the chief judge of the judicial district, a former court commissioner who is employed by the court system or is acting pursuant to an order of the chief judge of the commissioner's judicial district, the residential school administrators of the Minnesota State Academy for the Deaf and the Minnesota State Academy for the Blind, a licensed or ordained minister of any religious denomination, or by any mode recognized in section 517.18.

Minnesota Statutes § 517.04.

No person with the statutory authorization to solemnize a marriage took part in the ceremony at the time when Xiong and Yang began to live together. (The traditional Hmong Mej Koob, pronounced "May Kong," brokers, but does not solemnize the Hmong marriage.)

*A marriage license must be obtained.*

Before any persons are joined in marriage in Minnesota, a license shall be obtained from the local registrar of any county within Minnesota. The marriage need not take place in the county where the license is obtained but must take place within the geographical borders of Minnesota.

Minnesota Statutes § 517.07.

Su Xiong and Choa Yang obtained a Minnesota marriage license but did not participate in any wedding ceremony as this is delineated in our laws.

Marriage vows must be exchanged in the presence of a person authorized to solemnize marriages and in the presence of two witnesses.

No particular form is required to solemnize a marriage, except: the parties shall declare in the presence of a person authorized to solemnize marriages and two attending witnesses that they take each other as husband and wife; or the marriage shall be solemnized in a manner provided by Section 517.18.

Minnesota Statutes § 517.09.

No marriage vows were exchanged. Neither Xiong nor Yang appear to have stated to one another or to formal witnesses that Xiong and Yang meant to take one another as a spouse. No one served as a statutory witness here.

Finally,

[T]he person solemnizing a marriage shall prepare and sign a certificate. The certificate shall contain the full names of the parties before and after marriage, the birth dates of the parties, and county and state of residences of the parties and the date and place of the marriage. The certificate shall also contain the signatures of at least two of the witnesses present at the marriage who shall be at least 16 years of age. The person solemnizing the marriage shall immediately make a record of such marriage, and file such certificate with the local registrar of the county in which the license was issued within five days after the ceremony. The local registrar shall record such certificate in the county marriage records.

Minnesota Statutes § 517.10.

No marriage certificate exists here. The sole document available is a marriage license issued to Su Xiong and to Choa Yang which was never used by them to legally marry. Ramsey County issued this marriage license over three years after the cultural ceremony occurred. The marriage license in question bears an issuance date of December 4, 1993, Exhibit 3. The actual license on file with Ramsey County is annotated with the observation that the license has never been used by Su Xiong and Choa Yang to marry.

In the present case, the parties failed to obtain a marriage license before participating in any cultural ceremony. (Choa may assert that the ceremony in which the parties participated represents a Hmong cultural marriage, but there is no question but that the parties did not have a valid Minnesota marriage license in hand at the time of the ceremony.)

Choa Yang's testimony is inconsistent. In fact, Choa Yang argues at one point in the Family Court proceedings that the couple participated in the Hmong cultural wedding

ceremony and then, years following, got a marriage license. The implication is that the after-the-fact marriage license had “validated” the Hmong “wedding.”<sup>8</sup> This is nonsense.

Choa also admits that she never legally married Su Xiong: This is fatal to her claim to be a putative spouse. Without as much as an attempt to legally marry under Minnesota law, no one has the power to claim to be a putative spouse.

What is undisputed here is that no official participated in the Xiong–Yang ceremony as one who had been legally–sanctioned or statutorily–authorized to conduct a marriage ceremony. In Hmong cultural marriages, there does not appear to be a ceremony analogous to western wedding ceremonies, and no single individual officiates at the ceremony. No words are exchanged that would represent words of marriage; no vows are exchanged.

Su Xiong and Choa Yang never married one another as this legal relationship is known in Minnesota. Su Xiong and Choa Yang never attempted to complete the process delineated in Minnesota statutes to be married.

The Minnesota appellate Courts do not construe statutes in isolation, but rather read every statute with reference to the entire statutory body of law of which it is part so that

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<sup>8</sup> A marriage license does not by means of its merely being issued cure any defects which had made a previous attempt at marriage invalid. Nothing in the marriage statutes suggests that the subsequent issuance of a marriage license ratifies or cures an otherwise invalid Hmong cultural wedding. Minnesota Statutes, § 517.07 contains clear temporal requirements: There are steps which must be followed. “Before any persons are joined in marriage in Minnesota, a license shall be obtained from the local registrar of any County within Minnesota.”

the whole may be harmonized and work together effectively.

