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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of KULDEEP KAUR
KHALSA and GURLAL SINGH.

KULDEEP KAUR KHALSA,

Respondent,

v.

GURLAL SINGH,

Appellant.

A128518

(Alameda County
Super. Ct. No. FF07322181)

Gurlal Singh appeals from the order granting Kuldeep Kaur Khalsa's petition to annul their marriage. He claims the trial court erred in admitting evidence of statements he made during a Sikh temple-sponsored reconciliation session. He also claims the evidence is insufficient to support the finding that he committed fraud when he entered into the marriage. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The parties were married in India in March 2005. They separated in February 2007, while residing in California.

On April 24, 2007, Kuldeep filed a petition for nullity of marriage, asserting the ground of fraud.¹ (Fam. Code, § 2210, subd. (d).)

On June 5, 2007, Gurlal filed a response and a request for dissolution of marriage.

¹ Because several persons involved in this case use the name Singh, we refer to the parties by their first names. No disrespect is intended.

On March 2, 2009, the matter was set for trial.

On March 13, 2009, Gurlal was served with a notice of removal proceedings from the United States Department of Homeland Security.

The trial commenced on June 1, 2009, and continued on three other days until its completion on January 15, 2010.

I. Kuldeep's Evidence

The parties' marriage was arranged by Gurlal's aunt and Kuldeep's father. Kuldeep testified she was initially skeptical of the arrangement, but after she spoke with Gurlal on the telephone she began to look forward to being married to him. She traveled to India with her father and her two daughters for the wedding. After the wedding, the parties spent three weeks together, traveling with Gurlal's family in India. During that time, the marriage was consummated. She was sad to leave him when she returned to the United States. Gurlal stayed in India until October 2006. While they were separated, she would speak with Gurlal on the telephone every few days. She gave her father money to pay for Gurlal's immigration papers. She also sent Gurlal approximately \$8,000 in support during the year and a half that he remained in India.

After Gurlal received his visa, Kuldeep paid for his airline ticket to the United States. When he arrived, they moved to an apartment in Union City. Kuldeep testified that the relationship initially was pleasant. After Gurlal received his green card, however, the relationship deteriorated. He refused to have sexual relations without using a condom, and they had arguments because he refused to contribute money to the household and often stayed away from home.

At some point, Kuldeep discovered a New Year's greeting card that had been sent to Gurlal by a woman in India named Navdeep Gill. Gurlal eventually admitted to Kuldeep that Gill was his girlfriend, and that he had only married her to get an immigration card. She came home one night in February 2007 and found that all of his belongings were gone. He had left the apartment without telling her where he was going. She went to the police station and filed a missing person's report. After a few days, Gurlal telephoned her and said he was in New York working at a gas station. In reality,

he had enrolled in a truck driving school in Bakersfield. His enrollment application listed a home address in Lathrop, rather than the parties' apartment in Union City. After she filed her petition to annul the marriage, she obtained a restraining order against Gurlal because she was afraid he might try to hurt her or her daughters.

Rashpal Waraich, a driving instructor, testified that Gurlal took classes from him in December 2006. During their conversations, Gurlal told him that he married to get to the United States, and that after he obtained his green card he was going to marry his fiancée in India. In April 2008, Waraich, who is a member of the same Sikh temple as the parties, learned of their marital problems. He approached Kuldeep's father and told him what Gurlal had said to him earlier.

Mr. Shamsher Singh Shergill testified that he was asked to participate in six meetings at the temple, the purpose of which was to restore the parties' marriage. About eight to ten people participated in these sessions, including Gurlal, Gurlal's uncle, and Kuldeep's father. Kuldeep did not attend because women do not normally come to these types of meetings. Gurlal did not come to the first session. At the second session, Gurlal acknowledged that he was involved with another woman. He stated that the marriage to Kuldeep was only temporary and that his girlfriend (Gill) was in India. He complained that Kuldeep was five to six years older than him and she already had two children. He stated that he married her just to get to the United States.

Hardev Singh also participated in the temple meetings. About five or six sessions occurred between March and June 2007. These sessions were consistent with the Sikh cultural tradition of meeting together to achieve reconciliation. Singh testified that Gurlal stated he had a romantic relationship with another woman in India and wanted to divorce Kuldeep.

