

DOCKET NO. MMX-FA24-5016572-S

SUPERIOR COURT

JASMINE J. ORTEGA

OFFICE OF THE CLERK
SUPERIOR COURT

J.D. OF MIDDLESEX

v.

2024 MAY 10 A 10:06

AT MIDDLETOWN

SANTANA D. HUBBARD

JUDICIAL DISTRICT OF
MIDDLESEX
STATE OF CONNECTICUT

MAY 10, 2024

MEMORANDUM OF DECISION

RE: ANNULMENT

This action, which seeks the annulment of the parties' 86-day marriage, was commenced by a complaint filed by the plaintiff wife, Jasmine J. Ortega, on December 20, 2023, which was returnable to the court on January 23, 2024. The plaintiff appeared as self-represented and was the only witness. The defendant husband, Santana D. Hubbard, did not file an appearance and did not appear in court. The court held a hearing on March 8, 2024.

The court has fully considered the rules of practice, full exhibits, the credibility of the appearing party, applicable case law, and the criteria set forth in General Statutes §§ 46b-42, 46b-45, and 46b-40 in reaching the decisions reflected herein.

I

FACTUAL BACKGROUND

Based upon the testimony and evidence presented to the court, the court finds as follows. All findings of fact are based on a preponderance of the evidence. The court has jurisdiction over this matter, and no statutory stays exist. The parties married on September 25, 2023, in Moore, Oklahoma. The plaintiff has resided in Connecticut for twelve months prior to the institution of this action and currently resides in Middletown, Connecticut. The plaintiff left Connecticut to marry the defendant in Oklahoma and returned to Connecticut shortly after the marriage and filed this action merely three months after on December 20, 2023. The plaintiff testified she made a radical decision when she married the defendant after knowing him for thirty days believing he was an answer to her prayers as he exhibited everything she desired in a man. The defendant's

Copies mailed to Jasmine Ortega; Defendant is non-appearing; on 5/10/2024 J. Rosah, Assistant Clerk

listed address is in Moore, Oklahoma. No children were born to either the plaintiff or defendant after the date of their marriage.

The plaintiff seeks to annul her marriage to the defendant on the grounds that the defendant willfully pretended to be something and someone he was not to manipulate her and to have her under his control and to render all her possessions to and for him.¹ At the hearing, the plaintiff testified that the defendant had made two fundamental misrepresentations about himself to induce her into marriage: (1) misrepresentations about being a church-going Christian; and (2) misrepresentations about his willingness to engage in intimacy during their marriage. Her testimony and evidence convey the following information.²

In support of her argument that the defendant misrepresented himself as a church-going Christian, the plaintiff alleges that before marriage, they had discussed, and agreed to, going to church regularly and tithing. The plaintiff also alleges that the defendant claimed membership in a specific church. Despite these conversations and promises, the defendant refused to take her to church and would sleep through online church services. The plaintiff also describes the defendant as having a “Jezebel spirit,” and unlike the man he had held himself out to be before the marriage. Further, she describes the defendant as a man who would speak to her in a demeaning and undermining way. She alleges that the defendant exhibited behavior throughout their marriage that further contradicted his portrayal of a Christ-like individual. He exhibited verbal abuse and aggression and told her that she did not know what “long-suffering” and sacrifice are, and that she was undeserving of the things that she currently had. The plaintiff claims that the defendant’s actions demonstrate a deliberate misrepresentation of his religious beliefs and commitment.

¹ Plaintiff’s Complaint, page 1.

² Plaintiff’s Exhibit Two – Statement for Annulment

In support of her second argument, that the defendant refused to engage in physical intimacy during their marriage, the plaintiff alleges that, prior to marriage, they had discussed their expectations for intimacy and expressed a shared desire for a fulfilling physical relationship within their marriage. Despite those conversations, the defendant would sleep on one side of the bed with no physical connection and his back to her every night. After refusing to disconnect her cable service, the plaintiff alleges that the defendant told her that he does not trust her, and no longer likes her. He no longer wants to make love to her and doesn't even care to sleep in the same bed as her. The plaintiff states that these actions and statements significantly deviated from their pre-marital discussions and expectations. The plaintiff further testified that after their marriage, the defendant persuaded her to relinquish all her assets, to sell her property, to get rid of her dogs, and to put all her funds in a mutual account. Further, she relayed that the defendant had failed to disclose his rap sheet that he has with criminal litigations and that she does not feel like she should be held to a marriage or even a title of divorce when she was not given a full opportunity to experience a marriage.

