Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of June, 2023** are as follows:

BY Crichton, J.:

2022-C-01570 AMY WEDERSTRANDT AND BILLY R. EFFERSON, JR. VS. EDEN KOL (Parish of East Baton Rouge)

AFFIRMED. SEE OPINION.

Weimer, C.J., dissents for reasons assigned by Crain, J. and assigns additional reasons.
Hughes, J., dissents and assigns reasons.
Crain, J., dissents and assigns reasons.
McCallum, J., additionally concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-C-01570

AMY WEDERSTRANDT AND BILLY R. EFFERSON, JR.

VS.

EDEN KOL

On Writ of Certiorari to the Court of Appeal, First Circuit,
Parish of East Baton Rouge

CRICHTON, J.

Plaintiffs, surviving parents of their deceased daughter, brought an action to nullify their daughter's marriage to defendant, Eden Kol, based upon the allegation that their daughter and defendant entered into the marriage for the sole purpose of evading federal immigration laws to obtain permanent resident status for defendant. Defendant filed an exception of no cause of action, alleging the petition failed to state a cause of action for nullification of marriage under the Louisiana Civil Code. The trial court granted the exception, and the court of appeal affirmed. For the reasons set forth below, we find the court of appeal correctly concluded that plaintiffs have failed to state a cause of action under the well-pleaded facts as stated in the petition and hereby affirm.

FACTS AND PROCEDURAL HISTORY

Ivie Efferson was killed in an automobile accident on June 12, 2021, at the age of twenty-four. On June 24, 2021, plaintiffs, the parents of Ms. Efferson, filed a Petition for Declaration of Absolutely Null Marriage. In their Petition, plaintiffs allege that the marriage between their daughter Ivie Efferson and defendant Eden Kol[1] was fraudulent and entered into for the purpose of violating federal immigration

[1] The plaintiffs' petition states that Mr. Kol is "originally a citizen of Israel but who has immigrated to the United States."

law as found in 8 U.S.C. § 1325(C).[2] Specifically, plaintiffs allege that defendant and decedent never had a "meaningful" or intimate relationship; they did not cohabitate as husband and wife; both parties had romantic relationships with others during the entire duration of the alleged fraudulent marriage; and defendant paid the decedent $10,000 in cash for the purposes of entering into the false marriage. Thus, plaintiffs assert, the object of Ms. Efferson and Mr. Kol's marriage contract violates a rule of public order and is "clearly illicit and immoral." Consequently, according to plaintiffs, the marriage contract is in violation of La. C.C. art. 2030[3] and is an absolute nullity.

Defendant answered plaintiffs' petition and filed an exception of no cause of action, asserting that La. C.C. art. 87 sets forth the only requirements for a valid marriage, which are the absence of a legal impediment, a marriage ceremony, and free consent of the parties to take each other as husband and wife as expressed at the ceremony. Defendant further argued La. C.C. art. 94[4] sets forth the exclusive bases for declaring a Louisiana marriage absolutely null, providing that "[a] marriage is absolutely null when contracted without a marriage ceremony, by procuration, or in violation of an impediment." Because plaintiffs have alleged no violation of article 94, specifically no impediment of marriage, defendant argued to the trial court that plaintiffs had no cause of action. Defendant also asserted that these articles are

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[2] The statute provides, in pertinent part: "(c) Marriage fraud: Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both."

[3] La. C.C. art. 2030 provides:

> A contract is absolutely null when it violates a rule of public order, as when the object of a contract is illicit or immoral. A contract that is absolutely null may not be confirmed. Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.

[4] La. C.C. art. 94 provides:

> A marriage is absolutely null when contracted without a marriage ceremony, by procuration, or in violation of an impediment. A judicial declaration of nullity is not required, but an action to recognize the nullity may be brought by any interested person.

exclusive, and neither of these articles incorporates any other provisions of the Civil Code, including violations of public policy or an illicit object of a contract under La. C.C. art. 2030. Defendant argued that broadening the inquiry into what constitutes an "illicit and immoral" marriage is an impossible legal standard and against public policy.

The trial court held a hearing on the exception on October 12, 2021, during which the court sustained the exception of no cause of action and dismissed plaintiffs' petition with prejudice. A judgment to this effect was signed on October 14, 2021. Plaintiffs timely appealed.

The court of appeal affirmed, noting that La. C.C. art. 94 is the more specific statute as it relates to nullity of a marriage and thus rejected the plaintiffs' argument that the general principles of conventional obligations apply broadly to marriage as a civil contract. *Wederstrandt v. Kol*, 22-0108 (La. App. 1 Cir. 10/5/22), 353 So. 3d 833. The majority also held that based upon the petition, no amendment to it could state a cause of action for nullity pursuant to La. C.C. art. 94. Judge Welch dissented, finding no conflict between the Civil Code articles pertaining to marriage and those pertaining to obligations and contracts more broadly. He therefore would have held that a marriage contract alleged to have been entered into for the sole purpose of immigration crime states a cause of action for absolute nullity under Louisiana law through incorporation of the broader obligations of Civil Code articles. *Wederstrandt v. Kol*, 22-0108 (La. App. 1 Cir. 10/5/22), 353 So. 3d 833 (Welch, J., dissenting). This Court thereafter granted plaintiffs' writ application. *Wederstrandt v. Kol*, 22-1570 (La. 1/18/23), 352 So. 3d 966.[5]

[5] Abraham Mebrahtom, Yam Trucking, LLC., and Alpine Transportation Insurance Risk Retention Group, Inc., filed an amici brief in this Court and participated briefly in oral argument. They assert their interest in this matter stems from their status as defendants in a wrongful death and survival action originally filed by plaintiffs herein in the 19th JDC but removed to federal court. The federal court proceeding is presently stayed pending the outcome of this matter. *Efferson, et al. v. Mebrahtom, et al.,* 3:22-cv-00438-SDD-RLB (MDLA). In short, they argue the court of appeal opinion should be affirmed because the requirements of a valid marriage and the basis for its

DISCUSSION

The issue before us today is whether La. C.C. article 94 provides the exclusive grounds for declaring a marriage absolutely null, and absent such language, whether resorting to other provisions of the Civil Code to determine nullity is appropriate.

