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Summary of Irving v. Irving, 122 Nev. Adv. Op. No. 44

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Recommended Citation

Hale, Christian, "Summary of Irving v. Irving, 122 Nev. Adv. Op. No. 44" (2006). *Nevada Supreme Court Summaries*. 531.

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Irving v. Irving, 122 Nev. Adv. Op. No. 44 (May 25, 2006)¹

FAMILY LAW – ANNULMENT OF MARRIAGE BASED ON FRAUD

Summary

Appeal of a district court order granting an annulment for fraud.

Disposition/Outcome

Reversed. A party seeking to have a marriage annulled on the ground of fraud must prove the fraud by clear and convincing evidence.

Factual and Procedural History

After meeting through a pen-pal service, appellant Beatriz S. Irving, who was living in the Philippines, and respondent Gilbert J. Irving, who was living in the United States, exchanged love letters and telephone calls for nearly ten years. Twice, Gilbert visited Beatriz in the Philippines. After the first visit, Beatriz told Gilbert that she had been pregnant with his child but that she had had a miscarriage. In 2002, Gilbert obtained government approval for Beatriz to immigrate to the United States. The parties married shortly thereafter.

From June 2002 to October 2002, the parties lived together as husband and wife. During this time, Beatriz never became pregnant despite the couple's continued efforts. In October 2002, Beatriz was diagnosed with tuberculosis and moved out of Gilbert's residence, in part because Gilbert was concerned that the disease was contagious. In November 2002, Gilbert filed a complaint for annulment, alleging that his consent to marriage was induced by fraud because Beatriz had misrepresented that she wanted to conceive his child.

After a bench trial, the district court noted that the case was "very close" but ordered an annulment for fraud based on its findings that Gilbert had relied on Beatriz's representations that she would conceive his child and that there were no "allegations of the normal reasons as to why parties separate."

Beatriz appealed on the basis that Gilbert was required to prove fraud by clear and convincing evidence, and the district court had not addressed the required burden of proof.

Discussion

The Court noted that the level of proof required to establish fraud for an annulment under NRS 125.340(1) was an issue of first impression in Nevada, and a matter of statutory interpretation since the statute at issue was unclear.² Since the interpretation of a statute is a

¹ By Christian Hale.

² If the consent of either party was obtained by fraud and fraud has been proved, the marriage shall be void from the time its nullity shall be declared by a court of competent authority. NEV. REV. STAT. § 125.340(1) (2005).

question of law, the standard of review on appeal was *de novo*. The Court stated that where statutory language is clear, it follows the plain meaning; where the language is ambiguous, such that it is susceptible to two or more reasonable interpretations, the Court looks to legislative intent. Here, the legislative history was silent as to the burden of proof required. The Court noted that legislative intent may nevertheless be deduced by reason and public policy.³

The Court noted two possibilities: fraud may be proved either by clear and convincing evidence, as in a traditional tort cause of action for fraud, or by a preponderance of the evidence, the general civil standard. The Court found the former appropriate here for two reasons. First, the Court already requires clear and satisfactory evidence from a party seeking an annulment for want of understanding due to intoxication.⁴ Second, due to Nevada's "strong public policy favoring marriage," courts should not generally grant an annulment absent clear and convincing evidence.⁵

The district court decision in favor of Gilbert was reviewed for abuse of discretion. The Court found no substantial evidence⁶ to support a finding of fraud in this case by clear and convincing evidence because of the testimony at trial. First, Beatriz had testified that she had been pregnant with Gilbert's child before, but had miscarried, and that she could conceive again, in theory. Second, Gilbert had testified that having a child with Beatriz was not his primary reason for marrying her, and that even if Beatriz were infertile, he would still have married her. Third, both parties testified that they had been attempting to conceive a child together. Accordingly, the marriage had not been entered into fraudulently, and the district court had abused its discretion because fraud on the part of Beatriz had not been proved by any fact by clear and convincing evidence.

Conclusion

Nevada courts will now require a party seeking to annul a marriage on the grounds of fraud to prove the fraud with clear and convincing evidence. Nevada law favors this higher burden of proof because of a strong public policy in favor of marriage and against annulment.

³ Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. ___, ___, 131 P.3d 5, 10 (2006) (quoting State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004)).

⁴ McNee v. McNee, 49 Nev. 90, 100, 237 P. 534, 537-38 (1925).

⁵ The Court cited opinions from Arkansas, Alaska, North Dakota, Delaware, and Wisconsin courts, which supported the requirement of a heavy burden of proof for the annulment of marriage for fraud.

⁶ Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment. Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).