In this case, the Family Court Referee read the putative spouse statute separately and apart from Minnesota's laws related to obtaining a legal marriage. A trial court should not be allowed by this Court of Appeals to selectively narrow the law being applied to reach the judge's desired outcome. The Family Court Referee did not take into account the fact that Su Xiong and Choa Yang met virtually none of Minnesota's requirements to be legally married.

***II: Choa Yang cannot argue that she is entitled to the spousal rights offered under the putative spouse statute.***

Choa Yang and her Counsel successfully argued to the Family Court Referee that Choa held the status of a putative spouse entitled to the putative spouse protections provided under Minnesota law.

The Minnesota putative spouse statute states that

Any person who has cohabited with another to whom the person is not legally married in the *good faith belief* that the person was married to the other is a putative spouse until knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of the status, whether or not the marriage is prohibited or declared a nullity. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Minnesota Statutes § 518.055 (Emphasis added).<sup>9</sup>

The Minnesota putative spouse Statute nearly mirrors the Uniform Marriage and Divorce Act, § 209, 9 U.L.A. 192 (1998). The only differences relate to the use of personal pronouns rather than Minnesota's more linguistically sophisticated use of the word "person" in the text.

"The general rule in the United States today appears to be that the putative spouse doctrine...require[s] a ceremony if common law marriage is not recognized...in the State's substantive marriage law," *The Putative Spouse Doctrine*, Christopher Blakesley, 60 *Tulane Law Review* 1, 27–28 (1985). Minnesota has no common law marriage.

Choa Yang admitted that she knew that she had not legally married Su Xiong when she participated in a cultural ceremony which failed to meet many, if not all, of the elements necessary to create a valid marriage pursuant to Minnesota law. The parties had obtained a marriage license from the County *years after* their cultural ceremony. The couple made no effort to actually marry after getting the license: They failed to conduct a ceremony in the presence of a person authorized to solemnize marriages. They failed to obtain the signatures of two witnesses to any marriage ceremony, either their Hmong cultural ceremony or a legally-recognized ceremony during the six months following the date they got their marriage license in Ramsey County. They failed to exchange vows in a

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<sup>9</sup> Uncommonly, Minnesota law additionally uses the word "putative" to denote a father who asserts that he is, in fact, the father of a child rather than the husband of the married woman who birthed the child. See, *Marriage of Pierce*, 374 N.W.2d 450 (Minn. Ct. App. 1985).

manner than an onlooker would recognize that the parties were marrying.

The cultural ceremony in which Su Xiong and Choa Yang participated did not even meet the traditional criteria of a Hmong marriage.

Choa Yang admits that her cultural marriage to Su Xiong is not a legal marriage.

11/16/09 Trans. at 50.

“The ‘good faith’ belief of marriage must be reasonable. Since the requirement of a marriage ceremony is considered common knowledge, States that do not recognize common law marriages generally require participation in a marriage ceremony to establish such a reasonable good faith belief.” *Divorce, Separation and the Division of Property*, 2.03[4], page 2–15, J. Thomas Oldham, Law Journal Seminars Press, 1987.

This good faith belief must be objectively reasonable. The Family Court Referee held that the good faith belief analysis is for a subjective rather than an objective good faith.

This same issue is dispassionately analyzed in a California case, *In re Marriage of Vryonis*, 202 Cal.App.3d 712, 248 Cal. Rptr. 807 (1988).

While a trial court may be tempted to base a finding of putative spousal status merely on the subjective good faith in a valid marriage held by a credible and sympathetic party, more is required. "Good faith belief" is a legal term of art, and in both the civil and criminal law a determination of good faith is tested by an objective standard.

In *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 853 [244 Cal. Rptr. 682, 750 P.2d 324], the following language is pertinent: "A vested right requires more than a good faith subjective belief that one has it." In *Perdue v. Crocker National Bank*

(1985) 38 Cal.3d 913, 924 [216 Cal. Rptr. 345, 702 P.2d 503], the court observed: "The recent decision in *Lazar v. Hertz Corp.* (1983) 143 Cal. App.3d 128 [191 Cal. Rptr. 849], offers an analogy to the present litigation. Hertz's car rental agreement permitted it to determine unilaterally the price charged for gas used to fill the tanks of returned rental cars. Plaintiff's suit alleged that Hertz fixed unreasonably high prices, in breach of its duty of good faith and fair dealing. Discussing this cause of action, the court said that '[t]he essence of the good faith covenant is objectively reasonable conduct. Under California law, an open term in a contract must be filled in by the party having discretion within the standard of good faith and fair dealing.' (P. 141.)" (Italics added.)

