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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re Marriage of NORRIS SNOWDEN
and SIMONA N. CAMPEANU.

H038010
(Santa Clara County
Super. Ct. No. 1-11-FL157518)

NORRIS SNOWDEN,

Appellant,

v.

SIMONA N. CAMPEANU,

Respondent.

Petitioner Norris Snowden is a 55-year-old American. Respondent Simona N. Campeanu is a Romanian citizen in her early forties. She first met Snowden via the Internet in 2006. Snowden and Campeanu got married in 2009. They did not begin living together until December 2010, after Campeanu obtained the necessary visa and left Romania with her two daughters, moving into Snowden's home in San Jose. The couple lived together for less than two months before they separated permanently in January 2011.

On March 3, 2011, Snowden filed a petition to annul the marriage, citing Family Code section 2210, subdivision (d), which provides for annulment in the case of fraud. Snowden claimed that Campeanu refused to have sex with him after they married and had concealed from him the fact that she is infertile. Snowden maintained that Campeanu's

true motive for marrying him was to obtain a green card, allowing her to reside in the United States.

Campeanu denied the fraud allegation and petitioned for dissolution of the marriage. The trial court bifurcated the annulment issue from the dissolution issue and the annulment matter was tried first. The evidence consisted primarily of the testimony of the two parties. The trial court, as the finder of fact, concluded that Snowden had failed to carry his burden of proof and denied the petition. Snowden appeals. He argues that the evidence supports his claim of fraud but he disregards substantial conflicting evidence upon which the trial court relied. Accordingly, we shall affirm.¹

A. Legal Framework

Family Code section 2210, subdivision (d) provides that a marriage is voidable and may be adjudged a nullity if, “The consent of either party was obtained by fraud” In the civil context, proof of fraud requires, among other things, proof of the defendant’s misrepresentation or concealment, the defendant’s intent to induce reliance, and the plaintiff’s justifiable reliance upon the deceit. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) In the context of a petition to annul a marriage, the fraud “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

¹ As a general rule, no appeal lies from a prejudgment, interim ruling on a bifurcated issue in a family law case absent trial court certification of the appealability of the issue. (Code Civ. Proc., § 904.1, subd. (a)(10); Fam. Code, § 2025; see also, *In re Marriage of MacFarlane & Lang* (1992) 8 Cal.App.4th 247, 251, 256, fn. 9.) We are unable to locate any such certification in the record before us. Nevertheless, dismissal would be “unnecessarily dilatory and circuitous.” (*In re Marriage of Vryonis* (1988) 202 Cal.App.3d 712, 714, fn. 1.) The validity of the marriage is a threshold issue upon which the balance of the case will turn. Thus, in our view, the matter is appropriate for immediate review. Indeed, Campeanu has requested that we expedite our consideration of the merits; a request we have previously granted. We therefore exercise our discretion to treat the appeal as a petition for an extraordinary writ and turn to the merits. (*Olson v. Cory* (1983) 35 Cal.3d 390.)

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 (*Ramirez*)). 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.*)

"[H]istorically, annulments based on fraud have only been granted in cases where the fraud relates in some way to the sexual, procreative or child-rearing aspects of marriage." (*Ramirez, supra*, 165 Cal.App.4th at p. 758.) For example, an annulment may be had for fraud where one spouse secretly intends at the time of the marriage not to engage in sexual relations with the other spouse (*In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 156), where a wife concealed from her husband that she was pregnant by another man (*Hardesty v. Hardesty* (1924) 193 Cal. 330), or where a wife concealed the fact that she was sterile (*Vileta v. Vileta* (1942) 53 Cal.App.2d 794). Even in cases of alleged immigration fraud, a judgment of nullity is generally granted only where substantial evidence demonstrates that the immigrant spouse never intended to carry out the essential duties of a spouse. (See, e.g., *In re Marriage of Rabie* (1974) 40 Cal.App.3d 917, 922-923 [husband married to obtain green card and did not intend to remain faithful to wife or remain married to her]; *In re Marriage of Liu, supra*, at p. 156 [wife married to obtain green card and concealed intent not to engage in sexual relations].)