II DISCUSSION

The plaintiff's action for annulment rests upon her claim that the defendant committed a fraud upon her when he agreed to the conditions for marriage they discussed prior to marriage. The court must decide whether the plaintiff has proven legal grounds for the annulment of her marriage. General Statutes § 46b-40 (b) applies, providing that: "An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed. . . ." Therefore, the court must look not only to Connecticut law for the grounds of annulment but also to that of Oklahoma, the state in which the marriage occurred. In particular,

the court must examine the law of each state regarding the claim of fraud which is the basis for the plaintiff's action.

A
Connecticut

“An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed. . . .” General Statutes § 46b-40 (b). “Courts are without power or authority to render a decree of annulment when the marriage was a valid marriage. It is only when the marriage is void or voidable that a decree of annulment may be entered.” *Trotta v. Trotta*, 5 Conn. Supp. 218, 222 (1937). “[B]efore a court in this State would be justified in decreeing a purported marriage performed in another State void . . . it would be necessary first to determine whether it was void by the laws of that State.” *Davis v. Davis*, 119 Conn. 194, 198, 175 A. 574 (1934).

1
Void or Voidable Marriage – Grounds for an Annulment

There are no statutory provisions itemizing the grounds for an annulment of a voidable marriage in Connecticut. Consequently, the court must look to adjacent statutes and case law. “As a general principle, the formation of a binding contract requires the mutual assent of the parties, as determined by their expressed or manifested intention. *Altieri v. Layton*, 35 Conn. Supp. 258 (1979). The Court is interested in those incidents leading up to the declaration of the marriage ceremony. Consent is a necessary condition to the marriage ceremony and this consent must be mutual. *Bernstein v. Bernstein*, 25 Conn. Supp. 239 (1964). As a general principle of law, the party who is induced to enter into a contract by fraud is entitled to rescind that contract. *Hackett v. New Haven*, 2 Conn. App. 255 (1984). Similarly, a person who is fraudulently induced to enter into the marriage contract may have that contract annulled. *Bernstein v. Bernstein*, supra, [25 Conn. Supp.

239].” *Phillips v. Dame*, Superior Court, judicial district of New London, Docket No. 518815 (July 11, 1991, *Mihalakos, J.*) (4 Conn. L. Rptr. 650).

Two claims that Connecticut courts recognize as “going to the essence of a marriage contract,” and therefore creating voidable marriages for annulment actions are: (1) “[t]he concealed intent not to assume the duties of the marital relationship” in the context of sexual relations between the parties³; and (2) misrepresentations about religious beliefs made prior to marriage upon which the marriage was predicated.⁴ Both will be discussed below in this memorandum of decision. It appears that the plaintiff has alleged two valid claims that would render her marriage voidable under Connecticut law. Because the plaintiff’s marriage is voidable, the court now turns to the analysis of proving the fraud required for it to grant an annulment.

2

Proving an Annulment for Fraud

Under Connecticut law, the plaintiff must prove, by clear and convincing evidence, the existence of fraud that would nullify the marriage contract. *Fattibene v. Fattibene*, 183 Conn. 433, 438, 441 A.2d 3 (1981). The presumption of the validity of a marriage is very strong. *Carabetta v. Carabetta*, 182 Conn. 344, 352–53, 438 A.2d 109 (1980). A plaintiff is entitled to an annulment on the grounds of fraud only where it is proven that the fraud related to the essentialia of the marriage relation.” *Barra v. Barra*, Superior Court, judicial district of Hartford, Docket No. HHD-FA-15-5039866-S (January 27, 2016, *Albis, J.*).

³ *Phillips v. Dame*, Superior Court, judicial district of New London, Docket No. 518815 (July 11, 1991, *Mihalakos, J.*) (4 Conn. L. Rptr. 650) (referencing *Bernstein v. Bernstein*, 25 Conn. Supp. 239 (1964)).

