Filed 4/17/18 Marriage of Brandon CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of DAVID and SARAH BRANDON	B270838 (Los Angeles County Super. Ct. No. LD066106)
DAVID BRANDON, Appellant, v. SARAH BRANDON, Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

David Brandon, in pro. per.

Law Offices of David A. De Paoli and David De Paoli for Respondent.

Petitioner David Brandon (David)[1] petitioned to annul his marriage to Respondent Sarah Brandon (Sarah) based on his claim the marriage had been a product of fraud. David's theory, as articulated to the family law court and here again on appeal, is that he is a victim of "immigration marriage fraud" because Sarah violated federal immigration laws when she came to the United States and married him only for immigration purposes. The family law court denied David's request to nullify the marriage and dissolved it instead. We consider David's legal and evidentiary challenges to the family law court's decision, as well as his contention that the court was biased against him.

I. BACKGROUND

A. Procedural Overview

David filed a petition for dissolution of marriage in August 2013, and he filed an amended petition for nullity in March 2015. At trial, David pursued his request for an annulment based on fraud.[2]

Trial on the nullity request commenced on October 14, 2015. The family law court heard testimony over the course of three days. Both parties represented themselves at trial.

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[1] Consistent with the convention in marital dissolution cases, we refer to the parties by their first names. (*In re Marriage of Smith* (2007) 148 Cal.App.4th 1115, 1118, fn. 1.)

[2] Neither the original petition nor the amended petition are included in the record on appeal.

B. David and Sarah's Relationship and Marriage[3]

1. First online meeting in 2008

David and Sarah met online in November 2008. At the time, Sarah was 18 years old and lived in Germany; David was 42 years old. David made a living running a website called gothicatrocity.com through which he bought, sold, and traded screening props. Sarah first contacted David through his website to ask about whether certain props were for sale.

David and Sarah thereafter communicated via email for several months. Though the record contains only a limited selection of the many emails David and Sarah sent to one another,[4] the emails were affectionate and flirtatious. David had a number of pet names for Sarah. They both referred to David as Sarah's "man," and later in their exchanges, Sarah started referring to David as her "husband." David told Sarah he would

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[3] The Reporter's Transcript indicates the court received a number of exhibits during the trial. Those exhibits are not included in the Appellant's Appendix. It appears David submitted a limited selection of the exhibits in a Reply Appendix. "Where exhibits are missing we will not presume they would undermine the judgment." (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal. App. 4th 278, 291.)

[4] Sarah estimated they sent over 2,000 emails to each other. A small selection of their correspondence, mostly emails submitted by David, was admitted at trial. The family law court noted most of what David submitted were isolated emails that did not include his messages or responses. The court characterized his submission as providing "a very incomplete picture." Sarah did not present any emails from the period of time before she moved to the U.S.

always be there to protect and take care of her, and he promised to convince her grandmother that he was worthy of Sarah. In response, Sarah referred to herself as David's wife, said she would always be there for him, and stated she would feel very safe with him. In another email, Sarah told David she would come to him that summer and she knew they would be together. Sarah told David she loved him in multiple emails and also stated she wanted to be with him forever. At some point, David and Sarah were corresponding with each other on a daily basis.

2. Sarah flies to America to meet David, and the two marry

Sarah was very happy in Germany and had a very close bond with most of her family members. But around April 2009, Sarah purchased a roundtrip ticket for a flight to the United States. Sarah's grandparents (not David) gave her the money to pay for the flight, and Sarah obtained a visa to enter the United States.

In an email to David, Sarah stated she would be arriving on June 29, and she told him she would ignore her return flight and stay with David "this summer." Before Sarah embarked on her voyage, she packed up most of her belongings and stored them in her grandparents' attic. Sarah said she did so in order to keep them in good condition. Sarah also began taking birth control pills a few months before she came to the United States because she believed she was too young to have children.

Once Sarah arrived, David proposed to her and she accepted even though choosing to stay was a "hard decision." They were married on July 4, 2009, and Sarah wore a costume dress she had brought with her from Germany.