A cause of action, when used in the context of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. *Wright, et al. v. Louisiana Power & Light, et al.*, 06-1181, p. 14 (La. 3/9/07), 951 So. 2d 1058, 1069, *reh'g denied*, June 1, 2007. An exception of no cause of action is utilized to determine the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.,* 616 So. 2d 1234, 1235 (La. 1993). No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. Thus, the court reviews the petition and accepts well-pleaded allegations of fact as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Everything on Wheels,* 616 So. 2d at 1235. The adjective "well-pleaded" refers to properly pleaded allegations conforming to the system of fact pleading embodied in the Louisiana Code of Civil Procedure. *Hamilton v. Baton Rouge Health Care*, 09-849, p. 4 (La. App. 1 Cir. 12/8/10), 52 So. 3d 330, 333. It does not include allegations deficient in material detail, conclusory factual allegations, or allegations of law. *Id.* This Court has also explained:

> In reviewing the judgment of the district court relating to an exception of no cause of action, appellate courts should conduct a *de novo* review because the exception raises a question of law and the lower court's decision is based solely on the sufficiency of the petition. *Fink v.*

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absolute nullity are limited to those specific impediments set forth in La. C.C. article 94. According to amici, to extend the analysis of when a marriage can be declared absolutely null to include reference to contractual obligations is not only an incorrect interpretation of the marriage statutes (and the Civil Code), but would result in bizarre and far-reaching consequences that run afoul of public policy.

> *Bryant*, 01-0987, p. 4 (La. 11/28/01), 801 So. 2d 346, 349; *City of New Orleans* at p. 28, 640 So. 2d at 253. The pertinent question is whether, in the light most favorable to plaintiff and with every doubt resolved in plaintiff's behalf, the petition states any valid cause of action for relief. *City of New Orleans* at p. 29, 640 So. 2d at 253.

Ramey v. DeCaire, 03-1299 (La.3/19/04), 869 So. 2d 114, 118-19.

The burden of demonstrating that the petition states no cause of action is upon the mover. *City of New Orleans v. Board of Com'rs of Orleans Levee Dist.*, 93-0690, p. 28 (La.7/5/94), 640 So. 2d 237, 253.

This case involves interpretation of articles of the Civil Code. The starting point in the interpretation of any statute is the language of the statute itself, as what a legislature says in the text of a statute is considered the best evidence of its intent and will. *Mayeux v. Charlet*, 16-1463, p. 8 (La. 10/28/16), 203 So. 3d 1030, 1036, citing *M.J. Farms*, *LTD v. Exxon Mobil Corp., et al.*, 07-2371, p. 13 (La. 7/1/08), 998 So. 2d 16, 27. Article 9 of our Civil Code further provides that "when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La. C.C. art. 9; La. R.S. §§ 1:3 and 1:4.

Louisiana Civil Code article 86 provides that marriage is a legal relationship "created by civil contract" subject to "special rules prescribed by law." The requirements for the contract of marriage are: the absence of a legal impediment, a marriage ceremony, and the free consent of the parties as expressed at the ceremony. La. C.C. art. 87. The sources of absolute nullity of a marriage contract are set forth in La. C.C. art. 94, which provides: "A marriage is absolutely null when contracted without a marriage ceremony, by procuration, or in violation of an impediment." The impediments of marriage are found in Louisiana Civil Code articles 88

("Impediment of existing marriage")[6], 89 ("Impediments of same sex"),[7] 90 ("Impediments of relationship")[8] and 90.1 ("Impediment of age").[9] Notably, the impediment of age found in La. C.C. art. 90.1 was most recently added by the Legislature in Acts 2019, No. 401, § 1.

Again, significantly, La. C.C. art. 94 provides a list of three things that render a marriage contract absolutely null: a lack of a marriage ceremony, by procuration, or in violation of an impediment. There is no "catchall" provision. In such a context, we apply the settled doctrine of statutory construction, e*xpressio unius est exclusio alterius*, which dictates that "when the legislature specifically enumerates a series of things, the legislature's omission of other items, which could have easily been included in the statute, is deemed intentional." *International Paper Company, Inc. v. Hilton, et al.*, 07-290, p. 19-20 (La. 10/16/07), 966 So. 2d 545, 599, citing *Filson v. Windsor Court Hotel*, 04-2893, p. 6 (La.6/29/05); 907 So. 2d 723, 728 (citing *State Through Dep't of Public Safety & Corrs., Office of State Police, Riverboat Gaming Div. v. Louisiana Riverboat Gaming Comm'n & Horseshoe Entm't*, 94-1872, p. 17 (La.5/22/95); 655 So. 2d 292, 302 (citing *State ex rel. Fitzpatrick v. Grace*, 187 La.

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[6] La. C.C. art. 88 provides: "A married person may not contract another marriage."

[7] Although La. C.C. art. 89 provides that "[p]ersons of the same sex may not contract marriage with each other," it has been rendered unconstitutional by the United States Supreme Court's decision in *Obergefell v. Hodges*, 135 S.Ct. 2584, 576 U.S. 644, 192 L.Ed.2d 609 (2015).

[8] La. C.C. art. 90 states:

> A. The following persons may not contract marriage with each other:
> (1) Ascendants and descendants.
> (2) Collaterals within the fourth degree, whether of the whole or of the half blood.
> B. The impediment exists whether the persons are related by consanguinity or by adoption. Nevertheless, persons related by adoption, though not by blood, in the collateral line within the fourth degree may marry each other if they obtain judicial authorization in writing to do so.

[9] La. C.C. art. 90.1 provides:

> A minor under the age of sixteen may not contract marriage. A minor sixteen or seventeen years of age may not contract marriage with a person of the age of majority where there is an age difference of three years or greater between them.