B. *The Evidence*

1. *Snowden's Testimony*

Snowden and Campeanu met over the Internet in 2006. They met in person in Romania in 2007 and again in 2008. Snowden liked being with Campeanu and wanted her to come to the United States so he employed immigration consultant Jim Phair to arrange for a fiancée visa for her. Phair made the arrangements and Campeanu arrived in San Jose in February 2009. Snowden and Campeanu soon decided to get married.

Notwithstanding the developing relationship with Campeanu, Snowden had continued exchanging flirtatious e-mails with other women online. Campeanu discovered one such e-mail on his computer shortly before their wedding day and it upset her. Snowden was upset with Campeanu for looking into his personal e-mail. They decided to go ahead with the wedding anyway and got married March 5, 2009. Campeanu returned to Romania five days later because the fiancée visa had expired.

Snowden did not communicate with Campeanu for several weeks after Campeanu returned to Romania. Campeanu e-mailed Snowden persistently but he did not respond. He wanted to separate from her because she had “violated [the] safety” of his home by snooping on his computer. Eventually, however, he accepted her apology and they reconciled. Snowden asked Phair to apply for a spousal visa for Campeanu. Phair told him it would take nine to 10 months.

The visa was eventually approved and Campeanu arrived with her children in December 2010, one year and nine months after the marriage in California. Snowden, who is an emergency response social worker employed by the County of Santa Clara, immediately asserted his child welfare expertise, coaching Campeanu on how to deal with her youngest daughter, who, he said, suffered from obsessive compulsive disorder and other mental health problems. He faulted Campeanu for her parenting skills and claimed that the daughter’s behavioral difficulties improved significantly in just a few weeks under his care.

On January 6, 2011, Campeanu received her green card and immediately her behavior changed. Snowden claimed that she no longer showed him any affection unless they were in public. Very suddenly, “[a]s soon as she got the green card,” she began “screaming and yelling” at him. She accused Snowden of having a girlfriend and demanded to go to North Carolina where her best friend was then living. On January 22, 2011, they had a big fight. Snowden bought airline tickets to North Carolina for Campeanu and her daughters and arranged transportation to the airport the next day.

That same day Snowden contacted Phair and online legal sites to see what his rights were. He made an appointment with an immigration official a couple of weeks later and turned in a report to the immigration office on February 2, 2011.

Snowden testified that “two days prior to marriage, sexual relationships stopped” so that he and Campeanu never had sexual relations with each other during their marriage. He maintained that she had slept with her back to him and dressed unattractively on purpose to keep him from feeling attracted to her. Sometimes they would have romantic evenings but they would never “pan out.”

On cross examination Snowden admitted that he did not mention the lack of sexual relations in any of his correspondence or reports about problems with his marriage. In a declaration he had previously executed under penalty of perjury he stated that it was his decision to end sexual intimacies so that the two could “talk, discuss, and relate our ideals about life to one another in hopes that our relationship would grow stronger.” He talked with Campeanu about terminating their sexual relations before they got married. Even though he and Campeanu had been married since March 2009, Snowden had not added her to his health insurance because, he said, “I had a lot of things to do. [It] just never came around.”

Snowden also admitted that in April 2009, a month after his marriage to Campeanu, he went to Manila and met several women there. He denied having sex with them. He traveled to Romania in December 2009 and stayed with Campeanu. He denied having sex with her during that visit. In April 2010, Snowden returned to the Philippines and lied to Campeanu about that trip, telling her he was going to Sacramento. In July 2010, he went back to Romania but denied having sexual relations with Campeanu on that trip. In November 2010, he went to Thailand where he met two or three women. He went to Costa Rica in April 2011. He denied having sexual relations with any women he met on these trips.

2. *Campeanu's Testimony*

When Snowden first went to Romania in June 2007, Snowden and Campeanu saw each other almost every day for the two weeks he was there and regularly engaged in sexual relations. Snowden asked Campeanu to come to the United States and live with him for a while to “see if we match.” After he left they talked via the Internet “almost every day” and the relationship continued to develop. Campeanu’s family did not approve of the relationship. Campeanu is White and Snowden is Black and interracial couples are not accepted in Romania.

