General Information Re Nullity (Annulment) Of Marriage Or Domestic Partnership In California

Petitioning for a judgment of nullity (rather than marriage dissolution) is appropriate where the validity of the marriage is in doubt.

Marital dissolution (divorce) and nullity of a marriage are premised on completely different assumptions:

- A dissolution action is maintained to terminate a valid marriage on grounds arising after the marriage (Ca Fam § 2310);
- A nullity proceeding is maintained on the theory that, for reasons existing at the time of the marriage, no valid marriage ever occurred (i.e., the marriage, from its inception, is either void or voidable; Ca Fam § 2200 et seq.). In other words, whereas a dissolution action seeks to terminate marital status, a nullity action seeks to inquire whether any such status ever existed.

A marriage may be invalid from its inception either because of irregularities in statutory formalization procedures (ordinarily, license, solemnization and authentication; (Ca Fam § 306) or because of other legal impediments that, notwithstanding proper formalization, render the marriage void or voidable (incestuous, bigamous, induced by fraud or force, party under age of consent, etc.; (Ca Fam §§ 2200, 2201, 2210).

General Requirements For A Valid Marriage In California

"Marriage" under California law is a "personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary." [Ca Fam § 300] But the parties' consent does not alone constitute a marriage. To validate the marriage, the consent must be followed by issuance of a license (Ca Fam § 350 et seq.), solemnization (Ca Fam § 400 et seq.) and authentication (Ca Fam §§ 422-425); and the "certificate of registry of marriage shall be returned" (Ca Fam §§ 359 & 360 (emphasis added)). [Ca Fam §§ 300, 306]

California has abolished the concept of "common law marriage." A valid marriage cannot be created in California solely by the parties' consent or mere cohabitation. [Ca Fam § 300]

"Void" vs. "Voidable" Marriages And Domestic Partnerships

A void marriage or domestic partnership (Ca Fam §§ 2200-2201) is invalid and a nullity from its inception. It never legally existed.

A voidable marriage or domestic partnership (Ca Fam § 2210) is valid for all civil purposes between the parties and against the world until adjudged a nullity; i.e., the marriage or domestic partnership is invalidated only from the time it is so declared by a court of competent jurisdiction. Moreover, with the passage of time, a voidable marriage or domestic partnership may, for all practical purposes, become valid (nonvoidable) because a proceeding to annul a voidable marriage/domestic partnership must be commenced within statutorily-prescribed time limits. [Ca Fam § 2211] Once the applicable statutory period expires, a judicial termination of marital/domestic partnership status and adjudication of the bundle of rights and responsibilities incident thereto must proceed by an ordinary dissolution.

Basis For Judicial Determination Of Nullity Where Marriage Or Domestic Partnership Is "Void"

An alleged marriage or domestic partnership may be adjudged a nullity as "void" pursuant to Ca Fam §§ 2200 or 2201 or if otherwise invalid from its inception as follows:

Incest: A marriage or domestic partnership between parents and children, ancestors and descendants of every degree, brothers and sisters (of the half or whole blood), or uncles and nieces or aunts and nephews is incestuous and void from the beginning, "whether the relationship is legitimate or illegitimate." [Ca Fam § 2200]

Bigamy: A subsequent marriage or domestic partnership is illegal and void from the beginning if either party has a spouse or domestic partner still living unless the former marriage/domestic partnership was dissolved or adjudged a nullity before the date of the subsequent marriage/domestic partnership. [Ca Fam § 2201(a)(1)]

Exception: A subsequent marriage or domestic partnership when a party has a spouse or domestic partner still living is only voidable (valid until adjudged a nullity pursuant to § 2210(b)) where, at the time of the subsequent marriage or domestic partnership, the former spouse/domestic partner (a) has been absent, and not known to be living for five successive years immediately preceding the subsequent marriage/domestic partnership, or (b) "generally reputed" or believed to be dead. [Ca Fam § 2201(a)(2) & (b)]

Marriage/Domestic Partnership Not Lawfully Contracted: Sections 2200 and 2201 (above) do not state the exclusive grounds for invalidating a marriage or domestic partnership as "void." A marriage or domestic partnership ostensibly contracted in

accordance with California law is also invalid from its inception and thus void if the parties failed to comply with the Ca Fam §§ 300 and 306 requirements for a valid marriage or the Ca Fam § 297 requirements for a valid domestic partnership).