1028, 175 So. 656 (1936); *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325 (1943). Pursuant to this principle, article 94, which provides only three sources of nullity of marriage and no others, is presumed intentional.[10] Applying the basic principles of statutory interpretation, as we must, we thus conclude that La. C.C. art. 94 is exclusive; its application does not lead to absurd consequences under the facts of this case and we may not turn to other provisions for interpretation. We therefore hold that plaintiffs have not, and cannot, assert a cause of action for nullity of their daughter's marriage and therefore affirm the trial court and court of appeal judgments.

Furthermore, we need not and will not expand the scope of that express list through reference to conventional obligations, and thus reject the plaintiffs' argument that the grounds for absolute nullification are not exclusive and incorporate ***both*** the Civil Code provisions on marriage ***and*** the general principles of conventional obligations. Plaintiffs assert that because their daughter and defendant entered into marriage for the "sole purpose" of evading federal immigration law as found in 8 U.S.C. § 1325(c), their marriage violates a rule of public order and therefore lacks a lawful cause and object as required by La. C.C. art. 2030. Plaintiffs further argue (as did the dissent in the court of appeal) that the marriage articles also incorporate La. C.C. article 7, which provides that "[p]ersons may not by their juridical acts derogate from laws enacted for the protection of public interest" and "[a]ny act in derogation of such laws is an absolute nullity."

[10] The intentionality of this exclusive list is evidenced by its prior revision. During the 1987 legislative session, which included a revision of several Matrimonial Regime articles overseen by the "Persons" committee of the Louisiana Law Institute, the Legislature deliberately chose to maintain the rule that minority was not an impediment to a marriage. Specifically, "[t]he Committee chose to preserve the validity of such marriages because, given the frequency of the marriage of minors, serious social problems could result from a law pronouncing the nullity of such a marriage." Katherine Shaw Spaht, *Revision of the Law of Marriage: One Baby Step Forward*, 48 La. L. Rev. 1131, 1136 (1988). As noted above, the impediment of age was added by the legislature in 2019.

As an initial matter, and as just explained, the marriage articles at issue here are complete and require no further search for their meaning. La. C.C. art. 9. Therefore, applying La. C.C. art. 2030 or any other article relating to conventional obligations, runs counter to foundational principles of statutory interpretation. In addition, plaintiffs' incorporation and expansion argument further illustrates its derogation of our rules of statutory interpretation. The marriage articles are contained within Book I ("Of Persons"), Title IV ("Husband and Wife"). La. C.C. art. 2030, relating to conventional obligations, is found in Book III ("Of the Different Modes of Acquiring the Ownership of Things"). General Principles of Conventional Obligations are found in Civil Code articles 1906 ("Definition of Contract") through article 1917 ("Rules Applicable to All Kinds of Obligations"). Within this section, there are definitions of various types of conventional contracts such as onerous and gratuitous as well as corresponding articles that dictate when to refer to conventional or general obligations. Article 1916, for example, states "All contracts, nominate and innominate, are subject to the rules of this title." Although one could argue the word "contract" is "clear and unambiguous" and thus should be applied as written to include *all* contracts, including the contract of marriage set forth in an entirely separate Book of the Code ("Of Persons"), we decline to adopt this reasoning based upon our rules of statutory interpretation.

We find support for this notion that Book III, Title IV was not intended to be incorporated in reference to the contract of marriage in other provisions of interpretation of laws. La. Civil Code art. 13 provides that "Laws on the same subject matter must be interpreted in reference to each other." The insertion of "nominate and innominate," when read *in pari materia* with other provisions on conventional obligations, references the court to La. C.C. art 1914, which states that "Nominate contracts are those given a special designation such as sale, lease, loan, or insurance." Notably, marriage contracts are given special designation, but they

do not fall within the types of categories of contracts – conventional contracts – that are listed as examples.[11] Thus, we decline to find that articles 1914 and 1916 intended to incorporate the contract of marriage into the types of contract subject to the rules of the Code's Title on Conventional Obligations or Contracts.

During the 1981 Persons Committee meeting prior to the revision of certain codal articles related to matrimonial regimes, the Committee specifically declined to set forth a blanket approval (or disapproval) of reference to general obligations principles. As Professor Spaht, Reporter for the Persons Committee of the Louisiana Law Institute at the time stated, "[s]everal members . . . . agreed that such an absolute bar [against resort to general obligations principles] was unwise, but disapproved adopting the converse provision that obligations principles could always be applied unless their use was explicitly disapproved." Katherine Shaw Spaht, *Revision of the Law of Marriage: One Baby Step Forward*, 48 La. L. Rev. 1131, 1134, n. 20 (Emphasis added.). In other words, the legislature (by way of adopting the Law Institute's revisions), neither intended to incorporate *all* of the conventional obligations principles nor to exclude their applicability.

Professor Spaht further acknowledged that, with respect to filling in the articles of marriage contracts with general principles on obligations: "There are occasions where it will be necessary to resort to general obligations principles **to resolve questions unanswered by the special rules in Chapters 1 or 2 of Title IV of Book I of the Civil Code**. Since marriage is created by a civil contract, it is appropriate in many instances to do so." Katherine Shaw Spaht, *Revision of the Law of Marriage: One Baby Step Forward*, 48 La. L. Rev. 1131, 1134, n. 20 (Emphasis

[11] As stated above, La. C.C. art. 9 provides that clear and unambiguous laws shall be applied as written and no further interpretation made *only* when "its application does not lead to absurd consequences." (emphasis added). Subjecting the contract of marriage to the entirety of Book III, Title IV by way of art. 1916 would lead to absurd consequences. For example, La. C.C. art. 1986 ("Right of the obligee") states that if an obligor fails to perform an obligation, or not to do an act, the court shall grant specific performance (plus damages if demanded). Certainly one would not expect a court to require specific performance in a failed contract of marriage.

added.). In other words, where there are gaps in the "special rules" applicable to marriage contracts, the Court can resort to the general principles of obligations. However, we do not find the facts of this case, as they relate to the nullity articles, present circumstances or gaps requiring our use of general obligations principles. We find article 94 speaks directly on this issue, leaving no question unanswered as to what creates an absolute nullity in a marriage. There are several code articles (La. Civil Code arts. 88, 89, and 90.1) that provide every type of impediment to marriage and, thus, because there is no gap, there is no reason to "resort" to La. C.C. art. 2030. Furthermore, it is notable that Professor Spaht refers to the general provisions on obligations (Title III to Book III) whereas La. C.C. art. 2030 is found in the general principles of *conventional* obligations (Title IV to Book III). In other words, it appears the legislature may not have even contemplated resorting to Title IV.

