S193493

In the

Supreme Court

of the

State of California

NANCY CEJA et al.,

Plaintiffs and Appellants,

v.

RUDOLPH & SLETTEN, INC.,

Defendant and Respondent;

PHOENIX CEJA et al.,

Respondent.

CALIFORNIA COURT OF APPEAL · SIXTH APPELLATE DISTRICT · CASE NO. H034826
SANTA CLARA COUNTY SUPERIOR COURT · HON. MARY JO LEVINGER
CASE NOS. CV112520 AND CV 115283

REPLY TO ANSWER TO PETITION FOR REVIEW

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I. There is an open split in the Appellate Districts on whether to use a subjective or an objective test in evaluating "good faith belief" in the putative-spouse context.

A. In deciding the present case, the Sixth District expressly broke from settled precedent.

In its opinion in this case, the Court of Appeal took the extraordinary step of rejecting two decades of settled California precedent on the putative-spouse issue. Ever since the decision in *In re Marriage of Vryonis* (2d Dist. 1988) 202 Cal.App.3d 712, California's Courts of Appeal have unanimously held that to have a "good faith belief" in a marriage's validity, a would-be putative spouse must have an objectively reasonable belief that the marriage was valid. *In re Marriage of Xia Guo and Xiao Hua Sun* (2d Dist. 2010) 186 Cal.App.4th 1491, 1493 ("A determination of good faith is tested by an objective standard."); *In re Marriage of Ramirez* (4th Dist. 2008) 165 Cal.App.4th 751, 756 ("[A] claim of putative spouse status must be based on facts that would cause a reasonable person to believe in good faith that he or she was married and that the marriage was valid under California law."); *Welch v. State of California* (5th Dist. 2000) 83 Cal.App.4th 1374, 1378 ("A determination of good faith is tested by an objective standard."); *Estate of DePasse* (6th Dist. 2002) 97 Cal.App.4th. 92, 107-08 ("A subjective good faith belief in a valid marriage by

itself, even when held by a credible and sympathetic party, is not sufficient.").

The Court of Appeal, however, broke with this "firmly lodged" precedent and rejected the objective standard for "good faith belief":

> [W]e observe that appellate courts, including this court, have adopted *Vyronis*, accepting its objective test without critical analysis of its rationale. Indeed, its objective test has become firmly lodged in the judicial boilerplate describing the putative spouse doctrine.
>
> However, the time has come, belatedly, to review the analysis in *Vryonis*, and because we reject it, we shall do so in detail.

Ceja v. Rudolf & Sletten, Inc. (2011) 194 Cal.App.4th 584, 597 (internal citations omitted). Instead of using the well-established objective test, the Court of Appeal applied a subjective test—one that depends only on the personal belief of the party, regardless of whether that belief was a reasonable one. *Id.* at 605.

The Court of Appeal's repudiation of the *Vryonis* line of cases has created a split among the Appellate Districts regarding the proper standard to apply to "good faith belief" in the putative-spouse context. The Second, Fourth, and Fifth Districts apply an objective standard. The Sixth District, however, now applies a subjective standard. A decision by this Court is needed "to secure uniformity of decision."

It is not every day that a Court of Appeal abandons two decades of established legal doctrine, rejects the holdings of its

sister Appellate Districts, and brushes aside principles of *stare decisis* to "correct" what its deems to be an erroneous precedent. Even the Court of Appeal recognized that it was taking an usual step. The sheer length of its decision is testimony to this fact.

Yet in her effort to dissuade this Court from accepting this case for review, Plaintiff characterizes the present case as an "unremarkable appeal." (Answer at 1). Protesting too much, she claims that the Court of Appeal's decision did not create a split in authority, that it simply "cabined application of *Vryonis* to its facts," and that it was "merely a clarification and reinterpretation of existing case law." (Answer at 3, 5).

Plaintiff is wrong on all three counts.

First, as explained above, there is now a stark split among the Courts of Appeal as to the proper standard to apply in putative spouse cases. The Sixth District uses a subjective standard. The Second, Fourth, and Fifth Districts use an objective standard. Whether or not a person is classified as a putative spouse now will depend on the particular Appellate District wherein the case arises. Splits in authority do not come any clearer than this.

Second—and contrary to Plaintiff's representations—the Court of Appeals did *not* merely "cabin[ ] application of *Vryonis* to its facts." (Answer at 5). It completely rejected *Vryronis's* central holding, and the legal analysis that led to it. *Ceja*,194 Cal.App.4th at 608 ("Given our rejection of *Vryonis* . . . ."). The Court of Appeal said that the *Vryonis* court's analysis was mistaken, that it "intruded upon the Legislature's prerogative,"

and that it was "court-created error" that should be corrected. *Id.* at 606. The Court of Appeals did not limit *Vryonis* to its facts. It rejected the case, root and branch.

Third, the Court of Appeals did not simply "clarify" and "interpret" existing law. It rejected wholesale a line of published appellate authority that extends back more than two decades. This is plain from even a cursory reading of its opinion. The decison acknowledged that "courts of have uncritically accepted *Vryonis* and applied its objective test for many years." *Id.* at 606. Yet it then "reject[ed]" this line of authority as analytically unsound. *Id.* at 608. This was a repudiation, not a clarification, of existing authority.