Basis For Nullity Where Marriage Or Domestic Partnership Is "Voidable"

Minority Of A Party:

The party who commences the nullity proceeding (or on whose behalf it is commenced) was under the age of lawful consent (under age 18) and did not obtain the requisite parental/court consent unless, after attaining age 18, the party "freely cohabited with the other as husband and wife." [Ca Fam § 2210(a)]

Prior Existing Marriage Or Domestic Partnership:

Either party was legally married to another or a member of another domestic partnership, but the subsequent marriage or domestic partnership is not illegal and void because within the § 2210(b)(1) & (3) "voidability" rule (former spouse/domestic partner absent for five years and not known to be living or generally reputed to be dead. [Ca Fam § 2210(b)]

Unsound Mind:

Either party was of "unsound mind" (unable to understand the subject matter of the marriage/domestic partnership contract and obligations incident thereto) unless, "after coming to reason," he or she "freely cohabited with the other as husband and wife." [Ca Fam § 2210(c)]

Force:

Either party's consent to the marriage or domestic partnership was obtained by "force," unless the coerced party thereafter "freely cohabited with the other" as husband and wife. [Ca Fam § 2210(e)]

Physical Incapacity:

Either party was "physically incapable" of entering into the marriage state (unable to engage in normal copulation) and such incapacity continues and appears to be "incurable." [Ca Fam § 2210(f)]

Fraud:

Either party's consent to the marriage or domestic partnership was obtained by "fraud," unless the defrauded party thereafter, and with full knowledge of the facts constituting the fraud, "freely cohabited with the other" as husband and wife. [Ca Fam § 2210(d)]

The type of "fraud" sufficient to support a judgment of nullity must go to the very essence of the marital [or domestic partnership] relation. Thus, fraud or deceit sufficient to avoid an ordinary contract will not necessarily warrant a judgment of nullity. The alleged misrepresentation or concealment must have been "vital to the relationship," directly affecting the purpose of the deceived party in consenting to the marriage/domestic partnership.

The following are some examples of the kinds of fraud which would warrant a nullity judgment:

- As between spouses, concealment of sterility, of existing pregnancy, or of an intent not to terminate a sexual relationship with a "significant other" goes to the "very essence" of the marriage relationship and thus is sufficient ground for a judgment of nullity.
- As between married persons, a concealed intent not to live with the other spouse, not to engage in sexual relations with the other spouse, or not to have children despite a promise to the contrary supports a judgment of nullity on the ground of fraud.
- Wife, who was induced to marry by Husband's false representations he was an honest, law-abiding, respectable and honorable person and that he had a child who was well provided for, was entitled to a judgment of nullity on the ground of fraud where Husband had in fact been convicted of grand theft, was a parole violator and a fugitive from justice, and was guilty of failure to support his children from a prior marriage.
- A judgment of nullity based on fraud is also warranted where one party's motive in entering the marriage was solely to obtain a green card (to acquire U.S. residency status) and he or she never intended to engage in sexual relations with the other or to meet marital duties.

On the other hand, "the concealment of incontinence, temper, idleness, extravagance, coldness or fortune inadequate to representations cannot be the basis for an

annulment." The following are some examples of the kinds of fraud which would NOTwarrant a nullity judgment:

- A party's false representation that he or she owned a particular business or was a "person of means"
- Deceit about one's chastity or moral character is not "vital" to the marital relationship and thus will not justify a judgment of nullity on the basis of fraud.
- Nor is there sufficient fraud to annul a marriage simply because a party concealed a severe drinking problem (or, presumably, drug addiction), refused to seek employment after contracting the marriage (despite assurances before marriage to the contrary), proved to be a "disappointing" sexual partner, and/or turned from a "polite" and "nice" person before marriage to a "dirty," "unattractive" and disrespectful person after the marriage. A finding of § 2210(d) fraud cannot rest solely on the fact a spouse "turned from a prince into a frog."

Valid vs. Invalid Marriage - Substantive & Procedural Differences

Statute of limitations:

A nullity cause of action based on a voidable marriage or domestic partnership (minority, fraud, force, etc.) is subject to a statute of limitations. There is, of course, no "statute of limitations" on the commencement of a marriage or domestic partnership dissolution action.