⁴ *Corbin-Camara v. Camara*, Superior Court, judicial district of New London, Docket No. KNO-FA-19-6104588-S (September 3, 2019, *Carbonneau, J.*).

The Connecticut Supreme Court clarified that “the doctrine of essentials requires the misrepresentations claimed by the party seeking an annulment to be related to the sexual obligations of the marriage, that is, the ability or willingness to have sexual relations and the ability to bear children.” *Fattibene v. Fattibene*, supra, 183 Conn. 439.⁵ Additionally, the court has recognized that misrepresentations about religious beliefs made prior to marriage upon which the marriage was predicated also goes to the essence of a marriage contract. *Corbin-Camara v. Camara*, Superior Court, judicial district of New London, Docket No. KNO-FA-19-6104588-S (September 3, 2019, *Carbonneau, J.*).

The plaintiff in this case has alleged that the defendant is not engaging in the sexual intimacy patterns or the pledges to the religious involvement that the parties discussed and promised each other before marriage. Further, she claims that she would not have entered the marriage if she knew the defendant misrepresented his patterns of intimacy and religious faith, and that she made it very clear to the defendant that her faith is extremely important to her and that she would only marry someone who shared her commitment to her faith. Accordingly, the plaintiff is alleging two misrepresentations that the court recognizes as going to the essentials of her marriage. Because the plaintiff’s marriage is voidable and she raises two claims striking to the essentials of her marriage contract, the court must now turn to whether the plaintiff has proved the fraud required for the court to grant an annulment.

Even when the alleged fraud concerns the essentials of the marriage, however, the elements of fraud defined by Connecticut law must still be met. “The essential elements of fraud are: (1) a

⁵ The *Fattibene* court additionally cites to other cases in which courts granted annulments based on fraud: “*Stone v. Stone*, 136 F.2d 761 (U.S. App. D.C. 1943) (husband concealed fact he suffered from venereal disease); *Zoglio v. Zoglio*, [157 A.2d 627 (D.C. Mun. App. 1960)] (wife failed to keep promise to have normal and natural sexual relations; *Kaufman v. Kaufman*, 164 F.2d 519 (U.S. App. D.C. 1947) (husband unable to have sexual relations).”

false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) It was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury All of these ingredients must be found to exist Additionally, [t]he party asserting such a cause of action must prove the existence of the first three of [the] elements by a standard higher than the usual fair preponderance of the evidence, which . . . we have described as clear and satisfactory or clear, precise and unequivocal.” (Citations omitted; internal quotation marks omitted.) *Trumbull v. Palmer*, 123 Conn. App. 244, 257, 1 A.3d 1121, cert. denied, 299 Conn. 907, 10 A.3d 526 (2010). “The plaintiff’s burden is complicated further still by the fact that [she] seeks to prove, only by her own testimony, the defendant’s state of mind” *Barra v. Barra*, supra, Superior Court, Docket No. HHD-FA-15-5039866-S.

The plaintiff offers her testimony as evidence that, after she made clear that she would only marry someone who shared her commitment to her faith, that the defendant promised to tithe and regularly attend church with her. She testifies that the defendant did not carry through on his promises, and that this lack of action proves that his statements prior to marriage were intentional misrepresentations designed to induce her into marriage. However, the present case offers no definitive misrepresentation about religion. Taking the plaintiff’s undisputed testimony as fact, the plaintiff only proves that: she would not have married someone who did not share her commitment to Christianity; that the defendant represented his willingness to attend church regularly, tithe, and be active in their Christian faith; that she relied on these promises when she married the defendant; and subsequently, that he did not fulfill his religious promises to her. The court finds that she has not proven by clear and convincing evidence, however, that the defendant knew his statements were untrue and that he had no intention to fulfill his promises, nor that the defendant made the misrepresentation specifically to induce the plaintiff into marriage. “Even if the defendant’s

promise concerned an essential element of the marriage relation, in order to sustain [her] burden the plaintiff must prove that when the defendant made the promise [he] had no intention of fulfilling it. . . . It is possible for two reasonable people having a conversation about such matters, each believing what he or she says to be true, to have different ideas about what these categories of action entail.” *Barra v. Barra*, supra, Superior Court, Docket No. HHD-FA-15-5039866-S.

