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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of KATHLEEN M. WEISS
and JEFFREY EASTMAN.

KATHLEEN M. WEISS,

Respondent,

v.

JEFFREY EASTMAN,

Appellant.

G046392

(Super. Ct. No. 05D001385)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, James L. Waltz, Judge. Affirmed.

Law Offices of Brian G. Saylin, The Law Offices of Saylin & Swisher and Brian G. Saylin for Appellant.

Kathleen M. Weiss, in pro. per., for Respondent

When a couple manages to obtain a confidential marriage license without paying the statutory fees and later solemnize their marriage with a qualified officiant who signs the license, are they legally married? After 10 years and two children, appellant Jeffrey Eastman (husband) wants the answer to be “no.” It’s “yes.”

Husband appeals from the trial court’s order denying his motion to vacate the judgment dissolving his marriage to respondent Kathleen M. Weiss (wife) pursuant to Family Code section 2120 et seq. (all further statutory references are to this code unless otherwise indicated). In husband’s motion, he contended wife obtained that dissolution judgment through fraud and perjury because she claimed the parties were validly married even though she knew they had never paid the required fee for issuance of their marriage license. The court, however, specifically rejected that factual contention, concluding instead that wife, who testified she believed the parties had paid for their license, was the more credible of the two. On appeal, husband makes no real effort to challenge that conclusion. Instead, he seizes upon another of the court’s factual findings, a determination that despite wife’s belief, the parties likely did not pay the statutory fee for their marriage license when it was issued back in 1994 – and spins that finding into an argument that the license, and hence the marriage, was consequently void ab initio. The argument is unpersuasive.

Section 501 affirmatively requires the county clerk to issue a confidential marriage license when the parties to be married appear personally and pay the required fees. It does not, however, prohibit the issuance of a license in the absence of payment, nor does it provide that a license issued without payment is void. Husband has offered no legal authority even suggesting such a provision should be inferred, and we conclude such an inference would be contrary to well-established law. Because the trial court correctly concluded the marriage license was valid despite the parties’ alleged failure to pay the fee, we affirm its order.

FACTS

Wife and husband obtained a confidential marriage license from the county clerk on May 12, 1994. The license was signed by both parties, as well as by a deputy clerk and it reflects on its face an “issue” date of “5/12/1994.” Two days later, wife and husband’s marriage was solemnized and certified by an Episcopal priest.

Wife petitioned for dissolution of the marriage in February 2005. Husband filed a response to the petition, claiming the parties were never legally married. After a contested trial, the court found in wife’s favor, ruling the parties had been legally married. The court consequently entered a bifurcated “status only” judgment dissolving their marriage in October 2009. The court entered a judgment on reserved financial issues in January 2011.

Three months later, husband moved to vacate the judgment entered in January 2011 pursuant to section 2120 et seq. He contended wife had committed fraud and perjury by claiming the parties had obtained a marriage license, when “[t]he truth of the matter was that the parties, and especially [wife], had the express intent not to marry so as to avoid any liability . . . as a result of pending litigation in which [husband] was involved.” According to husband’s declaration in support of the motion, the parties “never purchased” a marriage license. Instead, he explained they “filled out the application with the clerk, and signed it along with the [c]lerk, who told [them] to go into the adjoining room to pay the \$67.25 to actually obtain the license.” Husband claimed he wrote out and signed a personal check to the county clerk in the required amount, but before the parties submitted that payment in the adjoining room, wife purportedly stated she was unsure about obtaining the license and going through with the marriage. The parties then left the courthouse with the license document in hand, but without paying the required fee. Two days later, wife and husband went ahead with the previously planned wedding ceremony “since [they] had many of [their] friends and family set to

attend” The priest who performed the service signed the license document, but did not retain it for registration because, according to husband, wife told him she would take care of it.

Husband claimed the parties thereafter agreed not to pay for the license or to register their marriage, and they always understood and agreed they were not legally married. Husband appended copies of both the license document, which he had in his possession, and the check made out to pay the fee, to his declaration.

Wife filed written opposition to the motion, but the court ordered an evidentiary hearing on the matter. It also issued an order directing the county clerk to provide “documentation reflecting whether a license for a Confidential Marriage [was] issued to [wife and husband] in 1994, or at any other time.”

At the evidentiary hearing, the court heard testimony from Richard Haro, an “office specialist” employed by the Orange County Clerk’s Office. Haro testified, based on his review of the records maintained by the county clerk, that the marriage license had been “issued” to wife and husband in 1994, and pointed to the license number included on the license document supplied by husband. He also testified, however, that there was no record of any fee having been paid for that license and no record of the license having been registered following the marriage ceremony. Haro explained that as of the time of the hearing, there was no provision allowing the clerk to waive the required fee for issuance of a marriage license, but acknowledged he had not been employed by the clerk’s office in 1994, and could not state whether there was any such provision in effect at that time.

