

DOCKET NO. : SUPERIOR COURT
: JUDICIAL DISTRICT OF
V. : AT
: OCTOBER 17, 2008

MEMORANDUM OF DECISION

By complaint dated June 1, 2007, the husband instituted this action seeking a dissolution of the marriage on the grounds the marriage had broken down irretrievably. The wife filed an amended cross-complaint alleging the marriage was void or voidable under Connecticut law and seeks an annulment. A four day trial commenced on September 15, 2008, and concluded after final arguments on September 18, 2008. Both parties were represented by counsel.

The plaintiff, ("Husband"), also known as , and the defendant whose name is ("Wife") were married in New Haven, Connecticut, on May 12, 2005. One child has been born to the wife since the date of the marriage, to wit: born July 2008. However, the parties stipulate and agree, and the DNA paternity test establish that the child is not issue of the husband (Exhibit 39). The husband also had a child born during the time of this marriage, not issue of the wife. The

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parties have lived separately and apart since the filing of the complaint in May of 2007. It is the second marriage for both parties. Neither party has been the recipient of assistance from the state, town or any subdivision thereof.

The husband is 36 years old, a Chinese citizen, and is in good health. This is his second marriage having had previously married in Shanghai, China on November 5, 1996. The first marriage was dissolved in the District Court Clark County, Nevada, on December 5, 2003 (Exhibit 2). The husband holds a bachelor of economics degree from Shanghai University of Finance and Economics. He arrived in the United States in September 2000, under a student visa and obtained a master of science in accounting and finance from Pace University. In May of 2002, he extended his student visa for the purposes of studying at the Darden Graduate School of Business at the University of Virginia. Immediately following this marriage, the husband was employed at Bear, Stearns & Co., first as a summer intern and then as a Financial Analyst. He earned a base salary of \$58,366.00 in 2006 (Exhibit Q), a total gross income of \$129,404 in 2007 (Exhibit S) and a total gross income of \$157,750.00 as of August 6, 2008 (Exhibit A). The husband no longer receives any severance benefits from Bear, Stearns & Co. and currently reports zero income.

The wife being 35 years old reports no significant health issues. She has claimed to have been treated for depression as a result of this marriage and despite treatment for depression she claims to be a result of this marriage she reports no significant health issues. She holds a post doctorate degree and is an Associate Research Scientist at University earning just under \$44,000 per annum. She is currently on maternity leave without pay but her position is available to her after the maternity leave concludes. As a result she reports zero income at this time.

The parties met when the husband responded to what was described as a popular Chinese website where the wife posted an advertisement looking for a husband. After communicating by e-mail the parties conversed via telephone on February 15, 2005, and met soon thereafter in person. After spending only weekends together they were married some short three months later. During the course of this marriage the husband lived in Virginia while pursuing his graduate studies and in New York while at Bears Stearns & Co. but considered his residence to be the marital address at 63 Nicholl St., New Haven. The husband admits time spent with his wife was limited but blames this was due to his educational pursuits and later due to employment demands. The husband testified that he married because he believed that at this stage in his life he deserved a stable family with a loving wife. He attributed the breakdown of the marriage to the fact that his wife interfered with his employment and caused problems with his mother in April and May of 2007. The husband offered a series of e-mail communications between the parties to

establish the cause of the breakdown (Exhibit 32). He has denied all allegations of assault or violence as alleged by his wife.

The wife seeks an annulment of the marriage claiming that the husband married her solely in order to obtain legal permanent residency in the United States. The wife contends that the Nevada judgment dissolving the husband's first marriage was a sham. She offered evidence that the address given by the husband in Nevada was either false or non-existent and claimed that he always intended to continue a conjugal relationship with his ex-wife as evidenced by the birth of his daughter to his ex-wife in 2005. The wife also alleges the husband sexually assaulted her, denied her what she wanted most i.e. a child, and used blackmail as a method of control. The later of these allegations are best addressed through the dissolution action and do not serve as a basis for annulment.

To be entitled to an annulment of a marriage, the plaintiff must allege and prove that the marriage is void or voidable under the laws of this state, or the state in which the marriage was performed. Durham v. Miceli, 15 Conn. App. 96, 97 (1988); see also Fattibene v. Fattibene, 138 Conn. 433 (1981) and Connecticut General Statutes § 46b-40(b).

“A petition for the annulment of a marriage requires of the court hearing ... great caution and demands clear proof.” Davis v. Davis, 119 Conn. 194 (1934). “It must find that the conditions leading up to and surrounding the marriage have been established by

clear and convincing evidence to be such as to render the marriage void or voidable." Trotta v. Trotta, 5 Conn. Sup. 218 (1937). Marriages are strongly favored by the law. Existing marriages are presumed to be valid and that presumption has been described by the courts as very strong. Carabetta v. Carabetta, 183 Conn. 344 (1980); and Manndorff v. Dax, 13 Conn. App. 282 (1988).

