

Survey of Family Law Cases 2004-2013

2010 Family Law Survey

ANNULMENT

Husband appeals from the judgment declaring his marriage to wife invalid in *In re the Marriage of Farr*, 228 P.3d 267 (Colo. App. 2010).

The parties' thirty-year marriage ended in dissolution in 1999. They remarried in 2004, and in 2007, husband again filed for dissolution. Wife cross-petitioned to declare the second marriage invalid pursuant to C.R.S. §14-10-111(1)(d), asserting that she agreed to marry him based upon his representation that he had a terminal illness and would die within a few years. Wife testified that she agreed to remarry husband because husband was dying and she did not want him to die alone.

Standard of proof: Husband contends that the trial court applied the wrong standard of proof in invalidating the parties' marriage when it did not apply the clear and convincing evidentiary standard. C.R.S. §13-25-127(1), (4) states that for all civil actions accruing after July 1, 1972, the burden of proof shall be by a preponderance of the evidence, notwithstanding any contrary provision of law. Therefore, the preponderance of the evidence standard applies when a party seeks to avoid a transaction on equitable grounds alleging fraud, undue influence, or mistake. Pursuant to this statute, the Court rejected husband's contention that the trial court erred by not applying a clear and convincing standard of proof when determining wife's petition for invalidity of marriage.

Grounds for Invalidity: Pursuant to C.R.S. §14-10-111(d), a court shall enter a decree declaring a marriage invalid if one party entered into the marriage in reliance on a fraudulent act or representation of the other party when the act or representation goes to the essence of the marriage. The trial court found: (1) that wife's testimony was more credible than husband's; (2) that wife believed husband's representation that his death was imminent; (3) that wife did not want husband to die alone; (4) that wife relied on husband's representation that he was dying in deciding to remarry him; and (5) that such representation was fraudulent.

Wife and the parties' son testified that after the parties remarried, husband did not appear to be ill and that they came to believe he had misled them into believing that he would die soon. Wife further testified that she reviewed husband's recent medical records and that they indicated to her that he was not ill. She also submitted an insurance application form, which was signed by husband and which indicated that he had no medical problems.

Here, Husband's misrepresentation went to the essence of the marriage. Misrepresentation about a spouse's prognosis and life expectancy can go to the essence of the marriage. Wife relied on husband's representation in deciding to remarry and did so only because she believed his death was imminent. Therefore, the misrepresentation went to the essence of this marriage.