IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOAQUINA REYES SANTOS,
Plaintiff-Appellant,

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Defendant-Appellee.

Supreme Court No. 2016-SCC-0005-CIV

Superior Court No. 15-0062-CV

OPINION

Cite as: 2017 MP 12

Decided December 7, 2017

Juan T. Lizama, Saipan, MP, for Plaintiff-Appellant.

Michael T. Witry, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Defendant-Appellee.

Claire M. Kelleher-Smith, Saipan, MP, for Amici Curiae.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

CASTRO, C.J.:

¶ 1 Plaintiff-Appellant Joaquina Reyes Santos ("Santos") appeals the trial court's order dismissing her discrimination complaint for failure to state a claim upon which relief can be granted under NMI Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"). She presents two issues on appeal, arguing 1 CMC § 8313(q) violates her constitutional rights because it discriminates against her on the basis of her class as a common law spouse and arbitrarily deprives her of the retirement benefits she is entitled to receive as a surviving common law spouse of a government retiree. As a case of first impression, we consider whether marriage at common law is valid in the Commonwealth. For the following reasons, we AFFIRM the trial court's order.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Santos and Cristin Cabrera Duenas ("Duenas") lived together as wife and husband from 1974 until Duenas' death in 2009. During their time of uninterrupted cohabitation, they held themselves out as wife and husband before friends and relatives, bore eight children, commingled and shared their incomes, and maintained a home. Duenas worked for the Commonwealth government from 1974 until he retired in 2002, at which time he began receiving retirement benefits until his death.[1]

¶ 3 Santos sued the Commonwealth of the Northern Mariana Islands ("Commonwealth") and the NMI Retirement Fund ("NMIRF") claiming discrimination. In the complaint, Santos alleged she is entitled to benefits as Duenas' surviving spouse under the NMI retirement law[2] and the denial of those benefits based on her class as a common law spouse—as opposed to a legal spouse—violated the Equal Protection Clause of the United States Constitution and Article I, Section 6 of the NMI Constitution. Santos also sought an order to declare 1 CMC § 8313(q) unconstitutional, alleging the denial was based on Section 8313(q)'s definition of "spouse" as one who is "legally married."

¶ 4 The Commonwealth subsequently moved to dismiss the complaint under Rule 12(b)(6).[3] The trial court granted the Rule 12(b)(6) motion, concluding

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[1] In reviewing an appeal from a Rule 12(b)(6) motion, we presume the facts in the complaint to be true and construe them in the light most favorable to the plaintiff. *O'Connor v. Div. of Pub. Lands*, 1999 MP 5 ¶ 2.

[2] The complaint alleges Santos was entitled to benefits under the retirement law in general, without referring to a specific statute. On appeal, Santos argues she is entitled to receive benefits under the Northern Mariana Islands Retirement Fund Act of 1988, 1 CMC § 8349(b)(1), and Public Law No. 18-21.

[3] At the motion hearing, the parties informed the trial court they had stipulated to dismiss the NMIRF from the case. Consequently, the trial court dismissed Santos' second cause of action for a mandatory injunction, where she had asked the trial court to direct the

Santos did not "suggest[] beyond speculation that the Government had no legitimate purpose in limiting some benefits to legally recognized spouses over common law spouses." *Santos v. Commonwealth*, Civ. No. 15–0062 (NMI Super. Ct. Dec. 30, 2015) (Order Granting Gov't Mot. Dismiss at 5).

¶ 5 Santos appeals.

II. JURISDICTION

¶ 6 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 7 Santos presents two issues, arguing: (1) 1 CMC § 8313(q) violates the Equal Protection Clause of the United States Constitution and Article I, Section 6 of the NMI Constitution because it discriminates against her on the basis of her class as a common law spouse; and (2) 1 CMC § 8313(q) violates the Due Process Clause of the United States Constitution and Article I, Section 5 of the NMI Constitution because it arbitrarily deprives her of the retirement benefits she is entitled to receive under the Northern Mariana Islands Retirement Fund Act of 1988, 1 CMC § 8349(b)(1), and Public Law No. 18-2.[4] Santos brings these constitutional claims based on the assertion she is the surviving spouse of her common law marriage to Duenas, a government retiree. As such, before turning to the merits of her claims, we must address the threshold issue of whether marriage at common law, or marriage *per verba de presenti*, is valid in the Commonwealth.

