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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of REBECCA KIM and  
TING WANG.

H041056  
(Santa Clara County  
Super. Ct. No. 1-12-FL-162065)

REBECCA KIM,  
  
Respondent,  
  
v.  
  
TING WANG,  
  
Appellant.

The trial court entered an order dissolving the marriage of Rebecca Kim and Ting Wang. Wang challenges the dissolution, arguing that the court should have granted his request for an annulment. Finding no error, we will affirm.

**I. TRAIL COURT PROCEEDINGS**

Wang and Kim were married in March 2004. Kim filed for dissolution in June 2012. Trial was set for late January 2013, at which time the court rejected Wang’s plea for a formal separation in an attempt to save the marriage. Wang voiced concern that a divorce would end his career as a minister. But more importantly, he felt that the marriage was salvageable—that “no differences should be irreconcilable with enough effort.” Citing California’s no fault divorce law, the court granted Kim’s dissolution request. Judgment was entered effective February 12, 2013.

Wang moved to set aside the judgment on several grounds including perjury, duress, mental incapacity, mistake, and excusable neglect, and he requested that the matter be resubmitted as an action for an annulment. In a supporting declaration, Wang stated that he was a respected and dedicated pastor in the Bay Area Christian community. He had served as a pastor for the College, Youth and Children's Ministries at the Korean Central Presbyterian Church. He had preached at the Christian Reformed Church and engaged in other speaking commitments. He explained that his church considers divorce a sin, so that a change in marital status would disqualify him from employment. Wang stated further that Kim "knew she was marrying into the role of the Preacher's wife with all of its responsibilities and benefits," and she was "aware that [Wang] would be subjected to intense scrutiny by [his] superiors and the church community."

The declaration continued: "Salient to the heart of the ministerial marriage partnership, and the issue that directly affected my decision to marry [Kim], was [Kim's] apparent spiritual maturity and Christian ministerial involvement prior to marriage. At the time of marriage, [Kim] told me that she was deeply involved in a Christian ministry in Berkeley, and was regularly mentored by her congregational leader ("Shepherd") in weekly one-on-one meetings with a view to biblical learning and spiritual growth. In addition, [Kim] informed me that while an undergraduate at UC Berkeley she had also undertaken a regular (at times, weekly) trip from Berkeley to Palo Alto (approximately 100 miles round-trip) in order to instruct a bible student in the Scriptures, and that she fulfilled this considerable obligation even during weeks of her own exams and heavy schoolwork, sometimes to the challenge of her own academic achievement. This demonstrated to me considerable devotion to, and sacrifice for, the life of ministry and service. Furthermore, [Kim] informed me that her parents were missionaries from Korea to the United States and had been instrumental in planting a successful church congregation in southern California. Moreover [Kim] also told me that she had grown up in her parents' church, and even bore a title granted to her by the church. Taken as a

whole, the information that [Kim] revealed to me regarding religious matters indicated a woman recognized to possess appreciable spiritual maturity and devotion.”

The declaration stated that Wang “broached the issue of [Kim’s] Christian commitment” in a conversation occurring at or about the January 2013 dissolution hearing: According to Wang, “[Kim] responded that it should have been obvious that she was a mere ‘benchwarmer Christian,’ if a Christian at all, even at the time of marriage,” and that response did not “line up with the facts that [Kim] disclosed to me prior to the marriage.”

Kim filed a declaration opposing Wang’s motion, explaining that in early 2012 Wang refused to continue couples counseling, he wanted the marriage to continue on terms including relationships with other women, and he would not change his behavior.

Wang’s motion was resolved by a stipulation vacating the dissolution judgment and allowing Wang to seek an annulment on the condition that the dissolution would be reinstated retroactive to February 12, 2013 if he failed to obtain an annulment. The stipulation acknowledged Kim’s “support[] in principle” and agreement not to oppose the annulment request.

Wang filed further briefing and he argued for an annulment based on Kim’s fraudulent concealment of her religious conviction. At the first of two hearings the court said that Wang’s request was unsupported by the law but it would give Wang the opportunity to present additional facts to support his request. At the prove-up hearing Wang added only that he was an ordained pastor in the Korean-American Presbyterian Church, a church that did not allow ministers to be divorced.

