

Superior Court of New Jersey
Appellate Division
Docket No. A-003448-23

NEEL H. PATEL,

PLAINTIFF-APPELLANT,

v.

CIVIL ACTION

BHOOMIKA PATEL,

DEFENDANT-RESPONDENT.

On appeal from a final order entered in the Superior Court of New Jersey,
Chancery Division, Ocean County, FM-15-928-23; Laurie Poppe, J.S.C.

BRIEF AND APPENDIX (A1-10) OF APPELLANT

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Procedural History¹

Plaintiff Neel Patel, (“Plaintiff”) filed a verified complaint against his wife, Defendant Bhoomika Patel (“Defendant”) seeking an annulment. Defendant opposed and sought a judgment of divorce. A1, A5.

The family court heard trial over two days. The court denied plaintiff’s petition for annulment and entered a June 14, 2024 final judgment of divorce between the parties adjudicating equitable distribution of some marital jewelry and awarding \$5,327 in counsel fees to the defendant. A6. Plaintiff now appeals. A8.

Statement of Facts

Background Information

Plaintiff entered an arranged marriage with Defendant on December 8, 2020, and traveled to Ahmedabad, Gujarat, India. A1-4. Plaintiff charged that he lacked legal capacity to marry at the time of marriage due to fraud practiced by the Defendant regarding the essentials of the marriage. A1-4. Unbeknownst to the plaintiff at the time, the defendant entered the marriage for the sole purpose of gaining permanent resident status in the United States. After the marriage, Defendant did not adhere to Plaintiff’s traditional culture despite initially representing herself as being a part of

¹ References to transcripts are as follows:

1T 6/10/24 (trial)
2T 6/13/24 (trial)

that culture. Defendant declined to consummate the marriage (thus no children were born of it). A1-4. Plaintiff affirmed that there was no reasonable prospect of reconciliation between the parties and asked the court to declare the marriage null and void. A1-4.

Plaintiff testified at trial and told the family judge that he moved with his family to the United States from India in 2010. 1T53. Plaintiff and his family are very religious; they follow traditions and are moderately conservative. 1T53.

Plaintiff graduated from pharmacy school at Temple University in August 2019 when he was around 24 years old. 1T55-56 At that time, his family wanted him to start looking for marriage prospects, which led him to the marriage app, Shaadi.com. 1T55-56.

Plaintiff and Defendant's Initial Communications

In September 2019, Plaintiff received a request from Defendant, Bhoomika Patel on the marriage app, Shaadi.com, and they began communicating. 1T56.

Plaintiff was able to review her profile which included her first name, last name, and date of birth. Additional details about her were shared separately later. 1T101. Plaintiff shared aspects of his cultural and traditional values with Defendant, to which she initially agreed. Patel highlighted traits such as honesty, optimism, a blend of modern and traditional cultural values, a love for traveling, and shared views on marriage. 1T102. Around mid-October 2019, Plaintiff discovered

discrepancies in Defendant's stated birth date; her profile initially indicated July 1, 1995, but he later learned it was July 26, 1995. 1T56. Plaintiff stressed the importance of accurate birth dates in his culture for horoscope matching, noting that the different birth dates suggested vastly different compatibility outcomes. 1T57. Despite the birth date discrepancy and initial misrepresentation, Defendant reassured him that compatibility and personal connection were more important. 1T57.

Plaintiff and Defendant continued communicating, and in October 2019, Plaintiff emphasized that divorce was not an option for him except in extreme circumstances. Despite this, Plaintiff noted further misrepresentations by Defendant regarding her views on marriage and divorce, which differed from his expectations. 1T57-58. Plaintiff asked Defendant about her views on potential reasons for divorce and she stated that while small fights and issues were normal, cheating was unacceptable. Plaintiff agreed with her stance on cheating, determining that it aligned with his own beliefs about marriage. 1T58.

In or around October 22, 2019, Defendant's father passed away, which was a significant emotional shock for her. Plaintiff felt a sense of guilt and responsibility towards Defendant following her father's death, feeling compelled to support her despite their short relationship at that point. 1T58

Plaintiff communicated to Defendant that he was also talking to five or six other women around that time to better understand different perspectives. 1T58.

Marriage Discussions

Communications continued between Plaintiff and Defendant and they began to discuss starting a family and having two children once they were married. Defendant said that she was open to living with Plaintiff's parents and embracing his culture, values, and traditions, which Plaintiff found appealing. 1T60. Plaintiff expressed to Defendant his desire to start a family and continue the legacy of his own grandfather. 1T59. Defendant's responses to his inquiries led Plaintiff to believe that Defendant was well-suited for him and would integrate well into his family and cultural expectations. 1T60

In November 2019, Defendant joked with Plaintiff about the fact that they were both Patels. (Plaintiff explained to the Court that there is a cultural distinction between two types of Patels: Kadava Patel and Leva Patel). Defendant humorously asked Plaintiff what he would do if she were a Leva Patel and not Kadava Patel, despite being a Kadava Patel herself (as she had originally represented as) but Plaintiff dismissed the subject since they were both Kadava Patels. 1T62

In December 2019, both families had their first video call, where they discussed a visit to India the following month. Plaintiff had feelings of exclusivity and emotional bonding with Defendant during this period. 1T62

Visit to India and Quick Engagement

In January 2020, Plaintiff and his parents traveled to India and met Defendant for the first time on January 28, 2020. They visited Defendant's home in Hyderabad, went out for dinner, and stayed overnight at her family's house. 1T63

In February 2020, Plaintiff asked Defendant to visit his hometown to spend time together. However, surprisingly, Defendant declined, stating her family would not allow it unless he formally agreed to marriage. Defendant emphasized cultural concerns, suggesting it would reflect poorly if she visited Plaintiff's hometown without a prior marriage agreement. Plaintiff was not ready to commit to marriage and the intention of the trip was for Plaintiff to also meet and consider other potential partners in India. However, Plaintiff felt a strong personal commitment to Defendant following their few months of conversations and the recent death of her father. Despite his reservation and only knowing Defendant for three to four months, Plaintiff decided to commit to marriage with Defendant. 1T64-65.

Shortly thereafter, in February 2020, Defendant visited Ahmedabad with her family for a pre-engagement celebration attended by 300-400 people from Plaintiff's side and only a few from Defendant's side. The engagement event went forward at the insistence of Defendant's family even though Plaintiff's grandmother passed away shortly before, in February 2020. Defendant even expressed a desire to marry

in February 2020, but Plaintiff insisted on needing more time to get to know her better. 1T65.

Plaintiff recounted to the family court events after the engagement, emphasizing that he and Defendant spent time together socially for couple hours a day for the next 3 days. Plaintiff described an intimate encounter at the movies, where Defendant was very physically affectionate despite claiming to be a virgin and inexperienced. Defendant stated that these interactions, including kissing and touching, made him feel she was trying to seduce him and reassured him about their future marriage. After Plaintiff returned to America, the relationship continued long distance. (1T66).

Surprises and Red Flags during Marriage Preparations

In April 2020, after being in contact with Defendant for around nine months, Plaintiff began preparing for their marriage by gathering documents. While gathering documents and preparing for marriage, Plaintiff discovered during a video call that Defendant's last name was not Patel, contrary to what he believed, which was a shock to him. Confronted with the discrepancy; Defendant insisted her family was still considered Patels despite the different last name. Defendant's sister intervened during the conversation, reprimanding Plaintiff for questioning his fiancée and insisting they were Patels. 1T67

However, the surprises continued. In April 2020, Plaintiff found out about Defendant's sister's engagement to someone outside their caste. While plaintiff's family does not discriminate, this engagement was unexpected because he had been told prior to his engagement that the sister would not be getting engaged outside of their caste. The sister's engagement only proceeded after Plaintiff agreed to marry Defendant. In addition, Plaintiff learned about Defendant's brother's divorce and remarriage, which is not viewed favorably in his family's culture. Plaintiff felt deceived that the revelation of the brother's divorce and remarriage occurred only after his own commitment and engagement to Defendant. (1T68-69). But it was too late, as he was already engaged in February 2020 in front of around 400 of his own family and breaking an engagement would not be viewed favorably in the culture and traditions of his family.

In May 2020, Defendant told Plaintiff that they would marry, legally, in December 2020, in India, where defendant continued to live; this would be done just so the defendant could file with the United States Citizenship and Immigration Services (USCIS); later, the couple would have their "real" with all the traditions and customs of the culture. Plaintiff testified, "Then we go to May of 2020 where she's telling me that -- because I was a little worried about this -- all this thing going on. So she's saying that, oh, don't worry, Neel. That our marriage that's going on in December that's not real. It's just for so that we can file for the USCIS. So don't

worry about the traditions and all that. We will get to do that in our real marriage, which would be done at the traditional marriage, like all our customs and traditions and all" (1T69). Plaintiff testified that during this time, Defendant was more concerned about the status of their United States Citizenship and Immigration Services (USCIS) filing rather than developing their personal relationship. (1T74).

In September 2020, Plaintiff questioned why Defendant did not marry outside of her caste like her sister. Defendant responded to Plaintiff that it was very important to Defendant's family that she marry a Patel, and her parents would be upset if she did otherwise. (1T71). Defendant told Plaintiff that she had liked another man named Kiran, but he was out of her caste, so she did not pursue a relationship with him. However, in that same month, Defendant texted Plaintiff that she had sent him a pearl earring that was meant for Kiran instead. Plaintiff expressed initial confusion but did not question the integrity of their relationship based on this text. (1T72) He later found out that she was with Kiran this whole time before and after the marital relationship with the plaintiff.

In November 2020, during the Diwali festival—compared to Christmas in Plaintiff's culture—Plaintiff asked Defendant why the traditional customs were not observed in her family, even though they claimed to be Patels and every Patel he knew observed these customs. Defendant dismissed his concerns and promised she would observe the customs when they were married. (1T72-73).

December 2020 Administrative Marriage

In December 2020, Plaintiff traveled to India to legally marry Defendant on paper to facilitate her immigration process with the United States Citizenship and Immigration Services (USCIS). Plaintiff stayed with relatives, while Defendant stayed at her uncle's house. Plaintiff suggested to Defendant that she stay with him temporarily which she initially refused due to her family customs but, she later agreed. During this period, they did not share a bed, maintaining separate sleeping arrangements. (1T73-74).

On December 8, 2020, Plaintiff and Defendant were legally married in India. As custom, immediately after signing the marriage paperwork, they had to visit their village to pray, and Defendant questioned the necessity of wearing traditional clothes as per custom. In response to Defendant's defiance of the custom and repeated complaints, Plaintiff emphasized to her that adhering to customs was important and that non-compliance indicated potential misalignment in their foundational beliefs and relationship. (1T75). Despite initial resistance, Defendant ended up begrudgingly complying with wearing the traditional clothing and they went to the temple. (1T76).

After they were married, Plaintiff and Defendant continued to sleep separately; she slept on a bed while he slept outside of the room on the floor. Plaintiff expressed that he did not want to force her to sleep in the same bed or cross

any limits against her wishes. (1T76). The marriage was never consummated. Plaintiff then returned to America in December 2020, and the relationship then continued long distance.

In August 2021, defendant again confirmed to plaintiff that she agreed with plaintiff on everything regarding their culture and traditions. Plaintiff, however, was still noticing differences with defendant's behavior and actions, so he asked defendant, "are you sure you didn't marry me for the green card as first we never argue, you seem to agree on everything?" Defendant told plaintiff not to worry and that they would have a great life together. Minor arguments happened thereafter nonetheless. So plaintiff again asked defendant if everything was okay; defendant replied "yes, of course, we are a couple and therefore are having arguments" (or something to that effect). (1T77).

More Surprises and Red Flags

After their marriage in December 2020, Defendant needed to visit HDFC Bank in India and Plaintiff suggested adding the plaintiff to defendants account, but it was never done. (1T76).