Strong language is used in *Theodor v. Superior Court* (1972) 8 Cal.3d 77, 98, footnote 13 [104 Cal. Rptr. 226, 501 P.2d 234], dealing with a search warrant issue, to make the point: "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be "secure in their persons, houses, papers, and effects," only in the discretion of the police.' (*Beck v. Ohio* (1964) 379 U.S. 89, 97 [13 L.Ed.2d 142, 148, 85 S.Ct. 223].) 'Good faith ... is immaterial, and cannot serve to rehabilitate an otherwise defective warrant.' (*Lockridge v. Superior Court, supra*, 275 Cal. App.2d 612, 622.)"

In discussing the question of probable cause, *People v. Ruggles* (1985) 39 Cal.3d 1, 9 [216 Cal. Rptr. 88, 702 P.2d 170], stated: "The probable cause determination that will validate a warrantless search of defendant's vehicle must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely the subjective good faith of the police officers."

Without question, the hallmark of the law is reasonableness, and "[r]easonableness,' of course, is an objective standard, requiring more than good faith." (*In re Arias* (1986) 42 Cal.3d 667, 696 [230 Cal. Rptr. 505, 725 P.2d 664].)

*Vryonis* at 720–721.

Then the California Court's analysis turns to the good faith held by one insisting on having the legal status of a putative spouse:

A proper assertion of putative spouse status must rest on facts that would cause a reasonable person to harbor a good faith belief in the existence of a valid marriage. Where there has been no attempted compliance with the procedural requirements of a valid marriage, and where the usual indicia of marriage and conduct consistent with a valid marriage are absent, a belief in the existence of a valid marriage, although sincerely held, would be unreasonable and therefore lacking in good faith.

While solemnization is not an absolute prerequisite to establishing a putative marriage (*Wagner v. County of Imperial* (1983) 145 Cal. App.3d 980, 983 [193 Cal. Rptr. 820]; *Santos v. Santos* (1939) 32 Cal. App.2d 62 [89 P.2d 164]), it is a major factor to be considered in the calculus of good faith. Without some diligent attempt to meet the requisites of a valid marriage (*Miller v. Johnson* (1963) 214 Cal. App.2d 123, 126 [29 Cal. Rptr. 251]), a claim of good faith belief in a valid marriage would lack any reasonable basis.

Consideration of such factors provides a framework for determining whether a petitioner had reason to believe a valid marriage existed. Lacking a reasonable basis for an alleged good faith belief, even an honestly held belief in the existence of a valid marriage will not be in good faith and therefore insufficient to come within [the protections offered under the putative spouse statute.

*Vryonis* at 721.

Minnesota law holds that unless a license is obtained and proper solemnization observed, no legally cognizable marriage with its attendant obligations can be contracted. *Abbott v. Abbott*, 282 N.W.2d 561, 566 (Minn. 1979) (citing *Baker v. Baker*, 222 Minn. 169, 23 N.W. 2d 582 (1946)).

In Minnesota, one must have a legally-issued marriage license in hand and then, within the time period when the license is effective, one must participate in a legally-structured solemnization. If this has not happened, there is no marriage.

Subsequent events are of no consequence as to whether there was a proper effort to create a valid marriage, although later conduct might shed light on whether the person had reason to believe he or she was married. *Estate of DePasse*, 97 Cal. App. 4th 92, 108 (Cal. App. 6th Dist. 2002.) See *Batey v. Batey*, 933 P.2d 551 (Alaska 1997).

Minnesota Statutes, § 518.055 specifically confers the rights of a legal spouse, including the right to maintenance and the rights to property, on a putative spouse, that is, one who cohabits with the good faith belief that he or she is married. No such exception is made for those who cohabit knowingly without the benefit of marriage. *Abbott v. Abbott*, 282 N.W.2d 561, 566 n. 4 (Minn. 1979). A person who simply lives together with another person (or cohabits) without following the prerequisites of marriage may not claim the legal benefits of marriage or the legal benefits granted to a putative spouse.

