No. A10-1525

STATE OF MINNESOTA

IN COURT OF APPEALS

IN RE THE MARRIAGE OF:

CHOA YANG XIONG,

Respondent,

v.

SU XIONG,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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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 LEGAL ISSUES

1. Is the Respondent Appellant's putative spouse and entitled to benefits as a spouse pursuant to Minnesota Statutes section 518.055?

   The trial court determined that Respondent was Appellant's putative spouse.

   Relevant authority:
   Minn. Stat. § 518.055

2. What is the correct standard for determining good faith when analyzing whether one has a good faith belief they are married?

   The trial court concluded, although not explicitly, that the correct standard is a subjective standard.

   Relevant authority:
   Minn. Stat. § 518.055

3. Did Respondent have an objective good faith belief she was married to Appellant?

   The trial court concluded that Respondent had an objective good faith belief she was married to Appellant.

   Relevant authority:
   Minn. Stat. § 245C.22

STATEMENT OF THE CASE

This matter involves an important case of first impression within Minnesota to determine the meaning of Minnesota's putative spouse statute. The central question rests on whether Respondent, after a twenty year relationship with Appellant, had a "good faith belief that [she] was married to [Appellant]." Minn. Stat. § 518.055 (2009). While the record shows the parties obtained a marriage license, they never completed all of the requirements of a legal marriage. The record shows, however, Respondent had a good faith belief she was married to Appellant. Specifically in 1993, Respondent, a then recent Hmong immigrant with limited English proficiency, and Appellant obtained a valid marriage license, raised their hands at City Hall, and then Appellant informed Respondent they had fulfilled the obligations of a legal marriage. Respondent put the marriage license away and lived her life as Appellant's wife. This life consisted of living together continuously for nearly 20 years, having seven children, buying and selling property as husband and wife, filing income tax returns as husband and wife, and amassing significant assets and wealth. Respondent only learned of the deficiency in the legal marriage when she met with an attorney to get a divorce.

TRIAL COURT'S ORDER

In its decision dated November 19, 2010, the trial court concluded that Respondent was Appellant's putative spouse and as such acquired the rights of a legal spouse. Appellant's App. at 2. The court opined that throughout the lengthy trial it had "ample time to determine the credibility of the parties." *Id.* Moreover, the court stated it

"unequivocally finds that [Respondent's] testimony in her belief that she was legally married to [Appellant] was credible." The court further notes that it "unequivocally finds that [Appellant] testimony that as to his belief that [Respondent] knew, or had reason to know, that the parties were not married is not credible." *Id.* The court also identified reasons for Appellant's lack of credibility noting his "self-serving denials were regular and often times absurd." *Id.* For example, the trial court noted that although Appellant alleged Respondent was his girlfriend and referred to her as such, the record is devoid of a single document or witness substantiating this position. All documents provided to the court list the couple as married and none of Appellant's own witnesses substantiated that Appellant referred to Respondent as his girlfriend.

In regards to the factual conclusions relating to Respondent's English skills in 1993, the court concluded that "the evidence illustrates that [Respondent's] English skills were deficient when she received the marriage license." Appellant's App. at 9. Appellant's argument that Respondent "came to the Country with no English skills and in less than four years mastered the English language" is without merit and possibility. *Id.*

STATEMENT OF THE FACTS

In 1988, when she was 16 years old, Respondent moved to the United States from Thailand where she was a Hmong refugee. Transcript 11/16/2009, p. 10 ("Tr. 11/16/2009"). When Respondent was seventeen years old she met Appellant who was twenty-five years old. After only two weeks, the parties had a traditional Hmong cultural

wedding and they began living together. Tr. 11/16/2009 at 13.[1] At the time Appellant and Respondent were wed in the Hmong culture, Respondent was not of the legal age of consent and the two were not legally married. Tr. 11/16/2009 at 15, 17-20.