¶ 8 Remedio Elameto and Pedro Pua join as amici curiae ("Amici"), urging us to recognize common law marriage and raising an additional issue regarding the interplay of common law marriage and customary marriage. In particular, Amici argue because Carolinian marriage custom is similar to common law marriage, we should recognize common law marriage to protect the customs of the Carolinian culture.

¶ 9 Generally, amici are not permitted to "create, extend, or enlarge the issues presented on appeal." *Commonwealth v. Borja*, 3 NMI 156, 163 n.2 (1992). Santos has neither alleged in her complaint nor on appeal that she was married to Duenas under a local custom. She merely alleged she is entitled to benefits as Duenas' surviving common law spouse. Also, while common law marriage and

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NMIRF to recognize her as a spouse to receive retirement benefits under the Defined Benefit Plan Reform Act of 2007. *Santos v. Commonwealth*, Civ. No. 15–0062 (NMI Super. Ct. Dec. 30, 2015) (Order Granting Gov't' Mot. Dismiss at 5).

[4] Santos also argues she is entitled to receive benefits under the Northern Islands Retirement Fund Act of 1988 as a dependent of her deceased common law husband. Because she failed to raise this argument in the trial court, we decline to address this issue on appeal. *Commonwealth v. Suda*, 1999 MP 17 ¶¶ 37–38 (declining to review arguments raised for the first time on appeal).

customary marriage may share some similarities, we note that they are not identical and must not be treated interchangeably. *See Mutong v. Mutong*, 2 TTR 588, 591 (H.C.T.T. Trial. Div. 1966) ("While there are distinct similarities between marriage under local custom . . . and . . . 'common law marriage' in American and English law, . . . this case cannot be determined solely upon the basis of the well-established precedents relating to common law marriages . . . ."). Common law marriage involves no custom; it may simply be "created by an agreement to marry, followed by cohabitation." BLACK'S LAW DICTIONARY 251 (6th ed. 1979). Customary marriage, on the other hand, may only be created by two Trust Territory citizens who marry pursuant to a *recognized custom*. 8 CMC § 1205. Because customary marriage and common law marriage are not the same and because the issue of customary marriage has neither been raised by the parties nor is relevant to the appeal, we decline to address the arguments raised by Amici. In the case at bar, we only look at the narrow issue of whether common law marriage is valid in the Commonwealth. This issue involves statutory interpretation, which we review de novo. *Reyes v. Reyes*, 2001 MP 13 ¶ 3.

IV. DISCUSSION

¶ 10 Common law marriage is defined as "[o]ne not solemnized in the ordinary way . . . but created by an agreement to marry, followed by cohabitation." Black's Law Dictionary 251 (6th ed. 1979). It requires no license or celebration, but a mere agreement to become husband and wife is sufficient. *See Offield v. Davis*, 40 S.E. 910, 910 (Va. 1902) ("The question presented on this appeal . . . is, whether or not a contract, if proved, entered into between a man and a woman . . . by which they mutually agreed to become husband and wife, without any celebration and without license, constitutes a valid marriage . . . ."). The great weight of authority recognizes the validity of common law marriage[5] and has held the common law right of marriage cannot be abrogated without the clear intent of the legislature. *See Huard v. McTeigh*, 232 P. 658, 662 (Or. 1925) ("Courts have universally held that this common-law right of marriage cannot be taken away without clear intent on the part of the legislature so to do.").