Husband testified, consistent with his declaration, that although the parties had gone to the courthouse to obtain a marriage license on May 12, 1994, they made a decision “not to go through with it,” and consequently left without paying. He stated they had discussed returning to the courthouse after the wedding ceremony to pay for the license and register their marriage, but ultimately decided not to do so. He claimed the

parties “never obtained the marriage license,” and that wife had misrepresented to the court they were legally married. The court admitted the original marriage license “application,” as well as husband’s uncanceled check reflecting the anticipated payment for the license fee, into evidence.

Under cross-examination, husband acknowledged that in the original trial, he had testified differently, claiming then that the parties had never even gone to the courthouse to obtain the license. He explained the discrepancy by stating, “at the time, I thought I hadn’t gone to the courthouse.”

Wife also testified, stating that while she believed husband had given a check to the clerk for the license fee when they were at the courthouse, she couldn’t say for sure it had occurred because she “wasn’t really paying that much attention to that aspect of it, I guess.” She denied saying anything to husband about not wanting to go through with the marriage or not wanting to obtain a valid license. She stated unequivocally that she considered the parties to have been married for nearly 11 years.

Husband’s counsel attempted to cross-examine wife about her belief in the validity of the marriage, relying upon documents that he claimed reflected her representations following the marriage that she remained a single woman for purposes of property ownership. The court refused to consider that evidence, explaining “I want to know if this is a lawfully-constituted marriage and that is what has . . . my attention. So I’m not interested in deeds that were issued . . . years later.” The deeds, which were marked as exhibits for identification purposes, were not admitted into evidence.

At the conclusion of the hearing, the court denied the motion to vacate. It first pointed out husband had failed to prove that “[wife] committed any act of perjury or fraud [o]n the court in the underlying proceedings.” The court specifically found the testimony wife gave at the hearing to be “truthful,” while husband’s was “evasive,” “mostly nonresponsive,” and of questionable veracity.

The court then pointed to section 350, which it identified as establishing the requirement of a marriage license, and to section 351, which it viewed as governing the required content of that license; it noted both statutes were devoid of any reference to fees. It explicitly found that “a marriage license was issued” in this case, stating, “I have the license in front of me.” The court also noted, “Mr. Haro has testified that his office found records which corroborate that a license, in fact, was issued on May the 12th, 1994.” Although the court found “[b]y the preponderance of the evidence, . . . the fees were probably not paid,” it concluded lack of payment did not affect the validity of the license.

Husband moved for a new trial, arguing the court’s reliance on sections 350 and 351 to demonstrate fees were not required was erroneous, because the parties’ application for a *confidential* marriage license was governed by section 501, which did specify the payment of fees. The trial court denied the motion.

DISCUSSION

1. Statutory Provisions for Vacating a Marital Dissolution Judgment

Husband’s motion to vacate the judgment was made pursuant to section 2120 et seq., which contain special provisions allowing parties to a marital dissolution action to seek vacation of the judgment under specified circumstances. We conclude husband’s motion did not allege any circumstance that would entitle him to relief under those statutes.

Section 2120 sets forth the Legislature’s findings and declarations with respect to these special provisions, strongly suggesting the remedy is intended to be limited to situations where a party is claiming the *division of marital property or award of child or spousal support was inequitable*:

“(a) The State of California *has a strong policy of ensuring the division of community and quasi-community property in the dissolution of a marriage as set forth in Division 7 (commencing with Section 2500), and of providing for fair and sufficient child and spousal support awards.* These policy goals can only be implemented with full disclosure of community, quasi-community, and separate assets, liabilities, income, and expenses, as provided in Chapter 9 (commencing with Section 2100), and decisions freely and knowingly made.

“(b) It occasionally happens *that the division of property or the award of support, whether made as a result of agreement or trial, is inequitable* when made due to the nondisclosure or other misconduct of one of the parties.

“(c) *The public policy of assuring finality of judgments must be balanced against the public interest in ensuring proper division of marital property, in ensuring sufficient support awards, and in deterring misconduct.*

“(d) The law governing the circumstances under which a judgment can be set aside, after the time for relief under Section 473 of the Code of Civil Procedure has passed, has been the subject of considerable confusion which has led to increased litigation and unpredictable and inconsistent decisions at the trial and appellate levels.” (§ 2120, italics added.)

