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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

TASHA SMITH,

Plaintiff and Respondent,

v.

RORY KEITH DOUGLAS,

Defendant and Appellant.

B270120

(Los Angeles County
Super. Ct. No. LD069896)

APPEAL from a judgment of the Superior Court of Los Angeles County. Patrick A. Cathcart, Judge. Affirmed.

Rory Keith Douglas, in pro. per., for Defendant and Appellant.

Buter, Buzard, Fishbein & Royce, Gary Fishbein, for Plaintiff and Respondent.

* * * * *

The family court annulled a marriage due to the husband's fraudulent failure to disclose his prior marriages (including two at the same time), two of his five children, his prior felony convictions, his use of other people's social security numbers, and his legacy of unpaid taxes and civil judgments for unpaid debts. The husband appeals this annulment. We conclude the marriage was properly annulled, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Plaintiff and respondent Tasha Smith (Smith) met defendant and appellant Rory Keith Douglas (husband) in November 2009, on a blind date. Smith places great emphasis on religious faith, and told husband as much during that date. Husband told her that he was a preacher and that he was in the gospel music business. Husband explained that he had been married once before, that the marriage ended 13 years prior, and that he had three children—two from the marriage and one out of wedlock. Husband proposed marriage in mid-2010, and they were married in December 2010.

Although Smith learned in 2011 that husband actually had five children (rather than three), it was not until early November 2014 that Smith learned that everything else husband had told her about himself was a lie. Husband had not been married once before; he had been married five times before. Two of the marriages overlapped for four years. In fact, husband said his vows to his fifth wife just three weeks before meeting Smith on the blind date. Husband was not a preacher of impeccable character; he was a twice convicted felon with eight civil judgments against him for unpaid debts, with four liens for unpaid taxes, and with two foreclosure actions. Over the years,

husband had used four different social security numbers, including one belonging to a dead woman.

II. Procedural Background

On November 7, 2014, Smith filed for dissolution.¹ Six months later, she amended her petition to request an annulment due to fraud. Husband denied the allegations of fraud and requested a dissolution.

The matter proceeded to a bench trial, at which Smith and husband both testified. Smith testified to her view that honesty and faith are “essential” to a marriage, and that if she had known of husband’s deceit, she would not have married him. Husband testified that he had disclosed all of his prior marriages and children to Smith and that his criminal history was part of his “troubled youth” (even though husband was in his 40’s at the time of his latest conviction).

The family court issued a 14-page written order granting an annulment. The court rejected husband’s “widely inconsistent” testimony as “simply not credible on most of the facts as to which [Smith] differed.” And on the basis of Smith’s testimony, the court found that husband had “conceal[ed] . . . his prior marriages, the number of children he actually had, the criminal conduct in his past, the fact of [his] tax liens, and the failure to pay taxes for almost a decade.” Because marriage, to Smith, “is a Christian commitment based upon trust,” husband’s fraud “went to the heart of [Smith’s] purpose in marrying [husband]” because she would not have knowingly “entered into a

¹ The parties sought and obtained temporary restraining orders against each other around the same time, but those matters were resolved by stipulation and are not before us.

marital contract with . . . a former bigamist, much less a man who had five prior marriages.”

Husband filed this timely appeal.

DISCUSSION

Husband argues that the family court erred in granting an annulment because (1) the fraud he perpetrated upon Smith does not rise to the level of fraud necessary for an annulment and did not go to the “heart” of the marriage, (2) Smith “ratified” husband’s initial fraud by remaining married to him after learning of his deception, and (3) the court’s comment that husband was a “former bigamist” amounts to a criminal conviction for bigamy imposed without any of the procedural safeguards attendant to criminal convictions.

I. Sufficiency of the Fraud

A marriage is “voidable” and “may be adjudged a nullity” if, among other things, “[t]he consent of either party was obtained by fraud.” (Fam. Code, § 2210, subd. (d).)

