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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of JAMES W. PALDI, Deceased.

PAMELA B. SCHUUR, as Administrator,
etc.,

Petitioner and Respondent,

v.

NANA PALDI et al.,

Claimants and Appellants;

KANWARA PALDI,

Objector and Appellant.

G049206

(consol. with G049359)

(Super. Ct. No. 30-2012-00548904)

O P I N I O N

Appeal from a judgment and order of the Superior Court of Orange County,
Randall J. Sherman, Judge. Affirmed in part and reversed in part.

No appearance for petitioner.

Alan R. Seher for Claimants and Appellants.

Obrien & Peterson and R. Thomas Peterson for Objector and Appellant.

* * *

Decedent James Paldi died intestate. Two competing petitions for appointment of an administrator were filed: one by decedent's sister, another by his wife. The latter must have come as a great surprise to decedent's remaining heirs, as none were aware he was married. The wife, however, produced a marriage certificate from Thailand showing the two were married. Decedent's remaining heirs contended the marriage was a sham, the sole purpose of which was to evade immigration laws. Among the facts they alleged to support this claim were: both decedent and wife filed tax returns indicating they were single, decedent took property as a single man, signed loan documents as a single man, took out an insurance policy as a single man, the two never cohabitated together, and decedent's friends and family had no knowledge of the marriage. But the trial court granted the motion for judgment on the pleadings against the heirs finding they had no standing to challenge the marriage. We reverse the judgment.

In a cross-appeal, wife contends the court erred in denying her motion to enforce a settlement agreement. In particular, sister signed a settlement agreement with wife to dismiss sister's competing petition and her objections to wife's petition, provided wife appointed sister's choice of an administrator, which wife did. The dismissal was to be "without prejudice . . . subject to refiling if new relevant facts are hereafter discovered" To wife's chagrin, the administrator then filed a petition to determine heirship to resolve the conflicting positions of wife and the remaining heirs concerning the validity of the marriage. Sister and four nieces (the latter of which were not parties to the settlement agreement) filed statements of interest asserting their position that the marriage was invalid. Wife filed a motion to dismiss all statements of interest based on

the settlement agreement. The court, after granting wife's motion for judgment on the pleadings, found wife's motion to enforce the settlement agreement was moot because wife had obtained all she bargained for. We affirm that order.

FACTS

Decedent James W. Paldi died intestate on February 8, 2012, at the age of 61. Five blood-relatives survived him: Nana Paldi (sister) and four nieces from his predeceased brother: Camille Paldi, Jill Paldi, Mary-Elizabeth Paldi, and Robynne Paldi (collectively, the family members, or, when necessary to distinguish, sister and nieces). He was also survived by Kanwara Paldi (wife), whom he married in Thailand in September 2009. After they married, they applied to obtain a permanent residence Visa for wife.

In February and March of 2012, sister and wife filed competing petitions for letters of administration of decedent's estate.¹ In May 2012, sister objected to wife's petition on the ground that her marriage to decedent was a sham. In support, sister alleged, "none of decedent's family members, personal friends, or business associates knew of decedent's marriage," "decedent had always filed his personal federal and California state income tax returns as an unmarried individual," and decedent and wife never cohabitated. Wife, for her part, alleged she did cohabit with decedent while in Thailand and that she received monthly support from him from the time of their marriage.

After wife and sister filed their competing petitions for administration, in July 2012, they resolved their conflict on a limited basis to permit an administrator to be selected. To that end, they signed an "Estate Settlement Agreement" intended "to settle

¹ Amy Paldi (decedent's cousin) initially filed the petition, which sister later joined. Amy Paldi apparently is no longer involved in the litigation. For simplicity's sake, we refer to that petition as sister's petition.

finally and fully their competing Petitions and Objections *without prejudice.*” (Italics added). Sister and her cousin, defined in the agreement as “Family Petitioners,” agreed to “immediately dismiss without prejudice their Petition for Administration subject to refiling if new relevant facts are hereafter discovered and to immediately withdraw [their] Objection to the Petition filed by [wife].” Wife agreed to appoint a different administrator than she had initially nominated. The agreement contained a merger clause. It was signed by sister on behalf of “Family Petitioners.”