Under the equitable putative spouse doctrine, a person's reasonable, good faith belief that his or her marriage is valid entitles that person to the benefits of marriage, even if the marriage is not, in fact, valid. The good faith necessary to establish that one is putative spouse must be measured by an objective, rather than a subjective standard.

Other jurisdictions have defined good faith belief using this objective standard: “The good faith belief that a marriage has been validly entered into is tested by an objective, not a subjective standard. A proper assertion of putative spouse status must rest on facts that would cause a reasonable person to harbor a good faith belief in the existence of a lawful [] marriage.” *In re Domestic Partnership of Ellis & Arriaga*, 162

Cal. App. 4th 1000 (Cal. App. 4th Dist. 2008), citing *Estate of DePasse*, 97 Cal. App. 4th 92, 107, 118 Cal. Rptr. 2d 143 (2002).

A subjective standard is inconsistent with the purpose of the Minnesota putative spouse statute. Other States hold that “[a] subjective good faith belief alone, even by a party that is found credible and sympathetic, is insufficient.” *Welch v. State of California*, 83 Cal.App.4th 1374, 1378, 100 Cal. Rptr. 2d 430 (2000). Minnesota Judges should apply this objective standard rather than any purely subjective analysis.

*In re Marriage of Ramirez*, 165 Cal. App. 4th 751 (Cal. App. 4th Dist. 2008), rejects a subjective analysis: The Court relates that

[h]ere, regardless of whether [he] subjectively believed the [] marriage was valid, *a reasonable person would not have*. The marriage was performed in Moreno Valley, California, by a priest or other official from the State of Jalisco, Mexico. The official issued an “Acta de Matrimonio,” a marriage license, stating that the wedding was performed in Jalisco. This in itself is enough to put a reasonable person on notice that the marriage license, and hence the marriage itself, was not valid. Thus, we hold that Jorge was not a putative spouse as to the 1999 marriage.

*Id.* at 756-757. (Emphasis added.)

*Allen v. Allen*, 703 A.2d 1115, 1115-1116 (R.I. 1997) also considers the reasonableness of person’s beliefs in a putative spouse analysis.

Illinois disallows a person from having putative spouse status where she has “knowledge that she was not legally married....” *Daniels v. Retirement Board of Policeman's Annuity & Benefits Fund*, 106 Ill. App. 3d 412, 416-417 (Ill. App. Ct. 1st Dist. 1982). Choa Yang knew that she had not legally married Su Xiong under the law of

the State of Minnesota. She knew this from the very beginning of what she claimed to be her “legal marriage.”

“The better rule, in light of reason and policy, is to require good faith at the inception of the putative marriage. See *M.R.S. v. State*, 897 P.2d 63, 66 (Alaska 1995)

\* \* \* Since [the purported wife] lacked a good faith belief in the validity of the marriage at its inception, she cannot take advantage of the protections afforded a putative spouse....” *Batey v. Batey*, 933 P.2d 551, 553-554 (Alaska 1997)

Choa Yang lacked a good faith belief that she had married Su Xiong in any manner conforming to Minnesota law. Without such good faith, objectively determined, Choa Yang cannot be accorded status as a putative spouse.

***III: Minnesota does not recognize common law marriage or palimony or any marriage other than the marriage sanctioned by statute.***

Legal scholars concur that “putative marriages” are not recognized as marriages per se. In Minnesota, the sole marriage acknowledged throughout the State is the marriage which is permitted according to statutory guidelines.

**A. COMMON LAW MARRIAGE.**

Choa Yang may not claim that she and Su Xiong entered into a common law marriage. Although Minnesota historically recognized common law marriage, common law marriage has been specifically abolished by the Legislature. *Hedlund v. Monumental General Insurance Co.*, 404 N.W.2d 371, 374 (Minn. Ct. App. 1987). Common-law marriages were specifically abolished in 1941. Minnesota Statutes §517.01.

As many as fourteen States and the District of Columbia still recognize common law marriages. Iowa is the only State bordering Minnesota which allows common law marriage: *Conklin v. MacMillan Oil Co.*, 557 N.W.2d 102 (Iowa Ct. App. 1996).

