

## Survey of Family Law Cases 2004-2013

### 2012 Family Law Survey

# DECLARATION OF INVALIDITY IN COLORADO

The Court of Appeals addressed the issue of annulment in In re the Marriage of Joel, (Colo. App. 2012). Husband, a US. citizen, and wife, a citizen of Pakistan, met and married in Pakistan in 2006. Husband returned to Colorado shortly after the marriage and submitted an application for wife to obtain permanent immigration status in the U.S. Wife received her conditional green card in February 2008. In February 2010, Wife received final approval for her permanent green card. A few days later, having left and returned the previous year, Wife left the marital home and never returned. Husband then filed a petition for dissolution of marriage, which he later converted to a petition for a declaration of invalidity of marriage. Following an invalidity hearing, the trial court found that the evidence established that Wife entered into the marriage to obtain legal residency in the U.S. The court declared the marriage invalid and equally divided the marital increase in husband's 401(k) and the value of a vehicle purchased during the marriage, and awarded wife maintenance of \$150 per month for twelve months.

C.R.S. §14-10-111(1)(d) provides that a district court shall enter a decree of invalidity where “[o]ne party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage.” Whether a marriage should be declared invalid for fraud is a question of fact. See Jones v. Milliken, 42 P.2d 467, 468 (Colo. 1935).

Following the hearing on invalidity, the trial court found that: (1) husband was vulnerable, despondent, and lonely when he met wife because of the deaths of his first wife and their child; (2) wife knew that marrying husband would secure her legal entry into the U.S.; (3) wife pursued husband and convinced him to marry; (4) upon arriving in the U.S., wife opened a separate bank account and kept her finances separate from those of husband, and she purchased and maintained a cell phone in her own name; (5) wife knew that her conditional green card would expire in February 2010; (6) wife returned from living in New York with her sister to obtain her permanent green card; (7) wife left husband after receiving approval for her permanent green card; and (8) the parties never had sexual relations. Accordingly, the trial court found that Wife's fraudulent misrepresentations to husband went to the essence of the marriage and declared the marriage invalid. The Court of Appeals affirmed the trial court's ruling.

Relevant provisions of the UDMA, properly applied, dictate that Wife's fraud precludes an award of any property attributable to husband's contributions or an award of maintenance. Under C.R.S. §14-10-113, property should not be divided in a manner that effectively treats a marriage as valid where doing so would reward the guilty party for his or her fraud. Therefore, as to property acquired after the date of the voided marriage, or as to an increase in the value of property acquired before the voided marriage, the most the court may award to the party who engaged in fraud is the proportion of property or increase in value attributable to the financial contribution of that party. Similarly, if a party committed fraud in inducing another to enter into a marriage, an award of maintenance to that party would not be equitable or “just.” Therefore, the maintenance award in this case was error.