In December 1993, Appellant and Respondent sought and obtained a marriage license from Ramsey County, in the State of Minnesota. Respondent's Appendix ("Resp App.") at 1. The two went to the Courthouse where the conversation with Ramsey County staff was in English. The two then raised their hands, swore an oath, and received a marriage license. Respondent testified that she believed that the marriage license was all that was needed to be legally married and that from that date she thought she was legally married to Appellant. Tr. 11/16/2009 at 17-18. After obtaining the license, Respondent contacted her father and other family members to inform them that she and Appellant were legally married. Tr. 11/16/2009 at 18. Furthermore, Respondent testified that Appellant affirmatively told her that the marriage license was all that was needed to be legally married. Tr. 11/16/2009 at 17-18.

Over the next seventeen years of their relationship, the Appellant and Respondent lived together, had seven children together, bought and sold property together as husband and wife, obtained life insurance as husband and wife, completed loan applications as husband and wife, and held themselves out to others as husband and wife.[2] *See* Resp. App. 1-29. In 1996, Respondent became a US Citizen and provided United States

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[1] Appellant contests whether the gathering was a Hmong marriage ceremony and alleges that it was merely a "party" verifying that the two were living together. Tr. 11/16/2009 at 77-83.

[2] There are no documents in the evidentiary record where Appellant and Respondent are identified as anything but spouses.

Immigration a copy of the marriage license as proof that she was married to Appellant. Tr. 11/16/2009 at 21-23. Her naturalization documents list her as "married." Resp. App. at 2. Respondent also legally changed her last name to Xiong, Appellant's last name, in 1996. *Id.*

During the relationship, one of the jobs Appellant held was as a tax preparer of personal income tax returns. Tr. 11/16/2009 at 71. Appellant testified at trial that he attended Globe College and later prepared tax returns for "over two thousand people." Tr. 11/16/2009 at 92. During the years Appellant and Respondent were together, Appellant completed the couple's tax returns and filed them as "married." Tr. 11/16/2009 at 90-92. *See also,* Resp. App. 5-29. On several joint tax returns, Appellant lists his occupation as "accountant." Resp. App. 5-29.

In recent years, Appellant fathered other children with at least one other woman and sought to end his relationship with Respondent. In June 2008, Respondent met with Legal Aid Attorney Sharon Jones to discuss divorcing Appellant. Tr. 11/16/2009 at 32. After a preliminary investigation, Ms. Jones concluded that Appellant and Respondent were not legally married because no marriage certificate was issued. Tr. 11/16/2009 at 34-35. Respondent testified, and Ms. Jones confirmed, that Respondent was devastated by the news and broke down emotionally. Ms. Jones testified that Respondent "was crying, and so we had to go through the information several times with the help of an interpreter" and "she repeatedly said that she had thought she was married based on the marriage license." Tr. 11/16/2009 at 36.

Respondent testified that she came to the United States in 1988 with limited English skills. Tr. 11/16/2009 at 10. Respondent had limited skills in speaking, reading and writing the English language. Tr. 11/16/2009 at 10. She attended high-school in the United States, but testified that she took classes with other Hmong student and was not fluent in reading and writing. Tr. 11/16/2009 at 11-13. Respondent testified that when she obtained the marriage license with Appellant in 1993 she was not able to read the document. Tr. 11/16/2009 at 19. She further stated that she had not read the document in the following years and merely tucked it away believing she was married to Appellant. Tr. 11/16/2009 at 19.

When questioned at the hearing, Respondent testified that she did not know what the English word "solemnize" meant and was not aware she needed to have a ceremony to become legally married. Tr. 11/16/2009 at 19. At the hearing, Appellant denied many things including: that they had a Hmong cultural wedding, that they held themselves out as husband and wife, and that Appellant referred to Respondent as his girlfriend and never his wife. However, there is nothing in the record supporting these assertions. In fact, one of Appellant's own witnesses directly contradicts that assertion and testified that he never heard Appellant refer to Respondent as Appellant's "girlfriend."[3]

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[3] Q. Did you ever hear [Appellant] call [Respondent] his girlfriend?
A. I have not heard, I have never heard it.
See Tr. 3/22/10 p.39 at 7-10.