Because the state is a “silent but active party in annulment proceedings,” and thus “has a rightful and legitimate concern with the marital status of the parties” (*Williams v. Williams* (1960) 178 Cal.App.2d 522, 525 (*Williams*)), the bar for annulment by fraud is fairly high: Not just any fraud will do. Instead, annulment is warranted only in those “extreme cases” where “the fraud relates to a matter which the state deems vital to the marriage relationship” (*Handley v. Handley* (1960) 179 Cal.App.2d 742, 746) or where “the particular fraud goes to the very essence of the marriage relation” (*Marshall v. Marshall* (1931) 212 Cal. 736, 739 (*Marshall*); *Millar v. Millar* (1917) 175 Cal. 797, 803 (*Millar*)). Even where the fraud itself is “vital” and “essen[tial],” the person seeking annulment must also show,

by clear and convincing evidence, “that [s]he would not have entered into [the marriage] if [s]he had known the [true] facts.” (*Handley*, at p. 746; accord, *In re Marriage of Ramirez* (2008) 165 Cal.App.4th 751, 757, overruled in part by *Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1126.) In reviewing an annulment, we review the family court’s factual findings for substantial evidence and independently review its conclusion that those findings meet the legal standard for annulment. (*In re Marriage of Seaton* (2011) 200 Cal.App.4th 800, 806.)

The fraud perpetrated by husband in this case is sufficiently “vital” and “essen[tial]” to qualify for annulment. It is not enough for a person to conceal his “incontinence, temper, idleness, extravagance, coldness, or fortune inadequate to representations” (*In re Marriage of Johnston* (1993) 18 Cal.App.4th 499, 501-502, quoting *Marshall, supra*, 212 Cal. at p. 740; accord, *Schaub v. Schaub* (1945) 71 Cal.App.2d 467, 476 (*Schaub*)), or even his “general untrustworthiness” (*In re Marriage of Meagher & Maleki* (2005) 131 Cal.App.4th 1, 8). However, annulment is appropriate when one party to the marriage conceals his intentions with respect to the “sexual or procreative aspects of marriage” (*Meagher*, at p. 7; *Rathburn v. Rathburn* (1956) 138 Cal.App.2d 568, 573-574 [wife concealed intention not to have sex with husband]; *Schaub*, at pp. 477-480 [same, because wife intended to carrying on an existing affair]; *In re Marriage of Rabie* (1974) 40 Cal.App.3d 917, 922 (*Rabie*) [same, because marriage was to obtain a green card]; *Aufort v. Aufort* (1935) 9 Cal.App.2d 310, 311 [wife concealed sterility]); conceals his marital history or present infidelity (*Hardesty v. Hardesty* (1924) 193 Cal. 330, 332-333 [wife concealed she was pregnant by another man at the time of marriage]; *Williams*,

supra, 178 Cal.App.2d at pp. 525-526 [marital history]); or falsely portrays that he is “an honest, law abiding, respectable and honorable man” when in fact he is a convicted felon on parole, a fugitive from justice, and the father of two children he has never supported (*Douglass v. Douglass* (1957) 148 Cal.App.2d 867, 868-870 (*Douglass*)). Husband’s deceit in representing himself to be a preacher and in the gospel music business when he was, in fact, a twice convicted felon who had been married to two women at the same time, had a total of five prior failed marriages, and had three children from extramarital affairs, falls on the actionable side of this line.

What is more, the family court’s finding that Smith believed that a man’s honesty, faithfulness, and piety were essential attributes of any husband was amply supported by her testimony.

Husband raises three arguments in response.

First, he asserts that in *Douglass, supra*, 148 Cal.App.2d 687, the husband’s concealment of his criminal conviction and of the children he did not support was far more “gross and cruel” than husband’s concealment in this case. The family court found the fraud in this case to be “no less egregious” than the fraud in *Douglass*. We agree.

Second, husband contends that *he* never knew that Smith was religious and desired a husband who shared the same values and views. However, Smith testified that she openly told husband about her faith and that husband went out of his way to characterize himself as a very religious man who was sent to her from God. The family court found her to be more credible than husband, and we cannot second guess that credibility determination. (*People v. Brown* (2014) 59 Cal.4th 86, 106.)