Finally, we note the policy consequences of incorporating La. C.C. art. 2030 into La. C.C. art. 94. Article 2030 states that contracts are absolutely null if entered into for "illicit or immoral purposes." Imposing this requirement in the marriage context would require courts to engage in the distasteful task of interpreting for what purposes a marriage contract could be considered "illicit" or – perhaps even more troublesome – "immoral." The policy consequences of such judicial meddling in personal choices of adults, who have otherwise validly contracted to marry, are not inconsequential.[12]

This Court recognizes its awesome responsibilities, we are mindful that "every word, sentence, or provision in a law is presumed to be intended to serve

[12] Absent any legislative direction, we also decline to read La. C.C. art. 7 so broadly in the context of the facts of this matter to incorporate an alleged violation of a federal crime as "any act in derogation of . . . . laws enacted for the protection of the public interest." Plaintiffs assert that because the marriage of their daughter and defendant contained an unlawful cause (an alleged violation of federal law), it violates a rule of public order and derogates from laws enacted to protect the public interest, thereby nullifying the marriage. However, employing the statutory interpretation principles expressed herein, as La. C.C. art. 9 states, we find that applying La. C.C. art. 7 to incorporate reference to violation of federal statutes into all juridical acts via the Civil Code would lead to absurd results and may require Louisiana state courts to improperly infringe upon interpretation of federal law.

some useful purpose, that some effect is given to each such provision, and that no unnecessary words or provisions were employed." *Colvin v. Louisiana Patient's Compensation Fund Oversight Bd.*, 06-1104, p. 6 (La.1/17/07), 947 So. 2d 15, 19; *Moss v. State*, 05-1963, p. 15 (La.4/4/06), 925 So. 2d 1185, 1196. In resolving the issue of statutory construction herein, we are constrained by the plain language of Article 94. We specifically note that it is within the province of the legislature to decide whether to expand the list of legal impediments to a marriage contract and thus not only render this particular act (as alleged) to be a criminal one but also one that constitutes an impediment of marriage. Until such time, we are limited by our rules of statutory construction as set forth herein and find that based upon the exclusive list of impediments as listed in Article 94, the plaintiffs have not adequately pleaded a cause of action under the facts of this case.

CONCLUSION

Based upon our analysis of the Civil Code provisions herein, we hold plaintiffs have not pleaded a cause of action under the facts of this case for nullification of the decedent's marriage. The court of appeal's ruling is affirmed.

AFFIRMED.

SUPREME COURT OF LOUISIANA

No. 2022-C-01570

AMY WEDERSTRANDT AND BILLY R. EFFERSON, JR.

VERSUS

EDEN KOL

On Writ of Certiorari to the Court of Appeal, First Circuit
Parish of East Baton Rouge

WEIMER, C.J., dissents for the reasons assigned by Crain, J., and assigns additional reasons.

The question here is not so much about the marriage itself as it is about who is entitled to sue and collect damages for the death of the alleged wife. This contest pits the alleged husband of the decedent against the decedent's parents based on allegations the deceased and the defendant violated federal immigration laws and committed a felony.

Generally, the reasons someone chooses to marry should not be evaluated in a court of law, and I share the concern of my colleagues in the majority about the potential slippery slope and ramifications of judicial meddling in such personal choices. However, this court is faced with specific and limited facts alleged to constitute a sham marriage in violation of federal immigration laws, and this court must apply the law as written to decide whether a cause of action exists to challenge the marriage if such a fraud has been perpetrated as alleged.

I agree with Justice Crain that the grounds for nullity of marriage stated in Civil Code article 94 are not the exclusive grounds to declare a marriage absolutely null. Likewise, I agree Article 7, which appears at the beginning of the Civil Code and sets forth a fundamental principle which permeates and resonates throughout the Code,

may be applied in determining the validity of a marriage entered into so as to violate federal immigration laws.[1] To hold otherwise would lead to an absurd result-allowing parties to enter into a marriage contract for the sole purpose of engaging in criminal activity by evading federal immigration laws.[2]

In this case, we are not required to determine whether plaintiffs will prevail at a trial on the merits, nor are we required to decide whether the parents' allegations regarding their daughter's marriage are truthful or have merit. Rather, this matter is before the court solely to determine whether the plaintiffs have sufficiently stated a cause of action in their petition. This court has explained:

> The purpose of the peremptory exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. No evidence may be introduced to support or controvert the exception of no cause of action. The exception is triable on the face of the pleadings, and, for purposes of resolving the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. The issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought.

Scheffler v. Adams & Reese, LLP, 06-1774, pp. 4-5 (La. 2/22/07), 950 So.2d 641, 646 (internal citations removed).

Plaintiffs alleged that the marriage contract between their daughter and Mr. Kol was entered into for the sole purpose of evading federal immigration laws to obtain permanent resident status for Mr. Kol. Plaintiffs specifically alleged Mr. Kol paid their daughter a sum of money, believed to be $10,000, which she accepted to marry him; (2) Mr. Kol and Ms. Efferson leased an apartment in Baton Rouge to create the false impression of a matrimonial domicile, but the apartment remained primarily

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[1] As noted by Justice Crain, resort to the Civil Code title governing conventional obligations (specifically Article 2030) is not necessary in this case based on the alleged facts.