In August 2021, Plaintiff first witnessed Defendant's true personality. Defendant made a significant "fuss" over wanting a specific resort to host their traditional marriage ceremony. She expressed her desire to Plaintiff's father, who eventually secured the resort after two weeks of substantial effort and

communication. Upon notifying Defendant and her brother that the resort was secured, their response was unexpectedly unenthusiastic, asking for more time instead of expressing satisfaction. (1T78).

On September 3, 2021, Defendant recorded a conversation with Plaintiff from India without his knowledge. In the recorded conversation, Plaintiff addressed his concerns about Defendant's continued misrepresentations but also stated that, despite the red flags, he was emotionally attached and wouldn't cancel the wedding (the "real" wedding ceremony the couple would be having). He insinuated that she should appreciate him as people generally would react differently. Plaintiff only found out about the defendant recording him in April 2024, when the defendant had to hand over her discovery. Had he known that she was recording him and planting seeds that he was allegedly "abusing" her, he never would have married Defendant. (1T79).

In September 2021, Plaintiff mentioned to Defendant a casual conversation he had with one of his pharmacy technicians about their future plans for having children. (1T79). Initially, Defendant expressed eagerness to start a family before marriage but now indicated she wanted to wait. Plaintiff felt Defendant's change of stance regarding children should have been mentioned before marriage. (1T80).

Plaintiff recounted to the court other red flags that he noticed. For example, not one family member or friend of the Defendant attended their wedding in

December 2020 or visited them for the 10 days they remained in his hometown. (1T80-81). Also, Plaintiff encouraged Defendant to visit his parents who had traveled to India in October 2021 and spend time getting to know them, to which she refused. (1T81-82).

In October 2021, Plaintiff expressed concerns to his parents about possible misrepresentations by Defendant and wanted more time before proceeding with the marriage, but his parents reassured him and encouraged him to remain positive. (1T83). In November 2021, Plaintiff traveled to India for the cultural wedding (the “real” wedding, as they were already administratively married). During this trip, Plaintiff brought up the topic of a prenuptial agreement with Defendant, emphasizing that it was not out of disrespect but due to his family’s efforts and investments, particularly his parents who worked hard and put significant savings into their dream house. Plaintiff’s parents worked 18-hour days and purchased their dream house in 2018, investing \$80,000 of their savings. Defendant strongly opposed the idea, asserting that, as his future wife, trust should negate the need for a prenuptial agreement. Plaintiff initially conceded, agreeing to forgo the prenuptial agreement. Defendant then assured Plaintiff that even if the relationship turned sour, she would not seek financial gain from him, offering to reimburse him for expenses. Plaintiff found this statement unsettling, expecting a positive discussion about their future together. (1T84-85).

Plaintiff advised the Court that a friend, Arth Shah, visited from Canada to attend his wedding. Mr. Shah spent time with Plaintiff and his fiancée Defendant, between November 21st and November 28th, 2021, prior to their cultural wedding on November 28th, 2021. Mr. Shah told Plaintiff something he overheard from Defendant, which caused him not to attend the wedding after expressing to Plaintiff his disapproval and concern over what he overheard. Plaintiff conveyed that despite this incident and other concerns, he remained positive and committed to the marriage, notably because of Defendant's father's recent passing and his family telling him that everything was going to be fine. (1T85-87).

Cultural Marriage and aftermath

Plaintiff followed his parents' advice and proceeded with the cultural wedding in November 2021, despite the issues and his reservations. (1T83). Plaintiff noted that, even though Defendant had friends attend the wedding, she never introduced those friends to Plaintiff, causing further strain and confusion in the relationship. (1T87).

Plaintiff affirmed that the marriage was never consummated, despite staying at a hotel booked by his friends and later at an expensive hotel he had booked. (1T88-89). Plaintiff then returned to America the first week of December.

In January 2022, after returning to America while Defendant stayed in her hometown due to visa issues, Plaintiff observed that disagreements became more

frequent. Plaintiff believed these disagreements were normal at the time but later suspected they were used to build a case against him, possibly for accusations of abuse. (1T89).

In January 2022, a heated argument erupted between Plaintiff and Defendant concerning the wedding photo album. The disagreement was significant enough to involve her brother and sister, who joined the discussion via video call. During the argument, Plaintiff expressed to the family members that Defendant's behavior was surprising and unlike the person he had married. Her brother agreed, acknowledging that her actions were indeed inappropriate. (1T89).

Following this confrontation, Defendant issued an apology in a group chat that included Plaintiff's parents. She promised to change her behavior and expressed concern about the possibility of Plaintiff canceling her visa application. Despite these assurances, Plaintiff made it clear that he was committed to working on their relationship, even amidst their disagreements. (1T89-90).

In April of that year, Defendant's visa was approved, allowing Plaintiff to travel to India to bring her to the United States. He took 2 weeks off from his job as a pharmacist manager based in New Jersey, knowing he could not extend his leave beyond that period. (1T90-91). Plaintiff recounted for the court below the exhausting journey he undertook to reach his hometown in India. After working a full day, he boarded a late-night flight, arriving at his hometown at 3:00 in the morning. From

there, he took a connecting flight to Hyderabad. By the time he reached Defendant Patel's hometown, he had been awake for almost three days straight, feeling the weight of sleep deprivation. (1T92)

The emotional atmosphere was palpable upon his arrival. Defendant's mother was in tears, which added to Plaintiff's emotional strain. Despite his fatigue, Plaintiff stayed awake until around 2 or 3 in the morning, in preparation for an early flight they needed to catch. (1T92)

Once back in his hometown, as they were getting ready for their next flight, Defendant expressed a desire to take an afternoon nap. However, Plaintiff, focused on the urgency of packing, insisted that they finish packing first. This decision led to his eventual exhaustion and an urgent need for sleep. When he finally rested, he woke up to find a room full of people. His aunt noticed his tired appearance and made a light-hearted comment about the packing situation. (1T93).

An argument broke out between Plaintiff and Defendant. She started creating a scene, speaking loudly in front of others, which led Plaintiff to remark on her behavior and question how it might be perceived by those around them. To calm the situation, Plaintiff held Defendant's hand to prevent her from leaving while they continued their discussion. (1T94)

During the confrontation, Defendant accused Plaintiff of hitting her, an allegation Plaintiff firmly denied. He maintained that he had only held her hand. To

avoid escalating the situation further in front of others, Plaintiff suggested they step outside and therefore the slight nudge. (1T94-95)

Defendant then escalated the accusations, claiming Plaintiff had dragged her by the neck and thrown her against a wall. Plaintiff denied these allegations and stated that there were witnesses who could corroborate his version of events. In the heat of the moment, Defendant threatened to inform Plaintiff's mother about the supposed assault. True to her threat, she told Plaintiff's mother that he had hit her, prompting his mother to reprimand him. (1T95)

Overwhelmed by fear and frustration, Plaintiff apologized to his mother. Considering the accusations and the escalating tension, he suggested to Defendant that perhaps they should consider spending some time apart if she truly believed he had hit her. (1T95). The defendant then suggested that was not necessary and she is perfectly fine and that it was just a miscommunication.

Lack of Consummation and Waiting to Have Children

Plaintiff expressed his desire to start a family as soon as he and Defendant were married. He had targeted December 2020 as a timeframe for beginning this new chapter, but he noted that it was dependent on mutual agreement between them, emphasizing that both partners were necessary for conception. (1T115).

However, Plaintiff observed a shift in Defendant's intentions after their wedding. Initially, she had wanted to have two children and start a family

immediately, but her stance changed to wanting to wait and get to know Plaintiff better. This change was significant to Plaintiff, as he believed it affected the integrity of their marriage. (T115-116)

When asked in court to define "consummation," Plaintiff described it as having a sexual relationship. He confirmed that he did not have a sexual relationship with Defendant. Plaintiff shared several excuses Defendant gave to avoid consummation, including claims of it being too painful, having stomach issues, or being on her period. (1T116).

Return to the United States

On May 2, 2022, Plaintiff and Defendant returned to the United States together. To celebrate their arrival, Plaintiff's parents had gone to great lengths to make the occasion special. They had the house beautifully decorated, spending approximately \$7,800 to ensure a memorable welcome. A gathering of 20 to 30 people was organized to surprise them, adding to the excitement of the day. To further mark the occasion, Plaintiff's mother took Defendant to a salon for makeup and preparation, spending around \$200 to \$300 on the experience. After this, they visited a local temple to receive blessings before heading to Plaintiff's home in Toms River, New Jersey. (1T96).

The first day at the house was filled with joy and celebration, but the mood shifted the following day. Defendant expressed disappointment, which left Plaintiff

puzzled. She compared her new experiences and the house unfavorably to the high standards she had seen on Indian television. She also complained about the thinness of her comforter, which she felt was inferior compared to what she was accustomed to. Plaintiff felt that Defendant was not appreciating the efforts made for their arrival and suggested that they could make adjustments to improve her comfort. Over time, this sense of dissatisfaction led Plaintiff to feel that Defendant did not truly want to be in the marriage. (1T97).

Shortly after their arrival in America, Defendant mentioned that she had her period, which meant they could not consummate their marriage. Plaintiff emphasized that he did not want to pressure her regarding this matter, wanting to respect her boundaries and comfort. (1T97).

On the second day of their stay, Plaintiff took Defendant to the Ocean County Library, a place of personal significance for him. It was where he had studied and passed the NAPLEX & MPJE exam for Pharmacist Licensure. However, Defendant's reaction was less than respectful. She made a dismissive joke about the library visit to a friend, which hurt Plaintiff deeply. He had hoped she would appreciate the significance of the place to him, but instead, her comment felt dismissive of his past experiences. (1T98).

A few days later, around May 11 or 12, Plaintiff, Defendant, and Plaintiff's family went to Brick to select trees and shrubs for planting. The outing was intended

to involve Defendant in the process and to seek her input. During the planting, Defendant suggested they should get similar plants the following year but referred to “you guys,” which made Plaintiff feel excluded. Her choice of words underscored a sense of separation and a lack of partnership, furthering Plaintiff’s feeling that their relationship was not as cohesive as he had hoped. (1T98).

The Green Card and Deterioration of the Marriage

Plaintiff confirmed that he filed an I-130 petition for Defendant, which was granted, allowing her to come to the United States. (2T30)

For the first two to two-and-a-half months after Defendant arrived in the United States, the couple enjoyed activities together, such as going to beaches, boardwalks, and movies. However, Plaintiff was keenly aware that Defendant was anxiously awaiting her green card, checking the mailbox daily until its arrival. (2T32-33).

On July 14, 2022, Defendant traveled to Kansas with Plaintiff’s cousin for a baby shower. Plaintiff messaged Defendant during her trip to gauge her feelings, asking if she loved being away from them; Defendant responded positively, expressing her desire to return and be with them. Plaintiff explained that Defendant often expressed that she missed him and wanted to return to be with him while she was away in Kansas. (2T33).

The green card arrived when Defendant was still in Kansas, and she returned on July 18, 2022. Upon her return, their relationship significantly deteriorated; Defendant started having arguments and complaints. Plaintiff described a change in Defendant's behavior that coincided with her obtaining a green card, noting she became more opinionated after that. But Plaintiff suggested that despite disagreements, they tried to resolve issues, framing it as typical marital discord. (1T127). However, Defendant continuously criticized Plaintiff and his parents, leading to frequent arguments, even over minor issues like watering plants. (2T33). After receiving Defendant's submissions during discovery, Plaintiff realized she had been secretly recording his parents and him during this time, leading him to believe that she was purposefully instigating arguments. (2T33).

On August 1st and 2nd, Defendant had a training session in Washington, D.C. She insisted on traveling alone, but Plaintiff felt uncomfortable with her traveling without him since she was new to the U.S. and was unfamiliar with the city. Plaintiff booked an expensive hotel and rented a car, a Camaro, for the trip to Washington, D.C., trying to ensure a good experience for Defendant. Despite sharing a room, the couple did not consummate the marriage during the trip. Defendant frequently cited health issues as reasons. (2T34-35).