Gurlal testified he received Gill's greeting card and showed it to Kuldeep. Gill was his classmate in India but he never dated her. The card was mailed to his uncle's house in Hayward. Gurlal did not know how Gill obtained his uncle's address. A portion of the card states: "I shall not erase your love from my heart even after removing myself from this world." He was surprised at what Gill had written. He denied that he and

Kuldeep had argued over the card. He also denied ever telling his driving instructor that he was planning on marrying his fiancée in India. He stated he never told anyone at the Sikh temple that he was committed to marrying Gill.

Gurlal further testified that he participated in a mediation session at the Sikh Temple a month or two after Kuldeep filed her petition. There were four to five people there, including Kuldeep's father. As this testimony was being elicited, Gurlal's counsel asserted the mediation privilege. The court agreed to exclude any testimony as to offers of settlement only.

On December 15, 2009, prior to the third day of the trial, Gurlal filed an ex parte application to strike and exclude all testimony concerning what transpired during the sessions at the temple, again asserting the mediation privilege. The trial court denied the motion, concluding the sessions were not intended to be confidential and that the privilege is not intended to apply to informal discussions between family members and others.

II. Gurlal's Evidence

Gurlal's uncle, Gurjant Singh Sandha, testified that during the mediation sessions Gurlal did not say he had a girlfriend back in India. He said his intent had been to stay with Kuldeep when he married her. Sandha also testified that Kuldeep's father demanded \$100,000 in exchange for allowing the marriage to continue so that Gurlal could become a permanent resident. Sandha refused.²

Gurlal testified that after the wedding he was happy he had married Kuldeep. Their relationship continued to deepen as they spoke on the telephone while he was waiting to come to the United States. When he finally arrived, they were happy to see each other and they began living together. After he received his green card and social security card, he tried to find a job but was only able to get occasional construction jobs. Kuldeep and her father put pressure on him to get a better job, so he decided to go to

² Kuldeep's father testified and denied ever demanding money.

truck driving school in Bakersfield. While he was in Bakersfield, his family told him that Kuldeep had taken out a restraining order against him so he did not return to their home.

Narindar Kaur, Gurlal's aunt, testified that Kuldeep had asked her to help find a husband. Kaur decided to ask Gurlal if he would be interested in marrying Kuldeep, and he responded affirmatively. He claimed he was not involved in any other relationships in India. After Gurlal came to the United States, the couple seemed happy at first. Later, Kuldeep told her that her father was pressuring her to get divorced and file restraining orders. Since returning from Bakersfield, Gurlal had resided in Kaur's home.

III. The Trial Court's Decision

On January 27, 2010, the trial court issued its tentative statement of decision. The court noted the principal question was whether Gurlal entered into the marriage for the sole or primary purpose of securing entry into the United States, without an intent to stay married to Kuldeep. After a detailed recitation of the evidence adduced at trial, the court found Gurlal's testimony lacked credibility. For example, the court noted Gurlal claimed he did not return to the apartment after he finished his truck driving school in Bakersfield because Kuldeep had taken out a restraining order against him, yet the evidence showed the restraining order did not issue until sometime later. Even without considering the testimony of those involved in the temple reconciliation sessions, the court found there was "sufficient, believable evidence" to support the conclusion that Gurlal's sole reason for marrying Kuldeep was to obtain residency in the United States. The court found clear and convincing evidence of this fraudulent intent and granted judgment for nullity.

On February 8, 2010, Gurlal filed his objections to the tentative statement of decision and a request for a new trial.

On March 3, 2010, the trial court denied the motion for new trial.

On April 15, 2010, the trial court entered the judgment of nullity. This appeal followed.

DISCUSSION

I. The Mediation Privilege Does Not Apply

Gurlal asserts the trial court committed prejudicial error by considering the testimony of the temple reconciliation session participants. He claims these sessions were privileged settlement discussions and were inadmissible under the mediation privilege contained in Evidence Code section 1119.³ “ ‘ “Broadly speaking, an appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion.” ’ [Citation.] The court’s ‘ “discretion is only abused where there is a clear showing [it] exceeded the bounds of reason, all of the circumstances being considered.” ’ [Citation.]” (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 332.)