3. Post-wedding life

David and Sarah lived together after their wedding. They hardly spent any time apart, particularly at the beginning of their marriage when they spent 24 hours a day together. Sarah wore her wedding ring, but not "always."

David and Sarah first submitted an application for Sarah to become a permanent resident alien in February 2011, approximately a year and a half after they married. They waited to apply for Sarah's green card partially for financial reasons, and partially due to David's unfamiliarity with the process.

During the marriage, David taught Sarah more of the English language. They went to prop deals, events, and shows together. They also went to the beach and Universal Studios. In the summer of 2012, they went to Germany to visit Sarah's family.

4. David and Sarah's separation

David and Sarah lived together until December 2012, when Sarah left their home for a period of time. Sarah left the home because she believed David was berating her "all of the time" and she was tired of it.

Also in December 2012, Sarah obtained a temporary restraining order against David and filed a request for a domestic violence restraining order. Sarah applied for the restraining order because she wanted David to leave her alone. The request for a restraining order was ultimately denied. David filed for divorce, but he later dismissed that petition.

During the period when Sarah and David were not living together, David sent Sarah at least two emails indicating he wanted to save their marriage. One stated: "I do not believe our

marriage is fraud. I never have and I never will. I believe with all of my heart that we both entered this marriage with utmost faith and love." The other stated: "It is you who is the best wife in the world for putting up with me all that time." Sarah moved back into David's home in late January 2013.

On July 11, 2013, David and Sarah went to Sarah's final immigration hearing. On July 27, Sarah left the marital home and did not return. According to Sarah, she did not return because she received a text message from David stating he was going to be very angry if she came home and Sarah did not want to get berated again. David and Sarah formally separated on July 27, 2013. Sarah did not receive her green card until months later.

C. Further Testimony Regarding David and Sarah's Courtship and Perceptions of Their Marriage

During their testimony at trial, David and Sarah described additional aspects of their relationship and marriage, as well as their thoughts and motivations during the period of their courtship. Two of their neighbors, Robert Wolter (Wolter) and Christine Rodrigue (Rodrigue) also testified.

1. Sarah's testimony

When Sarah came to the United States she was thinking about getting married but was not sure whether or not she was going to stay. She did not love David when she first arrived, but she liked him and wanted to get to know him. Sarah testified she had not misrepresented her feelings to David before marrying him. When she married him, she intended to be his wife and stay his wife.

When describing her feelings toward David after the first year or so of marriage, Sarah stated was in love with David and was "not someone who gives up just because you've been mean to me a couple of times." David had told her he had a bad past, and she wanted to give him a chance to experience "some good things." She had been happy with David and wanted to stay with him. Sarah returned to David in early 2013 because she missed him and wanted to see if he had changed. She ultimately concluded, however, that staying with David would merely lead to a repeat of the past.

2. David's testimony

David married Sarah both because he loved her and because Sarah represented herself as a victim of abuse and he thought he needed to save her. David felt he had been pressured into marrying Sarah, and he believed her representations she had been abused by her family were false. David based that belief on the impressions of Sarah's family that he formed when he and Sarah visited them in Germany.

David believed Sarah fraudulently entered into the marriage to obtain a green card rather than to be his wife. David believed he never "got a wife" because Sarah slept on the couch a lot, she was rarely intimate, she did not wear her wedding ring, and she did not express herself as a married woman. Sarah did not clean the house or cook any meals even though David was the "breadwinner," and David maintained Sarah did not provide him with emotional support, although he conceded she frequently told him she loved him. David claimed that after Sarah left their home in December 2012, he would have been willing to do anything to save his marriage.

3. Testimony by Wolter and Rodrigue

Wolter testified he believed David was a good husband, Sarah did not love David, David was a victim of fraud because Sarah married him for a green card, and Sarah did not do "things that normal women do" like cook three times per day and wash clothes. He also testified he had not heard David and Sarah arguing with each other.

Rodrigue testified she believed Sarah had been dedicated to David. Based on Rodrigue's observations, Sarah had fallen out of love with David in the last six months of their marriage. Rodrigue witnessed at least one argument between the couple, and she believed David had anger issues. Rodrigue thought Sarah went back to David in 2013 possibly because she wanted to give the marriage another chance, and possibly because she was waiting to get her green card.