Plaintiff told the court that Defendant did not enter the marriage in good faith while he, himself, entered the marriage in good faith. Plaintiff explained that his

reservations on the marriage and wanting to possibly delay the wedding were based on discovering lies in the relationship and wanting more time. Plaintiff reasserted his investment in the wedding after being reassured by his parents. Plaintiff acknowledged that he had reservations but chose to trust his parents' reassurances about both the wedding and the green card issues – and the assurances that defendant continually provided to him. (2T34-35).

Plaintiff admitted that he should have been more attentive to discrepancies early in their relationship, such as the difference of 25 days in her stated date of birth. He reflected that if he had known the defendant's intentions were solely to obtain a green card and that she planned to leave after three months, he would never have gone through with the marriage. (1T106). Plaintiff described being advised by a friend that Defendant might leave him shortly after receiving her green card. (2T32). Plaintiff recounted suspicions voiced by his family about Defendant, but he initially dismissed these concerns. Plaintiff felt deceived and stupid for trusting Defendant from the beginning. (2T34).

Plaintiff testified that he did not consider the December 2020 ceremony a "real wedding" after Defendant had indicated that it was not. Plaintiff testified that based on undisclosed information he only later learned, he now believes that none of the weddings, including the December ceremony, were genuine. (1T112-113).

Defendant's True Intentions are Made Clear

Plaintiff recounted his efforts to improve the couple's relationship, including a suggestion that they share something positive with each other before going to sleep. His wife rebuffed this idea, which was disheartening for him. (2T34-35).

On September 10, 2022, Mr. Patel took his wife to Ocean County Lake, hoping to discuss and resolve their issues in a peaceful setting. Unfortunately, she was uncooperative, which frustrated him further. To address their problems, Mr. Patel offered to live separately from his parents to give the new couple space. However, his wife declined the offer, reinforcing his growing suspicion that she had married him solely for the green card. (2T42). Defendant implied that she would have married someone else and still would have come to America. This reaction left Mr. Patel feeling used and convinced him that Defendant's primary intention was to immigrate to the United States, not a true and genuine marriage with the Plaintiff. (2T43). Additionally, his wife made comments suggesting that if something were to happen to her, Plaintiff should find someone else and be happy. These remarks puzzled Plaintiff, as they seemed to underscore her lack of commitment to the relationship. (2T43)

As Plaintiff argued to the family court, there was misrepresentation and fraud by the Defendant upon the Plaintiff – primarily Defendant's false representations that she was entering into the marriage to build a life with Plaintiff, when it really

was only to obtain a green card, after which she would promptly leave Plaintiff. As part of this lie, Defendant made false statements to Plaintiff and his family about Defendant's religious and cultural beliefs and background, as well as her wanting to have children with Plaintiff. The marriage was never consummated, as acknowledged by both parties, further showing the lies that Defendant told Plaintiff to hoodwink him into the marriage. 2T40.

Defendant's Affair

In January 2023, Plaintiff discovered that a man named Kiran had called his wife, Defendant Patel, at around 12:30 AM, and they had spoken for an hour and a half. Patel noted that Kiran was the same individual who Defendant had admitted to sharing feelings with and also had mistakenly texted about diamond pearl earrings. Plaintiff learned about the phone call through phone records, as Defendant was still using Plaintiff's father's phone line. Additionally, Patel revealed that he found out Defendant and Kiran had gone out together in Florida in February 2023 and frequently talked late at night. (2T48-49).

Defendant abandons the marriage

Plaintiff was unaware of Defendant's intention to leave permanently after obtaining her green card. This revelation came as a shock to Plaintiff, particularly when, on September 20th, he felt compelled to call Defendant's family due to threatening activities aimed at extorting money from Plaintiff's family. During the

call, Defendant's family confirmed that they were already aware of her plans for divorce, ever since she was in India, before the "real" marriage in November 2022.

(2T46)

Plaintiff was deeply troubled by this information. He expressed his disbelief and stressed the sanctity of marriage, vehemently objecting to the idea of divorce. In a conversation with Defendant's family, they suggested sending her to North Carolina for ten days, hinting that she would return afterward with her uncle.

(2T34-35).

Considering this suggestion, Plaintiff had booked a one-way ticket, operating under the assumption that she would return with her uncle. He was hopeful that Defendant would come back to him and their marriage. (2T34-35).

On the night before her departure, Mr. Patel observed his wife unusually dressed up and looking attractive, a stark change from her usual behavior. (2T43). The next morning, as Plaintiff and his parents dropped Defendant off at the Philadelphia airport, she displayed affection by holding his hand and kissing him on the cheek, which confused Plaintiff. Plaintiff felt manipulated into believing that Defendant would return and that their relationship had a future. Plaintiff's father overheard Defendant saying she intended to stretch their relationship until December to appear as a long-standing relationship for the United States Citizenship and Immigration Services (USCIS). After Defendant left, Plaintiff discovered through phone records that she was communicating with immigration lawyers and had no

interest in the relationship. Defendant did not respond to Plaintiff's calls and communications for over 70 days after she left – and even then, despite the prolonged silence, Plaintiff remained optimistic that the situation would resolve, and their marriage would continue. (2T44-45).

Plaintiff noted that his father had warned him about the potential outcome, but he chose to hold onto hope, believing that people from India did not just leave without any explanation. On their wedding anniversary, November 28, 2022, he reached out to Defendant's mother, seeking her assistance in mediating and resolving the issues, but this did not resolve the issue. Plaintiff attempted one last effort to reconcile with Defendant Patel in March 2023. He continued trying to salvage the marriage until various cultural holidays and festivals, only filing for annulment in March 2023 when it was undeniable that he had been defrauded to enter into the marriage by the Defendant. (2T36-38, 50)

Witnesses to Defendant's Fraudulent Behavior

Plaintiff's father testified at trial below. He overheard Defendant exclaim, "How long do I have to do this? I cannot do this acting anymore." 1T6. Defendant indicated she could not act anymore in the house she was sharing with plaintiff following their marriage. 1T7. Defendant noted that she needed to wait until 2024; if Plaintiff did not initiate a fraud case against her, she would receive a 10-year green

card. 1T8. “Do I have to continue staying here? As I already procured my green card” 1T8.

The record showed that friends from Canada informed Plaintiff and his father that something suspicious was happening behind his back. But Plaintiff, having a strong affection for Defendant, refused to believe this was true. Plaintiff’s father continued to investigate, however, and overheard Defendant mention receiving a green card and discussing how accusations of abuse in America could help secure a permanent green card. 1T14. Plaintiff’s father began observing defendant closely within the home. 1T18. He continued overhearing defendant questioning how long she would have to stay with the plaintiff, noting that Defendant had obtained her green card by that point. 1T18-19. The father overheard the defendant noting that she agreed with the plaintiff while they were in India and before Defendant received her green card, but since returning to the United States and obtaining her green card, she no longer felt the need to do so – her goal had been accomplished. 1T20. “I used to agree with Neel on everything before greencard, but now I have the greencard why do I have to agree?, why will I stay with him, If I don’t have to?” 1T20.

Jina Bhagat, a friend of Plaintiffs Father, testified at trial as well. 2T6. She met the defendant when plaintiff and defendant visited Canada. 2T6. Ms. Bhagat described a shopping trip to Lowes with her husband, son, Plaintiff, and Defendant.

During the trip, Defendant received a phone call and took it outside. Ms. Bhagat overheard Defendant on the call, saying that she was there for one month and had to leave once her green card arrived. Bhagat did not take immediate action but later discussed what she had heard with her husband. Thereafter, Ms. Bhagat and her husband decided to speak to Harish Patel, Plaintiff's father, about the matter, and did so the next day. (2T8-9).

Arth Shah also testified. Shah stated he is Plaintiff's best friend and has known him for 29 years. Initially, Shah was invited to Plaintiff's wedding in India but was unable to attend; he later surprised Plaintiff by showing up. Shah recounted an instance during Plaintiff's ceremonial functions where he overheard Defendant say something that raised his suspicions. Shah mentioned hearing Defendant speak when he was at Plaintiff's residence. He recalled her saying, "it's going to be a matter of months after I move to America." (2T16). Shah interpreted Defendant's comment as a red flag and immediately informed Plaintiff about it. Shah then did not attend the wedding because Plaintiff questioned his intentions regarding coming to India and his warnings about Defendant. Shah and Plaintiff had multiple discussions, leading Shah to decide not to attend the wedding as a sign of his seriousness. Shah did not inform anyone else about what he overheard the Defendant say. (2T16-18)

Filing for Annulment of the Marriage

Plaintiff affirmed that he was seeking the annulment because the Defendant had lied to him in order to induce him into their marriage. (2T35). Mr. Patel shared that within his culture and family, divorces are rare, and he would be the first to experience such a situation, which carries a significant stigma. He emphasized that he has conducted himself honorably throughout the marriage, asserting that he has neither used bad language nor engaged in physical or sexual abuse. Mr. Patel also noted that he had not consummated the marriage and remained a virgin (which also was important in his culture as a prospect for marriage). He expressed concern about the challenges he would face in finding another virgin partner if he were to get divorced. (2T34-35).

Plaintiff testified that Defendant sought a divorce only to pursue a claim under the Violence Against Women Act (VAWA) -- for immigration benefits. Mr. Patel insisted that his desire for an annulment was driven by cultural considerations and the societal impact of being a divorced man. Defendant's motivations were solely to secure immigration benefits, not to enter into a marital partnership with Plaintiff. (2T39-41).

Threats from Defendant's Family

On September 5, 2022, Defendant Patel's family reached out to Plaintiff Patel's family with a request for a divorce. During his testimony, Plaintiff explained

that Defendant's family called Plaintiff's family in India to make this request. The conversation took a threatening turn when Defendant's family warned that they would take extreme actions if Plaintiff did not travel to India to facilitate the divorce the Defendant and her family were demanding. (2T42-49).

Additionally, after filing for annulment, Plaintiff began receiving threats from Defendant's family directly. One recorded threat urged Plaintiff to withdraw his claim for annulment, warning that Defendant could fabricate claims and get Plaintiff imprisoned. Distressed by these threats, Patel contacted his attorney on April 5, 2023. Initially, he did not report the threats to the police but later chose to do so due to growing concerns for his family's safety. The threats made Plaintiff and his family afraid to travel to India, exacerbating their anxiety. Patel described his fear of traveling to India due to the threats he received, which included a recorded message suggesting harm if he did not withdraw the annulment case. Plaintiff felt that his life was in danger and interpreted the threat as a potential for physical harm. Patel clarified that the demand to "take the case back" meant not pursuing the annulment and opting for a divorce instead. He emphasized that the threats began only after he had mustered the courage to confront and speak out about the situation. (2T50-51).

The Family Court Decision

The family court denied Plaintiff's petition for annulment. 2T43. The judge said that the facts presented did not make out a case for annulment based on fraud.

2T44. “The Court finds that the defendant wasn’t necessarily ending the marriage but rather trying to find her independence, which may not have been supported. The plaintiff has not met the legal standard for proving fraud, nor for granting an annulment, which the Court denies.” 2T45.

The court instead granted Defendant’s application for a judgment of divorce, with the final order entered on June 14, 2024. A6. The court ruled that all jewelry acquired during the marriage shall be equally shared between Plaintiff and Defendant within 60 days from the date of the Judgment, and that Plaintiff shall pay Defendant \$5,327.00 within 60 days from the date of the Judgment to account for part of fees and costs the defendant had incurred. A6. (The written order mistakenly switches the parties, but the oral decision makes clear that the court ordered plaintiff to pay defendant the fees, 2T106-07).

Argument

The Family Court erred in denying an annulment to Plaintiff on ground of fraud by the defendant (A6; 2T42-43).

Marriage is both a legal and social institution, contractual in nature, creating both rights and duties attaching to both parties. It creates status unique in the law subject to the control of the legislature. The contractual undertaking assumed in a marriage has been said to be akin to a partnership. Lindquist v. Lindquist, 130 N.J. Eq. 11 (1941); Rothman v. Rothman, 65 N.J. 219 (1974).