Because all four elements of fraud must be proven for this court to grant an annulment for fraud, the plaintiff would need to prove both the defendant’s intent to misrepresent himself and that he made the misrepresentations to induce the plaintiff into marriage. “A petition for the annulment of any marriage requires great caution and demands clear proof.” *Davis v. Davis*, 119 Conn. 194, 203, 175 A. 574 (1934). Accordingly, the court finds that the plaintiff has not proven by clear and convincing evidence the elements of fraud required under Connecticut law to support a judgment annulling her marriage on the grounds that the defendant misrepresented his commitment to Christianity.

The plaintiff claims additionally that the defendant’s misrepresentations regarding his willingness to engage in a fulfilling, intimate relationship with the plaintiff are grounds for an annulment. As discussed above, “the ability or willingness to have sexual relations” goes to the essentials of a marriage, and a lack of sexual intimacy may render a marriage voidable. *Fattibene v. Fattibene*, supra, 183 Conn. 439. Again, however, the plaintiff must prove the four elements of fraud through clear and convincing evidence for this court to grant an annulment on the grounds of fraudulent misrepresentations. The plaintiff testifies to the defendant’s promises of intimacy and provides examples demonstrating that the defendant broke these promises. Much as in the above section, however, she does not prove by clear and convincing evidence that the defendant never intended to engage in fulfilling sexual relations with the plaintiff after marriage, or that he made these promises specifically to induce her to marry him. The plaintiff further testifies that the

marriage was consummated but that the defendant ceased engaging in intimacy with her. This court does not intend to question the integrity of the plaintiff; its decision is simply informed by the lack of clear and convincing evidence as to the intentionality of the defendant's misrepresentations to *never* fulfill his premarital promises or that he made those promises with the specific intention to induce the plaintiff into marriage. Therefore, the court finds that the plaintiff has not proven by clear and convincing evidence the elements of fraud required under Connecticut law to support a judgment annulling her marriage on the grounds that the defendant misrepresented his willingness to engage in the "fulfilling physical relationship" that the parties had discussed and set expectations for. Pl. Ex. 2.

B
Oklahoma

The state of Oklahoma views marriage as "something more than a civil contract. It is a civil status in which the state is vitally interested. The state of the domicile of the parties, being interested in the marriage status to be created, has a right to determine by legislative enactment the competency of the parties to enter into the marriage relation, their obligations each to the other during the continuance thereof, and the circumstances and conditions under which it may be terminated" *Ross v. Bryant*, 1923 OK 562, 90 Okla. 300, 217 P. 364, 366 (1923).

Currently, no Oklahoma statute explicitly outlines general annulment or enumerates grounds for annulments beyond consanguinity,⁶ bigamy and polygamy,⁷ incompetence,⁸ remarriage prior to the expiration of a six-month waiting period,⁹ and marriage between underage

⁶ OKLA. STAT. tit. 43, § 2 (2024)

⁷ OKLA. STAT. tit. 43, § 123 (2024)

⁸ OKLA. STAT. tit. 43, § 128 (2024)

⁹ OKLA. STAT. tit. 43, § 126 (2024)

parties.¹⁰ Nevertheless, this court must define what would be a void or voidable marriage under Oklahoma law to satisfy Connecticut’s § 46b-40 (b) that states: “An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed. . . .” In the absence of clear statutory guidance, this court looks to case law, state practice books, and court rules addressing the issue of annulment.

1

Void or Voidable Marriage – Grounds for an Annulment

The best description of the governing statutes available appear to be present in § 25 of the Oklahoma Practice Series: Oklahoma Family Law book, which was updated in August 2023. It enumerates void and voidable marriages. Section 25:2.1 lists void marriages as those between relatives, including both blood relatives and step relatives, and bigamous or polygamous marriages. Statutory Grounds for Annulment, 4 OKPRAC § 25:2.1 (A)–(B). Further, it lists voidable marriages as: marriages where one or both parties are mentally incompetent to engage in a marriage contract; marriages where at least one party divorced and subsequently remarried within six months of the date of the divorce decree from the previous marriage; and marriages in which one or both parties are underage. Statutory Grounds for Annulment, 4 OKPRAC § 25:2.2 (A)–(C).