ARGUMENT

Respondent qualifies for spousal benefits under the plain language of Minnesota's putative spouse statute because she had a good faith belief that she was married to Appellant. The putative spouse statutes provides in part:

> Any person who has cohabitated 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 . . . . A putative spouse acquires the rights conferred upon a legal spouse . . . .

Minn. Stat. § 518.055 (2009).[4] The putative spouse doctrine "was developed to avoid depriving innocent parties who believe in good faith that they are married from being denied the economic and status-related benefits of marriage, such as property division, pension, and health benefits." *Williams v. Williams*, 97 P.3d 1124, 1128 (Nev. 2004).

I. The Trial Court's Findings Of Fact Should Be Upheld Because They Are Not Clearly Erroneous.

The trial court's findings of fact are supported by the evidence and are not clearly erroneous. In reviewing cases tried without a jury, this court will not set aside the findings unless clearly erroneous. Minn. R. Civ. P. 52.01. "Where the trial court's factual findings are reasonably supported by the evidence, they are not clearly erroneous and must be affirmed." *Tourville v. Kowarsch,* 365 N.W.2d 298, 299 (Minn. App.1985).

The trial courts' Findings of Fact, Conclusions of Law, Order For Judgment and Judgment and Decree Finding Putative Spouse Status and Dissolving Marriage ("Order") contains numerous important findings of fact. Specifically, it finds that:

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[4] Minnesota's putative spouse statute mirrors the language of the Uniform Marriage and Divorce Act § 209.

- The court "unequivocally finds that [Respondent's] testimony in her belief that she was legally married to [Appellant] was credible."

- The court further notes that it "unequivocally finds that [Appellant] testimony that as to his belief that [Respondent] knew, or had reason to know, that the parties were not married is not credible."

- The court further identified reasons for Appellant's lack of credibility noting his "self-serving denials were regular and often times absurd."

- Appellant testified that he and Respondent were merely boyfriend and girlfriend. However, the record is devoid of a single witness who substantiated this statement. In fact, no witness testified that Appellant ever referred to Respondent as his "girlfriend." Moreover, Appellant failed to provide any documents that likewise referred to Respondent as "girlfriend." On the contrary, the record is filled with documents referring the couple as married, spouses, and husband and wife.

- "Despite the fact that the [Appellant] and Respondent moved in together, had a "party" that included Me Kong and a dowry, [Appellant] denied this was a Hmong cultural marriage ceremony. This was contradicted by every witness at the hearing including [Appellant's] own brother-in-law."

- "In the present case, the [Appellant] and Respondent did obtain a marriage license and thus made affirmative steps towards legal marriage. Ex. 3. Moreover, the [Appellant] informed [Respondent] that the marriage license was all that was needed to become married in the United States. *Testimony Petitioner*. Finally, from that point on, the couple referred to themselves as married in every possible capacity. *Id.; Exs*. 4-9. In tax returns, in housing documents, in citizenship documents, and [Respondent] even took [Appellant's] last name. Even under an objective standard, a reasonable person would conclude they were married under these circumstances."

These facts are supported by the testimony and evidence in the five day trial. Accordingly, the Court's factual conclusions should be the basis for any analysis of this appeal. Moreover, since the issue of whether one has good faith is a factual conclusion, the Appellant cannot prevail in this matter because he cannot prove the judge's factual conclusions are clearly erroneous.

II. Minnesota Applies A Subjective And Objective Hybrid Standard When Determining Whether Individuals Have A Good Faith Belief They Are Married.

While Respondent is unaware of any Minnesota case that addresses all the issues related to this appeal, there are several cases addressing Minnesota's putative spouse statute, all of which support Respondent's position that she is a putative spouse. The first is *Johnson v. Commissioner of Revenue*, 1979 WL 1142 (Minn. Tax 1979) (unpublished opinion attached hereto as Exhibit A), which involved a claim of inheritance by a putative spouse. The *Johnson* court found that the wife had putative spouse status under Minn. Stat. § 518.055 where: they exchanged rings and wedding vows but no officiated ceremony took place; the putative wife quit her job, sold her home, and moved into the decedent's home; they lived together for 15 years; the putative wife took the decedent's last name; and decedent's will and church record referred to the putative wife as his wife; they signed legal documents and held real estate in their names as husband and wife; and the community knew them as husband and wife. *Id.* at *2-6.