Pursuant to the agreement, wife nominated Pamela B. Schuur as the administrator of the estate. Less than one month later, the administrator filed a petition to determine distribution rights. She alleged that wife and the remaining heirs had a disagreement regarding the validity of the marriage. The administrator maintained neutrality on the issue, but explained that the dispute needed resolution because one of her core roles was to file tax returns on behalf of the estate, and to do that she needed to know whether he was single or married.

Sister and the four nieces filed substantially identical statements of interest contending the marriage was invalid. They argued, “Claimant is informed and believes that Decedent did not inform any family members or friends of the fact that he was married. Decedent did not act as if married, filing federal and state income tax returns as ‘Single,’ taking ownership of property as ‘a Single man,’ obtaining insurance as ‘single,’ applying for a loan as ‘single,’ maintaining all of his financial accounts in his name alone, residing apart from his alleged wife, and affirmatively informing his tax preparer just days before his death that he was ‘single.’ [¶] 10. Likewise, Claimant is informed and believes that [wife] filed her Thai tax returns as a Single individual; maintained a residence in Thailand apart from decedent, and maintained separate financial accounts.”

Wife filed an “Opposition and Reply to Administrator’s Petition to Determine Distribution Rights” in which she contended the marriage was valid. She attached a few e-mails from decedent, a copy of the settlement agreement, and a declaration from wife’s counsel.

In December 2012, wife filed a single document entitled “Motions to Strike, Demurrer, and Judgment on the Pleadings (Based on Settlement Agreement) to Statements of Interest Filed by Family Members.” The motions were largely based on wife’s contention that the settlement agreement bound all of the heirs, despite only being entered into by sister. To that end, wife filed a declaration from her counsel who negotiated the agreement. Counsel declared the settlement agreement was negotiated on behalf of all of the family members. He stated, “The U.S. heirs at the time of their settlement negotiations were all represented to me by [sister’s counsel] as being represented by his firm. The only reason given to me for only [sister] signing the Settlement Agreement on behalf of all the U.S. heirs was because they did not want to have the expense of paying new fees and costs for making a general appearance by means of their Settlement Agreement signatures. It was also represented by [sister’s counsel] that it was cumbersome to obtain all their signatures in time to prevent further trial preparation proceedings in this Court. At all times my client only signed the Settlement Agreement and prejudicially relied upon [sister’s counsel’s] representations that he had full authority on behalf of all the U.S. heirs to have [sister] sign it.” The family members objected to the declaration on the bases of hearsay, improper opinion testimony, and argumentative.

The court denied the motions, stating only, “No authority is offered for rolling [three] motions into one pleading.” The court also overruled the family members’ objections, stating, “They are overbroad. Not all of the cited material is objectionable.”

Wife then refiled her motions separately as a “Motion for Enforcement of Settlement Agreement and Judgment Thereon” and a “Motion for Judgment on the Pleadings to Statements of Interest Filed by Family Members.” Her counsel filed a similar declaration with respect to the effect of the settlement agreement. The family members again objected to the declaration, this time adding the objection that it violated the parol evidence rule.

The court granted the motion for judgment on the pleadings. The court stated, “Pursuant to Family Code sections 2210 and 2211, and the case of *Pryor v. Pryor* (2009) 177 Cal.App.4th 1448, the Family Claimants do not have standing to assert that the marriage between the decedent and Kanwara Paldi is voidable, and their claim does not survive the decedent’s death.” The court denied the motion to enforce the settlement agreement, stating, “There are no unperformed terms of the settlement agreement that moving party seeks to enforce. The Evidentiary Objections to the Declaration of [wife’s counsel] are sustained.” The court entered judgment, and the family members appealed.

DISCUSSION

When considering a trial court’s decision to grant a motion for judgment on the pleadings, the reviewing court applies the same standard of review applicable to a general demurrer. (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 187.) The reviewing court reviews the complaint “‘de novo to determine whether [the complaint] alleges facts sufficient to state a cause of action under any legal theory.’” (*DiPirro v. American Isuzu Motors, Inc.* (2004) 119 Cal.App.4th 966, 972.) “If the appealed judgment or order is correct on any theory, then it must be affirmed regardless of the trial court’s reasoning” (*Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1201.)