Campeanu received the first visa in January 2009. Three days after receiving it she had a fertility test that showed it unlikely she could conceive. Campeanu knew Snowden wanted to have children. She planned to try fertility treatments. She told Snowden “there were very few chances to have a baby at my age due to my hormonal issues.” “I told him I cannot get pregnant or there were very few chances.” This was prior to their marriage but after she had traveled to San Jose. Campeanu had intended to tell him before leaving Romania but when he told her he had made room for her in his home she could not bring herself to say anything. She did not tell him about the fertility test itself.

Late in February or early March 2009, Campeanu was on Snowden’s computer looking for flowers for the wedding and found “some bad words in his recent search.” The words referred to Bangkok and, knowing that Snowden had been to Bangkok the previous September, she looked into his e-mail account. There she found an e-mail from a woman in Bangkok with an attachment showing Snowden and the woman in a restaurant. The woman stated, “I love you. I miss you,” to which Snowden replied that he was “trying to get [rest] and save my energy for another trip [to] Thailand in April.” When confronted, Snowden promised he loved Campeanu and would not go anywhere, but he was upset that she had looked into his e-mails. Nevertheless, they went ahead with

the wedding. They had sex on the night before she returned to Romania on March 10, 2009.

After returning to Romania, Campeanu continued to communicate with Snowden via the Internet for a few weeks until Campeanu discovered that Snowden was still on dating and travel sites and had traveled to the Philippines just three weeks after the wedding. In an e-mail dated April 10, 2009, she asked for a divorce, noting, “You have never used the same rules for both of us. You did not trust in me when you said it was not the moment to get pregnant, remember? Even without real reasons, only making suppositions. Not all the people are like you, Norris. Everything I did lately was thinking of us instead of me. I was even about to start a fertility treatment, to turn back my biological clock. See how naïve I was?” Snowden did not reply.

On April 22, 2009, Campeanu wrote to “web site lawyers” via e-mail asking: “I got married with an American citizen in March 2009 in San Jose, California. He did not contact me in the last month, and he refuses to answer my messages. What are my rights as a wife? How do I get divorced, as long as I got to the United States with a fiancé[e] visa, with only one entry, and I did not start yet the process for a spouse visa?” She telephoned Phair on May 21, asking him “How can I get divorced.” She called another immigration specialist on May 29 with the same inquiry. By then she had contacted a lawyer in Romania and had learned that she could not apply for divorce in Romania nor could she do so in California without residing there for six months. She did not want to continue with the visa process. In an e-mail reply to the second immigration specialist Campeanu stated, “I don’t want to continue the proceedings for obtaining the green card. My wish is to only obtain dissolution of marriage. Could you help me by recommending a lawyer specialized in divorce? I’m sorry for insisting, but I really don’t know how to initiate this procedure, as long as my husband refuses to cooperate. Once again, thank you for your time.”

Campeanu continued sending e-mails to Snowden expressing her feelings for him and her frustration with the whole situation. She finally heard from Snowden again on May 3, 2009. He was still very put off by her having looked at his e-mail. Campeanu decided that she wanted to try to solve their problems and give him a chance to explain but she told him that if he wanted to dissolve the marriage she would not fight him. They eventually reconciled in June 2009. Snowden contacted Phair again and the process for a spousal visa was restarted.

Snowden went to Romania in December 2009 and stayed for four days. Snowden and Campeanu had sexual relations once during that time. He returned in July 2010 for two weeks. Again they had sexual relations only once. Campeanu wondered why he had slowed down their sexual relations. She was the one who usually initiated sex but Snowden usually refused. Campeanu asked Snowden why they could not have a “normal” life. Snowden said he was getting old and did not feel like having sex.

The spousal visa was finally issued and Campeanu arrived in California on December 8, 2010, bringing her two daughters with her. Campeanu, who has a bachelor’s degree in mechanical engineering and a masters in financial management, quit a good paying job and signed a long-term lease on the apartment she owned before packing up and moving to San Jose. Things were fine for about two weeks but then something changed and Snowden became very demanding and insisted that she should always follow his instructions to the letter. He told her she was an incompetent mother, did not know how to cook, and repeatedly threatened to send her back to Romania. This was a great concern to Campeanu in light of what she had given up in Romania. Snowden refused to have sex with her and, at the same time, his computer history showed he was active on dating Web sites and viewing pornography. By January 4, 2011, Snowden decided they had to separate. Finally, after a big fight with Snowden on January 22, 2011, Campeanu and her daughters left for North Carolina where Campeanu’s friend lived.