There is no suggestion that Su Xiong and Choa Yang conducted their cultural ceremony in any State other than Minnesota; no testimony suggested that a common law marriage analysis might apply here. The refusal of the State of Minnesota to recognize common law marriage stands as proof that our Legislature held a high view of marriage. Minnesotans jump through numerous hoops to reach the married estate.

Even a common law marriage requires a reputation of marriage “which is not partial or divided but is broad and general,” *Staudenmayer v. Staudenmayer*, 552 Pa. 253, 262-263 (Pa. 1998).

\* \* \*

**B. PALIMONY:**

In *Carlson v. Olson*, 256 N.W.2d 249 (Minn. 1977), the Minnesota Supreme Court analyzed a property distribution using a partition analysis and the well-known California palimony case, *Marvin v. Marvin*, 557 P.2d 106 (1976). Although there are references in the *Carlson* decision to a “putative spouse,” the primary analysis relates to partition aided by equitable principles, *Olson* at 255.

In response to these two cases, *Carlson* and *Marvin*, the Minnesota Legislature

promptly adopted legislation, Minnesota Statutes, § 513.075 (1980),<sup>10</sup> requiring a written contract between cohabiting persons to serve as a ground for claiming against the other's property:

If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if:

- (1) the contract is written and signed by the parties;  
and
- (2) enforcement is sought after termination of the relationship.

This legislation is commonly known as Minnesota's anti-palimony statute.

The anti-palimony statute has been regularly enforced in Minnesota cases: For example, in *Roatch v. Puera*, 534 N.W.2d 560 (Minn. Ct. App. 1995), the Court held that because the parties had not executed a written contract conforming to Minnesota Statutes, § 513.075, "the trial court lacked jurisdiction to hear Roatch's claims to Puera's property." *Id.* at 564. And, "Minnesota courts are bound to deny enforcement of unwritten contracts." *Id.*

The statute has been enforced only with respect to cohabitation that began after the effective date of the enactment of the statute, *Marriage of Cummings*, 376 N.W.2d 726, 729 (Minn. Ct. App. 1985).

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<sup>10</sup>Argument, *Minnesota's Cohabitation Statute*, 2 J. Law & Equality 335, 336-37 (1984).

*Cummings* references the statutory language that denies Courts the jurisdiction to hear cases for a property division where there is no written contract:

This court has stated that “courts have no power to distribute property but by statute.” *Damman v. Damman*, 351 N.W.2d 651, 652 (Minn. Ct. App. 1984). *Minn. Stat.* §513.076 provides that

unless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if that claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.

*Cummings*, 376 n.w.2d at 729.

This statute came into effect several years before Choa Yang and Su Xiong began their cohabitation; the statute applies directly against Choa Yang. She has no palimony claim against Su Xiong.

The Family Court Referee repeatedly asserted that where Su Xiong and Choa Yang had signed mortgage documents together, this stood as evidence that the Xiong and Yang were “married.” In light of the language of the anti-palimony statute, these executed sales agreements and mortgages are unimportant.

The Minnesota Court of Appeals has held that executed mortgage documents and holding property as joint tenants “does not necessarily fulfill the writing requirements of *Minn. Stat.* §513.075. Specifically absent in these real estate documents is any reflection of the terms and conditions of the purported promises made by the parties to this case,”

*Mechura v. McQuillan*, 419 N.W.2d 855, 859 (Minn. Ct. App. 1988).

Choa Yang brought virtually nothing to the Xiong–Yang relationship as her own independent financial contribution. She did not pay a significant amount of money toward the purchase of a house or a business. She cannot trace her contributions, if any. In the present case, Choa Yang does not seek to “preserve and protect her own property which she acquired for cash consideration wholly independent of any service contract related to cohabitation.” *Obert v. Dahl*, 574 N.W.2d 747, 749 (Min. Ct. App. 1998), citing *In re Estate of Ericksen*, 337 N.W.2d 671, 673–74 (Minn. 1983).

Choa Yang may maintain an action against Su Xiong regarding her own earnings or property, based on equitable theories such as constructive trust or unjust enrichment. *Obert, op.cit.* at 749. To this point, she has not. The Ramsey County Family Court probably does not have the jurisdiction to hear such issues. Those remaining matters related to property, real and personal, must be transferred to the Ramsey County District Court.

Without having recourse to an extant common law marriage statute or palimony, the Family Court Referee’s decision is even less tenable.