Entering into a marriage for the purpose of evading immigration laws is a federal crime. (8 U.S.C. § 1325(c) [“Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both”].) It is, not surprisingly, also a deportable offense. (8 U.S.C. § 1227(a)(1)(G).) Such a marriage, considered a “sham marriage,” “is invalid from its inception.” (*Matter of Awwal* (1988) 19 I. & N. Dec. 617, 621.) Under the federal common law, “A sham marriage, void under the law of this country as against public policy, can have no validity.” (*United States v. Lutwak* (7th Cir. 1952) 195 F.2d 748, 753.) “[A] marriage void ab initio is void for all purposes and has no standing in court.” (*Id.* at 754.)

Under California common law, marriage is contractual in nature. (Fam. Code, § 300.) A contract whose object is illegal is void. (Civil Code, § 1598.) “California law includes federal law.” (*People ex rel. Happell v. Sischo* (1943) 23 Cal.2d 478, 491.) It follows that a marriage entered into for the purpose of evading federal immigration laws is void under California law as well. And this result is just: we see no reason to bestow the blessing and protection of the state on a marriage that was designed to defraud the state, particularly where legitimate heirs will be harmed by doing so.

Under federal law, “In deciding whether [wife] entered into her marriage for the purpose of procuring her admission as an immigrant to the United States, the focus of our inquiry is whether [wife] and [husband] intended to establish a life together at the time they were married. [Citation.] Although evidence that the parties separated after the marriage is relevant to ascertaining whether they intended to establish a life together at the time of marriage, evidence of separation cannot, by itself, support a finding that the marriage was not bona fide. [Citation.] [¶] In undertaking this inquiry, we examine the objective evidence that would support a finding that the couple entered into the marriage with an intent to establish a life together — including evidence of whether [wife] was listed on [husband’s] insurance policies, property leases, income tax

forms or bank accounts; testimony or other evidence regarding their courtship, wedding ceremony; and evidence concerning whether they shared a residence.” (*Nakamoto v. Ashcroft* (9th Cir. 2004) 363 F.3d 874, 882.)

The facts alleged by the family members are of this ilk. They alleged: (1) decedent’s family and friends were unaware of the marriage; (2) decedent filed income tax returns as an unmarried man; (3) decedent took ownership of property as an unmarried man; (4) decedent procured insurance as an unmarried man; (5) decedent applied for a loan as an unmarried man; (6) decedent maintained his financial accounts in his name alone; (7) decedent did not cohabit with wife; (8) decedent affirmatively told his tax preparer shortly before his death that he was single; (9) wife filed her Thai tax returns as an unmarried woman; (10) wife maintained a residence in Thailand apart from decedent; and (11) wife maintained separate financial accounts. These facts, if true, and barring any contrary evidence, would be sufficient to find decedent’s marriage to wife was a sham.

The court’s ruling was not based on whether the pleadings sufficiently stated a claim, however, but instead was based on lack of standing. To that end, the court relied on Family Code sections 2210 and 2211² and *Pryor v. Pryor* (2009) 177 Cal.App.4th 1448 (*Pryor*). Those statutes govern actions to annul a marriage. Section 2210 provides that a marriage may be annulled on one of several grounds, including inability to consent, bigamy, unsound mind, fraud, duress, and incurable physical incapacity. Section 2211, a companion statute, identifies those who have standing to assert the various bases for annulment and the relevant period of limitations. With respect to fraud, for example, section 2211, subdivision (d), provides that the action must be brought “by the party whose consent was obtained by fraud, within four years after the discovery of the facts constituting the fraud.”

² All further statutory references are to the Family Code unless otherwise stated.

In *Pryor*, the daughter of the late comedian Richard Pryor sought to posthumously annul his marriage under section 2210, subdivision (d), on the ground that Pryor's wife forged the marriage certificate and thus the marriage was procured by fraud. (*Pryor, supra*, 177 Cal.App.4th at p. 1452.) The trial court granted a motion to quash the petition on the ground that the daughter lacked standing, and the Court of Appeal affirmed. It observed that under section 2210, a fraudulent marriage is *voidable*, not void. (*Pryor*, at pp. 1454-1455.) It then noted that under section 2211, subdivision (d), the only party with standing to annul the marriage on the ground of fraud is the person who was defrauded. (*Pryor*, at p. 1455.)