[2] See La. C.C. art. 9, which cautions against reading codal provisions in such a fashion so as to create an absurd result.

unoccupied; (3) Mr. Kol and Ms. Efferson did not live together as husband and wife, and did not have a meaningful romantic relationship or engage in any activities of a bona fide marriage necessary for lawful immigration; (4) Mr. Kol was not present in Louisiana for most of the marriage, but, instead, resided in California; (5) Ms. Efferson remained in Baton Rouge and Mr. Kol returned to Baton Rouge only as necessary for the purpose of keeping up the appearance of a false marriage during the immigration process; (6) Mr. Kol and Ms. Efferson maintained romantic relationships with other partners during the duration of the fraudulent marriage; and (7) Mr. Kol was a gay man and had no intention of being married to a woman. While no opinion is expressed on the merits of these allegations and assertions, accepting the facts alleged in plaintiffs' petition as true, as must be done based on the law related to the exception of no cause of action filed by the defendant, it cannot be said at this preliminary stage of the proceeding that plaintiffs have failed to state a cause of action for nullity and should be barred from the door of the courthouse.

Importantly, this avenue for challenge to the validity of a marriage is extremely narrow and expressly limited to the unique facts of this case. I recognize that people choose to marry for a myriad of reasons, some of which may be offensive to others. However, this case involves alleged criminal activity and whether a sham marriage entered into for illegal purposes is the type of marriage contract that should be upheld under Louisiana law. The institution of marriage should be afforded a degree of respect such that legal recognition should not be given to one that "derogate[s] from laws enacted for the protection of the public interest." See La. C.C. art. 7. The petition sufficiently states a cause of action for nullity because the allegations, taken as true, support a finding that the marriage contract was a violation of a rule of public

order, namely a sham marriage entered into for the sole purpose of immigration fraud.

Thus, I must respectfully dissent.

SUPREME COURT OF LOUISIANA

NUMBER 2022-C-01570

AMY WEDERSTRANDT AND BILLY R. EFFERSON, JR.

VERSUS

EDEN KOL

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of East Baton Rouge

HUGHES, J., dissenting.

Respectfully, the majority misses the forest for the trees. This matter is before the court on an exception of no cause of action. The sole cause for this contract was to intentionally violate the law, for the price of $10,000. It is illicit and immoral. These are the facts.

SUPREME COURT OF LOUISIANA

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CRAIN, J., dissenting.

Plaintiffs allege their daughter was paid $10,000 to marry a foreign national for the sole purpose of committing a federal crime, specifically felony immigration fraud. The majority finds the Civil Code authorizes and even encourages this illegal conduct by granting the parties thereto all the rights and privileges of a valid marriage. I disagree.

Marriage is a legal relationship "created by civil contract." La. Civ. Code art. 86. A "contract" is a conventional obligation defined as "an agreement by two or more parties whereby obligations are created, modified, or extinguished." *See* La. Civ. Code art. 1906. The marriage contract is "subject to special rules prescribed by law." La. Civ. Code art. 86. One of those rules is Louisiana Civil Code article 94, which states a marriage "is absolutely null when contracted without a marriage ceremony, by procuration, or in violation of an impediment." The present issue is whether these are the *only* grounds for declaring a marriage absolutely null. Resolution of this issue requires answering two questions: (1) does Article 94's language establishes its exclusivity; and (2) absent such language, is there another applicable Civil Code article that provides a basis to nullify the subject marriage?

As to the first inquiry, Article 94 does not expressly state whether its grounds for absolute nullity are exclusive of, or in addition to, those provided elsewhere in the Civil Code for contracts and other juridical acts. The article identifies certain absolute nullities without qualifying whether they are the "exclusive" or "only" grounds to declare a marriage absolutely null. The enactment and placement of Article 94 in the marriage title does not resolve the issue. Exclusive or not, Article 94 is required in the code's marriage title because the contract of marriage has some unique requirements: a ceremony is required, one cannot enter the agreement with a close relative, and the contract cannot be entered if one of the parties is in a similar contract with another person. *See* La. Civ. Code arts. 88, 90, and 91. Without Article 94, we would not know if the lack of a ceremony or the presence of an impediment renders a marriage absolutely null, relatively null, or not null at all. Article 94 answers that question. It does not, however, say those are the only grounds for the absolute annulment of a marriage.

The majority concludes otherwise, relying on the legal maxim "e*xpressio unius est exclusio alterius.*" This Latin phrase translates to "expression of one is the exclusion of another" and has been used to find "when the legislature specifically enumerates a series of things, the legislature's omission of other items, which could have easily been included in the statute, is deemed intentional." *International Paper Company, Inc.*, 966 So. 2d at 559-59. This rule can be helpful when a single law applies to the subject at hand; however, it is not a license to disregard *other applicable laws* that equally express legislative will.

"Laws on the same subject matter must be interpreted in reference to each other." La. Civ. Code art. 13. Where two laws deal with the same subject matter, they should be harmonized if possible. *S. Lafourche Levee District v. Jarreau*, 16-0788 (La. 3/31/17), 217 So. 3d 298, 304. The more specific law controls only if there is a conflict. *See Id.* While Article 94 specifically applies to a marriage, it

must be harmonized, if possible, with any more general law governing nullities that may apply. *See* La. Civ. Code art. 13; *S. Lafourche Levee District*, 217 So. 3d at 304. If there is such a law, the legislature's "omission of other" grounds in Article 94 is not an exclusion of anything; it is simply a recognition that another law already provides those grounds. The legislature is presumed to know the law and to have enacted a statute in light of the preceding statutes involving the same subject matter. *See Kocher v. Truth in Politics, Inc.*, 20-01153 (La. 12/22/20), 307 So. 3d 182, 184. In sum, "*expressio unius est exclusio alterius*" does not demand legislative redundancy.

