Annulments: Not Easy By Design

By Family Court Judge Mathew Harter

The world views marriages performed in Las Vegas as somewhat fictional, primarily due to their portrayals in the media. Thus, many erroneously assume what can be obtained simply and with such frivolity can then legally be erased thereafter with similar ease. Surely, pulling through a drive-thru chapel having your favorite superhero, Disney character, or the resurrected Elvis himself perform your nuptials can't be too difficult to undo, right? Untrue. This general misconception is somewhat similar to those anarchist tourists that end up in CCDC after finding out the hard way that we do have real laws, that *The Hangover* was just a movie, and what happens in Vegas does *not* always stay in Vegas.

In *Irving v. Irving*, 134 P.3d 718 (Nev. 2006), Justice Hardesty noted that Nevada has the same serious view of marriage as the rest of the United States and those parts of the world rooted in English common law. Consequently, *Irving* held that there is a "public policy in favor of marriage and *against* annulment" and "courts will generally *not* annul a marriage absent clear and convincing evidence." *Id.* (emphasis added).

Unless at the time of your Vegas hitchin' you married a child without proper court or parental consent, *see* NRS 125.320; it slipped your mind that you are currently married, *see* NRS 125.290; and/or you married a relative, *see id*. (and, yes, that full trifecta of shame is plausible), then you are left with only three narrow grounds to annul the marriage. Under the second two grounds listed below, if the complaining spouse realizes the error but continues voluntarily to live as husband and wife, they forego their right to get an annulment. There is no "saintly" defense of they were only trying their best to make their blessed union work out.

1. Contract void in equity (NRS 125.350)

Marriage is a civil contract, but "no particular form is required except that the parties [vow to] . . . take each other as husband and wife." NRS 122.110(1). That's all! This author has found when this ground is used, two bases are routinely alleged: (i) lack of a meeting of the minds and (ii) mistake. Although a meeting of the minds is a basic contract requirement, "[a] contract can be formed . . . when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later." *May v. Anderson*, 119 P.3d 1254 (Nev. 2005). Further, "[i]f a person is in fact aware of certain uncertainties, a mistake does not exist at all. One who is uncertain assumes the risk that the facts will turn out unfavorably to his interests." *Tarrant v. Monson*, 619 P.2d 1210 (Nev. 1980). The simplest solution to this and the next ground is to ask questions. Ask *lots* of questions before you marry.

2. Fraud (NRS 125.340)

It is no secret that love-struck individuals usually embellish a bit to impress their fiancés. Although it can be a fine line, there is a distinction between fraud and "fluff," otherwise known as negligent misrepresentation. *See McLaughlin v. Williams*, 665 S.E.2d 667 (S.C. Ct. App. 2008). Fraud is "[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment." *Black's Law Dictionary* (10th ed. 2014). Being a victim of fraud may qualify you for an annulment; blindly believing "fluff" will not.

3. Want of understanding (NRS 125.330)

This ground is defined in the statute itself as one of the parties being "incapable of assenting thereto," which includes insanity. "[T]he burden [is] on plaintiff to prove by clear and satisfactory evidence that he was so far intoxicated [or insane] when he went through the marriage ceremony as to have been incapable of giving a rational assent to the obligations imposed." *McNee v. McNee*, 237 P. 534 (Nev. 1925). Thus, video evidence of the bride passed out by the commode post-reception is irrelevant. The issue is did she understand what she was doing during the ceremony.

Closing

Because of the seriousness of marriage, family court judges are required to ensure that the record contains substantial evidence supporting the annulment. Judges have a duty to protect the integrity of the court and can address any issues *sua sponte*. *Christensen v. Christensen*, 14 N.W.2d 613 (Neb. 1944). This duty does not change or become relaxed simply because the parties enter a stipulation or a default gets entered. Further, annulments are an equitable relief, so the maxims in equity apply. Plaintiff cannot have unclean hands. *Id*. (denying plaintiff husband annulment because he entered into marriage knowing he was afflicted with venereal disease). Second, equity aids the vigilant, not those that slumber on their rights. *McConnell v. Wells' Estate*, 393 A.2d 830 (Pa. 1978). Those who inexcusably wait for years, sometimes decades, before attempting to annul their marriage may waive their right.

Many wish they could just simply take the proverbial mulligan and legally erase their first marriage. It's not that easy--even in Vegas.

Family Court Judge Matthew Harter serves in Department N in the Family Division of the Eighth Judicial District Court. He was re-elected in 2014.

Family Law Notes

By Stacy Rocheleau

Q: Can I change the locks of my house after I serve my spouse with divorce papers?

A: No, even if the title and mortgage is in your name. By changing the locks on your house you are illegally evicting your spouse. The best practice is to file a motion for exclusive possession of the home. If your spouse has voluntarily moved out the court would approve a change of locks.

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