From evidence the wife presented at trial it is not clear and convincing that the husband's Nevada divorce was a sham nor that the husband married solely to establish permanent residency. First, the offer of proof that husband's address in Nevada was non-existent did not rise to the level of clear and convincing. Further, even if the court were to find the husband's address to be non-existent, the court does not find that to be evidence of fraud perpetrated in this marriage because the dissolution took place December of 2003, long before the husband and the wife even knew of each other's existence. Furthermore, in support of a valid marriage, both parties testified that they had sexual relations; they took a trip together to Orlando, Florida soon after the marriage to celebrate their marriage; the husband contributed financially to the household, although not at the level of contribution that the wife thought satisfactory; and the husband had intentions of living in New Haven with the wife as evidenced by the United Illuminating bill, the registration of his automobile in the State of Connecticut, his Connecticut driver's license, and his AAA Membership. (Exhibits 4-9).

While the fact that the husband applied for permanent resident status on the exact date of the marriage is unsettling, it is evident that the wife could not be surprised or defrauded by that fact in that she assisted him in the submission of his application and at the hearing before the Immigration Services in support of that application as late as February 2007. The wife's amended cross complaint for annulment is denied.

There is no question that based upon the testimony and evidence presented at trial the marriage of the parties has broken down irretrievably. The only issue in the limited contested dissolution proceeding is a determination on the equitable distribution of property. The wife is seeking a lump sum award in the amount of \$100,000.00 and the husband request that both parties leave this marriage with their respective assets and liabilities as listed on their financial affidavits.

There are three stages of analysis regarding the equitable distribution of each resource; first, whether the resource is property within Section 46b-81(classification); second, what is the appropriate method for determining the value of the property (valuation); and third, what is the most equitable distribution of the property between the parties.” Krafick v. Krafick, 234 Conn. 783 (1995).

The court first addresses the property listed on the plaintiff's financial affidavit identified as an apartment in Shanghai, China¹. Based upon the evidence, the testimony

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A pre-marital agreement dated May 12, 2005 reflects the plaintiff held \$5,000.00 in cash assets

of the parties, and taking into consideration Section 46b-81 the court finds the apartment to be marital property. Further the court accepts the value of that property to be \$150,000.00 as claimed on the husband's financial affidavit. As to other marital property the court finds that the plaintiff had earned in salary and bonuses a total of \$345,520.00 during the course of the marriage and had acquired at least \$108,416.60 in cash assets.²

In contrast, the wife held cash assets at the time of the marriage in the amount of \$60,000.00. In March 2007, just prior to the filing of the dissolution complaint, the wife held cash assets of approximately \$41,975.00 (Exhibits K and P), and at the time of dissolution reported bank accounts and IRA's in the amount of approximately \$51,000.00. The automatic orders prohibiting the transfer or disposal of any property were in effect since June 1, 2007. From the documents and from the testimony of the parties it is clear that the Husband earned significantly more income, removed cash assets, reduced his liabilities, and held real estate solely in his name without the wife's

and \$127,000.00 in liabilities with no mention of the apartment. It further reflects the wife held \$60,000 in cash assets and no liabilities. This agreement was not offered for the purposes of finding an enforceable agreement but for the limited purpose of showing the parties intent on the date of the marriage. (Exhibit 10). He also failed to report the apartment on his financial affidavit dated May 5, 2008 (Exhibit T). On the affidavit filed with the court on May 21, 2008 he reported the current value of the apartment at \$180,000 and then at time of trial he reports the apartment with valued at \$150,000.00.

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The Husband's financial affidavit dated May 5, 2008 reflects bank accounts and 401(k) assets totaling \$108,416.00 (Exhibit T), and financial affidavits showing on May 21, 2008 these accounts diminished to a total amounting \$63,967.00 and then diminished once again to \$37,983.00 at time of trial.(Financial affidavit dated 9/15/08).

knowledge during the course of the marriage.

The court, having heard the testimony of both parties, and having considered the evidence presented at hearing, as well as having considered the factors enumerated in General Statutes §§ 46b- 40, 46b-44, 46b-81, 46b-82 the court hereby makes the following findings:

1. This court has jurisdiction and the matter has been pending over 90 days.
2. That the allegations of the complaint are proven and true.
3. That the marriage of the parties has broken down irretrievably, and that the evidence exists to show that both parties have contributed to the breakdown.
4. There are no minor children issue of this marriage.
5. Neither party has received any assistance from the State of Connecticut or any town or political subdivision thereof.
6. All personal property has been divided to the satisfaction of the parties.
7. The Shanghai apartment is a martial property with a current value of \$150,000.00. Other marital assets in existence at the date of the automatic orders included bank accounts, stocks, and bonds under the control of the husband, in the amount of \$108,000.00.

ORDERS

1. The marriage of the parties is hereby dissolved, and they are each declared to be

single and unmarried.

2. Taking into consideration the factors set forth in 46b-82 alimony is not awarded to either party.

3. The parties shall be responsible for their respective health insurance coverage.

4. The parties shall be responsible for their respective attorney's fees.

5. As to the division of assets the Husband shall pay to the wife a lump sum payment in the amount of \$50,000.00 to be made within 60 days of this judgment.

6. The Wife shall be entitled to keep her bank accounts and IRA's as listed on her financial affidavit free and clear of any claims by the Husband.

7. Each party shall be responsible for their respective debts as listed in their financial affidavits and shall hold each other harmless from any third party claims for collection thereon.

8. There having been a contested hearing at which financial orders were in dispute, the court orders the financial affidavits of the parties unsealed pursuant to P.B. Sec. 25-59A(h).

Markle, J.
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