In another unpublished decision, the Court of Appeals upheld the trial court's finding of putative spouse status to the respondent who believed she was marrying a divorced man. *See Aldainy v. Aldainy,* 1997 WL 561267 (Minn. App. Sept. 9, 1997) (unpublished opinion attached hereto as Exhibit B). The parties were married about 13 years, had two children and purchased a home together. *Id.* at *1. The Court concluded that the trial court's findings were supported by the record, including the Respondent's testimony regarding her good faith belief that appellant was not legally married to another woman, the appellant's deposition in which he referred to the respondent as his

"current wife" and his first wife as his "past wife," and a statement by appellant in which he referred to respondent as "my wife." *Id.* at *2.

The third Minnesota case was very recently decided by the federal district court of Minnesota. *See Nur-Afi v. Guidance Residential, LLC*, Not reported in F. Supp. 2d 2009 WL 4578689 (D. Minn. Dec. 1, 2009) (unpublished opinion attached hereto as Exhibit C). In *Nur-Afi*, the wife sought summary judgment on her claim that she and her husband were legally married in accordance with Somali law and Muslim custom in Mogadishu, Somalia. *Id.*, slip opinion at 2. In particular, the wife testified in her affidavit that the marriage ceremony was presided over by a Sheikh and that she was told that the Sheikh brought two men who served as witnesses. *Id.* The wife acknowledged, however, that she was not in the room where the ceremony occurred, because the men and women were in separate rooms. *Id.* She claimed that her stepfather represented her in the room with the men and that he confirmed that the marriage was completed. *Id.* The parties lived together for 14 years and had six children. *Id.* at 1. The Court found that the record was inconclusive as to whether the marriage was legal and did not reach a conclusion on the putative spouse issue for other reasons. *Id.* at 3. Nevertheless, the Court stated:

> [M]any would suggest that the interests of justice and any inequities of this difficult situation would be served by a resolution of the matter, given the fact that **it is quite apparent by the record that the Plaintiff did have a good faith belief that she was legally married.** Most individuals meeting or encountering the Plaintiff and her family would have likely drawn the same conclusion; namely, that they were married, living together as husband and wife, and raising a family.

Id. at 4. (emphasis added).

The final Minnesota case, and the only one not finding putative spouse status, is factually very dissimilar to the other cases. *See Mjolsness v. Mjolsness*, 363 N.W.2d 839 (Minn. App. 1985). In *Mjolsness*, the parties were divorced after over 20 years of marriage. *Id.* at 840. The former husband claimed that on the day of the divorce, the former wife called him and told him she wanted to get back together and that her attorney advised her that if the parties had sexual relations before midnight that day, the divorce would be invalidated. *Id.* The wife denied this claim. *Id.* The former husband claimed that as a result of these representations, he held a good faith belief that they continued to be married. *Id.*

Although there was much conflicting evidence in the case, the Court of Appeals deferred to the trial court's credibility determinations and upheld its finding that the former husband was not a putative spouse. *Id.* The Court found that there was evidence from which the trial court could have concluded that the former husband knew he was divorced, including that he had prepared tax returns for the wife listing her as a single person and that there was a conversation, corroborated by their daughter, about the parties remarrying in New Orleans. *Id.* The Court also found that the former husband's receipt of the divorce decree was "strong evidence" that he did not reasonably believe he was still married. *Id.* Unlike the claimant in *Mjolsness*, there is no evidence that Respondent had reason to believe that her marriage was not legal. Nor did the parties have any conversations that would cause Respondent to believe that the marriage was invalid. Therefore, these Minnesota cases all support a finding that Respondent is Petitioner's putative spouse.

