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COURT OF APPEALS OF THE STATE OF NEW MEXICO

MARGARET ANNE DION,

Petitioner-Appellant

COURT OF APPEALS OF NEW MEXICO
FILED

MAY 12 2011

Ben M. M...

vs.

No. 30,699

NANCY CIMARRON RIESER,
Successor Personal Representative of the
Estate of Richard Davis Rieser, Deceased,

Respondent-Appellee.

**PETITIONER-APPELLANT'S
REPLY BRIEF**

On Appeal from the Hon. Raymond Z. Ortiz,
District Court Judge, Division III,
First Judicial District Court, County of Santa Fe,
Case No. D-0101-PB-200700081
In the Matter of the Estate of Richard Davis Rieser, Deceased

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Oral argument is requested in this matter

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| Table of Contents | i |
| Table of Authorities..... | ii |
| Argument | 1 |
| Introduction..... | 1 |
| The <i>de facto</i> spousal relationship is an exclusive relationship | 1 |
| The <i>de facto</i> spousal relationship has a public aspect | 2 |
| Conclusion | 3 |

TABLE OF AUTHORITIES

Page

CASE LAW

Decisions from other jurisdictions:

| | |
|--|------|
| Judgment in <i>Dion v. Rieser</i> , New South Wales (Australia) Supreme Court [2010] NSWSC 50..... | 1, 2 |
|--|------|

STATUTES

STATUTES FROM OTHER JURISDICTIONS

| | |
|--|------|
| Property (Relationships) Act 1984, New South Wales (Australia) as amended | 1, 2 |
|--|------|

ARGUMENT

Introduction:

Decedent's sister urges this Court to consider the Australian *de facto* relationship between petitioner and decedent as something less than a marriage entitled to recognition in New Mexico. In so doing she has misstated Australian law and ignored the public nature of the Australian relationship.

The *de facto* spousal relationship is an exclusive relationship

Contrary to the Personal Representative's assertions, the *de facto* spousal relationship is an exclusive relationship under the laws of New South Wales. The "*de facto* spouse, in relation to a person dying wholly or partly intestate, means someone who (a) was the sole partner in a *de facto* relationship with the person, and (b) was not a partner in any other *de facto* relationship." Judgment in *Dion v. Rieser*, New South Wales (Australia) Supreme Court [2010] NSWSC 50 (hereinafter referred to as the "Bryson Judgment") at ¶ 8 [Citing 1999 amendments to the Property (Relationships) Act 1984, New South Wales (Australia)].

The exclusivity of the relationship makes it more like a common law marriage than some lesser relationship as urged by the Respondent herein.

The *de facto* spousal relationship has a public aspect

Like a common law marriage, the *de facto* spousal relationship has a public aspect in that one of the circumstances of the relationship to be taken into account is the reputation and public aspect of the relationship. Property (Relationships) Act 1984, New South Wales (Australia) at §4(2)(i). As a part of the public and reputational aspect of the relationship considered in *Dion v. Rieser*, Judge Bryson found that decedent applied for an Australian permanent residence visa in 1997 and listed his marital status as “de facto/common law.” Bryson Judgment at ¶ 61. Judge Bryson states: “He named Ms. Dion as his spouse [Citation omitted]” Id.

The foregoing demonstrates that Mr. Rieser publicly identified himself as the spouse of Ms. Dion. That fact is one of many upon which the Supreme Court of New South Wales relied in determining that Ms. Dion was the *de facto* spouse of the late Richard Davis Rieser. The *de facto* spousal relationship between Ms. Dion and Mr. Rieser has all of the indicia of a common law marriage and should be


recognized by the courts of New Mexico in the same manner they have recognized common law marriages lawfully entered into in other states.

CONCLUSION

For the reasons set forth herein and in Petitioner-Appellant's Brief in Chief the Australian *de facto* spousal relationship of Petitioner and decedent should be accorded recognition in New Mexico, and Petitioner should have priority for appointment as personal representative of decedent's estate.

Because of the many policy issues inherent in this matter, oral argument would be helpful.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the foregoing Petitioner-Appellant's Reply Brief was mailed to Marcy Baysinger, Esq., Pregenzer Baysinger Wideman & Sale, P.C., Attorneys for Nancy Rieser, 2424 Louisiana Blvd. N.E., Suite 200, Albuquerque, New Mexico 87190-3694, on this 12th day of May, 2011.

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By



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