Several commentators have concluded the articles on conventional obligations may be applicable in certain instances to the contract of marriage.[1] Notably, Professor Spaht made this observation when suggesting that Louisiana Civil Code article 93, which identifies vices of consent for a marriage (a relative nullity), is *not* exclusive:

> An argument can be made that article 93 does not declare that the reasons for defective consent are exclusive. Therefore, an aggravated case involving a mistake in physical identity could be resolved by resort to the general articles on error. A justification for resorting to those articles is that article 86 defines marriage as a relationship created by civil contract. The words civil contract were used for two reasons: (1) To demonstrate the historical assertion of jurisdiction over marriage by secular authorities and (2) To permit analogy to the law of conventional obligations when appropriate.

Spaht, 48 La. L. Rev. at 1145 (footnotes omitted).

Resort to the Civil Code title governing conventional obligations is not necessary here. The redactors addressed the validity of illegal acts in the code's Preliminary Title at Louisiana Civil Code article 7:

> Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity.

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[1] *See* Katherine Shaw Spaht, *Revision of the Law of Marriage: One Baby Step Forward*, 48 La. L. Rev. 1131, 1145 (1988); Monica Hof Wallace, *A Primer on Marriage in Louisiana*, 64 Loy. L. Rev. 557, 616 n.185 (2018); Casey E. Faucon, "*Living Separate and Apart": Solving the Problem of Putative Community Property in Louisiana*, 85 Tul. L. Rev. 771, 830 n.6 (2011).

At the code's outset, Article 7 establishes the basic premise that the civil law does not sanction unlawful acts. As recognized by this court, "Courts of justice will not lend their aid to either party to enforce a contract entered into for a purpose reprobated by law." *Commercial Bank of Lafayette & Tr. Co. v. Barry*, 179 La. 684, 691; 154 So. 736, 738 (1934). This theme is repeated throughout the Civil Code.[2]

Article 7 applies to a "juridical act," which is broadly defined as "a lawful volitional act intended to have legal consequences. It may be a unilateral act, such as an affidavit, or a bilateral act, such as a contract. It may be onerous or gratuitous." *See* La. Civ. Code art. 3471, Revision Comments—1982, Comment (c); *Ross v. Ross*, 02-2984 (La. 10/21/03), 857 So. 2d 384, 391 n.5. A marriage requires the free exchange of consent between the parties, creates obligations, and has significant legal consequences. *See* La. Civ. Code arts. 87, 98-99, 2325-37. As "a lawful volitional act intended to have legal consequences," the civil contract of marriage is a juridical act. *See* La. Civ. Code arts. 86, 87, and 3471 Comment (c); *Ross*, 857 So. 2d at 391 n.5.

The federal immigration statutes, particularly the subject criminal provision, qualify as "laws enacted for the protection of the public interest," as required by Article 7. Immigration policy affects trade, investment, tourism, and diplomatic relations for the entire nation. *Arizona v. United States*, 567 U.S. 387, 395; 132 S.Ct. 2492, 2498; 183 L.Ed.2d 351 (2012). Plaintiffs allege facts sufficient to establish a

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[2] *See* La. Civil Code art. 1966 ("An obligation cannot exist without a lawful cause."); La. Civil Code art. 1968 ("The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy."); La. Civil Code art. 1769 ("A suspensive condition that is unlawful or impossible makes the obligation null."); La. Civil Code art. 1813 ("If all of the items of performance contemplated in the alternative obligation become impossible or unlawful without the obligor's fault, the obligation is extinguished."); La. Civil Code art. 3293 ("A conventional mortgage may be established to secure performance of any lawful obligation . . . ."); La. Civil Code art. 3036 ("Suretyship may be established for any lawful obligation, which, with respect to the suretyship, is the principal obligation."); La. Civil Code art. 2448 ("All things corporeal or incorporeal, susceptible of ownership, may be the object of a contract of sale, unless the sale of a particular thing is prohibited by law.")

violation of this law. Further, federal governance of immigration and alien status is extensive and complex. *Id*., 567 U.S. at 395; 132 S.Ct. at 2499. Granting legal status to a marriage prohibited by federal law potentially violates or undermines that law, raising preemption issues. *See* U.S. Const. Art. I, §8; *Arizona*, 567 U.S. at 403; 132 S.Ct. at 2503; *State v. Sarrabea*, 13-1271 (La. 10/15/13), 126 So. 3d 453, 465.

Article 7 states a fundamental principle of the Civil Code denouncing and invalidating illegal conduct in any act intended to have legal consequences. If the legislature intended for the contract of marriage to be the sole exception to this rule, a clear statement to that effect is required. Article 94 is not that statement. While I agree with the majority that blanket application of the conventional obligation laws to a marriage could lead to absurd results, I find nothing absurd about the application of Article 7 to invalidate an alleged marriage where one party was paid a significant sum to enter the union solely to perpetuate a federal crime. Holding otherwise, the majority unnecessarily diminishes the status of marriage by bestowing that legal standing on alleged criminal conduct. I would reverse the lower court judgments and remand for further proceedings.

SUPREME COURT OF LOUISIANA

No. 2022-C-01570

AMY WEDERSTRANDT AND BILLY R. EFFERSON, JR.

VS.

EDEN KOL

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of East Baton Rouge

McCALLUM, J., additionally concurs and assigns reasons.

"As an ounce of prevention is worth a pound of cure,"[1] I would advise that if the illegal immigration crisis is ever to be resolved, it will have to be addressed at the borders of our country, not at the marriage altars of our state. It would be better to prevent the problem than to attempt an ex post facto remedy. American immigration law rests on the foundational principle that the United States may regulate entry through its borders.[2] The inherent power of the sovereign to exclude aliens "is a proposition which we do not think open to controversy." *Ping v. United States*, 130 U. S. 581, 603 (1989). The enforcement of this power would alleviate the need for courts to address issues like the one with which we are presented here.