Section 2121, subdivision (a) then specifies the trial court may “relieve a spouse from a judgment, or any part or parts thereof, *adjudicating support or division of property*, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this chapter.” (§ 2121, subd. (a), italics added.)

Here, husband’s motion to vacate did not actually challenge the court’s adjudication of support or its division of marital property. What he was challenging was the court’s judgment dissolving the parties’ *marital status*, which had been entered on October 23, 2009. Husband had disputed wife’s claim the parties were legally married

right from the beginning of the dissolution action, which is why that status-only judgment reflects it followed a contested proceeding on the issue. Husband's motion to vacate the judgment was based squarely on his renewed assertion the parties had never legally married, and thus there was no marital relationship to dissolve, rather than on any assertion that the court's division of marital property or award of support made in connection with that dissolution had been inequitable. Section 2121 does not empower a court to relieve a party from the portion of the judgment adjudicating *marital status*.

Moreover, as the trial court found, husband failed to prove any grounds for vacating the dissolution judgment under the statutory scheme. Section 2122 sets forth the five grounds on which vacation of a marital dissolution judgment may be obtained: “(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. . . . [¶] (b) Perjury. An action or motion based on perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement [¶] (c) Duress. . . . [¶] (d) Mental incapacity. . . . [¶] (e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. . . .” (§ 2122.)

While husband claimed his motion to vacate the judgment was grounded on wife's commission of “actual fraud” and “perjury” in claiming the parties were validly married when she knew they were not, the trial court rejected that assertion, and concluded wife's version of the factual events surrounding the parties' marriage was the more credible one. The trial court was entitled to make that credibility determination, and we are obligated to respect it. (*People v. Tafoya* (2007) 42 Cal.4th 147, 192 [“We accept the trial court's factual findings and credibility determinations if supported by substantial evidence”]; *In re H.G.* (2006) 146 Cal.App.4th 1, 13 [“We accept, as we must, the trial court's determination of the credibility of witnesses”].)

Additionally, we note that even if wife had engaged in the acts of fraud and perjury alleged by husband, they would not justify an order vacating the judgment under the statutory scheme. Her claim that the parties had been validly married, even if fraudulent, did not mean husband “was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding.” (§ 2122, subd. (a).) He was at all times aware of the facts surrounding the parties’ marriage and relied upon those facts as a basis for contesting wife’s claim of a valid marriage. He makes no effort to explain how her claim that the parties were legally married would have prevented him from “fully participating in the proceeding.”

And wife’s alleged perjury regarding the circumstances of the parties’ marriage was not related to “the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement,” as specified in § 2122, subd. (b). We acknowledge husband’s point that the *designation* of “perjury” as a ground for vacation of a judgment under section 2122 is not explicitly limited to perjury committed in connection with a preliminary or final declaration of disclosure or an income and expense report, but it does not persuade us that the statute would authorize vacation of a judgment based on other acts of perjury. The statute provides that it governs both “[t]he grounds *and time limits* for a motion to set aside a judgment” (§ 2122, italics added), and the designation of “perjury” as a ground for relief is followed immediately a sentence specifying a time limit *only for* “[a]n action or motion based on perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement” (§ 2122, subd. (b)). If we were to interpret that provision as also authorizing vacation of a dissolution judgment on the basis of perjury *unrelated to* those identified disclosures and income and expense statements, it would mean that a motion based on such misconduct would be *ungoverned by any time limit*. Because that result would be

inconsistent with the statute's explicit statement that it imposes "time limits" on the authorized motions to vacate, we reject it.

Because husband's motion to vacate the judgment was flawed for all of the foregoing reasons, we have no trouble concluding the trial court did not err in denying it.

2. *Lack of Jurisdiction*

As we have already acknowledged, however, husband's appeal does not focus on the propriety of the court's ruling under section 2120 et seq. Instead, he seizes on the court's specific factual determination that the required fee for the parties' confidential marriage license was probably not paid, and relies upon that finding to support an argument that the license, and hence the parties' marriage, was necessarily invalid as a matter of law. He contends the invalidity of the marriage deprived the court of fundamental jurisdiction to issue any orders dividing the parties' property or awarding spousal support.

Husband correctly points out that a claim the court lacks fundamental jurisdiction over the parties or the subject matter can be made at any time, including for the first time on appeal. "[A]n act beyond a court's jurisdiction in the fundamental sense is null and void. Therefore, a claim based on a lack of a fundamental jurisdictional may be raised for the first time on appeal." (*People v. Williams* (1999) 77 Cal.App.4th 436, 447.)