Both the grounds for annulment and the grounds for divorce are controlled by statute, N.J.S.A. 2A:34-1; N.J.S.A. 2A:34-2. The basic distinction between an annulment and a divorce is in the facts which give rise to the cause of action. In an annulment, the facts which justify a declaration of the court of nullity antecede the marriage. The grounds for annulment typically relate to conditions existing at the time of the marriage, not issues that arise during the marriage as in an action for divorce. The petitioner bears the burden of proof for either claim. Patel v. Navitlal, 265 N.J. Super. 402, 407–08 (Ch. Div. 1992).

An annulment should be granted under several circumstances (N.J. Stat. Ann. § 2A:34-1), including but not limited to,

- Lack of consent or mental capacity -- If either party lacked the mental capacity to consent to the marriage due to conditions like severe intoxication, drug influence, or mental illness at the time of the marriage, an annulment may be granted.
- Fraud -- Annulment is appropriate if the marriage was based on significant fraud that goes to the essence of the marriage contract. This could include concealing pregnancy, mental illness, or other substantial matters that one party fraudulently concealed from the other.

The statute provides under subsection (d) that a judgment of nullity of marriage may be rendered where “The parties, or either of them, lacked capacity to

marry due to want of understanding because of mental condition, or the influence of intoxicants, drugs, or similar agents; or where there was a lack of mutual assent to the marital relationship; duress; or fraud as to the essentials of marriage; and has not subsequently ratified the marriage.” Faustin v. Lewis, 85 N.J. 507, 510 (1981).

A family court also has general equity jurisdiction to annul a marriage if the circumstances justify such an action. Id.

The family court erred in denying an annulment to Plaintiff in this case. The undisputed evidence presented at trial showed that an annulment was warranted and due to plaintiff on ground of fraud, or because there was “a lack of mutual assent to the marital relationship,” Faustin, supra, 85 N.J. 510 (considering sham marriage entered into knowingly by both parties as qualifying for annulment; “We conclude that plaintiff’s marriage, entered into for the sole purpose of securing permanent residence in the United States, clearly falls within the language of the 1971 amendment to paragraph (d). Here, neither of the parties intended to marry, nor did they thereafter enter into any kind of marital relationship with each other. Consequently, plaintiff alleged facts that, if proven, establish a statutory ground for judgment of nullity of her marriage.”)

As plaintiff contended and the undisputed evidence – with no testimony presented by the Defendant -- showed, Defendant married Plaintiff with the fraudulent intention of obtaining a green card and leaving once financially

independent. After securing her green card and achieving independence, Defendant left Plaintiff. Defendant lied to Plaintiff about her true intentions in order to trick Plaintiff into entering into the marriage.

Plaintiff, meanwhile, was unaware of Defendant's intent to lure him into a sham marriage solely to obtain her green card and whatever financial support she could wedge out of the plaintiff during the time. Because of the Defendant's lies and false shows of affection for him, Plaintiff believed the marriage was okay and viable, rooted in Indian culture and tradition, until Defendant left and abandoned the marriage after such a short a time following the arrival of her green card.

This was not an issue that suddenly arose during the marriage. Defendant Patel's intent was always fraudulent – to marry Plaintiff solely to obtain a green card. Defendant lied to Plaintiff in order to cover up her true intention throughout the pre-marital period. Defendant never had a legitimate purpose, never actually loved or even liked Plaintiff such that she wanted to share a life with him as Defendant falsely claimed, and never intended to make the marriage viable from the beginning – all unknown to the unwitting and naïve young Plaintiff.

Plaintiff's case here is unlike Patel, supra, 265 N.J. Super. 408. The court denied annulment in Patel, supra, 265 N.J. Super. 408, because the marriage was consummated and thus required clear and convincing proofs to demonstrate grounds for annulment. In the instant case, the marriage was never consummated, see Bilowit

v. Dolitsky, 124 N.J. Super. 101, 102–03 (Ch. Div. 1973) (“Our courts have long required a more substantial quantum of fraud to entitle a party to an annulment where the marriage has been consummated than where it has not. Any kind of fraud which would render a contract voidable may be the basis for the annulment of a marriage similarly infected” (citing Ysern v. Horter, 91 N.J. Eq. 189 (Ch. 1920); Caruso v. Caruso, 104 N.J. Eq. 588 (Ch. 1929))).

Moreover, both parties in Patel, supra, 265 N.J. Super. 408, testified that it was their intention to live as husband and wife. It was the Plaintiff's intention to live in the United States. It was the Defendant's intention to live with her husband as his wife. Both parties had the requisite intent to create a meaningful relationship at the time of the marriage or civil ceremony as required by law and, therefore, grounds for annulment were not shown – there was no pre-marital lie or fraud that related to conditions existing at the time of the marriage. Patel, supra, 265 N.J. Super. 409; Faustin, supra, 85 N.J. 507.

In Plaintiff's case here, by contrast, the undisputed evidence showed that there was no consummation of the marriage, and that Defendant never had any intent to create a meaningful relationship with plaintiff. Defendant lied to Plaintiff that she had such an intention when, in fact, she was marrying Plaintiff solely for immigration purposes – unbeknownst to the young, naïve plaintiff. These grounds of fraud, a recognized ground for annulment, related directly to conditions existing

at the time of the parties' marriage; they were not conditions that arose only after the parties married.

The only testimony presented at trial on the annulment issue was from the Plaintiff and his family – neither defendant nor anyone on her behalf testified about the annulment issue. Thus, there was no refuting of the sworn testimony from the Plaintiff (primarily), reinforced by his father and the friend witnesses who Plaintiff presented, showing from the Defendant's own words that she had married Plaintiff solely for immigration purposes and would remain with the Plaintiff only for as long as she had to in order to achieve her immigration objective. There was never any intention by the Defendant, at any time, to create a meaningful relationship with plaintiff, have children with him, live according to the customs and traditions the Defendant falsely claimed she shared, etc.

Those undisputed facts, unlike the decision in Patel, supra, 265 N.J. Super. 408, establish the Plaintiff's right to an annulment under New Jersey law. New Jersey courts have consistently stressed that misrepresentation or concealment of a fact is a basis for claiming fraud as to the essentials of a marriage, Tobon v. Sanchez, 213 N.J. Super. 472 (Ch. Div. 1986).

The fraud that Plaintiff proved in this case is the type of fraud entitling a plaintiff to an annulment – contrasting with prior caselaw holding that certain types of fraud do not so qualify. In Carris v. Carris, 24 N.J. Eq. 516, 516 (1873), for

instance, the court said that false representations regarding family, fortune, or external condition (in Carris a pregnancy) were not sufficient in degree to justify annulment, because a court should exercise annulment power only in cases where the fraud is of an extreme nature. In Plaintiff's case here, however, the fraud is of an essential nature, because the proofs – uncontradicted by any testimony from the defendant – showed that the Defendant had no intention of marrying the Plaintiff for a good faith purpose at any time; Defendant married the Plaintiff for one reason only – to obtain her green card, and lied to the Plaintiff over and over again about that. Unlike Patel, supra, 265 N.J. Super. 408, the record presented to the family court in this case showed “that the defendant was ... unwilling to act as a wife to the plaintiff” and “did not want to create for herself the status of wife” to the Plaintiff – with Defendant's own overheard words so exclaiming. This case is not one simply of “deficiency in a character trait” of the defendant; it is one of a lie by one of the contracting parties that affected the essential component of the marriage contract between these parties.

Our courts have stressed that, beyond the annulment statute, public policy encourages full disclosure of pertinent facts in contemplation of entering a bond as significant as marriage. V.J.S. v. M.J.B., 249 N.J. Super. 318 (Ch. Div. 1991). Plaintiff in this case was not simply “unaware” of some character trait of the woman he was marrying; the defendant actively duped him into entering the marriage, for

her own purpose and against the Plaintiff's interest. The courts have defined "fraud in the essentials" to include several different factual scenarios in which one spouse omits to mention or misrepresents an issue so material that it goes to the very essence of the marriage relationship constituting grounds for annulment. There is inherent jurisdiction in a court of equity to annul fraudulent contracts, including a contract of marriage. V.J.S., supra, 249 N.J. Super. 318; In re Estate of Santolino, 384 N.J. Super. 567, 582 (Ch. Div. 2005). The family court erred by failing to do so in this case.

In Williams v. Witt, 98 N.J. Super. 1 (App. Div. 1967), the court held that an annulment may be granted where one of the parties prior to the marriage formed a fixed determination never to have children and did not communicate that intention to his intended spouse. The court explained that an annulment in such a case is granted on the theory that since procreation is an essential element of the marriage, there exists an implied promise at the time of the marriage to raise a family. An undisclosed contrary intention, therefore, constitutes a fraud going to an essential of the marriage. Williams, supra, 98 N.J. Super. 1; see also V.J.S., supra, 249 N.J. Super. 321("this court is satisfied that plaintiff clearly and convincingly proved that there was, in fact, a premarital fraudulent intent on the part of defendant to have children in direct opposition to the express agreement between the parties prior to the marriage not to have children").

If an annulment was deemed warranted in Williams, *supra*, 98 N.J. Super. 1, an annulment is warranted in Plaintiff's case here because the lies that Defendant told Plaintiff to induce him to marry impacted an even more essential of a marriage – the desire to marry the Plaintiff in good faith at all. Several cases outside of New Jersey have ruled that an annulment is proper where one party secretly entered into the marriage solely to obtain a green card, as in Plaintiff Patel's case here, *see, e.g.*, Nwankwo v. Uzodinma, 185 N.E.3d 513 (2022); In re Marriage of Goodwin-Mitchell & Mitchell, 40 Cal. App. 5th 232 (Cal. Ct. App. 2019) (concealed intent to marry solely to obtain favorable immigration status supports annulment); In re Marriage of Rabie, 40 Cal. App. 3d 917, 922–923 (Cal. Ct. App. 1974) (husband induced wife to marry him solely to acquire green card and never intended to remain faithful or stay married); In re Marriage of Liu, 197 Cal. App. 3d 143, 156 (Cal. Ct. App. 1987) (wife entered marriage to obtain a green card and did not intend to consummate marriage); Seirafi-Pour v. Bagherinassab, 2008 OK CIV APP 98 (annulment proper based on evidence that wife married he husband solely to enter United States and without intention of assuming duties of marriage); Matter of Marriage of Kidane & Araya, 53 Kan. App. 2d 341 (2017) (evidence sufficient to support finding that parties engaged in a sham marriage for sole purpose of allowing husband to obtain green card, rendering marriage voidable under annulment statute). These jurisdictions recognize that entering a marriage solely for immigration

benefits, without the intention of establishing a true marital relationship, constitutes fraud that goes to the essence of the marriage and thus supports a judgment of annulment. Misrepresentation about the primary purpose of marriage, such as obtaining a green card, can be deemed fraudulent inducements that justify annulment. This is because such fraud directly affects the essence of the marital relationship, undermining its legitimacy from the outset, In re Marriage of Turfe, 23 Cal. App. 5th 1118 (Cal. Ct. App. 2018), as modified on denial of reh'g (June 8, 2018). The facts that Plaintiff Patel established in this case, at trial below, warranted granting him the requested annulment based on these same principles that New Jersey law embraces.

Indeed, in Faustin, supra, 85 N.J. 510, our Supreme Court ruled that the Plaintiff was entitled to an annulment even though it was a sham marriage, solely for immigration purposes, that was entered into knowingly by *both* parties. The Court reasoned that even unclean hands by the petitioning wife did not preclude her from obtaining an annulment under New Jersey law, stressing, “the relief which Plaintiff seeks will not enhance her standing to claim permanent residence in the United States. All that she asks is that her ceremonial marriage to defendant, which now appears as a matter of public record, be judicially declared to be what it really is a nullity. In a sense, plaintiff's suit could be considered repentance on her part since she acknowledges her wrongdoing and, in asking to have it undone, may well

jeopardize her residential status in this country. Under the facts alleged, the equitable defense of unclean hands must give way to the public interest served by adjudicating plaintiff's marital status. If, on remand, Plaintiff offers satisfactory proof of the allegations contained in her complaint, then she will be entitled to have her marriage to defendant annulled.” Faustin, supra, 85 N.J. 513.