C. Snowden's Rebuttal

Snowden claimed that he did not learn about the 2009 fertility test and did not know Campeanu had any fertility problems until the day of trial when he saw her trial brief. He denied Campeanu's claim that they had had sexual relations three times since the wedding.

On cross examination Snowden explained that he knew fertility could be an issue because of both their ages, "So we thought that there may be a possibility, because we've been having plenty of sex, and what I wanted to do is when she got here we could do whatever is best to be sure that she could get pregnant and we could have a baby." He again admitted that he never added her to his health insurance, denied having any sex with her since prior to March 2009, and denied having had any sex with anybody else since then. At the same time, he agreed that he believed he is a "typical male" without "any problems with sex" and that he was "sexually active."

D. The Trial Court's Decision

The trial court concluded that Snowden had not proved his marital fraud claim, resolving the conflicting evidence in Campeanu's favor. The court found that Campeanu "loved Snowden and intended to engage in sexual relations with him after they married." They engaged in sexual relations on Snowden's two postmarriage trips to Romania and Campeanu had intended to continue the sexual relations but it was Snowden who "did not want to engage in sexual relations at that time because he wanted to focus on deepening their relationship by discussing each other's ideals and beliefs. He admits as much in his declaration filed on May 10, 2011."

As to the fertility issue, the court observed that Snowden had not alleged infertility as a basis for annulment nor had he raised the issue of Campeanu's failure to show him the 2009 fertility report until he filed an objection to the trial court's proposed statement of decision. But even if these procedural issues were excused, Snowden had not proved that he was unaware of Campeanu's fertility problem or that he would not have entered

into the marriage had she shown him the report. The court accepted Campeanu's testimony describing her premarital discussion with Snowden about "the fact she probably could not become pregnant" "At the time of the marriage, Snowden was already aware that it would be difficult for Campeanu to become pregnant at her age and it would become even more difficult as time passed. Snowden and Campeanu had discussed adoption as an alternative if Campeanu could not become pregnant. Nevertheless, Snowden was not in any hurry to have a child with Campeanu, as evidenced by his decision not to put her on his medical coverage (so that she could undergo fertility testing in the United States) and not to engage in sexual relations so that they could focus on deepening their relationship. Snowden had planned for Campeanu to undergo fertility treatment in the United States. There is no evidence that Snowden would have accepted the Romanian medical report as valid proof that Campeanu could not become pregnant." Thus, the trial court concluded, Campeanu did not conceal her fertility problem at the time of the marriage, Snowden would have married her even if he had seen the Romanian fertility report, and Campeanu's fertility was not material to Snowden's decision to marry her.

Finally, the trial court found that Campeanu did not marry Snowden just to obtain a green card. Rather, she loved him and had intended to fulfill her marital duties. The marriage failed for other reasons, including "trust issues," Snowden's "ambivalence about being married and his seeming desire to continue living the way he lived as a bachelor," and "parenting issues."

E. Discussion

Snowden argues that the trial court abused its discretion in rejecting his petition because it is undisputed that Campeanu did not show him the Romanian fertility report and because there is no other substantial evidence to support the trial court's decision. Snowden argues, at different points, that this court should apply the abuse of discretion, substantial evidence, and independent standards of review.

We apply the independent standard of review when the facts are undisputed. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) To the extent Snowden argues that Campeanu’s failure to show him the Romanian fertility report is a fact that compels judgment in his favor, we apply this least deferential standard. Nevertheless, we reject the argument. Although it is undisputed that Campeanu did not disclose the fertility report prior to marriage, proof of the nondisclosure is only one element of Snowden’s marital fraud claim. Snowden points to no uncontroverted evidence that would support the other elements. Accordingly, we reject his contention that he was entitled to judgment as a matter of law based upon this single undisputed fact.