The argument husband makes, however, is not a challenge to the court's *fundamental* jurisdiction. A court has fundamental jurisdiction when it has "jurisdiction over the subject matter and the parties in the fundamental sense" (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) Here, there is no question that both parties here appeared in the marital dissolution case, thus personal jurisdiction was established. It is also undisputed that the superior court has subject matter jurisdiction to

determine the validity of a marriage. Since the court had both personal and subject matter jurisdiction, the argument that it lacked fundamental jurisdiction is frivolous.

Instead, what husband is really arguing is that the court acted *in excess of its jurisdiction* when it ruled the parties' marriage was valid. "A court acts in excess of jurisdiction 'where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.'" (*In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 598.) Such claims cannot be asserted in the first instance after a judgment has become final. "It is the general rule that a final judgment or order is *res judicata* even though contrary to statute where the court has jurisdiction in the fundamental sense, i.e., of the subject matter and the parties." (*Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 725; *In re Marriage of Murray, supra*, 101 Cal.App.4th at p. 599.)

In any event, husband's jurisdictional argument fails on the merits as well. He relies on section 501, which governs the issuance of confidential marriage licenses. It provides that the county clerk shall issue the confidential marriage license "upon the personal appearance together of the parties to be married *and their payment of the fees required . . .*" (§ 501, italics added.) Husband then simply assumes, without the support of legal authority, that because the statute specifies a "required" fee, the clerk would have no power to issue a valid confidential marriage license in the absence of payment. But the statute does not say that. The statute simply imposes an affirmative requirement that the clerk *issue the license* under the specified circumstances, while remaining silent about the clerk's power to do so under any other circumstances.

Moreover, we cannot infer a limitation on the clerk's authority to perform services based on whether required fees have been collected. To do so would be inconsistent with a long line of cases holding that although the clerk is required to collect mandatory fees when performing services, its failure to collect a fee would not render the

service a nullity. (*Tregambo v. Comanche M. and M. Co.* (1881) 57 Cal. 501, 506 [“When the demurrers were placed in the custody of the clerk, he had a legal right to refuse to file them, unless the fees for that service were paid to him. [Citations.] But he did not refuse When, therefore, the demurrers were brought and deposited with the clerk for filing, they were, in contemplation of law as to the defendant, on file in the case”]; *Foley v. Foley* (1956) 147 Cal.App.2d 76, 78 [“If it had been the legislative intent that the effectiveness of certain official acts would depend on the payment of fees by the persons interested in them, a provision directed to those interested persons and in our case contained in the Code of Civil Procedure could have been expected. Not every act of an official in violation of a mandatory statute must necessarily be held totally void”]; *Duran v. St. Luke’s Hosp.* (2003) 114 Cal.App.4th 457, 460 [“while it is mandatory for the court clerks to demand and receive statutorily required filing fees, it is not, as defendants maintain, a jurisdictional defect if the precise fee is not collected. . . . [I]f a clerk does file without receiving the fee, the filing is nevertheless valid”].)

As the appellate court acknowledged in *Bauer v. Merigan* (1962) 206 Cal.App.2d 769, 771, the clerk’s *authority* to perform a service is not dependent on his or her collection of the required fee. Instead, if the clerk performs the service without collecting the required fee, the remedy is to enforce payment: “the clerk may, of course, be personally liable for the fee, if it is not, in fact, paid. But the filing was not invalid.” (*Ibid.*)

These cases holding that a county clerk’s failure to collect required fees would not invalidate the service rendered are entirely consistent with the statutes governing the validity of marriage. It is the clerk’s obligation to collect required fees when issuing a marriage license. (Gov. Code, § 26820 [“The county clerk shall charge and collect the fees fixed in this article for service performed by the clerk, when not otherwise provided by law”].) If the clerk issues the license without fulfilling that obligation, or otherwise commits an error in the issuance of the license, that failure

cannot be relied upon as a basis to invalidate the marriage. Section 306 specifies that while “a marriage shall be licensed, solemnized, and authenticated, and the authenticated marriage license shall be returned to the county recorder of the county where the marriage license was issued . . . [n]oncompliance with this part by a nonparty to the marriage does not invalidate the marriage.” (Italics added; see also *In re Marriage of Cantarella* (2011) 191 Cal.App.4th 916, 924-925 [noting “the societal importance of recognizing the validity of marriages to which parties have consented”].)

In short, we agree with the trial court’s determination that “[husband’s] claim that he never obtained a license . . . because the fees were not paid, . . . is incorrect. [¶] The license was issued. The ceremony took place and both of these people stood up before each other and others and announced that they were[,] through this ceremony, man and wife, husband and wife. They were married.”

DISPOSITION

The order is affirmed. Wife is to recover her costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.