D. Judgment

The family law court issued a written judgment of dissolution on January 14, 2016, stating it had "carefully considered the testimony and evidence in this matter, as well as weighed the credibility of the parties and witnesses who testified." The court found David failed to carry his burden of proof to show Sarah's intent was to marry him solely for the purpose of obtaining a green card. The court expressly found credible Sarah's testimony that she did not come to the United States and marry David for the purpose of circumventing immigration laws.

In rendering its judgment, the family law court made a number of factual findings. The court found the parties engaged in over six months of affectionate email correspondence before

Sarah came to the United States, which demonstrated they seemed infatuated with each other and showed they considered themselves to be "in a relationship." The court determined "[t]he long term nature of their relationship, albeit electronic, is well established by the evidence." The court found the testimony established David and Sarah "were in love with each other, tried hard to make the marriage work, [and] had many ups and downs with dramatic separations followed by passionate reunions." The family law court noted David and Sarah did not apply for a green card until Sarah had been married to David for about a year and a half, and the court reasoned "[d]elaying the application for a year and a half also supports the fact that [Sarah] did not come just for a 'green card.'" The court further found David "exhibited a brash, loud, dramatic and 'big' personality" in court, and "many times showed tendencies to bully [Sarah]." By contrast, the family law court observed Sarah to be "a quiet, timid person," and the court found the dynamic "seemed to help explain the [Sarah's] position that she left the marriage for these reasons, among others." The court acknowledged David "was dismissive of the marriage, saying that it wasn't a 'real' marriage" when testifying in court, but the court believed that testimony was "belied by his emails" to Sarah which showed he "did not ever consider this a marriage in name only."[5]

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[5] The court also found it significant that the parties had entered into a post-nuptial agreement (after they separated in 2013) pursuant to which David would owe $10,000 to Sarah if they divorced. The court believed the agreement was motivation for David's pursuit of an annulment.

II. DISCUSSION

David argues the family law court erred by ignoring the effect of federal immigration law, ignoring evidence that supported David's contention that Sarah fraudulently induced David to marry her, and ignoring applicable California precedent. None of these arguments warrants reversal. First, federal immigration law is irrelevant to this dispute because absent an express Congressional indication to the contrary or an actual conflict of law, state law (not federal law) governs domestic relations. Second, David's argument that the evidence presented at trial supports his claim of a fraudulently induced marriage disregards the substantial conflicting evidence upon which the family law court relied, and that evidence dooms his argument under the applicable standard of review. Third, the California precedent upon which David relies is inapposite and does not require a contrary result. Because we additionally conclude there is no merit to David's contention that the family law court was biased against him, we will affirm the judgment.

A. Federal Immigration Law Does Not Compel Reversal

A marriage may be judged a nullity under California law 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 cohabited with the other as [husband or wife]." (Fam. Code, § 2210, subd. (d).) "[A]n annulment of marriage may be granted on the basis of fraud only 'in an extreme case where the particular fraud goes to the very essence of the marriage relation.' (*Marshall v. Marshall* (1931) 212 Cal. 736, 739-740[ ]; accord, *Barnes v. Barnes* (1895)

110 Cal. 418, 421-422[ ])" (*In re Marriage of Meagher and Maleki* (2005) 131 Cal.App.4th 1, 3.)

Fraud asserted to annul a marriage "must be such as directly defeats the marriage relationship and not merely such fraud as would be sufficient to rescind an ordinary civil contract. [Citations.] Fraudulent intent not to perform a duty vital to the marriage state must exist in the offending spouse's mind at the moment the marriage contract is made." (*In re Marriage of Ramirez* (2008) 165 Cal.App.4th 751, 757, disapproved on another ground by *Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1126.) The fact represented or concealed by the offending spouse must be one that "relates to a matter of substance and directly affects the purpose of" the spouse who claims to have been deceived into entering into the marriage. (*Ibid.*)

David contends the family law court violated the United States constitution by failing "to consider or even recognize the Immigration Marriage Fraud Act." David cites the federal Constitution's Supremacy Clause, argues federal laws are "the supreme law of the land," and asserts that the "Immigration Marriage Fraud Act," in conjunction with California case law governing annulments, "expands the scope" under California law "to obtain an annulment based on fraud."