If the Faustin plaintiff was entitled to an annulment under those facts as our Supreme Court held, Plaintiff Patel in this case – who was totally unaware of the Defendant’s fraudulent intent on identical grounds – is entitled to a judgment of annulment as well. At the very least, the family court abused its discretion in failing to grant an annulment based on general equity jurisdiction under the undisputed evidence that Plaintiff presented at trial, Carris, supra, 24 N.J. Eq. 523; In re Estate of Santolino, supra, 384 N.J. Super. 583. Even the Family Court Judge recognized the equities – asking the Defendant if she would consent to an annulment with the Plaintiff. It was erroneous to fail to afford plaintiff statutory or at least equitable relief on his annulment request under governing New Jersey law.

Conclusion

A divorce in plaintiff's Indian Kadava Patel community is socially devastating. Nobody will even consider plaintiff as a suitable marriage partner now because this divorce from the Defendant is on his record – a divorce entered after a three-month relationship, without consummation, where Defendant left upon receiving her green card. The plaintiff, being a virgin in this fraudulent marriage, if judgment of divorce is given, will not find a virgin partner in the future -- which is highly important in his community.

The Court should vacate the judgment of divorce the Family Court entered below and remand with direction that a judgment of annulment be entered in accordance with the governing New Jersey law cited above; the Court should also vacate the award of attorney's fees entered against plaintiff that are premised on the Family Court's denial of his petition for annulment.

Respectfully submitted,

/s/ Michael Confusione
Counsel for Appellant

Dated: September 12, 2024

Superior Court of New Jersey

NEEL H. PATEL,

Plaintiff-Appellant,

v.

BHOOMIKA PATEL,

Defendant-Respondent

: APPELLATE DIVISION

: DOCKET NO. A-003448-23

: CIVIL ACTION

: ON APPEAL FROM

: The Final Judgment of Divorce entered by the
: Superior Court of New Jersey, Chancery Division,
: Family Part, under Docket No. FM-15-928-23

: SAT BELOW

: Hon. Laurie Poppe, J.S.C.
: Ocean County

**BRIEF ON BEHALF OF DEFENDANT/RESPONDENT
BHOOMIKA PATEL**

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PRELIMINARY STATEMENT

After listening to the testimony of Plaintiff and several other witnesses over two days, the Trial Court properly determined that Plaintiff failed to demonstrate by clear and convincing evidence that he was entitled to an annulment on the grounds of fraud as to one of the essentials of marriage. The Court did not err, as Plaintiff alleges, and the Trial Court's findings should be affirmed.

There was no fraud in this case. Defendant did not marry Plaintiff to get a green card and did not misrepresent regarding her character. Defendant was herself during the marriage, as she had always been. Plaintiff just did not like her and wanted her to be somebody other than her. He wanted her to fit a narrative that would align with his family and would follow their views. Someone who would never talk back, not have an opinion, not be allowed to speak her mind and unfortunately, that's not what she agreed to. That was not what Defendant was promised as part of this marriage, which is why she chose to leave. However, just because the marriage did not work out, it does not mean there was fraud. Not a single iota of evidence was produced at trial to establish fraud based on the legal standards set forth by our statute.

Plaintiff was not able to convince the trier of fact by clear evidence that Defendant married Plaintiff to obtain a green card and upon

obtaining same, left the marriage. The evidence pointed to the fact that it was Plaintiff who filed to end the marriage, *not* Defendant. Plaintiff also testified at trial repeatedly that the Defendant never said from her own mouth that she wanted to end the relationship.

The reality is that Plaintiff had doubts about marrying Defendant from the beginning and was aware that certain differences existed between the parties. Despite his concerns, he still married Defendant. He did not have to follow through with the civil ceremony or the religious ceremony. He had ample time to investigate and alleviate any doubts that he had about Defendant, but chose not to. Thus, the fact that the marriage did not work out does not mean that Defendant engaged in any fraudulent conduct in order to induce Plaintiff to marry.

Plaintiff was also unable to convince the Court that Defendant misrepresented her religious views, cultural beliefs and traditions to Plaintiff. There was no intent on the part of Defendant to deceive Plaintiff. Plaintiff was well aware, prior to marriage, that Defendant and her family's values and views were different than him and his family. For example, Defendant's sister married outside her caste, which was an issue for Plaintiff, but not for Defendant and her family. Defendant's brother was divorced and remarried. Again, an issue for Plaintiff but not for Defendant. Defendant's family also did not engage in a specific

Diwali puja. However, all these facts were known to Plaintiff before he married Defendant. This includes the fact that the parties' horoscopes did not align and their marriage was going to end in divorce. Regardless, Plaintiff still married Defendant. Thus, the Trial Court properly found that Plaintiff did not provide clear evidence which causes one to be convinced that the allegations sought to be proved are true.

Lastly, the Trial Court properly found that Plaintiff was not cognizant of his own actions and that there were legitimate reasons for the parties' marriage not working out. For example, Plaintiff and his family were recording and videotaping Defendant without her knowledge. To give another example, when Defendant asked to go visit a friend during a trip to Canada, Plaintiff refused to let her go alone. When Defendant wanted to attend her work training in Washington D.C., Plaintiff refused to let her go alone. Plaintiff controlled Defendant throughout the marriage. He even made her sleep on a mattress on the floor. However, Plaintiff minimized all these issues at trial.

The Court did not err in its decision that Plaintiff was not entitled to an annulment on the grounds of fraud. The Court assessed the credibility of all witnesses and its decision was supported by consistent, competent, credible evidence. As such, the Trial Court's decision should be affirmed.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

The parties were married in a civil ceremony on December 8, 2020 in India. (Pa1). Plaintiff testified that he did not consider this ceremony to be the “real wedding.” (1T112-5).

Approximately one (1) year later, the parties were married in a religious ceremony on November 28, 2021 in India. (1T87-18); (1T88-7).

The parties separated in September 2022. (1T104-14).

Plaintiff filed for an annulment on March 14, 2023. (Pa1-2).

The parties could not resolve the matter and a trial took place on June 10, 2024 and June 13, 2024. (1T¹ and 2T²).

After hearing two (2) days of testimony from the Plaintiff and certain other witnesses, the Trial Court determined that Plaintiff did not meet his burden by clear and convincing evidence that he was entitled to an annulment on the grounds of fraud. (2T86-18; 2T88-23).

As a result, a Final Judgment of Divorce in favor of Defendant was entered on June 13, 2024. (Pa6); (2T110-18).

Plaintiff filed a Notice of Appeal on July 9, 2024. (Pa9).

¹ June 10, 2024

² June 13, 2024

COUNTERSTATEMENT OF RELEVANT FACTS

In September of 2019, the Plaintiff and Defendant met on a dating app, “Shaadi.com.” (IT55). Defendant’s profile on the app reflected that she was a “...fun loving person with a right mix of modern and traditional cultures...” (1T102-5).

On the dating app, Defendant stated her birthday was July 1, 1995. Id. Fifteen days after the parties met on the app, Defendant advised Plaintiff that her actual birthday was July 26, 1995. (1T56-16). Despite Plaintiff believing that the parties’ marriage would end in divorce according to their birthdates and horoscope, he still married Defendant. (1T57).

In October of 2019, Plaintiff asked Defendant about her opinion regarding a “divorce.” Id. Plaintiff indicated that a divorce was not an option for him absent “crazy things happening” or if “there’s physical abuse” in the relationship. Id. (1T103-13). Defendant advised Plaintiff that “fights are going to happen; small things are going to happen” and it’s fine. (1T58-3). However, “cheating should not happen.”(1T58-3).

Plaintiff testified that he wanted a family and Defendant indicated to him that she wanted two kids. (1T60-1).

In February 2020, approximately four (4) months after meeting on Shaadi.com, Plaintiff and Defendant were engaged in Ahmedabad, India. (1T65-7).

In April 2020, prior to the parties' civil ceremony, Plaintiff questioned Defendant whether she was a "Patel" or not. (1T67-7). Defendant advised Plaintiff that she was a "Patel"³ even though her last name was not "Patel." (1T67-13).

Plaintiff testified that according to "his culture and traditions" he did not like that Defendant's brother was divorced and remarried, and that her sister married "out of caste." (1T68-6). A fact Plaintiff knew prior to the parties' civil ceremony.

In November 2020, Plaintiff was made aware that Defendant's family does not do a "puja" or prayer for the festival of Diwali. (1T73).

Regardless, in December 2020, Plaintiff went to India for the civil ceremony. (1T73-23). The parties legally married on December 8, 2020 but continued to live separate and apart, as if they were not married, as the religious ceremony had not taken place. Id. (Pa1).

In August 2021, Plaintiff asked Defendant outright if she was marrying him for a green card. (1T77-12). Defendant said "no." Id.

³ Patel is considered by many to be a type of caste.

In October 2021, Plaintiff told his parents that he was having second thoughts about the marriage. (1T83).

Despite having second thoughts, in November 2021, Plaintiff went to India to get married to Defendant. (1T83-22).

While in India and one month before the religious ceremony, Plaintiff asked Defendant if she would sign a prenup. (1T85-4). Defendant got upset and there were no further discussions about a prenup. Id.

Prior to the wedding, Plaintiff's best friend, Arth Shah, who was present in India for the parties' religious wedding ceremony, overheard Defendant state "it's going to be a matter of months after I move to America." (2T17-23). At trial, Mr. Shah acknowledged that this statement "could be interpreted in a lot of ways." (2T18-2). He also testified how he advised Plaintiff prior to the wedding date, that he overheard Defendant make this statement. (2T18). Despite being aware of this, Plaintiff still married Defendant. As a result of this conversation, Mr. Shah did not attend the wedding. (2T18-24; 2T19-1).

The parties' religious ceremony took place on November 28, 2021. (1T87-18). After the marriage, Plaintiff came back to America. (1T89-14). Defendant went back to her hometown in India. Id.

In January of 2022, the parties started to have disagreements. Id.

In April of 2022, Defendant's visa was approved. (1T91-9). Plaintiff went back to India to bring Defendant to the USA. Id. During this time when Plaintiff was in India with Defendant, Plaintiff testified that Defendant claimed that he "hit her" "dragged her by the neck" and "threw her across the wall." (1T94). Plaintiff admitted that he pushed Defendant. Id. This was despite Defendant telling Plaintiff not to come close to her or touch her. Id.

On May 2, 2022, Plaintiff escorted Defendant to the United States of America. (1T96-3). Upon landing, the parties went to Plaintiff's home in Toms River, New Jersey, where he resides with his parents. Id. There was a celebration awaiting both of them when they arrived. Id. Defendant was overwhelmed and a little shocked by the new environment, especially having never been to America before. (1T96-24); (1T97-1).

As days went on, Plaintiff started to feel that Defendant was becoming disrespectful to her elders if she voiced her opinions. (1T126-11). In fact, Plaintiff felt that Defendant became "opinionated" as soon as her green card arrived. (1T127-3). However, on cross-examination, it was elicited via Plaintiff's testimony that Defendant had voiced her opinions in the past regarding selection of the wedding venue and in

addressing an issue pertaining to wedding albums, which opinions lead to a “fight.” (1T127-6).

In June of 2022, the parties visited Plaintiff’s friends in Canda. During this visit, Plaintiff denied Defendant the opportunity to meet her friend without him present. (2T6-19); (2T7-1).

According to a witness, Jina Bhagat, during the visit to Canada, Plaintiff and Defendant looked like a “newly married couple,” very much in “love.” (2T7-15). They were “holding hands and it looked like they were happy.” (2T7-16).

According to Ms. Bhagat, the parties’ demeanor appeared similar when she came to visit them in the USA. (2T7-21). During that visit to the USA, Ms. Bhagat overheard Defendant state on a phone call to her mother that “I am here only for one month. Once the green card come, I have to leave.” (2T8-15; 2T10-13). However, Ms. Bhagat testified at trial that she was not aware of the context of the conversation and acknowledged that perhaps Defendant was “planning to go someplace.” (2T10-25; 2T11-1; 2T11-18). For example, perhaps Defendant wanted to go visit her mother in India and needed her green card before she could do that. (2T10-25; 2T11-1).

