Marriage - Consent of Parents or Guardians - Whether Parental Consent to Marriage of Minor Child, Induced by the Fraud of the Child, May Be Rescinded and the Marriage Annulled

E. E. Dechter

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation
E. E. Dechter, Marriage - Consent of Parents or Guardians - Whether Parental Consent to Marriage of Minor Child, Induced by the Fraud of the Child, May Be Rescinded and the Marriage Annulled, 37 Chi.-Kent L. Rev. 71 (1960).
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol37/iss1/7

This Notes is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact jwenger@kentlaw.iit.edu, ebarney@kentlaw.iit.edu.
DISCUSSION OF RECENT DECISIONS

MARRIAGE—CONSENT OF PARENTS OR GUARDIANS—WHETHER PARENTAL CONSENT TO MARRIAGE OF MINOR CHILD, INDUCED BY THE FRAUD OF THE CHILD, MAY BE RESCINDED AND THE MARRIAGE ANNULLED—A new facet of the law relating to under-age marriages has been exposed through the recent California case of Turner v. Turner where it was determined that a parent could withdraw the consent he had given to the marriage of his minor son on the ground that such consent had been obtained by fraud. The fraudulent representations which the plaintiff parent pleaded were that the defendants had been married in Mexico and that his son’s putative wife was pregnant. On the strength of this, the plaintiff had consented in writing to the marriage but, upon learning of the true state of affairs, he then brought an action to have his consent rescinded and the marriage annulled. The defendants defaulted, but the trial court refused to rescind the plaintiff’s consent and denied him any relief. On appeal to the Appellate Court for the Second District of California, that decision was reversed and a decree was entered in favor of the plaintiff. The court decided that, on the petition of the parent, any consent given by a parent to the marriage of his minor child may be rescinded where induced by fraud and, upon rescission, the resulting marriage may be annulled.

Prior to the instant case, no reviewing court appears to have considered the right of a parent to withdraw his consent to the marriage of his minor child. Faced with a dearth of precedent, the court sought an analogy to the doctrine of equity which permits cancellation of instruments which have come into existence through fraud. To receive equitable relief, the plaintiff there must both allege and prove fraud. In the case of Hayter v. Fulmor, for example, the court in question had defined fraud in customary terms. Applying that definition to the case at hand, the court found not only that all of the elements of fraud were present but that the plaintiff would not have consented to the marriage had he known that the representations were false. The absence of any pecuniary loss was evident, but the court was quick to note that the injury need not be pecuniary and may be found in an alteration of one’s position to his

3 The defendants were the plaintiff’s son and the son’s wife.
prejudice. Even if a pecuniary loss is thought necessary, arguably a parent has the right to the services and the earnings of a minor child. Along with this, a parent also has the right to the custody of a child and such right has sometimes been thought of as a property right. Finding that the plaintiff had set out a cause of action and had sustained his burden of proof, the court quite naturally held that he was entitled to rescission.

The court also pursued an analogy to adoption matters, where the consent of the natural parent is also customarily required. Consent lies at the foundation of both minor marriages and adoptions; the theory being that unless such consent is given the parent has not given up control and custody of his child. In the case of Arnold v. Howell, an apt analogy for this purpose, the parent sought to withdraw her consent to the adoption of her child. The court there concluded that the consent was not a free and voluntary one where it had been induced by fraud so the parent was held entitled to rescind and have the adoption decree set aside since a consent which has been induced by fraud is voidable and subject to rescission.

Passing to the question of the relief to be accorded to the plaintiff, and accepting for this purpose the view that the consent to a marriage may be cancelled even though acted upon, the issue remained whether the court could grant annulment of the marriage. The law of California concerning annulment is statutory, so it was necessary for the court to determine whether statutory grounds for annulment were present. Under the statute, non-age and lack of parental consent are prerequisites. Non-age alone or lack of parental consent alone are inadequate causes by

7 Montgomery v. Meyerstein, 156 Cal. 459, 199 P. 800 (1921); Spreckels v. Gorrill, 152 Cal. 388, 92 P. 1011 (1907).
10 In re McCones, 174 Cal. 211, 162 P. 897 (1917); In re Cozza, 163 Cal. 514, 126 P. 161 (1912).
13 The grounds for annulment in California are to be found in Cal. Civ. Code § 82. Among the grounds listed there is one to the effect that a marriage may be annulled if the party in whose behalf annulment is sought was under the legal age for consent and the marriage was contracted without the consent of the minor's parents or guardians.
DISCUSSION OF RECENT DECISIONS

themselves but when present in combination do make the marriage voidable and susceptible to annulment. It was evident, in the instant case,\(^\text{16}\) that both aspects were met so no difficulty existed on that score.

A further factor considered was whether the parent was an appropriate party to bring the action.\(^\text{17}\) In the case of *Vaughn v. Gideon*,\(^\text{18}\) a suit for annulment brought by the father of a minor party to the marriage, it appeared that the child was but fifteen years of age and the ceremony had been performed without parental consent. The court there held that the statutory law of California gave to the non-consenting parent the right to commence annulment proceedings, provided the action was instituted within an appropriate time. Since the parent in the case at hand met all of these qualifications the court experienced no difficulty in concluding that the remedy of annulment was available to him.

While there is little support to be found in precedent for the principal holding, the view taken can be said to be both just and understandable. To permit a parent to be defrauded of his consent would be to deprive him of that control over the marriage of his child which the law has given to him. Marriage, in many respects a civil contract, must stand or fall as any other contract, being voidable for reasons similar to those which render other civil contracts voidable. By allowing cancellation in the instant case, the court reached the only just and equitable conclusion possible in the premises.

E. E. Dechter

MORTGAGES—REDEMPTION—WHETHER A SUPERSEDEAS ORDER, IN EFFECT WHILE AN APPEAL IS PENDING FROM A DEGREE APPROVING A MORTGAGE FORECLOSURE SALE, SUSPENDS THE RUNNING OF THE STATUTORY PERIOD FOR REDEMPTION—A question concerning whether the time for redemption from a mortgage sale would be extended by the presence of a supersedeas order in the case was before a reviewing court of Illinois for the first time in *Fairfield Savings & Loan Association v. Central National Bank in Chicago*.\(^\text{1}\) In that case, the petitioners, as equitable owners of the premises, appealed from a decree which had approved a mortgage foreclosure sale of their real estate. The chancellor, at the time he approved the appeal bond,


\(^{17}\) Cal. Civ. Code, § 83, provides that the action to obtain a decree of nullity of a marriage may be brought by a party to the marriage or by a parent or guardian or other person having charge of a non-age male or female at any time before the married minor has arrived at the age of legal consent.