Of course, this case is not about restricting illegal immigration or prosecuting alleged criminal behavior. In fact, there is no indication that anyone connected to this case ever contacted Immigration and Customs Enforcement about the complained of marriage. Nor is there any indication that the plaintiffs even object to

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[1] Benjamin Franklin, The Pennsylvania Gazette, February 5, 1735; see also Benjamin Franklin, The Papers of Benjamin Franklin, vol. 2, 12-15 (Leonard W. Labaree ed., Yale University Press, 1961). Franklin published this correspondence concerning the various methods of preventing conflagrations, a matter of particular interest to him. The conflagration imagery may well serve as an apt metaphor for our country's border crisis.

[2] Maria Isabel Medina, "The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud," *George Mason Law Review* 5 (Summer 1997): 669.

defendant's continued presence in this country. Instead, this case focuses on whether the plaintiffs have stated a cause of action against defendant to annul his marriage to their daughter on the purported basis that it was entered into for the sole purpose of evading federal immigration laws.

The result reached by the majority is correct because our civilian tradition demands it. The majority also properly refuses to read into a federal statute an action for the nullity of a marriage where none exists.

Louisiana law does not permit a collateral challenge to a marriage which otherwise meets the requirements of our Civil Code. I agree with the majority that the plaintiffs have failed to state a cause of action in this matter. I write separately to highlight that, although the issue presented in this case is *res novo* in Louisiana, our decision is consistent with statutory authority and cases from other jurisdictions which also recognize that it is a state legislature's sole and absolute prerogative to determine the grounds upon which a marriage may be nullified.

I further agree with the majority's finding that La. C.C. art. 7 cannot be applied to find that a marriage entered into for the purposes of evading the immigration laws is an absolute nullity because it is ostensibly an act that "derogate[s] from laws enacted for the protection of the public interest." There is "no basis to determine that the best public policy for Louisiana is anything other than that expressly stated in Louisiana's statutes and Louisiana's jurisprudence to date." *Tradewinds Env't Restoration, Inc. v. St. Tammany Park, L.L.C.*, No. CIV A 06-593, 2007 WL 1191896, at *4 (E.D. La. Apr. 20, 2007), *aff'd sub nom. Tradewinds Env't Restoration, Inc. v. St. Tammany Park, LLC*, 578 F.3d 255 (5th Cir. 2009). *See also Woodward Design + Build, LLC v. Certain Underwriters at Lloyd's London*, No. CV 19-14017, 2020 WL 5793715, at *3 (E.D. La. Sept. 29, 2020) ("A state's public policies are found in 'the Constitution, the laws, and the judicial decisions of the

court of last resort of that state.' ") (quoting *W.L. Slayton & Co. v. Newton & Morgan*, 299 F. 279, 280 (5th Cir. 1924)).

In the instant matter, the public interest of this state with respect to the nullity of marriages is unambiguously set forth in La. C.C. arts. 94, 80-90.1. These articles are clearly defined expressions of our legislature as to the grounds upon which a marriage may be nullified. This Court cannot supplant those laws and interject a new basis to annul a marriage as the plaintiffs urge this Court to do.

As the majority properly noted, we must first examine the applicable Civil Code articles; "[b]ecause of Louisiana's civilian tradition, Louisiana courts must begin every legal analysis by examining primary sources of law, consisting of constitution, codes, and statutes." *Bergeron v. Richardson*, 2020-01409, p. 9 (La. 6/30/21), 320 So. 3d 1109, 1116. Here, the legislature has made clear that a marriage is an absolute nullity only in limited circumstances – when it has been "contracted without a marriage ceremony, by procuration, or in violation of an impediment." La. C.C. art. 94. Our Civil Code also identifies certain impediments to marriage, as the majority correctly notes. *See* La. C.C. arts. 88-90.1. While a marriage entered into for the purposes of evading federal immigration laws is certainly odious, the legislature has never included it as the basis for the nullification of a marriage. Although there may be many distasteful reasons for entering into a marriage, our legislature has proscribed only three bases upon which a marriage may be deemed absolutely null. *See,* La. C.C. art. 84.

Few other courts have faced the issue presented by this case; some jurisdictions that have addressed the issue have rejected attempts to nullify similar marriages where state laws did not include federal immigration violations as a basis for a nullity action. In *Marblex Design Int'l, Inc. v. Stevens*, 678 S.E.2d 276 (2009), for example, a wife was awarded survivor benefits after her husband was killed in a work-related accident. The employer opposed the award, maintaining that the

marriage was a "sham green-card marriage" entered into so that the decedent could obtain naturalized citizen status. *Id*., 678 S.E.2d at 302. The Court observed that 8 U.S.C. § 1325(C) provides that "[a]ny individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both." It then found that the marriage at issue was valid:

> The federal statutes do not address the question of the validity of a marriage; they only address the intent with which the parties entered the marriage, as a portion of a conspiracy. In short, no federal statute says the marriage, itself, is "illegal." It is undisputed, as noted above, that the parties obtained a marriage license, that a marriage commissioner performed the ceremony, and that the marriage was recorded in the Clerk's Office of the Circuit Court of Virginia Beach. In short the marriage was a legal marriage.

Id., 678 S.E.2d at 304. Like the majority in the instant matter, the *Marblex* Court applied "the statutory interpretation principle of *expressio unius est exclusio alterius*," observing that the "'mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute.'" *Id*., 678 S.E.2d at 278.

Like Louisiana, Virginia law sets forth which marriages are void. The *Marblex* Court found that a " 'sham/green card' marriage is not included," noting that "if the legislature had desired to deny workers' compensation dependant benefits to the purported spouse in 'sham/green card' marriages, they could have done so by adding the same to the list of void marriages. . . ." *Id*., 678 S.E. 2d at 304-306.

The court then addressed whether the marriage violated public policy:

> "The public policy of Virginia. . . has been to uphold the validity of the marriage status as for the best interest of society, except where marriage is prohibited between certain persons." *Needam v. Needam*, 183 Va. 681, 686, 33 S.E.2d 288, 290 (1945). "[I]t is the responsibility of the legislature, not the judiciary, to formulate public policy, to

> strike the appropriate balance between competing interests, and to devise standards for implementation." *Wood v. Board of Supervisors of Halifax Cty.*, 236 Va. 104, 115, 372 S.E.2d 611, 618 (1988). If the General Assembly wishes to include "sham/green card" marriages among those declared void, and against public policy, as set forth in Code §§ 20–45.1 and 20–45.2, they know how to do so.