Beyond the list of voidable marriages provided by Oklahoma Practice Series, the Oklahoma Supreme Court has added other types of marriages it considers voidable. In *Hunt v. Hunt*, 1909 OK 72, 23 Okla. 490, 100 P. 541, 543, 22 L.R.A.N.S. 1202 (1909), the court stated that: “Marriages are voidable which are obtained with imperfect consent, as where there is fraud, error, or duress” (Internal quotation marks omitted) (citing ¶4 Section 3, art. 1, c. 51, par. 3484, Wilson’s Rev. & Ann. St. Okl. 1903). Based on the above information, a marriage based on

¹⁰ OKLA. STAT. tit. 43, § 3 (2024)

fraud would create an imperfection in consent resulting in a voidable marriage. Accordingly, the court finds that the plaintiff has filed for the annulment of a voidable marriage under Oklahoma's legal standards.

2

Fraud Resulting in a Voidable Marriage

Not all fraudulent representations rise to the level of fraud necessary to result in an annulable marriage. For example, Oklahoma has not found "misrepresentation of affection, concealment of lesbian activities and drug use prior to marriage, concealment of prior marriage and divorce" as misrepresentations that will not support an annulment. *Miller v. Miller*, 1998 OK 24, 956 P.2d 887, 903 (1998). Helpfully, the Oklahoma Practice Series supplies a non-exhaustive list of examples of fraudulent misrepresentations that may support an annulment complaint.

"The most common allegation in an annulment action is the allegation that the marriage was based upon a fraud perpetrated by one of the parties upon the other. Fraud has been recognized under Oklahoma law as grounds for annulment.¹¹ Fraudulent behaviors that have been sustained as grounds for annulment include marriage motivated solely to obtain a green card for immigration purposes,¹² misrepresentation of the paternity of a child,¹³ misrepresentation or deceit with regard to impotence,¹⁴ false claim of pregnancy,¹⁵ and concealment of illegal drug use.¹⁶ An additional

¹¹ *Kildoo v. Kildoo*, 1989 OK 6, 767 P.2d 884, 885 (Okla. 1989).

¹² *In re Marriage of Rabie*, 40 Cal. App. 3d 917, 115 Cal. Rptr. 594, 597 (2d Dist. 1974); *Kurys v. Kurys*, 25 Conn. Supp. 495, 209 A.2d 526, 528 (Super. Ct. 1965); *Miller v. Miller*, 1998 OK 24, ¶ 42, 956 P.2d 887, 903 (Okla. 1998); *In re Marriage of Liu*, 197 Cal. App. 3d 143, 242 Cal. Rptr. 649 (6th Dist. 1987); *Seirafi-Pour v. Bagherinassab*, 2008 OK CIV APP 98, 197 P.3d 1097 (Div. 2 2008).

¹³ *Vargas v. Vargas*, 54 A.D.2d 590, 387 N.Y.S.2d 168, 169 (2d Dep't 1976).

¹⁴ *Dolan v. Dolan*, 259 A.2d 32, 37-38 (Me. 1969).

¹⁵ *Hill v. Hill*, 79 Ill. App. 3d 809, 35 Ill. Dec. 98, 398 N.E.2d 1048, 1053 (1st Dist. 1979).

example of fraudulent behavior which has supported an annulment decree is the ‘secret intention at the time of the marriage not to engage in sexual relations with . . . the husband.’¹⁷ . . . Additional common law grounds for annulment are coercion and undue influence and they must be sufficient in force, threat, or violence to overcome the will of the party entering into the marriage.’¹⁸ (Footnote numbering altered.) 4 OKPRAC § 25:3.

This court can use the above separate equitable grounds section of the Oklahoma Practice Series to create a working list of grounds supporting an annulment for fraud in Oklahoma. Relevant to the present case, the Oklahoma Practice Book lists “concealment or misrepresentation relating to religion,” and a “secret intention at the time of the marriage not to engage in sexual relations” with a spouse. 4 OKPRAC § 25:3. Accordingly, the court finds here that the plaintiff has alleged actions/inactions by the defendant that the state of Oklahoma classifies as fraud for the purposes of requesting an annulment for fraud.