III. In The Alternative, Minnesota Should Apply A Hybrid Standard For Determining What Constitutes Good Faith Belief That One Is Married.

Minnesota should require that each claim of a putative spouse be reviewed on a case-by-case basis that incorporates one's intelligence, experience, education, maturity, and linguistic capability in determining one's "good faith belief." [5]

A. The Louisiana Model.

Adopting a subjective standard or hybrid standard is not revolutionary, as, for example, Louisiana has long adopted such a standard in putative spouse cases. As far back as 1947, the Louisiana Supreme Court noted that "what constitutes 'good faith' . . . is not an absolute quality but is relative, and depends ultimately upon the facts and circumstances in each individual case." *Succession of Chavis*, 29 So. 2d 860, 863 (La. 1947). Intelligence, experience, education, maturity, and linguistic capability are among the characteristics which are important to the issue of whether a person does or does not have a good faith belief that a void marriage is valid. *Id.* Thus, if the putative spouse is

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[5] While the concept of good faith can vary depending on context, Minnesota case law often defines "good faith" as a subjective standard. *See e.g., Bahr v. Capella University,* 765 N.W.2d 428, 436 (Minn. App. 2009) (employment discrimination case stating that "the good-faith, reasonable-belief standard protects employers, requiring that the individual employee have a subjective good-faith belief that they were opposing an employer's discriminatory practice"); *Vitamin v. Gordin*, 2009 WL 4251054 (Minn. App. Dec. 1, 2009) (family law case stating, "[w]hether a party acts in good faith is, essentially, a credibility determination") (unpublished opinion attached as Exhibit C); *Halla v. Norwest Bank*, 601 N.W.2d 449 (Minn. App.1999) (stating that good faith, for purposes of the statute governing the conversion of negotiable instruments, is a subjective standard); *Unbank Co. v. Dolphin Temporary Help Services*, 485 N.W.2d 332, 333 (Minn. App. 1992) (stating that good faith for holder in due course status is subjective rather than objective determination, and is based on the honest belief that one's conduct is rightful); *Giesner v. Giesner*, 319 N.W.2d 718, 720 (Minn. 1982) (family court case stating that court must evaluate a party's *subjective* intent in making a career choice to determine whether a party acted in good faith).

young, naive, and unsophisticated, mere rumor of an impediment may not be sufficient to trigger a duty to investigate or to place that person in the status of bad faith. *Succession of Pigg*, 84 So. 2d 196 (La. 1955).

Moreover, Louisiana case law has a detailed and thoughtful analysis that articulates the subjective standard. Louisiana applies a basically subjective standard, but incorporates the objective elements of reasonableness. Specifically, the question of whether a party is in good faith is subjective, and depends on all the circumstances present in a given case. *Saacks v. Saacks*, 688 So.2d 673 (La. App. 5 Cir. 1/28/97); *In Re Succession of Gordon*, 461 So. 2d 357 (La. App. 2 Cir. 1984), *writ denied*, 464 So. 2d 319 (La. 1985). Although the good faith analysis incorporates the objective element of reasonableness, the inquiry is essentially a subjective one. *Saacks v. Saacks, supra*; *Rebouche v. Anderson* 505 So. 2d 808 (La. App. 2 Cir. 1987), *writ denied*, 507 So. 2d 228 (La. 1987). One law review article summarizes the good faith standard as follows:

> "The question of the good faith of the belief that the marriage is valid is an issue for the trier of fact, and the fact finder's decision is given great deference. The Louisiana Supreme Court has noted that 'what constitutes 'good faith' . . . is not an absolute quality but is relative, and depends ultimately upon the facts and circumstances in each individual case.' **Intelligence, experience, education, maturity, and linguistic capability are among the characteristics which are important to the issue of whether a person does or does not have a good faith belief that a void marriage is valid.** Thus, if the putative spouse is young, naive, and unsophisticated, mere rumor of an impediment may not be sufficient to trigger a duty to investigate or to place that person in the status of bad faith."

The Putative Marriage Doctrine, 60 Tul. L. Rev. 1 (1985) (citations omitted) (emphasis added).