Id., 678 S.E. 2d at 281.

Similarly, in *In re Marriage of Kunz*, 136 P.3d 1278, 1286 (Utah Ct. App. 2006), the court was presented with "the first opportunity. . . to address the issue of the validity of an immigration-motivated marriage under Utah law." Noting that some jurisdictions treated such marriages as void and others as voidable,[3] the Court found as follows:

> Although section 30–1–2 [of the Utah Code] lists the specific types of marriages that are considered void in Utah, a sham immigration marriage is not expressly included as one of them. . . . Because the legislature enumerated specific types of marriages that are void under Utah law and failed to include a sham immigration marriage among them, we construe that omission as intentional.
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> Because the Utah Legislature did not include immigration-motivated marriages among those deemed void, we hold that such marriages are merely voidable under Utah law—i.e., valid until nullified. *See Estate of Steffke*, 538 F.2d 730, 736 (7th Cir.1976) (" 'A marriage which is merely voidable, however, is valid for all purposes until avoided or annulled in a proper proceeding during the lifetime of the parties.' " (quoting 35 Am.Jur. *Marriage* § 57 (1941)) (other quotations and citation omitted)); *United States v. Sacco*, 428 F.2d 264, 269 (9th Cir.1970) ("The general rule is that a voidable marriage is considered valid until it is annulled, and cannot be collaterally attacked. . . .").

Id., 136 P.3d at 1287. As the *Kunz* Court recognized, an action to annul a "voidable" marriage may only be brought by one of the parties to the marriage. *See also*, *In re Est. of Dito*, No. A116815, 2008 WL 821694, at *9 (Cal. Ct. App. Mar. 28, 2008)

[3] This is similar to our Civil Code's division of marriages as absolutely null under La. C.C. art. 94 or relatively null under La. C.C. art. 95.

(unpub.) ("The Legislature did not include immigration-motivated marriages among those it deemed void. . . . Further, there is nothing in the Family Code specifying that a valid marriage must be motivated by reasons other than immigration purposes. . . . Thus, we find no specific statutory basis to suggest an immigration-motivated marriage is void. In this regard, it is well settled the Legislature has full control of the subject of marriage and may fix the conditions under which the marital status may be created or terminated, subject to constitutional limitations. . . . Where, as here, the Legislature has specifically enumerated the requirements of a valid marriage and the conditions under which a marriage is deemed to be void, the omission of a sham immigration marriage from the list of void marriages may be construed as intentional. . . . Further, '[i]n view of the policy of the law to promote and protect the marriage relationship,' courts have been reluctant to hold that the Legislature 'meant to declare by inference' additional grounds upon which a marriage may be found void.") (internal citations omitted).[4]

If these common law states have deferred to their respective legislatures on the issue of marriage, how much more should we, who hold ourselves out as a civilian jurisdiction, not do likewise?

Like these other states, "the public policy of Louisiana [is] that every effort must be made to uphold the validity of marriages." *Wilkinson v. Wilkinson*, 323 So. 2d 120, 124 (La. 1975); *Ghassemi v. Ghassemi*, 2007-1927, p. 10 (La. App. 1 Cir.

[4] Some jurisdictions have concluded that a "sham" marriage could be annulled where the legislature specifically included "fraud as to the essentials of marriage" as a ground for an annulment. *See, e.g., Ur-Rehman v. Qamar*, 2012 WL 3889129, at *5 (N.J. Super. Ct. App. Div. Sept. 10, 2012) ("the fraud in N.J.S.A. 2A:34–1d 'refers to the fraud practiced on a party to the marriage.' *Faustin v. Lewis*, 85 N.J. 507, 510 (1981). Additionally, when both parties enter into a sham marriage with intent to defraud the immigration authorities, while this is not fraud, it nevertheless comes within the purview of N.J.S.A. 2A:34–1d. *Ibid.*"); *Matter of Marriage of Kidane & Araya*, 389 P.3d 212, 217, 220 (2017) (Under Kansas statute, whereby "[t]he district court shall grant a decree of annulment of any marriage for either of the following grounds: (1) The marriage is void for any reason; or (2) the contract of marriage is voidable because it was induced by fraud," a "sham," "green card" marriage is "voidable in Kansas" law, the court further noting that "whether the marriage is void or voidable has no impact on [its] decision. . . . The result is the same. As the Supreme Court recognized in [*State v.*] *Fitzgerald* [726 P.2d 1344 (1986)], an annulment has the effect of declaring the marriage relation void ab initio, or from the beginning.").

10/15/08), 998 So. 2d 731, 739; *Boyett v. Ingram*, 391 So. 2d 960, 961 (La. App. 4 Cir. 1980). Absent the express inclusion of a "sham" marriage in the enumerated list of absolutely null marriages in the Civil Code, this Court should not judicially create a new "impediment" to an otherwise valid marriage; *i.e.*, one that complies with La. C.C. art. 94.

Furthermore, while Congress passed the Immigration Marriage Fraud Amendments of 1986, providing penalties to those who enter into a marriage for the purpose of evading federal immigration laws,[5] this provision has never been used to nullify a marriage. Nor does it contain any language providing a legal basis for the nullity of marriage. We cannot accept the invitation to judicially amend what Congress wrote.

Marriage is more than an ordinary civil contract; it is a special form of contract with its own peculiar Civil Code provisions. While we must address only its civil, contractual connotations, we are also not oblivious to the deep religious and moral implications that are intertwined with it. Therefore, we should leave the regulation of marriage to those elected representatives most closely associated with the people; the legislature.

[5] Under 8 U.S.C.A. § 1325 (c), "[a]ny individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both."