Plaintiff testified that after Defendant arrived in the USA, he felt the “first two months or two-and-a-half months were good.” (2T30-17).

They were going out to beaches, boardwalks, movies etc. (2T30-18). The trip to Canada was good. (2T32).

On or about July 14, 2022, Plaintiff traveled to Kansas to attend a baby shower. (2T31). From the baby shower, Defendant was texting Plaintiff that she “loves” his family, is “missing” Plaintiff and “wants to come back home.” Id.

Defendant’s green card arrived when Plaintiff was in Kansas.

On August 1st and 2nd of 2022, Defendant had her work training and advised Plaintiff that she wanted to go alone. (2T34-15). However, Plaintiff refused to let her go alone and accompanied her to her work training in Washington D.C. (2T34-25).

Plaintiff testified that the parties started having “stupid arguments,” including arguments about “watering the plants.” (2T57). However, the arguments were not “stupid.” For example, Plaintiff told Defendant that she was watering the plants incorrectly and if she did not agree with his sentiment, they could review the cameras videotaping Defendant in the house to see if she was watering the plants incorrectly. (2T58). Plaintiff also testified how Defendant told her parents that Plaintiff was not buying her shampoo or giving her money and that she slept on a mattress on the floor. (2T46-12; 2T59-16). Plaintiff further testified how his parents were recording Defendant. (2T61-2).

The hostility between Plaintiff's parents and Defendant was also growing during this time period. For example, Plaintiff's mother sent Plaintiff a text message stating that "I don't like her because she looks so black." (2T61-22; 2T62; 2T63; 2T64).

In light of the disputes that were occurring between the parties, it was agreed that some space was needed. (2T12-9). In September 2022, Plaintiff purchased a one-way ticket for Defendant to go to North Carolina. (2T12-9). He could have purchased a round-trip ticket, but chose to purchase a one-way ticket for his wife. (2T38-8).

After the parties' separation, Plaintiff continued to track Defendant's phone calls because she continued to stay on the family plan. (2T74-24; 2T75-1).

Despite the separation, Plaintiff testified that Defendant never sought a divorce. (1T87-15). He specifically said that "up until June 10th of 2024, from [Defendant's] mouth she's never told me she wants a divorce. From her own mouth. Okay?" (1T87-15).

Plaintiff testified that he waited six months after Defendant went to North Carolina before filing for an annulment because he initially did not believe that Defendant married him to get a green card. (2T56). Plaintiff also testified that the reason he wants an annulment is because

a divorce looks bad and it would be hard for him to find a suitable, “virgin” mate in the future (2T40; 2T41).

After listening to all the testimony, the Court determined that Plaintiff had not met his burden that the marriage was fraudulent, warranting him an annulment. Specifically, the Court noted that there are two things that really “jumped out” to him. (2T85-8). “One is that the Plaintiff has repeatedly stated that the Defendant has never said from her own mouth that she wants to end the relationship...” and it’s the Plaintiff who filed to end the relationship. Id.

Second, that Defendant minimized his actions and those of his family, which actions led to the demise of the marriage. (2T85 and 86). Essentially, that “the facts aren’t adding up to what the plaintiff believes happened. The Plaintiff to this Court is minimizing his actions that he even testified to...” (2T86-24; 2T87-1). For example, “the Defendant through Plaintiff’s own testimony, didn’t say I don’t want children. She said not yet.” (2T87-20). Further, that the Defendant’s characterization of herself on the wedding website was “modern” and how “it is reasonable that someone who felt that they were in a more modern relationship would be trusted to go to D.C. to do a job training, would be trusted to meet up with a friend in Canada to say hello, wouldn’t need to be watched.” (2T88)

The Court also found that it did not feel that Defendant was “pulling the plug on a marriage necessarily. I think she was finding her legs and I’m not sure she was given the space or the support to do so.”

Id.

It is for these reasons, that the Court found that Defendant has not met the standards for fraud and denied Plaintiff’s relief for an annulment.

The Court then went on and granted Defendant a divorce on the grounds of irreconcilable differences. (2T89-7).

Plaintiff now files this appeal.

STANDARD OF REVIEW

It is well settled that Appellate Courts must give deference to decisions of the trial court because the trial court is the trier-of-fact. Cosme v. East Newark Twp. Comm., 304 N.J. Super. 191 (App. Div. 1997). In Cosme, the Court stated:

...[W]e are enjoined to accord substantial deference to...rulings of trial judges and not to ‘invalidate such determinations merely because from our examination of the record we believe that we would have decided differently.’ Id. at 202 (quoting Smith v. Smith, 17 N.J. Super. 128, 134 (App. Div. 1951)).

The Appellate Court grants “substantial deference to a trial court’s findings of fact and conclusions of law, which will only be disturbed if they are ‘manifestly unsupported by or inconsistent with the competent, relevant, and reasonably credible evidence.’” Crespo v. Crespo, 395 N.J. Super. 190, 193-94 (App. Div. 2007) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)).

Further, Appellate Courts review decisions by Family Part judges “in accordance with a deferential standard of review, recognizing the court’s ‘special jurisdiction and expertise in family matters.’” Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v.

Cesare, 154 N.J. 394, 413 (1998)). These orders should not be overturned unless the ruling is “so wide of the mark that a mistake must have been made.” N.J. Div. of Youth & Family Svcs. v. P.W.R., 205 N.J. 17, 38 (2011) (quoting N.J. Div. of Youth & Family Svcs. v. M.M., 189 N.J. 261, 279 (2007)).

Deference "is especially appropriate when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). The Appellate Court must accord considerable weight to the trial judge's findings of credibility as the judge is in a unique position to evaluate the demeanor of the parties and the other witnesses. Rova Farms Resort at 484.

Additionally, in order to nullify a marriage on the ground of fraud, a court must determine that the party seeking the annulment showed fraud as to one of the essentials of marriage by clear and convincing evidence. Williams v. Witt 98 N.J. Super 1, 3-4 (App. Div. 1967); Patel v. Navitlal, 265 N.J. Super. 402, 408 (Ch. Div. 1992). Clear and convincing evidence is evidence that produces firm belief or conviction that the allegations sought to be proved by the evidence are true. N.J.S.A. § 2A:15-5.10. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause [a factfinder] to

come to a clear conviction of the truth of the precise facts in issue. Model Jury Charges (Civil) 1.19 "Burden of Proof-Clear and Convincing Evidence) (approved Apr. 1988, rev. August 2011). It "requires that the result shall not be reached by a mere balancing of doubts or probabilities, but rather by clear evidence which causes [a factfinder] to be convinced that the allegations sought to be proved are true." Id.

LEGAL ARGUMENT

THE TRIAL COURT PROPERLY FOUND THAT PLAINTIFF DID NOT MEET HIS BURDEN FOR AN ANNULMENT ON THE GROUNDS OF FRAUD

(Raised Below: Pb30).

The essence of a void marriage is one where it should not be recognized. In re Parentage of Robinson, 383 N.J. Super. 165, 173 (Ch. Div. 2004). The major difference between an annulment and a divorce is that in an annulment, the accrual of the facts giving rise to the cause of action must antecede the marriage itself. Doscher v. Schroder, 105 N.J. Eq. 315, 321 (Ch. 1929). Whereas, the causes for divorce arise during the marriage. Id.

The statutory causes of an action for nullity of marriage are set forth in N.J.S.A. 2A:34-1 and a court may grant an annulment under one of the following conditions:

- a. Either of the parties has another wife, husband, partner in a civil union couple or domestic partner living at the time of a second or other marriage.
- b. The parties are within the degrees prohibited by law. If any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

c. The parties, or either of them, were at the time of marriage physically and incurably impotent, provided the party making the application shall have been ignorant of such impotency or incapability at the time of the marriage, and has not subsequently ratified the marriage.

d. The parties, or either of them, lacked capacity to marry due to want of understanding because of mental condition, or the influence of intoxicants, drugs, or similar agents; or where there was a lack of mutual assent to the marital relationship; duress; **or fraud as to the essentials of marriage; and has not subsequently ratified the marriage.** (emphasis added)

e. The demand for such judgment is by the wife or husband, who was under the age of 18 years at the time of the marriage, unless such marriage be confirmed by her or him after arriving at such age.

f. Allowable under the general equity jurisdiction of the Superior Court.

Pursuant to N.J.S.A. 2A:34-1(d), an annulment may be granted where there was “fraud as to the essentials of the marriage” and the marriage has not been subsequently ratified. What goes to the essentials of a marriage is a subjective test, where a determination must be made on a case-by-case basis. Patel v. Navitlal, 265 N.J. Super, 409-410 (1992).

Generally, the courts have long required a more substantial quantum of proof of fraud to entitle a party to an annulment where the marriage has been consummated. Id. at 408.

Hence, a claim for annulment on the basis of fraud requires (a) a legal analysis of what the term, "fraud as to the essentials of the marriage" entails; and (b) a factual analysis of the specific circumstances in this case.

As noted by the New Jersey Supreme Court, "although the word 'fraud' is used in common parlance to connote any practice involving shady or underhanded dealing, in law it is a term of art with a clear definition." Banco Popular No. Am. v. Gandi, 184 N.J. 161, 175 (2005). The precise definition of common-law fraud consists of five specific components: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; (5) resulting damages or harm to the other person. Id. at 172-173.

In the context of an application for annulment, there been very few reported opinions interpreting this statutory provision. The decisional

law of New Jersey has not specifically defined what is meant by the "essentials" of the marital relationship, and that there is an absence of judicial guidelines in this area. Costello v. Porzelt, 116 N.J. Super 380, 383-384 (Ch. Div., 1971).

Following enactment of N.J.S.A. 2A:34-1, different courts have found different actions to constitute actual fraud as to the essentials of the marriage. In Costello, the court granted an annulment when the husband concealed from the wife at the time of marriage that he was a heroin addict. Id. at 380. In Bilowit, the court annulled a marriage where the husband had falsely represented prior to marriage that he was a practicing orthodox Jew. Bilowit v. Dolitsky, 124 N.J. Super 101, 103-104 (Ch. Div. 1973). In V.J.S. a judgment of nullity was deemed proper when the husband falsely represented to wife prior to marriage that he shared her wish to avoid having children, but after marriage essentially limited contraception. (V.J.S. v. M.J.B., 249 N.J. Super 318 (Ch. Div., 1991)).

Reciprocally, however, the court denied an annulment in a case where the husband failed to disclose to the wife prior to marriage that he previously fathered out-of-wedlock children. Tobon v. Sanchez, 213 N.J. Super 472, 474-475 (Ch. Div., 1986). In Woodward, the Court held

that misrepresentation prior to marriage as to financial status is not fraudulent. Woodward v. Heichelbech, 97 N.J. Eq. 253 (Chancery, 1925). In Rhoades, the Appellate Division held that a false representation by wife prior to marriage that she had borne a male child was not fraudulent. Rhoades v. Rhoades, 10 N.J. Super. 432, 434, (App. Div., 1950). In Pisciotta, the Court held that a false representation by husband prior to marriage that after wife worked to help pay off his bills, he would have children with her was not fraudulent. Pisciotta v. Buccino, 22 N.J. Super 114, 116, (App. Div., 1952).

In cases where annulments were granted, a common thread appears to be a finding of a defendant's actual and intentional knowing misrepresentation of a material fact which, under the totality of the circumstances, was significant enough to be deemed "essential" to the marriage itself. Easton v. Mercer, 2015 N.J. Super. Unpub. LEXIS 1755.

To prove fraud about intent to have children with a prospective spouse, the party seeking annulment must show by clear and convincing evidence that the spouse misrepresented a desire to have children, when the intent not to have children was actually fixed prior to the marriage. Tabon at 474.