“Mediation confidentiality is codified in Evidence Code section 1115 et seq. This evidentiary restriction is not limited to those communications made ‘ “in the course of . . . mediation. [Citation.]” ’ [Citation.] Rather, as delineated in Evidence Code section 1119, the restriction applies to any written or oral communication made ‘for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation,’ as well as all ‘communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation’ [Citation.] Section 1119 also makes such evidence not subject to discovery.” (*Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137, 150–151.) “[T]he mediation confidentiality provisions of the Evidence Code were enacted to encourage mediation by permitting the parties to frankly exchange views, without fear that disclosures might be used against them in later proceedings.” (*Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 194.)

“Mediation is defined as a ‘process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.’ [Citations.] During this process, a neutral third party with no

³ Evidence Code section 1119, subdivision (a), provides: “No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.”

decisionmaking power intervenes in the dispute to help the litigants voluntarily reach their own agreement. [Citation.] Essential to the mediation process is the concept that the parties are in control of resolving their own dispute.” (*Jeld-Wen, Inc. v. Superior Court* (2007) 146 Cal.App.4th 536, 540 (*Jen-Wen*).)

“Mediation generally falls into two categories. The first is traditional or classic mediation, where attorneys are not present, the mediator meets directly with the parties to facilitate negotiations, and the mediator is passive, expressing neither judgment nor opinion on the merits. The second is the type of mediation conducted as part of voluntary settlement conferences. In that form, lawyers are present and the mediator takes a more active role, often expressing an opinion on the merits but without authority to reach a decision. [Citation.] Critical to either process is the concept of self-determination, leaving the parties in control of resolving their own dispute. Self-determination commits the parties to their settlement terms because they have made decisions by themselves instead of having a resolution imposed on them by a third party. [Citations.] ‘The function of the mediator, therefore, is to facilitate the parties to voluntarily reach their own agreement. [Citations.]’ [Citation.]” (*Travelers Casualty & Surety Co. v. Superior Court* (2005) 126 Cal.App.4th 1131, 1139–1140, fn. omitted.)

In *Saeta v. Superior Court* (2004) 117 Cal.App.4th 261, the appellate court held the mediation confidentiality statutes did not apply to the proceedings of a “termination review board” before which a discharged employee had a contractual entitlement to review of the termination decision. The board was composed of an employer representative, an employee representative, and a “neutral” third member, and was empowered to take evidence, then report to the employer’s home office its view whether the termination should be upheld. (*Id.* at p. 265.) Applying the premise that “[statutory] privileges are narrowly construed . . . because they operate to prevent the admission of relevant evidence” (*id.* at p. 272), the *Saeta* court observed that the board there at issue, which included party representatives, and whose function was to review and recommend, lacked two minimum elements of the “broad” definition of mediation—“a neutral

mediator or group of mediators” and an “aim to facilitate a mutually acceptable result” by the parties’ voluntary agreement. (*Id.* at p. 271.)

In the present case, the reconciliation sessions at the Sikh temple were similarly devoid of at least one minimum element of the broad definition of mediation, namely, the presence of both parties. It is undisputed that Kuldeep did not attend any of the sessions, though her father did attend. There was also no evidence that she requested these sessions herself, or that she asked her father to act on her behalf. While the conduct of these sessions appears to be consistent with cultural traditions of not allowing females to participate directly in such meetings, as noted above, “Essential to the mediation process is the concept that *the parties* are in control of resolving their own dispute.” (*Jeld-Wen, supra*, 146 Cal.App.4th 536, 540, italics added.) We also agree with the trial court that there was no evidence suggesting that the participants in the meetings at the temple had an understanding that the matters discussed were to remain confidential. In sum, we conclude that the sessions at the Sikh temple were not a “mediation” within the meaning of Evidence Code section 1115. The statements made by Gurlal during the meetings are therefore not covered by the mediation privilege under Evidence Code section 1119, subdivision (a).

II. Substantial Evidence Supports the Finding of Fraud

Gurlal claims Kuldeep did not establish he had the requisite fraudulent intent to induce her to marry him for the sole purpose of obtaining residency in the United States. “We review the judgment of nullity or a decision regarding the validity of a marriage under the substantial evidence standard of review.” (*In re Marriage of Ramirez* (2008) 165 Cal.App.4th 751, 756 (*Ramirez*)). “Under the substantial evidence standard of review, our review begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the trial court’s factual determinations. [Citations.] Substantial evidence is evidence of ponderable legal significance, reasonable in nature, credible, and of solid value. [Citation.] The substantial evidence standard of review applies to both express and

implied findings of fact made by the court in its statement of decision.” (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 501.)

“A marriage is voidable and may be adjudged a nullity if the consent of either party was obtained by fraud. [Citation.] A marriage may be annulled for fraud only in an extreme case where the particular fraud goes to the very essence of the marriage relation. [Citation.] The fact represented or suppressed to induce consent to marriage will be deemed material if it relates to a matter of substance and directly affects the purpose of the party deceived in entering the marital contract. [Citation.] In other words, the fraud relied upon must be such as directly defeats the marriage relationship and not merely such fraud as would be sufficient to rescind an ordinary civil contract. [Citations.] Fraudulent intent not to perform a duty vital to the marriage state must exist in the offending spouse’s mind at the moment the marriage contract is made.” (*Ramirez, supra*, 165 Cal.App.4th 751, 757.) Additionally, because public policy strongly favors marriage, any fraud must be shown by clear and convincing evidence. (*Williams v. Williams* (1960) 178 Cal.App.2d 522, 525.)

Annulments based on fraud are granted only in cases where the fraud relates in some way to the sexual, procreative or child-rearing aspects of marriage. (*Millar v. Millar* (1917) 175 Cal. 797, 800–801 [wife concealed from husband at time of marriage that she did not intend to have sexual relations with him]; *Ramirez, supra*, 165 Cal.App.4th 751, 759 [husband married wife while having love affair with wife’s sister, which he intended to continue after the marriage]; *Handley v. Handley* (1960) 179 Cal.App.2d 742, 747–748 [concealment of intention not to live in the same house with the other spouse]; *Schaub v. Schaub* (1945) 71 Cal.App.2d 467, 477–479 [concealment of intention not to terminate an intimate relationship with a third person after the marriage]; *Vileta v. Vileta* (1942) 53 Cal.App.2d 794, 796 [concealment of sterility].) In contrast, fraud that does not go to a matter that the state deems vital to the marriage relationship is insufficient for an annulment. (*In re Marriage of Meagher & Maleki* (2005) 131 Cal.App.4th 1, 3 [husband’s alleged financial misrepresentations and fraudulent inducement of wife’s investments in business ventures did not constitute fraud warranting

annulment]; *In re Marriage of Johnston* (1993) 18 Cal.App.4th 499, 500–502 [nullity judgment reversed where husband allegedly concealed severe drinking problem, and that he did not intend to work for a living, even though the wife also alleged an unsatisfactory sex life].)

In the present case, there is substantial evidence in the record that in entering the marriage Gurlal concealed not only his purpose of obtaining permanent residency, but also his intent to end the marriage once he achieved this goal and marry Gill instead. This evidence came in the form of multiple statements made to Kuldeep, Waraich, and participants at the reconciliation session at the Sikh temple, in which Gurlal explicitly stated these intentions. Additionally, Gurlal’s sudden change of attitude towards the marriage after he obtained his green card, and his abrupt departure to Bakersfield, lend support to the trial court’s finding that he entered the marriage with fraudulent intent.

Gurlal argues that the trial court failed to consider evidence of financial problems, certain letters between the parties, and the alleged bias of some of Kuldeep’s witnesses. “Where statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.” (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) Here, the trial court evaluated conflicting evidence regarding the circumstances surrounding the demise of the parties’ marriage and concluded Gurlal had fraudulent intent. It is within the exclusive province of the trial court “to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.)

Gurlal also claims the trial court drew “improper” inferences from various items of evidence, including the New Year’s greeting card, his refusal to have sex without a condom, and the fact that the truck driving school enrollment listed his address as being in Lathrop rather than the parties’ apartment in Union City.

We are bound by the trial court’s conclusions. “Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) In sum, we conclude the trial court’s decision is supported by substantial, admissible evidence.⁴

DISPOSITION

The judgment is affirmed.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.

⁴ It necessarily follows that the trial court did not err in denying Gurlal’s motion for new trial.