3

Proving an Annulment for Fraud

The state of Oklahoma considers the standard for sufficiently supporting an annulment for fraud as equivalent to the standard of successfully asserting fraud as an independent cause of action. “Does [an annulment] go to the essence of the marital relationship? In this regard, it is useful to consider those cases in which an annulment has been granted based upon a claim of fraudulent inducement to marry. . . . If a claim of fraud is sufficient to support an annulment, then it ought to be sufficient to support an action for damages where an annulment is unavailable

¹⁶ *Woy v. Woy*, 737 S.W.2d 769, 773 (Mo. Ct. App. W.D. 1987).

¹⁷ *Seirafi-Pour v. Bagherinassab*, 2008 OK CIV APP 98, ¶¶ 12–18, 197 P.3d 1097 (Div. 2 2008) (citing *In re Marriage of Liu*, 197 Cal. App. 3d 143, 242 Cal. Rptr. 649 (6th Dist. 1987)).

¹⁸ See 4 AM. JUR. 2D *Annulment of Marriage* § 2[4] (2006).

because the marriage has already been dissolved by divorce.” *Miller v. Miller*, supra, 956 P.2d 903 (1998).

a. Essential to the Marriage Relationship

Much like Connecticut, Oklahoma requires “that a misrepresentation inducing one to enter into a valid marriage must go to the essential ingredients of the marriage in order to sustain a finding of materiality sufficient to support a cause of action for fraudulent inducement to marry. This is a necessary restriction.” *Miller v. Miller*, supra, 956 P.2d 903. While the Oklahoma Practice Series does not explicitly define its listed equitable grounds (above) for an annulment as “essential ingredients of marriage,” the fact that Oklahoma recognizes them as acceptable grounds upon which to bring an annulment, signals to this court that they may be interpretable as essential. Because both “concealment or misrepresentation relating to religion,” and a “secret intention at the time of the marriage not to engage in sexual relations” with a spouse are listed as equitable grounds for an annulment, the court finds that the plaintiff has alleged two grounds that Oklahoma recognizes as essential to a marriage relationship. 4 OKPRAC § 25:3.

b. Elements of Fraud

Oklahoma courts approach the elements of actionable fraud and the burden of proving the elements by clear and convincing evidence the same way that Connecticut courts do. “[T]he elements of actionable fraud are that the defendant made a material representation that was false, that he knew when he made the representation that it was false . . . and that he made it with the intention that it should be acted upon by plaintiff, and that plaintiff acted in reliance upon it and thereby suffered injury.” *D & H Co., Inc. v. Shultz*, 1978 OK 71, 579 P.2d 821 (1978). “Fraud is never presumed but must be proven by clear and convincing evidence.” *Tice v. Tice*, 1983 OK 108, ¶ 8, 672 P.2d 1168, 1171 (1983).

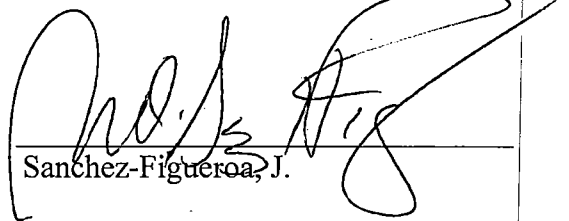
For the reasons discussed above in relation to Connecticut law, the court concludes that the plaintiff has failed to satisfy her burden of proving fraud under Oklahoma law. Like in *Barra v. Barra*, supra, Superior Court, Docket No. HHD-FA-15-5039866-S, “[t]he court has heard one party’s recollection of a . . . conversation in which the precise words and actual intentions of the other party—whom the court did not have the opportunity to hear and observe—are critical. If the defendant consciously lied about [his] intentions, planning all along never to attempt to fulfill [his] promise, then one of the elements of fraud might exist. But if [he] made the promise in the hope that [he] could keep it, even if [he] harbored doubts about [his] ability to do so, [his] conduct would not be fraudulent. Based on the evidence, the latter possibility is . . . at least as likely as the former.” The court therefore concludes that the plaintiff has not sustained her burden of proof and that it can not grant the relief she seeks in her complaint.

III
ORDER

For the forgoing reasons, the plaintiff’s complaint for annulment is DENIED.

SO ORDERED.

BY THE COURT,



Sanchez-Figueroa, J.