Additionally, misrepresentation or concealment of a fact may well serve as the basis for claiming fraud as to the essentials of the marriage. Patel at 411 (citing to Tobon v. Sanchez 213, N.J. Super 472 (Ch. Div. 1986)). However, in distinguishing types of fraud, the court in Carris, clearly held that false representations in regard to family, fortune, or external condition are not sufficient in degree to justify the court exercising its power to annul a marriage for the public policy consideration that a court should only exercise that power in cases when the fraud is of an extreme nature. Id. (citing Carris v. Carris, 24 N.J. Eq. 516 (E. & A. 1873)).

In Patel v. Navitlal, the Plaintiff argued that the parties' marriage should be annulled on the grounds that defendant fraudulently induced plaintiff to marry her solely to gain entry into the United States, and offered as proof the concealment of a relationship between the defendant's mother and her paramour. Patel at 404-405. Defendant argued that the annulment should not be granted because the plaintiff was aware of any impediment to the marriage, the marriage was consummated, and any fraud perpetuated against the plaintiff must be proven by clear and convincing evidence. Id. The Court in Patel held the parties intended to be married and to grant plaintiff an annulment for

reasons which remain outside the control of one of the parties to the marriage would result in a miscarriage of justice. Id. At best, plaintiff's argument rises to the level of a deficiency in a character trait, assuming that the court would even recognize the Asian-Indian caste system. Id. at 410-411. Misconceptions as to character have been held not to support an allegation of fraud upon which an annulment may be based. Id. (citing to Lindquist v. Lindquist, 130 N.J. Eq. 11, 20 (E. & A. 1941)).

The Court in Patel, further held that public policy encourages full disclosure of pertinent facts especially in contemplation of entering a bond as significant as marriage. Id. at 411. Conversely, the law imposes a duty to investigate in matters affecting character. Id. The Court in Patel cited to Justice Heher, in Lindquist writing for a unanimous court, who stated

In regard to countenance, as well as to other personal traits and attributes of character, it is the duty of a party to make due inquiry beforehand, and not to ask the law to relieve him from a position into which his own discretion or want of diligence has led him. Lindquist at 20.

The Court in Patel eventually held that prior to the civil ceremony, the plaintiff was aware that not all requisites had been met by defendant

to be considered of the same caste. Id. It was incumbent upon plaintiff to conduct further investigation after being placed on notice of any alleged impediments, particularly in light of the fact that the defendant was presented to the plaintiff through a marriage broker. Id. Plaintiff specifically waived any objection to any impediments by his marrying the defendant. Id. Plaintiff is therefore equitably estopped from asserting any grounds of the Asian-Indian caste system as a basis for an annulment of the marriage or that it constitutes an essential of the marriage.

Here, in this matter, the Court properly found that Plaintiff did not demonstrate by clear and convincing evidence that Defendant entered into the marriage for a fraudulent purpose, including but not limited to the sole purpose of obtaining entry into the United States. The Court supported its decision with competent, relevant, and reasonably credible evidence, citing to details in the testimony presented at trial over two days. The Court carefully considered and rejected the evidence that Plaintiff now claims the Court ignored.

Specifically, there is no merit to Plaintiff's argument that Defendant only married Plaintiff for a green card and when she received same, she sought to leave the marriage. (Pb32). The Court found by way

of Plaintiff's testimony that Defendant never stated from her own mouth that she wanted to end the marriage and, in fact, it was the Plaintiff who filed to end the relationship, not the Defendant. (2T85-8). Specifically, the Court noted that there are two things that really "jumped out." (2T85-8). "One is that the Plaintiff has repeatedly stated that the Defendant has never said from her own mouth that she wants to end the relationship..." Id.

More so, the Court found that it did not feel that Defendant was "pulling the plug on a marriage necessarily." (2T87-88). The Court found that Defendant was "finding her legs and I'm not sure she was given the space or the support to do so." Id.

The Court also recognized that an annulment was important to Plaintiff but felt that "there is a compulsion or an idea that the defendant be 'punished' for ending the marriage." (2T86-11). This is why Plaintiff was adamant that the annulment be based on the grounds of fraud and not some other basis. Thus, the Court properly found to grant an annulment would result in a miscarriage of justice, especially as the facts were not aligning. For example, "the Defendant through Plaintiff's own testimony, didn't say I don't want children. She said not yet." (2T87-20).

The Court also properly determined that the Plaintiff minimized his actions during the marriage, which resulted in the marriage failing. For example, belittling your new spouse by telling her that you're watering flowers wrong and to go so far as to say, "we have videos in the house, we can watch a video...I know what you did" can make a spouse not want to stay in the marriage (2T87-3). Recording Defendant without her knowledge was an invasion of her privacy.

Further, the Court accurately highlighted and emphasized the testimony of Plaintiff where he said that the wedding site that Plaintiff and Defendant met on, characterized the defendant as "modern," "...which flies in the face of everything the plaintiff testified as something that he was seeking." (2T87-88). Plaintiff testified he wanted a "traditional" wife but knew prior to marriage that the Defendant was educated and "modern." (1T102-5).

Additionally, the Court recognized how "it is reasonable that someone who felt that they were in a more modern relationship would be trusted to go to D.C. to do a job training, would be trusted to meet up with a friend in Canada to say hello, [and] wouldn't need to be watched." (2T88).

While Plaintiff argues that “Defendant lied to Plaintiff about her true intentions in order to trick Plaintiff into entering into the marriage” to obtain a green card, same is not true. (Pb32-33). Plaintiff produced no proof at trial of the existence of that intent any time before or after the marriage. In fact, Plaintiff even asked Defendant if she was marrying him for a green card, and Defendant said no. (1T77-12). Defendant has a Master’s degree, comes from an affluent family in India and was fully capable of entering the United States independently.

Additionally, Arth Shah, Plaintiff’s best friend also overheard Defendant say, prior to the marriage, “it’s going to be a matter of months after I move to America,” and conveyed this to Plaintiff. (2T17-23; 2T18). Plaintiff acknowledged during trial that there was no way to know what this meant. (2T29-2). However, if Plaintiff had any doubts, he should not have married Defendant. This is what the Court believed as well. Specifically, the Court articulated that Plaintiff’s best friend testified that he told Plaintiff about what he overheard and Plaintiff had “an opportunity to investigate and to make a decision as to whether he wanted to investigate this?” (2T22). Further that Plaintiff “...had an opportunity not to go through with a marriage or to delay a marriage.” Id. The Court believed that Plaintiff was making an “informed” decision and it was Plaintiff’s duty to make due inquiry before getting married.

In this case Plaintiff even ratified his marriage by first having a civil ceremony, and then having a religious ceremony later.

Further, Plaintiff argues that the marriage was never consummated. (Pb33). However, the testimony at trial appears to reflect that the parties engaged in sexual activity. (1T116). Specifically, when Plaintiff was asked on cross-examination whether he had a “sexual relationship” with Defendant, Plaintiff said “no,” but when asked if Defendant ever touched Plaintiff’s penis, he said “yes.” (1T117). Plaintiff then testified that he never “touched” Defendant “physically or sexually” or attempted to put his penis inside of Defendant but then stated “... as soon as I would start, we would even have, she was like oh...it’s too big.” (1T40-17; 2T40-17). Plaintiff’s own testimony is contradictory. Plaintiff and Defendant clearly “touched” each other “physically or sexually.” Also, what does “I would start” mean? Obviously, it means intercourse.

Even the Judge stated that “It appears to me that the plaintiff believes that the standard is that if the parties never engaged in sexual intercourse involving the penis actually entering the vagina with ---with full consummation with an intention of pregnancy that a marriage is not consummated.” (1T132-20). The reality is that it is important for Plaintiff, who is traditional in his views, to maintain that he is a virgin

as it is believed by him that it is more difficult to get remarried if he had sex with Defendant. (2T40-17). That is why he testified at trial as he did. Likewise, maintaining this position of being a virgin is culturally important to Defendant as well – for the same reasons.

More so, while Plaintiff claims that Defendant’s failure to follow South Asian traditions and “cultural beliefs,” after representing herself as being part of that culture, constitutes fraud as to the essentials of the marriage, no evidence was produced that Defendant lied or made a misrepresentation of any sort to Defendant. When asked on cross-examination to identify five (5) specific traditions that were important to Plaintiff, he struggled to identify more than two. (1T102-22;1T125-22; 1T126-7). Of those beliefs, one was that he did not believe in divorce. Plaintiff testified that there had never been a divorce in his family. (2T40-13). Specifically, in his “whole family of 304 people, nobody got divorced” and he would be the first one to get divorced (1T64-17; 1T69-5). However, on cross-examination, it was revealed that his uncle (i.e., mother’s brother) had been divorced three times. (2T53-17; 2T54-1).

Additionally, the plaintiff knew that differences existed between the parties before the civil and religious ceremony, but he still married

Defendant. For example, Plaintiff testified that the parties' horoscopes did not match based upon their dates of birth and this would result in divorce. However, Plaintiff became aware of this fifteen (15) days after he met Defendant on Shaadi.com. but still married Defendant. (1T57).

Plaintiff also testified how he found out that Defendant's last name was not Patel. (1T67-7). This bothered Plaintiff, despite Defendant telling him that she was a "Patel." (1T67-13). Defendant even clarified to Plaintiff that just because her surname was not Patel, it did not mean that she was not of the Patel caste. There was no misrepresentation on the part of Defendant. Regardless, despite knowing this fact, Plaintiff still married Defendant. If it was so important to him, he should not have married her.

Further, Plaintiff testified that he was aware that Plaintiff's family did not follow certain "traditional norms," such as conducting a puja on Diwali, Defendant's sister marrying outside her caste and Defendant's brother being divorced. (1T68-6;1T73). Notwithstanding these differences, the plaintiff married defendant in a civil ceremony and later in a religious ceremony.

There was no fraud here. The parties' marriage just did not work out. It is for all these reasons that the Court properly found that the Plaintiff did not meet his burden for an annulment on the grounds of fraud.

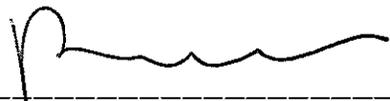
CONCLUSION

For all the foregoing reasons and authorities cited, it is respectfully requested that Plaintiff's appeal be denied in its entirety. Plaintiff has not demonstrated by clear and convincing evidence that he is entitled to an annulment on the grounds of fraud. Further, the Trial Court's decision is supported with competent, relevant, credible evidence and should not be overturned. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility, as in this case.

Respectfully submitted,

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Attorneys for Bhoomika Patel
Respondent

BY:



RUCHIKA S. HIRA, ESQ.

Dated: November 20, 2024

Superior Court of New Jersey
Appellate Division
Docket No. A-003448-23

NEEL H. PATEL,

PLAINTIFF-APPELLANT,

v.

CIVIL ACTION

BHOOMIKA PATEL,

DEFENDANT-RESPONDENT.

On appeal from a final order entered in the Superior Court of New Jersey,
Chancery Division, Ocean County, FM-15-928-23; Laurie Poppe, J.S.C.

REPLY BRIEF

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BRIEF FILED ON DECEMBER 7, 2024

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| <u>Bilowit v. Dolitsky</u> , 124 N.J. Super. 101 (Ch. Div. 1973) | 6 |
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| <u>Caruso v. Caruso</u> , 104 N.J. Eq. 588 (Ch. 1929) | 6 |
| <u>Crespo v. Crespo</u> , 395 N.J. Super. 190 (App. Div. 2007) | 1 |
| <u>Faustin v. Lewis</u> , 85 N.J. 507 (1981)..... | 5, 7, 8 |
| <u>In re Estate of Santolino</u> , 384 N.J. Super. 567 (Ch. Div. 2005) | 8 |
| <u>Patel v. Navitlal</u> , 265 N.J. Super. 402 (Ch. Div. 1992) | 6, 7 |
| <u>Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am.</u> , 65 N.J. 474 (1974) | 1 |
| <u>Ysern v. Horter</u> , 91 N.J. Eq. 189 (Ch. 1920) | 6 |
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Argument

The Family Court erred in denying an annulment to the plaintiff on ground of fraud by the defendant (A6; 2T42-43).

