

STATE OF MICHIGAN  
COURT OF APPEALS

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SHEILA K. SULLIVAN,  
Plaintiff–Appellant,

UNPUBLISHED  
September 3, 1996

v

No. 176683  
LC No. 93-456433-DO

EDWARD T. SULLIVAN,  
Defendant–Appellee.

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Before: Corrigan, P.J., and Jansen and M. Warshawsky,\* JJ.

PER CURIAM.

Plaintiff appeals by right the order dismissing with prejudice her claim for divorce. To obtain a divorce in Michigan, plaintiff sought to prove that she and defendant had entered into a common-law marriage valid in the state of Texas. The trial court found that plaintiff failed to prove a common-law marriage under Texas law, and granted defendant’s motion for involuntary dismissal. We affirm.

The trial court did not clearly err in finding that plaintiff had failed to prove that a common-law marriage existed. Michigan recognizes the validity of common-law marriages entered into in states that permit such marriages. *In re Borroughs Estate*, 194 Mich App 196, 197; 486 NW2d 113 (1992). A common-law marriage is valid in Texas when three elements are present: (1) a present agreement to be husband and wife; (2) residence together in Texas as husband and wife; and (3) holding each other out to the public as husband and wife. *Id.*, citing *Winfield v Renfro*, 821 SW2d 640 (Tex Civ App, 1991).

The trial court found for plaintiff on two elements, that plaintiff and defendant had resided together in Texas as husband and wife and had held each other out as husband and wife. The court found that the proofs failed on the element of an agreement presently to be husband and wife. The parties’ testimony conflicted on both the issue of holding out and that of agreement. A finder of fact may believe some, all or no portions of a witness’ testimony. The trial court did not clearly err in finding that the parties had at times held themselves out as married, but that they had not mutually agreed to be husband and wife.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff alleges that the trial court erred in precluding her from presenting a second witness who attested in an affidavit that plaintiff and defendant had held themselves out as husband and wife. Plaintiff asserts that had this witness testified, plaintiff would have proved her case by a preponderance of the evidence, because the witness would have called defendant's credibility into question, which would have caused the trial judge to believe plaintiff's testimony on the issue of agreement.

Counsel must object at trial to preserve an issue for appellate review. *Hammack v Lutheran Social Services*, 211 Mich App 1, 7; 535 NW2d 215 (1995). Plaintiff failed to object after the trial court stated that it did not wish to hear the witness' testimony at that time, although the trial court invited objections. Because the issue was not preserved, this Court is not required to review it absent exigent circumstances. *Booth v University of Michigan Bd of Regents*, 444 Mich 211, 234, 234 n 23; 507 NW2d 422 (1993); *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995); No exigent circumstances call for appellate review.

Moreover, plaintiff's claim would likely fail. The record does not reflect that the uncalled witness, Deborah Neal, could or would have given testimony relevant to the issue of an agreement to marry. Further, it is unlikely that her testimony would have caused the court to question defendant's credibility. The court had conducted a hearing on defendant's motion for summary disposition less than an hour before this trial. At that hearing, the trial court referred to the witness and the contents of her affidavit, which contradicted defendant's later trial testimony on the issue of holding out. If the trial court had been inclined to perceive the conflict between the witness and defendant as a shadow on defendant's credibility, it would likely have found that an agreement to be married existed. Because it did not, it is reasonable to assert that Neal's testimony would not have affected the court's findings, and that there was no error in precluding plaintiff from presenting the witness.

Affirmed.

/s/ Maura D. Corrigan  
/s/ Kathleen Jansen  
/s/ Meyer Warshawsky