B. The majority of putative spouse cases nationwide support a subjective standard.

Other states employ an equitable subjective test in determining whether one has a good faith belief they are married. For example, in Nebraska, "Whether a party acted in good faith depends on the facts and circumstances of the case." *Hicklin v. Hicklin*, 509 N.W.2d 627, 631 (Neb. 1994). In Illinois, in determining good faith, the court considers the subjective attitude as well as the knowledge of the putative spouse. *Estate of Whyte v. Whyte*, 614 N.E.2d 372 (Ill. Ct. App. 1st Dist. 1993). Even in California, determining good faith requires a subjective assessment: "the test is the individual claimant's belief.... The fact that another person might not have had the same belief under the same circumstances...will not preclude a finding that the claimant acted in good faith.... [F]actors which may be helpful in doubtful cases in resolving the question (i.e. whether the claimant's allegation of believing the marriage valid is credible) are the claimant's education, experience in worldly affairs, and age." *Thomas v. Sullivan*, 922 F.2d 132 (C.A.2 1990) (citations omitted).

IV. Applying A Hybrid Standard For Determining Good Faith Fulfills The Purpose Of The Putative Spouse Doctrine Without Undue Expansion Of Claims.

A. The hybrid standard supports the intent and equitable purpose of Minnesota's putative spouse statute.

Applying a hybrid standard, and concluding Respondent is Appellant's putative spouse, aligns with the purpose and policy of the Putative Spouse Doctrine. The Putative Spouse Doctrine "was developed to avoid depriving innocent parties who believe in good

faith that they are married from being denied the economic and status-related benefits of marriage, such as property division, pension, and health benefits." *Williams v. Williams*, 97 P.3d 1124, 1128 (Nev. 2004). In the absence of doctrines such as these, many persons who in good faith consider themselves married, and who have established and maintained over a long period a stable family relationship, would be denied both the economic and status incidents of marriage. This section makes it clear that the Act was not intended to abolish such doctrines. Unif. Marriage & Divorce Act § 209.

In this case, if Respondent is denied putative spouse status, she will suffer tremendous inequity. Despite devoting her life to raising seven children with Appellant, living as husband and wife for 20 year, and Appellant accumulating significant wealth during this time, Respondent, due to no fault of her own, would not be entitled to any benefits as a spouse. This is the exact inequity the Putative Spouse Doctrine seeks to avoid.

B. Application of a hybrid test for good faith will not expand the scope of putative spouse claims.

Application of a hybrid subjective standard to determine good faith will not expand the doctrine of putative spouse nor bring about an undue expansion of claims. As noted by both parties in their briefs, there are simply very few Minnesota appellate cases addressing the putative spouse statute. In fact, since the statute was enacted in 1978 there are only a handful of cases at the Court of Appeals. Any assertion that applying a hybrid subjective standard will open the proverbial floodgates to putative spouse claims is baseless.

V. Respondent Satisfies The Subjective Good Faith Standard.

Respondent had a reasonable good faith belief she was married to Appellant when reviewing her intelligence, experience, education, maturity, and linguistic capability. Applying the subjective standards to this case, this Court should consider Respondent's particular circumstances at the time of the marriage, including her actual knowledge and belief, as well as her age, education, culture and language, to determine if she had a reasonable and good faith belief that she was legally married to Appellant.

The record shows that Respondent was only 17 when she had her cultural ceremony with Appellant, and 21 when she went to the courthouse, raised her hand, took an oath and received the marriage license. Moreover, after the procedure at the courthouse, Appellant informed Respondent that the marriage license was sufficient and the two were married.

English is not Respondent's first language and her knowledge of English in 1993 was limited when the marriage license was issued. Additionally, Respondent did not understand the customs in Minnesota or this Country, and her education was limited to a few short years of English classes. Under these circumstances, Respondent's belief that she was legally married to Appellant was reasonable and she and acted in good faith.