***IV: Failure to follow local laws and customs may not be excused when these relate to as fundamental an institution as marriage.***

Choa Yang repeatedly testified that her education had been limited; and, her skills in speaking English and reading English were likewise limited. Choa Yang seemingly wishes to base her failure to meet the requirements to have a legally–cognizable marriage

here in Minnesota on her deficient education. Choa Yang accepts no responsibility here. Choa Yang accompanied Su Xiong when the two went to get a marriage license. She could hear what the Registrar stated, and with her high school education should have understood the conversation. Choa Yang kept the marriage licence in her own possession. Her seeming ignorance is profoundly willful. There is no child-like ignorance. She has willfully refused to accept the most basic responsibility for refusing to read the license. All those empty times have significance. Sheer ignorance of the marriage laws of this State cannot bolster Choa Yang's claim to be the putative spouse of Su Xiong.

The Minnesota Supreme Court has related that "all members of an ordered society are presumed either to know the law or, at least, to have acquainted themselves with those laws that are likely to affect their usual activities." *State v. King*, 257 N.W.2d 693, 697-98 (Minn. 1977). This statement is related in the context of a criminal appeal, but the concept remains useful. The most basic laws undergird marriage. Virtually everyone in Minnesota knows what needs to be done to get married. Not knowing the law here is no defense.

Few legal maxims have enjoyed more popularity than "ignorance of a law is no excuse for failure to observe it." See, *Alderman's Inc. v. Shanks*, 515 N.W.2d 97, 102 (Minn. App. 1994), *rev'd in part on other grounds*, 536 N.W.2d 4 (Minn. Aug. 18, 1995).

Logically, the community cannot allow a small set of the population, on the one hand, to assert ignorance of the requirements to obtain a legally-recognized marriage and,

then to proffer a good-faith belief that a putative marriage exists.

The United States Supreme Court has held that as a general rule, mistake or ignorance of the law is not a legal defense. *Cheek v. United States*, 498 U.S. 192, 199 (1991).

Prosser, *The Law of Torts* § 109, at 724 n.38 (4th ed. 1971), may be cited for the same maxim, *Bucko v. First Minnesota Savings Bank, F.B.S.*, 471 N.W.2d 95, 100 (Minn. 1991).

The Minnesota Supreme Court held that even substantial compliance with the registration requirements of the Minnesota Fathers' Adoption Registry does not excuse a father's failure to timely register his identity, *Heidbreder v. Carton*, 645 N.W.2d 355 (Minn. 2002). The Court in *Heidbreder* invoked once more the legal maxim that the father's ignorance of the law's demands did not excuse his failure to timely register within 30 days. In the present case, there is no factual basis for any claim that Su Xiong and Chou Yang ever substantially complied with the requirements necessary to have a legally-cognizable marriage. There cannot be a putative marriage without substantial compliance with the requirements for a legal marriage.

#### CONCLUSION

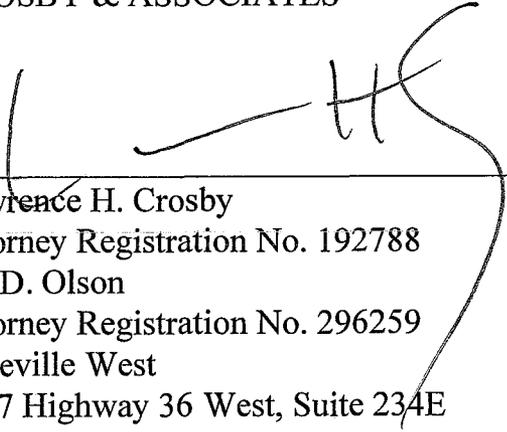
For all these reasons, this Court s of Appeals should hold that Choa Yang is not and has never been the putative spouse, the common law spouse, or the legal spouse of Su Xiong. Any remaining property claims asserted by Choa Yang should be remanded to

the Ramsey County District Court. The Family Court may retain jurisdiction over child support and other closely related matters.

Respectfully submitted,

Dated at Saint Paul, Minnesota, this 22<sup>nd</sup> day of November, 2010.

CROSBY & ASSOCIATES



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Lawrence H. Crosby  
Attorney Registration No. 192788  
Jay D. Olson  
Attorney Registration No. 296259  
Roseville West  
2277 Highway 36 West, Suite 234E  
Saint Paul  
Minnesota 55113  
(651) 635-0818