¶ 11 The United States Supreme Court and various state courts urged to address the validity of common law marriage have held, or recognized the general rule, that marriage at common law is valid "notwithstanding the statutes, unless they contain express words of nullity." *Meister*, 96 U.S. at 79; *e.g.*, *Marris v. Sockey*, 170 F.2d 599, 601–02 (10th Cir. 1948); *Gabaldon v. Gabaldon*, 34 P.2d 672, 672 (N.M. 1934); *Offield*, 40 S.E. at 912. This rule stems from the theory that since "marriage is an institution of the common law," marriage statutes are merely directory, regulating a pre-existing right and "violation of the regulations is

[5] *Meister v. Moore*, 96 U.S. 76, 79 (1877); *Reed v. Harkrader*, 264 F. 834, 835–36 (9th Cir. 1920); *Huard v. McTeigh*, 232 P. 658, 661 (Or. 1925); *Schuchart v. Schuchart*, 60 P. 311, 311–12 (Kan. 1900); *Poole v. People*, 52 P. 1025, 1026 (Colo. 1898).;.

attended by such consequences only as the statute prescribes." *Gabaldon*, 34 P.2d at 672.

¶ 12 "This [general] rule, however, is not universal." *Offield*, 40 S.E. at 912; *see also Huard*, 232 P. at 661 ("[I]t remains for this court to determine and declare the public policy of this state relative to the marital status of the parties hereto, regardless of but with due deference to what other courts have said on the subject."). Few states have taken a broader approach in their interpretation, noting, in determining whether common law marriage is valid notwithstanding the statutes, the issue is not whether the statutes expressly nullify marriage at common law but whether the "legislative enactments as viewed in their entirety were intended to abrogate the rule relative to common-law marriages . . . ." *Huard*, 232 P. at 662. In *In re Estate of McLaughlin v. McLaughlin*, the Washington Supreme Court stated:

> It is true the legislature may expressly provide that all marriages not entered into in the ways pointed out by the statutes, and not within the exceptions provided for, shall be held invalid, but this affords no reason for not giving effect to the clear intention otherwise expressed in the legislation existing, because the legislature has not expressly declared all others void.

30 P. 651, 658 (Wash. 1892). We echo the sentiment of the Washington Supreme Court and find the broader approach persuasive. "Our principal responsibility in statutory construction is to discern and give effect to the intent of the legislature." *In re Commonwealth*, 2015 MP 7 ¶ 11. Thus, in determining whether common law marriage is valid in the Commonwealth, we ask whether our marriage statutes, viewed as a whole, were intended to abrogate marriage at common law.

¶ 13 "The answer to this question depends upon whether [the] statutory provisions relative to marriage are mandatory or directory." *Huard*, 232 P. at 661. If the provisions prescribe exclusive methods to effectuate marriage, they are mandatory, and common law marriage would not be valid. *Id.* However, if the provisions are non-exclusive, they are directory, and common law marriage would be valid. *Id.*

¶ 14 The Commonwealth marriage statutes are enumerated in 8 CMC §§ 1201–1205.[6] The relevant provisions are as follows:

> To make valid the marriage contract between two noncitizens or between a noncitizen and a citizen of the Trust Territory, it is necessary that . . . [a] marriage ceremony be performed by a duly authorized person as provided in this chapter.

8 CMC § 1201(c).

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[6] The Commonwealth marriage statutes, 8 CMC §§ 1201–1205, were adopted from the Trust Territory marriage statutes, 39 TTC §§ 51–55, in 1984. They have not been revised by the Commonwealth legislature for over three decades.

> The Governor or a mayor is authorized to grant a license for marriage between two persons. Upon the filing of an application for the license, the Governor or a mayor shall collect from the parties the following fees: (i) Ceremony fees (Non-Residents), $75; (ii) Ceremony fees (Residents), $30; (iii) Marriage License Application (Non-Residents), $125; (iv) Marriage License Application (Residents), $50; (v) Documentation Fee, $25; and (vi) Marriage License Copy, $25. Notwithstanding any provision of law to the contrary, one hundred percent (100%) of the fees collected by a respective mayor under this section shall be deposited into that respective mayor's office account which the Secretary of Finance shall established without further legislative appropriation.