The court denied the annulment request because no California case law supported Wang’s argument that fraud with respect to religious conviction was a basis for nullity. Mindful of Kim’s non-opposition to the annulment, the court noted the reference in *In re Marriage of Meagher v. Maleki* (2005) 131 Cal.App.4th 1, 6 (*Meagher*) to the state’s role as a “silent but active party in annulment proceedings,” and the court’s duty to

uphold the law. A dissolution judgment was entered on March 26, 2014, effective February 12, 2013.

## II. DISCUSSION

### A. LEGAL PRINCIPLES

Family Code section 2210, subdivision (d) provides for the annulment of a marriage when “[t]he consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as his or her spouse.” Annulment is considered an extreme remedy: “A marriage contract should not be annulled [based on fraud], except in an extreme case where the particular fraud goes to the very essence of the marriage relation, and especially is this true where the marriage has been fully consummated and the parties have actually assumed all the mutual rights and duties of the relation.” (*Marshall v. Marshall* (1931) 212 Cal. 736, 739–740.) To show a marriage induced by fraud, the moving party must show that the spouse “made false statements upon matters which the state deems vital to the marriage relationship,” or that “at the time the marriage was contracted did not intend to perform marital duties, but on the contrary assumed the relation with the sole intent of obtaining fraudulently the property of the other, or with the intent of gaining thereby some advantage which inheres in the matrimonial state.” (*Bragg v. Bragg* (1934) 219 Cal. 715, 720.) Fraud must be proven by clear and convincing evidence. (*Williams v. Williams* (1960) 178 Cal.App.2d 522, 525.)

Historically, annulments based on fraud have been granted only in cases where the fraud related in some way to the sexual, procreative, or child-rearing aspects of marriage. (*Meagher, supra*, 131 Cal.App.4th at pp. 7–8.) In *Meagher*, the wife sought annulment of a three-year marriage based on the husband’s fraudulent misrepresentation of his financial circumstances and his deception with regard to joint business ventures before the marriage. In rejecting fraud regarding financial matters as a proper basis to support

an annulment, the court summarized: “In the absence of fraud involving the party’s intentions or abilities with respect to the sexual or procreative aspect of marriage, the long-standing rule is that neither party ‘may question the validity of the marriage upon the ground of reliance upon the express or implied representations of the other with respect to such matters as character, habits, chastity, business or social standing, financial worth or prospects, or matters of similar nature.’ ” (*Id.* at p. 8; italics omitted), quoting *Schaub v. Schaub* (1945) 71 Cal.App.2d 467, 476.)

The statute of limitations to seek an annulment based on fraud is four years from the date the facts constituting the fraud are discovered. (Fam. Code, § 2211, subd. (d).)

## **B. WANG’S ARGUMENTS<sup>1</sup>**

Relying principally on *Lamberti v. Lamberti* (1969) 272 Cal.App.2d 482 (*Lamberti*), Wang argues that the trial court rejected his annulment request based on the erroneous legal conclusion that religious fraud is not recognized in California. In *Lamberti*, the parties met when the defendant was visiting the United States from Italy. (*Id.* at p. 483.) After knowing each other for less than one month, they agreed to marry immediately so the defendant could lawfully remain in the United States. (*Ibid.*) The parties entered into a civil ceremony with the understanding that they would be wedded in the Roman Catholic church three months later, after which time they would live together and the marriage would be consummated. (*Id.* at pp. 483–484.) Church representatives confirmed the process violated no church rules. (*Id.* at p. 484.) The plaintiff would not have participated in the civil ceremony without the defendant’s promise to wed in the Catholic church. (*Id.* at p. 484.) Immediately after the civil ceremony, the “defendant’s ardor seemed noticeably to cool toward [the] plaintiff.” (*Ibid.*) He refused to attend church or make any arrangements for the religious ceremony, and he made little effort to visit the plaintiff except to deflect

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<sup>1</sup> Consistent with her non-opposition, Kim has not filed a brief in this appeal.

immigration authorities. The parties never lived as husband and wife, and the marriage was not consummated. (*Ibid.*)