David's contentions are supported by almost no citations to legal authority. Though his opening brief references an "Immigration Marriage Fraud Act," it does not include a citation to the statute upon which he relies. In fact, the only citation David offers in support of his argument is the aforementioned

citation to the Supremacy Clause.[6] While the clause is venerable, the citation does not establish federal immigration statutes have any bearing on California annulment law. In the absence of proper support with citation to authority, we are entitled to treat the argument as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074.)

The substance of David's argument, in any event, is unpersuasive. "The whole subject of domestic relations has traditionally been dealt with by local authorities (*Buechold v. Ortiz* (9th Cir. 1968) 401 F.2d 371, 372). The power to make rules to establish, protect and strengthen family life is committed to the state Legislature by the Constitution of the United States (*Labine v. Vincent*, 401 U.S. 532, 538[ ])." (*In re Marriage of Hillerman* (1980) 109 Cal.App.3d 334, 339-340.) "When state family law conflicts with a federal statute, preemption must be 'positively required by direct enactment' of Congress (*Wetmore v. Markoe*, 196 U.S. 68, 77[ ]), or must be the 'clear and manifest' purpose of Congress (*Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158[ ]), as evidenced by an 'actual conflict' between the state and federal law (*Florida Avocado Growers, Inc. v. Paul* (1963) 373 U.S. 132, 141[ ]), which does 'major damage' to the 'clear and substantial' governmental interests involved in the federal

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[6] In his reply brief, David also cited to a number of federal cases discussing, analyzing, and applying federal immigration law. None of those cases stands for the proposition that federal immigration law preempts or impacts state domestic relations law.

scheme [citation]." (*In re Marriage of Hillerman*, *supra*, at pp. 341-342.)

We are presented with nothing demonstrating Congress "positively required" any federal immigration laws to preempt state annulment law, or that there is an "actual conflict" between California's annulment law and federal immigration law. Indeed, David acknowledges the federal immigration law he invokes does not define "immigration marriage fraud" and "only sets forth the penalties" for engaging in that undefined behavior. As the party arguing state law is preempted by federal law, David bears the burden of demonstrating preemption. (*Bronco Wine Co. v. Jolly* (2004) 33 Cal.4th 943, 956.) He has not met that burden.[7]

B. Substantial Evidence Supports the Judgment

David argues the family law court erroneously denied his request to annul the marriage by failing to consider the totality of the evidence in making its determination. Because David's argument effectively challenges the sufficiency of the evidence to support the family law court's judgment, the proper standard of review is the substantial evidence standard. (*Pryor v. Pryor* (2009) 177 Cal.App.4th 1448, 1453.)

When reviewing for substantial evidence, we examine the "evidence in the light most favorable to the prevailing party and giving that party the benefit of every reasonable inference [citation]." (*In re Marriage of Catalano* (1988) 204 Cal.App.3d 543, 548.) We ask only whether there is substantial evidence in the record, contradicted or uncontradicted, to support the family

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[7] We express no view on whether there has been a violation of federal immigration law.

court's findings, not whether there is evidence that would support contrary findings. (*In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 703; *In re Marriage of Gonzalez* (1976) 57 Cal.App.3d 736, 745.) The testimony of one witness entitled to credit is sufficient to prove any fact and to constitute substantial evidence. (Evid. Code, § 411; see also *In re Marriage of Fregoso & Hernandez*, *supra*, at p. 703.)

David's theory of the case has been that Sarah never intended to be a wife to him and wanted the marriage solely for the purpose of applying for a green card. The family law court rejected David's characterization of events, finding Sarah and David were in a relationship before they married, Sarah loved David, and Sarah intended to be a wife to David. In short, the court concluded David had not shown fraud by Sarah that would justify annulling rather than dissolving the marriage.