8 CMC § 1202(a).

> To obtain a license to marry, the parties shall file with the Governor or a mayor an application in writing . . . . If the statements in the application are satisfactory and it appears that the parties are free to marry, the Governor or a mayor shall issue to the parties a license to marry. Nothing in this section may be construed to prevent the issuance of a license to marry to two citizens of the Trust Territory.

8 CMC § 1202(b).

> The presence of two witnesses, at least, is required for the celebration of a marriage between two noncitizens or between a noncitizen and a citizen of the Trust Territory. The marriage ceremony shall be performed in the Commonwealth. The marriage rite may be performed and solemnized by an ordained minister, a judge, the Governor or by any person authorized by law to perform marriages, upon presentation to that person of a license to marry as prescribed in 8 CMC § 1202.

8 CMC § 1203.

> Marriage contracts between parties, both of whom are citizens of the Trust Territory, solemnized in accordance with recognized customs, shall be valid, a notice of the marriage, showing the names and addresses of the persons married, their ages and the date of marriage, shall be sent to the clerk of courts of the Commonwealth Trial Court, who shall, upon its receipt, record it in the marriage register.

8 CMC § 1205.

¶ 15 The statutory language of 8 CMC §§ 1201–1205 are carry overs from the Trust Territory period and are almost verbatim of Sections 51–55 of Title 39 of the Trust Territory Code ("TTC"). These provisions are not new enactments but a continuation of existing Trust Territory law, *Commonwealth v. Lizama*, 3 NMI 400, 406–07 (1992), which have always been the law of the Mariana Islands District before becoming a Commonwealth. As such, we find cases from the High Court of the Trust Territory of the Pacific Islands helpful in interpreting our statutes. *Robinson v. Robinson*, 1 NMI 81, 88 (1990); *see* Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 505 ("The laws of the Trust Territory of the Pacific Islands . . . applicable to the Northern Mariana Islands on the effective date of this Section and not inconsistent with this Covenant or with those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands."). Notably, we find *In the Matter of Nasie Airam* instructive.

¶ 16 The court in *Nasie Airam* was called upon to answer a similar question as presented here, that is, whether their marriage provisions at 39 TTC §§ 51–53, the predecessors to our statutes 8 CMC §§ 1201–1203, are mandatory. 7 TTR 426, 428 (H.C.T.T. App. Div. 1976).[7]

¶ 17 The *Nasie Airam* court construed the marriage statutes in their entirety, including 39 TTC §§ 51,[8] 52,[9] 53,[10] and 55.[11] The court recognized these statutes governed two types of marriages: one, customary marriage, which may only be entered into by Trust Territory citizens in accordance with recognized local customs, 39 TTC § 55, and two, non-customary marriage, which may be entered into by Trust Territory citizens and/or noncitizens in accordance with formal procedures set forth by the statutes. Because the Congress of Micronesia imposed specific and distinct requirements to effectuate different types of marriages by variant citizens, the court concluded the statutory provisions relative to marriage are mandatory:

> Where a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute

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[7] The court was also called to answer whether a noncitizen and a citizen of Trust Territory may enter into a valid customary marriage. The court held, because the statute requires both parties be Trust Territory citizens to effectuate a valid customary marriage, a customary marriage entered by a noncitizen and citizen of Trust Territory is not valid. *Nasie Airam*, 7 TTR at 429.

[8] 39 TTC § 51 is a counterpart of 8 CMC § 1201; in relevant part, it states: "In order to make valid the marriage contract between two noncitizens or between a noncitizen and a citizen of the Trust Territory, it shall be necessary that . . . [a] marriage ceremony be performed by a duly authorized person as provided in this chapter."

[9] 39 TTC § 52 is a counterpart of 8 CMC § 1202; in relevant part, it states:

> concerning a related subject is significant to show that a different intention existed. Judicial construction of a statute should be in keeping with the natural and probable legislative purpose. There can be no doubt that the Congress of Micronesia intended to make valid customary marriages between Trust Territory citizens only. As to marriages . . . involving a non-citizen, it exercised its power to regulate and require certain procedures and forms in the celebration of marriages. . . . Thus, a requirement that solemnization be performed by a person mentioned in 39 TTC 53 in order to constitute a valid marriage is a mandatory condition. . . . . The statutes before us are clear and unambiguous, and it is neither our right nor duty to change them. . . . Clearly, it has made 39 TTC 51, 52, and 53 mandatory. Any other interpretation by us would serve only to thwart the legislative intent of Congress.

