
MEMORANDUM

To: Karen Markus

From: Andy Chen

Re: Wilson-Stilwell annulment cause of action based on fraud.

Date: March 25, 2006

Statement of Facts

This memorandum explores whether our client Angela Wilson is likely to have a cause of action for marital annulment based on fraud under California family code section 2210(d). Wilson is vice president of a successful local high-tech firm and owns a luxurious home outright. She is interested in an annulment because it would allow her to avoid sharing her assets with her husband Michael Stilwell.

When Wilson and Stilwell first met, he stated that he was a stockbroker managing his own portfolio and that he had received an undergraduate degree from Stanford as well as an MBA from Harvard. Stilwell was well-read and well-spoken and had plenty of money to spend so Wilson never doubted what he told her. They dated for approximately one year before getting married on Labor Day 2004. Afterwards, Stilwell moved into Wilson's home and managed his portfolio during the day while Wilson went to work. She admits that she was content during the first year of the marriage even though she often smelled marijuana smoke in her home and suspected that Stilwell was an abuser.

Three months ago, Wilson inadvertently learned from an acquaintance at Stanford that Stilwell had never been enrolled there as a student. Her curiosity peaked, Wilson investigated further and discovered that Stilwell had never attended Harvard and had neither the stockbroker's license nor the MBA he claimed. Her investigation also revealed that Stilwell had been married five years earlier to a wealthy heiress and that he had received a generous settlement when she later divorced him. Wilson also discovered that Stilwell had been convicted of bank fraud and that he had served two years probation. Stilwell had never told Wilson any of this information.

When Wilson confronted Stilwell, he admitted that all her findings were true and that he had lied because he was afraid that she would not have married him otherwise. Stilwell told Wilson that he loved her and that he wanted the marriage to continue. Wilson was unsure of what to do, but let Stilwell stay in the guest bedroom of the house while she decided. Wilson concluded one month later that she did not want to stay married and made Stilwell move out of her home.

Question Presented

Whether Stilwell's misrepresentations to Wilson before their marriage concerning his education and financial background, drug abuse, criminal history, and marital history constitute clear and convincing evidence of fraud sufficient to grant a marital annulment under California Family Code section 2210(d), which

states that “[a] marriage is voidable and may be adjudged a nullity if ... [t]he consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabitated with the other as husband or wife,” in light of the fact that Wilson allowed Stilwell to live in her home for one month after she discovered his misrepresentations.

Brief Answer

Wilson is unlikely to have a cause of action for marital annulment based on fraud because while she and Stilwell did not cohabit as husband and wife for the month after she discovered his misrepresentations, Stilwell’s misrepresentations about his education and financial background, drug use, criminal past, and marital history did not constitute clear and convincing evidence of fraud affecting the procreative aspects of the marriage required under California law to justify an annulment.

Discussion

The state has an interest in promoting stable families and one way it does so is with a legal presumption against annulment in the absence of clear and convincing evidence otherwise. *In re Marriage of Meagher and Maleki*, 131 Cal. App. 4th 1,6, 31 Cal. Rptr. 663, 667 (2005). The rule in California is that “a marriage may only be annulled for fraud if ... [it] ... relates to a matter which the

state deems vital to the marriage relationship.” *Id.* (citing *Bruce v. Bruce*, 71 Cal. App. 2d 641, 643, 163 P.2d 95, 97 (1945)).

Case law illustrates that the vast majority of annulments granted because of fraud were when the fraud concerned the procreative aspects of the marriage. *Meagher*, 131 Cal. App. 4th at 7, 31 Cal. Rptr. at 667 (2005). Therefore, in order to prevail, Wilson will need to present clear and convincing evidence that Stilwell’s misrepresentations affected their procreative ability and that she and Stilwell did not cohabit as husband and wife after she discovered his misrepresentations.

Concealment of education, financial, and social status

California law holds that in the absence of fraud involving a party’s intentions or procreative abilities, neither party may annul a marriage based upon the other party’s misrepresentations about his “business or social standing, financial worth or prospects, *or matters of a similar nature*” (italics in original). *Meagher*, 131 Cal. App. 4th at 8, 31 Cal. Rptr. 3d at 668 (citing *Schaub v. Schaub*, 71 Cal. App. 2d at 476, 162 P.2d at 973 (1945)). See also *Marshall v. Marshall*, 212 Cal. 736, 30 P. 816 (1931) (wife was denied annulment for husband’s misrepresentations about his wealth) and *Mayer v. Mayer*, 207 Cal. 685, 279 P. 783 (1929) (husband’s misrepresentation that he owned a shoe store was not sufficient grounds for annulment).