Respondent states that the Appellate Division grants “substantial deference to a trial court's findings of fact and conclusions of law....” Resp. Brief at 14. That is not true regarding conclusions of law, which are reviewed de novo.

With respect to findings of fact, moreover, the appellate court will intervene where the lower court’s determinations are “manifestly unsupported by or inconsistent with the competent, relevant, and reasonably credible evidence,” Crespo v. Crespo, 395 N.J. Super. 190, 193–94 (App. Div. 2007), Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974).

The issue in this appeal is whether the lower court erred in failing to grant the appellant an annulment on the grounds of fraud, as N.J.S.A. 2A:34-1 provides. The respondent contends that there was no fraud because she did not marry the plaintiff to obtain a green card and did not misrepresent her character or beliefs. However, all the competent, relevant, and reasonably credible evidence shows just the opposite -- that the defendant made at least the following material misrepresentations to the plaintiff in the months leading to the parties’ marriage:

Defendant represented that her last name was Patel, which the plaintiff subsequently learned was false after the engagement, 1T67.

Relatedly, the plaintiff found out the defendant's family did not adhere to or observe traditional customs; defendant represented that her family adhered to and observed traditional customs as they claimed to be Patels, and every Patel known to the plaintiff observed these customs. Defendant promised that she would observe these customs once they were married. However, she did not; plaintiff learned, after the parties' marriage, that the defendant's family did not observe the traditional customs either, 1T72-73

Similarly, the defendant represented that her sister would not be engaged to someone outside of the plaintiff's caste—which is very important in Indian culture; this, too, was false, which the plaintiff learned after their engagement 1T68-69.

Defendant expressed to plaintiff, during the engagement and before marriage, her eagerness to start a family together, but changed her stance regarding children after the marriage, 1T80. When plaintiff asked defendant about having children, defendant told the plaintiff, before they were married, that she wanted to have two children and start a family immediately; plaintiff held the same views and agreed. However, after they married, defendant's stance changed to wanting to wait, which plaintiff believed impacted the integrity of their marriage. This further proves the defendant's intention to commit fraud by never intending to enter into a bona fide marriage with the plaintiff, T115-116.

Defendant stated that she wanted to marry the plaintiff and become his wife; however, after the marriage, the defendant refused to engage in sexual relations with the plaintiff and never did so. The marriage was never consummated due to the defendant's refusal. The defendant provided excuses to avoid consummation, including claims of it being too painful, having stomach issues, or being on her menstrual cycle, 1T116, 97.

Respondent contends that the family judge properly found that there was no fraud; however, the respondent did not testify regarding the annulment issue and did not present a single witness on the issue -- which is significant in undermining her claim, here on appeal, that the grounds for annulment were not established. The only testimony that the family court heard was from the plaintiff and his witnesses, all of whom detailed the fraud committed by the defendant during the parties' engagement, before they married.

Moreover, all of the statements that the defendant was charged with having made – relayed to the family judge by the witnesses at trial below – showed further the marital fraud that the defendant carried out.

For instance, when confronted about her sudden change in behavior following the marriage, the defendant issued an apology in a group chat that included the plaintiff's parents, while expressing her concern about the possibility of the plaintiff canceling her visa application, 1T89-90.

After arriving back in the United States, Plaintiff was keenly aware that Defendant was anxiously awaiting her green card, checking the mailbox daily until its arrival, 2T32-33. Once the green card arrived, the parties' relationship significantly deteriorated; Defendant began to have arguments with Plaintiff and constantly complained. She continuously criticized Plaintiff and his parents, leading to frequent arguments even over minor issues such as watering plants. (2T33).

This was not merely a he said/she said dispute. Beyond the testimony of the plaintiff himself, three additional important witnesses provided further objective evidence proving the marital fraud.

Plaintiff's father testified that he overheard Defendant exclaim, "How long do I have to do this? I cannot do this acting anymore." 1T6. Defendant indicated she could not act any further in the house she shared with Plaintiff following their marriage. 1T7. Defendant was overheard noting that she needed to wait until 2024; as long as Plaintiff did not initiate a fraud case against her, Defendant would receive her 10-year green card. 1T8. Plaintiff's father also overheard Defendant mention receiving a green card and discussing how accusations of abuse in America could help secure a permanent green card. 1T14. Plaintiff's father continued to overhear Defendant, over the months, questioning how long she would have to stay with Plaintiff in order to secure the green card. 1T18-19. Plaintiff's father overheard Defendant noting that she agreed with Plaintiff while they were in India and before

Defendant received her green card, but since returning to the United States and obtaining her green card, she no longer felt the need to do so—her goal had been accomplished. 1T20. “I used to agree with Neel on everything before the green card, but now that I have the green card, why do I have to agree? Why will I stay with him if I don’t have to?” 1T20. This is significant evidence supporting the annulment that the lower court judge entirely ignored.

Jina Bhagat, a friend of the Plaintiff’s father, testified that she met Defendant when Plaintiff and Defendant visited Canada. 2T6. Ms. Bhagat overheard Defendant on a phone call stating that she was there for one month and had to leave once her green card arrived. Ms. Bhagat and her husband decided to speak to Harish Patel, Plaintiff’s father, about the matter and did so. (2T8-9).

Arth Shah testified that he overheard Defendant saying, “it’s going to be a matter of months after I move to America.” (2T16).

All this testimony was undisputed because the defendant presented no evidence to counter it at trial below. This evidence qualifies, as a matter of law, for a judgment of annulment on the grounds of fraud or because there was “a lack of mutual assent to the marital relationship.” Faustin v. Lewis, 85 N.J. 507, 510 (1981) (considering a sham marriage entered into knowingly by both parties as qualifying for annulment; “We conclude that the plaintiff’s marriage, entered into for the sole purpose of securing permanent residence in the United States, clearly falls within

the language of the 1971 amendment to paragraph (d). Here, neither party intended to marry, nor did they thereafter enter into any kind of marital relationship with each other. Consequently, the plaintiff alleged facts that, if proven, establish a statutory ground for a judgment of nullity of her marriage.”).

The only evidence presented at the trial below was from the plaintiff and his witnesses, and all that evidence demonstrated that the defendant married the plaintiff with the fraudulent intention of obtaining a green card and leaving the marriage once she obtained it -- which she promptly did. The defendant lied to the plaintiff about her true intentions to trick the plaintiff into the marriage so the defendant could obtain the green card—lying to the plaintiff about wanting to have children immediately upon marriage, lying about her and her family’s adherence to traditional Indian culture and traditions that were so important to the plaintiff and his family, and even lying about her last name. If these facts do not warrant annulment under New Jersey law, then none do.

Respondent cites Patel v. Navitlal, 265 N.J. Super. 402, 408 (Ch. Div. 1992), as support for the lower court’s decision. However, as argued in Appellant’s Brief, this case differs from Patel in important respects.

The court denied annulment in Patel because the marriage was consummated and thus required clear and convincing proof to demonstrate grounds for annulment. Here, the parties’ marriage was never consummated – eliminating the clear and

convincing evidence burden, see Bilowit v. Dolitsky, 124 N.J. Super. 101, 102–03 (Ch. Div. 1973) (“Our courts have long required a more substantial quantum of fraud to entitle a party to an annulment where the marriage has been consummated than where it has not. Any kind of fraud which would render a contract voidable may be the basis for the annulment of a marriage similarly infected”) (citing Ysern v. Horter, 91 N.J. Eq. 189 (Ch. 1920); Caruso v. Caruso, 104 N.J. Eq. 588 (Ch. 1929)).

Moreover, both parties in Patel, supra, 265 N.J. Super. 408, testified that it was their intention to live as husband and wife. It was the plaintiff's intention to reside in the United States. It was the defendant's intention to live with her husband as his wife. Both parties had the requisite intent to create a meaningful relationship at the time of marriage; grounds for annulment were therefore not established. The facts did not show a pre-marital misrepresentation or fraud that pertained to conditions existing at the time of the marriage. Patel, supra, 265 N.J. Super. 409; Faustin, supra, 85 N.J. 507.

In this case, by contrast, the undisputed evidence shows that there was no consummation of the marriage, and Defendant never had any intention of creating a meaningful relationship with Plaintiff. The undisputed evidence shows that Defendant misled Plaintiff into believing that she had bona fide intention to marry Plaintiff when, in reality, Defendant married Plaintiff solely for immigration purposes—unknowingly to the young, naïve Plaintiff. Such fraud is a recognized

basis for annulment because the misrepresentations that Defendant made to Plaintiff related directly to conditions existing at the time of the parties' marriage upon which Plaintiff relied in agreeing to marry Defendant. These were not conditions that arose only after the parties married. All the evidence presented at the trial of this case shows that; the judge erred by disregarding that undisputed evidence that Defendant presented no evidence of her own to contradict.

The judge's belief that the defendant perhaps did not want a divorce and intended to have a bona fide marriage with the plaintiff is not supported by any competent, relevant, and reasonably credible evidence presented at trial. There is no evidence demonstrating this because the defendant provided no testimony from herself or any witnesses on her behalf regarding the annulment issue. The judge's conclusion is premised on pure speculation by the family judge. This is not sustainable on appellate review because such speculation is manifestly unsupported by and inconsistent with the competent, relevant, and reasonably credible evidence, Crespo v. Crespo, 395 N.J. Super. 190, 193–94 (App. Div. 2007), Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974).

The facts show that, even after the defendant left the marital home, the plaintiff waited six months for the defendant to come back. Even after learning of the defendant's affair, the plaintiff waited and hoped the defendant would return to him and resume their marriage. The defendant never did, forcing the plaintiff to

finally seek an annulment below. The defendant only sought a divorce in counterclaim. As Plaintiff explained to the family judge below (2T43-44):

I was trying my best to like, hey, can you say one, we -- we can do this before sleeping we can say one positive thing and then -- and then have a sleep. Sorry to disrespect, I don't have anything positive to say about the relationship. And I'm like, why did you marry me, you know?

On September 10, 2022, I took her to the Ocean County Lake, and we sat there and she tell -- I -- I mean, I tried to, like, you know, trying to get what's going on. Let's solve this. Let's work on this. And it was like, she was not willing to budge anything.

I was like, if you have a problem with my parents, we can, you know, move out. We can stay by ourselves. And she's like, no, I don't want to do that. And then, so I was like, then you married me for a green card, right? And these were her exact words. She's like, what green card? Green card. If I didn't marry you, I was going to marry someone else. I would have come to America regardless.

At that point, I felt like I was a tool that was being used. If it wasn't me, it was going to be someone else. She was going to come to America regardless.

In short, all this evidence -- which stood uncontested at the trial below -- shows that the family judge erred in ruling that there was no marital fraud by the defendant warranting an annulment under New Jersey law. As noted in the Appellant's Brief, our Supreme Court in Faustin, supra, 85 N.J. 510, ruled that the plaintiff there was entitled to an annulment even though it was a sham marriage solely for immigration purposes that was knowingly entered into by both parties. Plaintiff Patel in this case was entirely unaware of Defendant's fraudulent intent on identical grounds. If annulment was due in Faustin, supra, 85 N.J. 507, it is even more due in this case.

The family court at least abused its discretion in failing to grant an annulment based on general equity jurisdiction under the undisputed evidence that Plaintiff presented at trial, Carris v. Carris, 24 N.J. Eq. 516, 523 (1873); In re Estate of Santolino, 384 N.J. Super. 567, 583 (Ch. Div. 2005). Even the family judge recognized the equities—asking Defendant if she would consent to an annulment with Plaintiff. It was erroneous for the family judge to fail to afford Plaintiff at least equitable relief on his request for an annulment (which Respondent does not address in her Brief).

Conclusion

For these reasons and all those set forth in Appellant’s Brief, the Court should vacate the judgment of divorce that the Family Court entered and remand with direction that a judgment of annulment be entered in accordance with governing New Jersey law. The Court should also vacate the award of attorney’s fees entered against the plaintiff, which is premised on the Family Court’s denial of his petition for annulment.

Respectfully submitted,

/s/ Michael Confusione
Counsel for Appellant

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