Substantial evidence supports the family court's conclusion. Sarah and David spent six months developing a relationship before Sarah came to the United States. The correspondence Sarah and David exchanged during that period of time demonstrated affection and infatuation. David and Sarah were then married for a year and a half before they applied for her green card.[8] David and Sarah continued in their marriage and

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[8] Indeed, though it is of no bearing on review for substantial evidence, some of the conflicting evidence suffered from problems of its own. David insists, for instance, that the delay was due to financial circumstances and unfamiliarity with the legal system, but we see no indication Sarah was upset by the delay or urged him to start the process earlier. Similarly, David's contention that Sarah was taking a contraceptive pill because she did not wish to have children does little to establish fraud because Sarah

cohabitated for roughly four years before Sarah first left the marital home. In addition, Sarah testified she truly loved David, and David admitted Sarah had frequently told him she loved him. Furthermore, Sarah testified that when she married David she intended to be and remain David's wife. The family law court was entitled to credit that testimony.

Based on the evidence presented at trial, it is quite reasonable to conclude that Sarah entered into the marriage for legitimate rather than fraudulent reasons. That is the conclusion the family court drew, and "[a]lthough there was conflicting evidence presented at trial, we are bound by the family law court's interpretation of the facts." (*In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 156.)

C. David's Reliance on a 1974 Court of Appeal Case Is Unavailing

David contends he was entitled to an annulment based on the holding in *In re Marriage of Rabie* (1974) 40 Cal.App.3d 917. The case, however, is inapposite for several reasons.

The husband in *In re Marriage of Rabie*, who was not a U.S. citizen, met and proposed to his wife during their first meeting, after ascertaining that she was a U.S. citizen. (*In re Marriage of Rabie*, *supra*, 40 Cal.App.3d at p. 920.) He convinced her to marry him approximately one week later, and a friend of the husband convinced the wife to immediately apply for a green card. (*Ibid.*) The wife did so, and the card arrived around six months later. (*Ibid.*) About a month prior to receiving his green

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testified she began taking the contraceptive because she thought she was too young to have children.

card, the husband telephoned another United States citizen to whom he had proposed and told her he had married his wife because he "'needed the green card.'" (*Ibid.*) After obtaining his green card, the husband and wife began having violent fights. (*Ibid.*) The family law court found the husband had fraudulently induced the wife to marry him and adjudged the marriage a nullity. (*Id.* at p. 921.) The Court of Appeal held there was substantial evidence to support the family law court's finding of fraud. (*Ibid.*)

In re Marriage of Rabie involved a scenario in which a spouse who was a United States citizen married someone who was not, but the similarities end just about there. Most significantly, the family law court in that case found the husband had fraudulently induced the wife to marry him and the Court of Appeal considered whether substantial evidence supported *that* determination. (*In re Marriage of Rabie*, *supra*, 40 Cal.App.3d at p. 921.) Here, by contrast, the family law court found there was no fraud and, as already discussed, we have concluded there is substantial evidence to support the determination the family law court made.

Additionally, we note *Rabie* is factually distinct. In *Rabie*, the husband had been actively looking for a United States citizen to marry him for immigration purposes for months before he married his wife. (*In re Marriage of Rabie*, *supra*, 40 Cal.App.3d at p. 921.) He met his wife and proposed to her on the same day; convinced her to marry him four days later, even though "he possessed a very low opinion of her"; and resumed a relationship with another woman once married. (*Id.* at pp. 921-922.) Here, though David and Sarah married soon after Sarah arrived in the United States, they had already been communicating online for

approximately six months. There is no evidence in the record that Sarah had previously been looking for someone to marry in order to help her secure a green card, that she urged a quick wedding upon her arrival to the United States, or that she had a low opinion of David when they married.

D. David Has Not Established the Family Law Court Was Biased Against Him

David argues the family law court's findings show the court was biased against him and favored Sarah. David points to the court's statements reflecting its observations of the parties, its disbelief of some of David's evidence, and its finding that Sarah's testimony was credible. Our review of the record reveals no indication of improper bias or prejudice by the family law court. The fact that the family law court ruled against David does not establish bias. (See *Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219 ["'[W]hen the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies him in the trial of the action'"].)

DISPOSITION

The judgment is affirmed. Respondent is entitled to recover her costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.