In determining whether the defendant's conduct constituted sufficient fraud to annul the marriage, the *Lamberti* court explained "there must be regard for the whole status of both parties and the circumstances which induced the contract—in short, the fraud must be determined by the circumstances of each case." (*Lamberti, supra*, 272 Cal.App.2d at p. 485.) The court noted that the annulment of an unconsummated marriage could more readily be obtained than one where the parties had cohabitated as husband and wife. (*Ibid.*) Upholding the annulment, the *Lamberti* court concluded that the defendant's promise to solemnize the marriage in a Catholic ceremony was a fraudulent misrepresentation material to the plaintiff's agreement to marry. (*Ibid.*) The court noted that the plaintiff was an observant Catholic who, by demanding a Catholic wedding, could have been concerned with "one of the most vital elements of the marriage and family life, namely, the manner of rearing any children." (*Ibid.*) The court observed: "Religion, of course, should not under any circumstances be used as a cloak to conceal some other fault; at the same time the right of an individual to his or her religious conviction is so ingrained in our philosophy of life and government that a court should not hesitate to give full credence to such a claim when made as in this case." (*Ibid.*)

The facts in *Lamberti* do not support Wang's broad argument that an annulment may be based on a misrepresentation in religious matters. In *Lamberti*, the civil ceremony occurred only to forestall the defendant's deportation to Italy. (*Lamberti, supra*, 272 Cal.App.2d at p. 483.) The parties understood the marriage would only be consummated after a Catholic ceremony and, as that ceremony never happened, the marriage was never consummated and the couple did not live as husband and wife. (*Id.* at p. 484.) In our view, *Lamberti* was not decided based on a misrepresentation regarding religious conviction but rather based on the defendant misrepresenting his love and affection for the plaintiff so that he could obtain legal status in the United States—a

misrepresentation that was apparent from his transformed demeanor immediately following the civil ceremony including his overt refusal to solemnize the marriage.

Appellant argues that what is essential to one marriage may not be significant to another, and for him “[r]eligion went to the heart of the marriage relationship.” He argues that the essence of marriage must mean more than procreation given that older couples and same sex couples may marry. We agree. In addition to procreation, courts have recognized sexual intimacy—shared by older couples and same sex couples—as essential aspects of marriage. (*Meagher, supra*, 131 Cal.App.4th at p. 7.) Courts have also recognized marriage as the foundation of family and the building block of community (*Obergefell v. Hodges* (2015) 135 S.Ct. 2584, 2601), interests promoted by all marriages regardless of age or gender. But while religious conviction may be important to many marriages, it is not an interest the state has deemed vital to a marriage. (*Bragg v. Bragg, supra*, 219 Cal. at p. 720.)

Even if religious misrepresentation were a proper basis for annulment, Wang has failed to show by clear and convincing evidence that Kim induced him to marry her based on any religious misrepresentation, or that Kim’s religious conviction prevented the parties from fulfilling their marriage contract. According to Wang’s declaration, nearly nine years after he and Kim married, Kim told Wang that it should have been obvious, even at the time they married, that Kim was, at most, a “ ‘benchwarmer Christian.’ ” But there is no evidence that Kim ever lied or mislead Wang about her religious upbringing or her involvement in Christian ministry before marriage.

There is also no evidence that during the marriage Kim’s religious conviction prevented the parties from living as a married couple. Wang acknowledges in his hearing brief that following the marriage he began to suspect that Kim “was not as fully committed to faith practice” as she had led him to believe before the marriage, in part because her lifestyle was inconsistent with her premarital religious devotion. He did not seek an annulment at that time but continued in the marriage. When Wang ultimately

sought an annulment, it was not because Kim's religious convictions had impeded their marriage. Rather, he sought an annulment in lieu of the dissolution sought by Kim because his religion apparently will not accept the ministry services of a divorced pastor. In light of the parties' consummated eight-year marriage in which the couple had assumed the rights and duties of the marriage in spite of Kim's lack of spiritual devotion, Wang has failed to show that the strength or weakness of Kim's religious conviction frustrated the essence of the marriage.

### **III. DISPOSITION**

The dissolution judgment is affirmed.

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Grover, J.

**WE CONCUR:**

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Rushing, P.J.

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Márquez, J.