Lastly, husband posits that Smith's beliefs were not genuine because she agreed to marry him despite knowing he had been previously married and had one illegitimate child, and because she did not leave him upon learning, in 2011, that he had two more illegitimate children. But knowing that husband had been unfaithful to his wife nearly two decades ago and knowing the full scale of his extensive dishonesty, marital history, criminal and financial troubles, and overall moral turpitude, are hardly the same thing. Along the same lines, Smith stayed in the marriage in 2011 because she "felt like [her] mission was to help this family and to support my husband to restore his relationship back with his children." We are unconvinced that Smith's acceptance of one past mistake and her willingness to remain by her husband's side as he mended his relationship with his two other illegitimate children means she did not consider honesty and respectable moral character essential to a marriage.

II. Ratification of the Fraud

Even if one spouse fraudulently conceals a fact "vital" or "essen[tial]" to the other spouse's decision to marry, a court may still not annul the marriage if the deceived spouse "afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as . . . her spouse." (Fam. Code, § 2210, subd. (d); *Rabie, supra*, 40 Cal.App.3d at p. 923; *Millar, supra*, 175 Cal. at p. 801.)

Husband argues that Smith "ratified" his prior fraud because (1) she was negligent in not uncovering his deceit, as she did not closely read her marriage certificate (which revealed two prior marriages, not one) and did not conduct further investigation after learning he had two more illegitimate children than he originally told her, and (2) Smith stayed with him after

her sister told Smith that she had done a background check on husband and discovered multiple, unreported marriages.

Neither argument has merit. We reject husband's first argument because a spouse's ratification of fraud requires the spouse's "full knowledge of the facts constituting the fraud." (Fam. Code, § 2210, subd. (d).) "Suspicion [of fraud], or a belief founded upon inconclusive circumstances," will not bar annulment. (*Rabie, supra*, 40 Cal.App.3d at p. 923; *Schaub, supra*, 71 Cal.App.2d at p. 480; *Oakland Raiders v. Oakland-Alameda County Coliseum, Inc.* (2006) 144 Cal.App.4th 1175, 1192-1193; *Warfield v. Richey* (1959) 167 Cal.App.2d 93, 98.) We reject husband's second argument because husband effectively negated the effect of the knowledge Smith's sister imparted to Smith. When Smith confronted husband about prior, undisclosed marriages, husband vehemently denied them and instead accused Smith's sister of "trying to mess up [their] relationship." Smith sided with husband and cut all ties to her sister for more than a year. In light of husband's contemporaneous acts to negate the actual notice Smith's sister tried to impart to Smith, we reject husband's argument that Smith should have disbelieved him when he disputed that notice back in 2013.

III. Court's Comment Regarding Husband's Former Bigamy

In its statement of decision, the family court found that Smith "would [not] have [knowingly] entered into a marital contract with . . . *a former bigamist*, much less a man who had five prior marriages." Husband asserts that a family court cannot make such a finding without according him the full panoply of protections attendant to a criminal conviction because bigamy is also a crime in California (Pen. Code, § 281), which ostensibly renders the family court's annulment ruling void.

Husband also contends that the finding that he was married to two women at once is inaccurate. He is wrong on both counts.

Bigamy is a crime in California, and is defined as “having a spouse living [and] marr[ying] or enter[ing] into a registered domestic partnership with any other person.” (Pen. Code, § 281, subd. (a).) However, the State of California never prosecuted husband for this crime. The procedural protections husband cites apply to criminal trials (U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, §§ 7, 14, 15), not to proceedings in family court that result, at most, in annulment—not incarceration or criminal fines.

The family court’s factual finding that husband was married to two living women at once is also supported by substantial evidence. The marriage certificates for his first and second marriages indicate that he was married to his second wife for four years while he was still married to his first wife. This meets the common definition of bigamy. Husband asserts that he did not commit bigamy because his first wife (falsely) told him that she had filed for divorce. We cannot consider husband’s testimony on appeal because the family court excluded it on hearsay grounds, and husband has not appealed that evidentiary ruling. (*Tustin Field Gas & Food, Inc. v. Mid-Century Ins. Co.* (2017) 13 Cal.App.5th 220, 231.) Even if we could consider the testimony, the family court rejected the whole of husband’s testimony as not credible, and we must defer to that credibility call.

DISPOSITION

The judgment is affirmed. Smith is entitled to her costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.