To the extent Snowden maintains that the evidence as a whole does not support the trial court’s decision, we apply the substantial evidence standard of review. More precisely, since the trial court found that Snowden had not carried his burden of proof, the question is whether the evidence compels a finding in his favor as a matter of law. “Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ ” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Indeed, Snowden’s argument is, simply, that the facts support his position. “If one is going to make a ‘the-facts-compel-that-I-win-as-a-matter-of-law’ argument, one’s brief must fairly state all the evidence.” (*McCauley v. Howard Jarvis Taxpayers Assn.* (1998) 68 Cal.App.4th 1255, 1266.) Snowden cites the evidence supporting his position but precious little of the evidence submitted by Campeanu. By failing to fairly state the evidence that was before the trial court, Snowden has forfeited his substantial evidence argument on appeal. (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 415.) Nonetheless, having conducted our own review, we briefly address the merits.

The gist of Snowden’s argument is that Campeanu never intended to be a wife to him and that she wanted the marriage solely to support her application for a green card.

In support of his theory Snowden alleged that Campeanu refused to have sex with him and failed to disclose her infertility knowing that he wanted to have a baby. He then described her sudden change in behavior immediately upon receipt of her green card, which, he claims, shows that once she got what she wanted she was ready to get out of the marriage. The trial court rejected Snowden's version, finding Campeanu had loved Snowden and intended to be a wife to him.

As to Snowden's claim that Campeanu refused to have sex with him, Campeanu provided conflicting testimony, stating that the couple had sexual relations once in the days after the marriage before she returned to Romania and once on each of Snowden's subsequent trips to Romania. She also testified that it was Snowden who declined sex on other occasions. Snowden's own declaration states that he wanted to stop having sex in order to work on deepening their relationship.

As to Snowden's claim that he did not know about Campeanu's fertility problem, Campeanu testified differently. There was also a reference to planned fertility testing in one of her postmarriage e-mails to him. The materiality of the issue to Snowden is defeated by his own acknowledgement that he knew fertility could be a problem given their ages but he never got around to adding Campeanu to his health insurance so that she could pursue fertility testing or treatment.

Evidence that Campeanu's actual intent was to marry and have a life with Snowden includes the fact that she obtained the fertility test before she left for San Jose the first time. If she did not hope to have a family with Snowden, or intend to have sex with him, there would be little reason to assess her fertility. She inspected his e-mail and Internet browsing history to find out just what kind of man he was. If all she wanted was a green card one would not expect her to be so concerned with his extra-marital behavior.

In the immediate postmarriage period, after Campeanu had returned to Romania and Snowden refused to communicate with her, Campeanu poured her heart out to Snowden in her e-mails while also seeking advice about how to get out of a marriage

when her husband would not speak to her. She noted in those inquiries that she was not interested in pursuing a visa. She just wanted to know how to end things. Even after Snowden began communicating again, she gave him the option of ending the marriage, telling him she would do nothing to fight it if that was what he wanted.

One could reasonably infer from the foregoing that Campeanu had intended to be a real wife to Snowden. The rapidity with which the marriage deteriorated after Campeanu received her green card does not compel a contrary conclusion. The couple did not trust each other from the very outset. Campeanu checked Snowden's Internet browsing history. She read his e-mail. What she found raised concerns about his character. Her snooping, in turn, led Snowden to mistrust her. His continued interest in frequent travels and pornography support a finding that he was ambivalent about the marriage. And there was significant conflict between Snowden and Campeanu over Campeanu's parenting of her younger daughter. Snowden accused Campeanu of being an "incompetent" mother and, after only weeks together, asserted himself as the parenting authority in the house. Since the marriage seems to have begun so shakily, it is reasonable to conclude that it was these further conflicts that undermined it altogether.

Suffice it to say that the trial court chose to believe Campeanu's version of events. Snowden's arguments on appeal go to the weight of the evidence, which was up to the trial court to assess. We cannot say that Campeanu's testimony was so inherently unreliable as to be unworthy of belief. " 'The cold record cannot give the look or manner of the witnesses; their hesitations, their doubts, their variations of language, their precipitancy, their calmness or consideration. A witness may convince all who hear him testify that he is disingenuous and untruthful, and yet his testimony when read, may convey a most favorable impression.' " (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.) Thus, "[a]lthough there was conflicting evidence presented at trial, we are bound by the trial court's interpretation of the facts." (*In re Marriage of Liu, supra*, 197 Cal.App.3d at p. 156.)

F. Disposition

The trial court's order denying the petition for annulment of the marriage between petitioner Norris Snowden and respondent Simona N. Campeanu is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.