Pryor is distinguishable from the present case in a crucial respect. As we have noted above, a marriage whose object is to avoid federal immigration laws is void, not *voidable*. Under *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1114 (*Lockyer*), this takes the case outside the scope of section 2211. In *Lockyer* our Supreme Court held that marriage certificates issued to same-sex couples in contravention of a statute are void.³ The City of San Francisco argued, much as wife does here, that the Attorney General did not have standing to make that argument under section 2211. But the court rejected that argument, noting that section 2211 applies to *voidable* marriages; in contrast, “[a] marriage prohibited as . . . *illegal* and declared to be “void” or “void from the beginning” is a legal nullity *and its validity may be asserted or shown in any proceeding in which the fact of marriage may be material.*” (*Lockyer*, at p. 1114.) Since we have determined that a marriage whose object is to avoid immigration laws is void, the standing restrictions of section 2211 do not apply. And since the validity of decedent's marriage is material to the outcome of the present proceeding, the

³ *Lockyer* was decided at a time when California law only permitted heterosexual marriages. That restriction was later deemed unconstitutional and same-sex marriages are now permitted. (*Perry v. Schwarzenegger* (N.D.Cal. 2010) 704 F.Supp.2d 921, 995.) But the rationale of the *Lockyer* decision with respect to standing is still valid and relevant to the present case.

family members may assert it. Accordingly, the court erred in holding the family members lack standing.

Turning to the cross-appeal, wife contends it was error to exclude her counsel's declaration, which established that the settlement agreement barred the family members from filing their statements of objection. Wife's contention suffers from at least two flaws.

First, even if we assume that counsel's testimony was admissible and that the settlement agreement bound the nieces (despite that the agreement was signed by sister solely on behalf of herself and her cousin), the family members alleged new facts. The settlement agreement was "without prejudice," "subject to refiling *if new relevant facts are hereafter discovered . . .*" (Italics added.) Sister's original petition alleged the marriage was a sham based on the following facts: (1) "none of decedent's family members, personal friends, or business associates knew of decedent's marriage," (2) "decedent had always filed his personal federal and California state income tax returns as an unmarried individual," and (3) decedent and wife never cohabitated. The family members' statement of interests alleged several new facts: They alleged: (1) decedent took ownership of property as an unmarried man; (2) decedent procured insurance as an unmarried man; (3) decedent applied for a loan as an unmarried man; (4) decedent maintained his financial accounts in his name alone; (5) decedent affirmatively told his tax preparer shortly before his death that he was single; (6) wife filed her Thai tax returns as an unmarried woman; (7) wife maintained a residence in Thailand apart from decedent; and (8) wife maintained separate financial accounts.

Wife responded by arguing that the family members already knew these facts and thus they were not "hereafter discovered" as required by the settlement agreement. Wife's record citations, however, do not support this claim. Wife cites to sister's petition where she listed the estimated value of various assets she believed were in decedent's name. There, sister alleged, "The above estimates of value have been

obtained by a review of the decedent's financial statements, tax returns, bank statements, and by consultation with decedent's tax attorneys, business partners, and personal friends." We do not know, however, what exactly sister "discovered" in her initial review of these documents. Certainly there is nothing explicit in the record before us about insurance policies, loans, what was said to decedent's tax preparer, wife's Thai tax returns, or wife's financial accounts. Given this record, wife did not carry her burden of proving a breach of the settlement agreement.

The second flaw in wife's argument is that the settlement agreement only precluded sister (and, allegedly, the nieces) from refileing a "Petition for Administration." In exchange, wife agreed to amend her petition to nominate a mutually-agreed-upon administrator. The evident purpose of this agreement was to permit an administrator to be appointed in a timely fashion so that the estate's assets could be managed. Nothing in the agreement prohibits the filing of responses to subsequent petitions by the administrator. Wife wants us to interpret the settlement agreement as being an ironclad bar to the family members' substantive challenge to the alleged marriage. But the settlement agreement wife negotiated was inherently weak. It was expressly "without prejudice." And there is no language in the agreement broadly forfeiting the family members' contention. And wife received all that she bargained for — her choice of an administrator. We recognize that wife's counsel's "intent . . . was to eliminate any and all objections by [the family members] to the status of [wife] as the surviving spouse . . . ," but the language of the agreement he negotiated does not support that interpretation. Accordingly, we affirm the court's order denying the motion to enforce the settlement agreement.

DISPOSITION

The judgment on the pleadings in favor of wife is reversed. The order denying wife's motion to enforce the settlement agreement is affirmed. The family members shall recover their costs incurred on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.