> (1) The district administrator . . . is authorized to grant a license for marriage between two noncitizens or between a noncitizen and a citizen of the Trust Territory. Upon the filing of an application for such a license, the district administrator shall collect from the parties making the application the sum of two dollars to be remitted to the treasurer of the Trust Territory. (2) In order to obtain a license to marry, the parties shall file with the district administrator an application in writing . . . . If the statements in the application are satisfactory and it appears that the parties are free to marry, the district administrator shall issue to the parties a license to marry. Nothing in this section shall be construed to prevent the issuance of a license to marry to two citizens of the Trust Territory.

[10] 39 TTC § 53 is a counterpart of 8 CMC § 1203; in relevant part, it states:

> The presence of two witnesses, at least, is requisite for the celebration of a marriage between two noncitizens or between a noncitizen and a citizen of the Trust Territory. The marriage ceremony shall be performed in the district in which the license is issued. The marriage rite may be performed and solemnized by an ordained minister, a judge of the high court, a judge of the district court, a district administrator, or by any person authorized by law to perform marriages, upon presentation to him of a license to marry as prescribed in section 52 of this chapter.

[11] 39 TTC § 55 is a counterpart of 8 CMC § 1205; in relevant part, it states:

> Marriage contracts between parties, both of whom are citizens of the Trust Territory, solemnized in accordance with recognized customs, shall be valid. A notice of such marriage, showing the name and addresses of the persons married, their ages and the date of marriage, shall be sent to the clerk of courts, who shall upon receipt thereof record the same in the marriage register.

Nasie Airam, 7 TTR at 429–30 (internal citations omitted).

¶ 18 Like the Congress of Micronesia, our Commonwealth legislature also created specific and exclusive methods by which people may enter into valid marriages. For example, to effectuate a non-customary marriage, our statutes require certain formal procedures to be followed: parties must obtain a marriage license and a ceremony must be performed by a person authorized by law. 8 CMC §§ 1201–1203. To effectuate a customary marriage, our statute requires that parties be Trust Territory citizens and the marriage be solemnized in accordance with recognized customs. 8 CMC § 1205. There are no other methods permitted by our statutes to make marriage valid. These provisions, when viewed in their entirety, ostensibly reflect the legislature's intent to void other forms of marriage which do not comply with these requirements. Thus, we determine that these provisions are mandatory. To interpret otherwise would defeat the purpose and spirit of our marriage statutes as a whole, rendering them utterly meaningless. Because we find our marriage statutes mandatory, we conclude the Commonwealth legislature clearly intended to abrogate the common law right of marriage. Accordingly, common law marriage is not valid in the Commonwealth.

¶ 19 This conclusion, we note, is consistent with 7 CMC § 3401, the statute which establishes the applicability of common law in the Commonwealth. Section 3401 states "the rules of the common law . . . shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary . . . ." Here, we have 8 CMC §§ 1201–1203 and § 1205 prescribing the procedures and forms to effectuate a valid marriage in our jurisdiction. These written laws are contrary to rules of common law as the former require a license and a ceremony, or solemnization by local customs to validate a marriage, while the latter does not. As such, we further conclude common law marriage is contrary to the laws of our jurisdiction, and is thus, not applicable.

¶ 20 Because common law marriage is neither valid nor applicable in the Commonwealth, Santos was not legally married pursuant to Commonwealth law and cannot be considered a spouse as contemplated by 1 CMC § 8313(q). Thus, Santos' constitutional claims, which necessarily relied on this definition, fail.

V. CONCLUSION

¶ 21 For the reasons stated above, we hereby AFFIRM the trial court's order.

SO ORDERED this 7th day of December, 2017.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice