

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

KIMBERLON WESLEY HODGESON

NO. 2012 CW 2085

VERSUS

BECKY ROSA BEESON LEONARD
WESLEY

FEB 28 2013

In Re: Becky Leonard Wesley, applying for supervisory writs, 21st Judicial District Court, Parish of Livingston, No. 137,702.

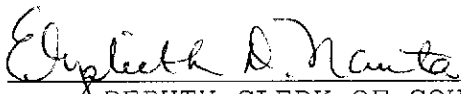
BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.

WRIT GRANTED IN PART; DENIED IN PART. Pretermittting whether the officiant had the requisite legal authority to perform the marriage ceremony in question, we rule as follows. To the extent that the plaintiff, Kimberlon Hodgeson's petition seeks to annul the marriage of her brother to the defendant, Becky Leonard Wesley, on the basis of his being incapable of legally consenting thereto, the petition states a cause of action for a relative nullity, which under Louisiana law, can be brought only by the party to the marriage contract itself or the party's legal succession representative. Kimberlon Hodgeson is neither a party to the marriage nor the legal succession representative; therefore, she has no right of action to annul the marriage as a relative nullity for lack of consent. See La. C.C. art. 95. Thus, the trial court erred in denying the exception in this regard.

However, Kimberlon Hodgeson also factually alleges a challenge to the marriage as an absolute nullity, a challenge which can be made by any interested party. See La. C.C. art. 94. To the extent that facts are alleged that challenge the veracity of the marriage license and question whether the decedent could have been physically present at the marriage ceremony when such is contradicted by the hospice care notes, the plaintiff is an interested party who has the legal right to assert the absolute nullity of such a marriage, if indeed it was unattended by one of the parties. See La. C.C. art. 91. Thus, the trial court did not err in denying the exception to the extent that the challenge is one of absolute nullity. The judgment of the trial court is hereby affirmed in part and reversed in part, accordingly.

VGW
PMc
TMH

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FOR THE COURT