VI. Respondent Made Affirmative Steps Towards Marriage.

The Respondent attempted compliance with the procedural requirements of marriage. Her failure to comply with the procedure was based on her language barriers, lack of familiarity with Minnesota law, and lies offered by a deceitful spouse. As the Trial Court relied on in its decision, Respondent and Appellant went to the Courthouse,

both parties raised their hands and received a marriage license and thus made affirmative steps towards marriage. This is supported by the record.

Appellant argues that Respondent cannot be a putative spouse because the parties did not participate in a solemnization ceremony. The plain language of Minnesota's putative spouse statute has no such requirement. If the legislature sought to limit putative spouse status to only those situations where a solemnization ceremony occurred, the legislature could have easily included such language. For example, compare the language of section 518.055 to the language of Illinois' putative spouse statute: "Any person, **having gone through a marriage ceremony**, who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights." 750 ILCS § 305 (emphasis added). [6]

VII. Respondent Meets The Definition of Putative Spouse Even If One Applies An Objective Standard.

Even if this Court applies an objective standard for determining good faith, Respondent had an objective good faith belief they were married. In its decision, the trial court specifically notes that "even under an objective standard, a reasonable person

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[6] California's Court of Appeals held that "although the usual putative marriage situation may arise under circumstances where a marriage is duly solemnized and celebrated in good faith but suffers from a legal infirmity, lack of a solemnization ceremony does not necessarily mean bad faith precluding finding a putative marriage." *Wagner v. County of Imperial*, 145 Cal.App.3d 980, 983 (Cal. Ct. App. 4 Dist.1983) (concluding that wife was a putative spouse even without a solemnization ceremony). *See also*, *Johnson v. Commissioner of Revenue*, 1979 WL 1142 (Minn. Tax 1979) (unpublished opinion attached hereto as Exhibit A) (finding wife was putative spouse even though no solemnization ceremony took place).

would conclude they were married under the circumstances." Appellant's App. at 8. Again, this factual determination is supported by the evidence and is not clearly erroneous.

VIII. Respondent's Ignorance Of The Law Is Not Fatal To Her Status As Putative Spouse.

The good faith belief that there is no impediment to one's marriage can be based on either a mistake of fact or of law. The summary adage that "ignorance of the law is not a defense" does not apply to this matter. In fact, many jurisdictions have held that the opposite is true. Specifically, "[g]ood faith may result either from an error of fact **or from an error of law**." *Hicklin v. Hicklin*, 509 N.W.2d 627, 631 (Neb. 1994) (emphasis added). *See also Saacks v. Saacks,* 688 So.2d 673, 676 (La. Ct. App. 5th Cir. 1997) ("[g]ood faith belief may arise from an error of law, as well as of fact"); *Succession of Lynch v. United States*, 17 F.Supp. 674, (W.D.La. 1936) (finding putative wife status where wife erroneously believed that husband's conviction and sentencing to the state penitentiary gave her a divorce); *Kimball v. Folsom*, 150 F.Supp. 482, 484 (W.D.La. 1957) (stating that the adage "ignorance of the law is no excuse" does not apply to putative marriages). Accordingly, to argue that Respondent cannot be a putative spouse because she made an error of law is patently wrong. Respondent is a putative spouse *because* she misunderstood the law and in good faith believed she was married.

The Appellant, however, does not have clean hands. Appellant did everything to cause Respondent to believe her marriage was valid. Every action he took confirmed that they were legally married. He lived with Respondent for 20 years, had seven children

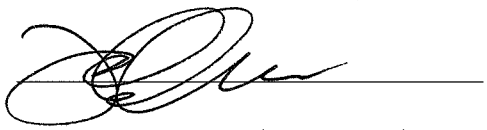
with her, bought and sold property with her, filed joint tax returns with her, and presented himself to the community as Respondent's husband. For these reasons, this Court should conclude that Respondent is Appellant's putative spouse.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court affirm the trial court's decision and conclude that she is Appellant's putative spouse and entitled to the rights of a spouse.

Dated: December 21, 2010

ARNESON & GEFFEN, PLLC



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