Wilson should be able to show that Stilwell's misrepresentations regarding his educational pedigree and occupation reasonably affected his business or social standing and financial worth or prospects. However, doing so does not advance her cause of action since California law does not consider these categories viable grounds upon which to seek an annulment. Furthermore, there is no evidence that Stilwell's misrepresentations pertained to his procreative ability nor that he married Wilson with intentions beyond sincere love.

Marijuana use

Stilwell's next misrepresentation concerns his alleged marijuana use. California law does not recognize undisclosed substance abuse as fraud sufficient to warrant an annulment. *Johnston v. Johnston*, 18 Cal. App. 4th 499, 22 Cal. Rptr. 2d 253 (1993) (husband's undisclosed alcoholism was not sufficient to warrant an annulment).

There is no evidence that Stilwell disclosed his alleged marijuana habit to Wilson before their marriage. Therefore, even if Wilson were to gather more probative evidence of Stilwell's marijuana use beyond a suspicious odor, it would not advance her cause of action for annulment due to fraud.

Concealment of criminal history

Stilwell's next misrepresentation concerns concealment of his conviction for bank fraud. One court has recognized concealment of criminal history as a grounds for annulment even though it does not concern procreation because the fraud in that case was so grievous that it placed the injured party in a relationship that was intolerable because it could not be honorably endured. *Douglass v. Douglass*, 148 Cal. App. 2d 867, 869, 307 P.2d 674, 676 (1957). The court held that the defendant's concealment of his criminal past showed that he was "a man unworthy of trust, either with respect to his truthfulness, his moral character, or ... [his] ... disposition to be a law-abiding citizen." *Id.* at 870, 307 P.2d at 676.

While Stilwell's situation appears similar, it also differs in three ways. First, unlike in *Douglass*, Stilwell is not a wanted felon. Second, while the defendant in *Douglass* was sentenced to jail for his crimes, Stilwell merely served two years probation. Third, the plaintiff in *Douglass* had hoped that defendant would be a stepfather to her children, but those hopes were dashed once she discovered his criminal past. *Douglass*, 148 Cal. App. 2d at 870, 307 P.2d at 676. There is no evidence that Wilson had or planned to have children that she hoped Stilwell would help raise. In addition, unlike the defendant in *Douglass*, who had a prior conviction for grand theft in addition to his failure to pay child support, there is no evidence that Stilwell had a pattern of criminal behavior.

Therefore, while Stilwell's concealment appears to constitute fraud sufficient to warrant an annulment because it placed Wilson in an tolerable relationship that could not be honorably endured, his misrepresentations are less severe than the ones made in *Douglass*. Therefore, a court will likely have difficulty concluding that Stilwell's misrepresentations constituted clear and convincing evidence of the fraud needed to justify an annulment.

Concealment of marital history

Stilwell's next act of alleged fraud concerns concealment of his marital history. There is no readily apparent case in which concealment of marital history was sufficient to grant an annulment. One court has held in dicta, however, that concealment of marital history justifies an annulment based on fraud because it is sufficiently similar to other fraudulent acts, such as a concealed intent not to have sexual relations with a spouse or not to live with a spouse after marriage, that courts have held as acceptable grounds for annulment. *Meagher*, 131 Cal. App. at 8, 31 Cal. Rptr. 3d at 668.

As a result, while Stilwell did not disclose that he had been married previously, that failure does not advance Wilson's cause of action for annulment.

Continued cohabitation after misrepresentations discovered

The fact that Wilson and Stilwell lived together for one month after she had full knowledge of his misrepresentations would appear to vitiate Wilson's annulment claim under California Family Code section 2210(d). However, the statute requires that the couple cohabit as husband and wife. This cohabitation requires the couple to engage in sexual relations and not merely remain together in common living quarters. *Millar v. Millar*, 175 Cal. 797, 806, 167 Plaintiff. 394, 401 (1917).

While Wilson and Stilwell lived in the same house during that month, they resided in separate bedrooms. There is no evidence that Wilson and Stilwell engaged in sexual relations during that time. As a result, a court would most likely conclude that the fact Wilson and Stilwell lived together for one month after she discovered his misrepresentations did not inherently vitiate her annulment claim.

Conclusion

Wilson is unlikely to have a cause of action for marital annulment based on fraud because Stilwell's misrepresentations concerning his education, financial and social status, as well as his marijuana use and marital history, did not affect the procreative aspects of their marriage and are, thus, not recognized under California law as sufficient grounds upon which to grant an annulment. Wilson is also unlikely to prevail based on Stilwell's concealment of his criminal history because

his criminal past was not as severe as that which courts have deemed clear and convincing evidence of fraud pertaining to procreative ability that is sufficient to warrant an annulment.