Minority Of A Party:

A petition for nullity of a voidable marriage/domestic partnership based on minority may be brought by:

- The party who was under the age of consent within four years after reaching the age of consent (Ca Fam § 2211(a)(1)); or
- A parent, guardian, conservator or other person having charge of the minor at any time before the married minor reaches the age of consent (Ca Fam § 2211(a)(2)).

Prior Existing Marriage:

A petition to annul a voidable marriage or domestic partnership based on a prior existing marriage or domestic partnership (former spouse/domestic partner absent for five years and not known to be living or generally reputed to be dead, may be brought by:

- Either party during the life of the other (Ca Fam § 2211(b)(1)); or
- The former spouse/domestic partner (Ca Fam § 2211(b)(2)).

Unsound Mind:

A nullity petition alleging voidability on the basis of a party's "unsound mind" may be brought by the "injured party," or by a relative or conservator of the party of unsound mind, at any time before the death of either party. [Ca Fam § 2211(c)]

Fraud:

A petition seeking a judgment of nullity on the ground of fraud may be brought only by the party whose consent was obtained by fraud and within four years after discovery of the facts constituting the fraud. [Ca Fam § 2211(d)]

Force:

An action to annul a voidable marriage or domestic partnership on the ground of force may be brought only by the party whose consent was obtained by force and within four years after the marriage/domestic partnership. [Ca Fam § 2211(e)]

Physical Incapacity:

A nullity action based on physical incapacity may be brought only by the "injured party" and within four years after the marriage/domestic partnership. [Ca Fam § 2211(f)]

Rights Of The Parties On Termination Of Invalid Marriage

Parties to an "invalid" marriage or domestic partnership generally do not have the rights and obligations granted to and imposed upon spouses or domestic partners under the Family Code.

But there is one important exception:

A party to an invalid marriage or domestic partnership who has "putative" spouse or domestic partner status may be entitled to property, support and attorney fees/costs rights similar to those attaching upon the dissolution of a valid marriage or domestic

partnership. [Ca Fam §§ 2251, 2254, 2255] A party to a void or voidable (or other invalid) marriage has "putative spouse" status only if he or she believed in good faith the marriage was valid. [Ca Fam § 2251]

A party's "good faith" belief in the validity of the marriage is not tested by whether he or she believed a "marriage" lawfully occurred under some private, secular or spiritual set of standards. A putative spouse must have had a good faith belief in the existence of a lawful California marriage (i.e., attempted compliance with statutory requirements).

Whereas unmarried "Marvin" cohabitants have no marital rights under the Family Code, putative spouse or domestic partner status gives rise to cognizable Family Code property, support and attorney fees/costs rights, as well as certain other rights that ordinarily attach only between lawfully married persons or lawfully registered domestic partners.

"Quasi Marital" Property:

Property that would have been community or quasi-community property had the marriage or domestic partnership been valid is deemed "quasi-marital property" and, in a proceeding to terminate the invalid marriage/domestic partnership, must be divided between the parties as if it were community property (i.e., generally equally pursuant to Ca Fam § 2500 et seq.). [Ca Fam § 2251(a)(2)]

Support And Attorney Fees:

Temporary and/or "permanent" spousal/partner support may be awarded in a nullity proceeding in favor of a putative spouse/partner "in the same manner as if the marriage [or domestic partnership] had not been void or voidable" (i.e., pursuant to Ca Fam §§ 3600 (temporary support) and 4320 et seq. ("permanent" support)). [Ca Fam § 2254] Also, the court may award Ca Fam § 2030 et seq. need-based attorney fees and costs in favor of a party found to be "innocent of fraud or wrongdoing in inducing or entering into the marriage [or domestic partnership], and free from knowledge of the then existence of any prior marriage [or domestic partnership] or other impediment to the contracting of the marriage [or domestic partnership] for which a judgment of nullity is sought." [Ca Fam § 2255]

Survivorship Rights:

CA Fam § 2251 "quasi-marital property" rights are triggered only in a dissolution, legal separation or nullity proceeding under the Family Code. The statute does not define a

surviving putative spouse's/partner's legal rights in the other party's estate at death; rather, that is a matter of probate law.