No matter how Plaintiff attempts to spin the issue, the fact remains that the Court of Appeal's decision was an unambiguous rejection of the holdings of its sister Appellate Districts. This created a clear split in authority that this Court needs to resolve.

B. Left unresolved, the split will create confusion and uncertainty on an important question of law.

Few areas of law are more important to more people than the laws concerning the civil effects of marriage. Few areas of law require more stability and predictability than the laws governing marital relationships. The putative-spouse doctrine is an integral part of California's domestic-relations law, and appears in many different legal contexts. It affects many laws and many lives.

The Court of Appeal's decision has created uncertainty in this important area of law. The split on the proper test to use for

a putative spouse's "good faith"—objective or subjective—will have far-reaching effects. As it now stands, the spouse of a Los Angeles resident killed in a San Jose accident may be a putative spouse in a wrongful-death action brought in San Jose, but *not* a putative spouse in probate proceedings in Los Angeles. A rule that varies between the districts will thus invite forum shopping. This Court should grant review in order to resolve this irreconcilable difference.

This is, by any measure, an "important question of law" that warrants review in and of itself, irrespective of the split in authority. Cal. Rules of Court, rule 8.5000(b)(1). Under the subjective standard, a party who unreasonably fails to take steps to ensure a valid marriage, but who nevertheless sincerely believes that he has entered into a valid marriage will enjoy nearly all the civil benefits of marriage.[1] By rewarding imprudent conduct, the subjective standard eliminates the incentive for parties to take reasonable steps to ensure that their marriage is valid. The elimination of that incentive will, in turn, lead to many more such future errors. Over time, this will erode compliance with California's marriage laws.

The objective standard is a sensible bulwark against such erosion. By requiring that parties take reasonable steps to

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[1] On page 9 of her Answer, Plaintiff mischaracterizes Petitioner's argument as stating that "there is only one way a person may achieve putative-spouse status: if he or she is absolutely unable to discover that the marriage is invalid." That is *not* Petitioner's position. The objective standard only requires *reasonable* efforts to ensure compliance with marital laws, not superhuman efforts.

ensure compliance with California's marriage laws, the objective standard ensures that parties will not ignore red flags that reasonably should tip them off to the invalidity of their marriage.[2]

Plaintiff, however, urges this Court to take a wait-and-see approach, deferring review of this important question until some unspecified future time. Petitioner respectfully submits that the time for review is now. The split in authority is clear and present, the issue is of vital concern to most Californians, and the harm created by uncertainty in this area of law is manifest. Society relies on stability in the law of marital relations. Correcting the harm caused by the Court of Appeal's decision will only become more difficult with the passage of time.

II. Contrary to Plaintiff's arguments, pre-*Vryonis* cases did not establish a subjective standard.

In her Answer, Plaintiff echoes the arguments of the Court of Appeal and claims that pre-*Vryonis* cases implicitly used a subjective standard when evaluating "good faith belief." (Answer at 5-6, 9-10). She reasons that because certain pre-*Vryonis* cases

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[2] Contrary to Plaintiff's suggestion on brief, the objective test does not punish the innocent. It disqualifies only those persons, like Plaintiff, who have *not* taken reasonable care to ensure that their marriage is valid. Those who exercise reasonable care—yet still have entered into an invalid marriage (e.g., with a deceptive spouse who has not disclosed an existing marriage)—would still enjoy putative-spouse status.

turned on factual questions, they must have applied a subjective standard. (Answer at 6).

This argument is unsound. It relies on the hidden assumption that only a subjective standard depends on factual questions. But that assumption is false. An objective "reasonable belief" standard, too, depends on facts about the party's actual beliefs. A person cannot have a *reasonable* belief in a marriage's validity if that person does not have an *actual* belief in its validity.[3] In other words, having an actual belief is a predicate for having a reasonable belief.

Whether a person harbors an actual belief often hinges on questions of credibility. Consequently, in jurisdictions that apply an objective standard, courts can—and will—conclude as a factual matter that the would-be putative spouse did not actually believe that the marriage was valid and so, *a fortiori*, did not have a reasonable belief. *See, e.g., Schaefer v. McCasland* (La. Ct. App. 1980) 379 So.2d 864 (affirming trial court's denial of putative-spouse status where there was evidence that the wife knew that her foreign marriage was of questionable validity).

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[3] The cases cited by Plaintiff, *Neureither v. Workmen's Comp. App. Bd.* (1971) 15 Cal.App.3d 429, and *Estate of Vargas* (1974) 36 Cal.App.3d 714, are not to the contrary. These were both cases in which the second wife had been falsely assured by her husband that he had obtained a valid divorce from his first wife. Even jurisdictions that employ an objective test will find putative-spouse status in such circumstances. *See, e.g., Succession of Chavis* (La. 1947) 29 So.2d 860, 864. In the present case, by contrast, Plaintiff has *never* claimed that decedent assured her that his divorce was final before they were married.

Thus, even though some pre-*Vryonis* California cases hinged on factual questions about a party's actual belief that they were married, they are still consistent with an objective standard.[4] A person who does not sincerely believe in the validity of her marriage is not a putative spouse under either the subjective or the objective standard. Thus, the pre-*Vryonis* cases that Plaintiff cites as support for a subjective standard are equally consistent with an objective standard.

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[4] This has been noted before. In *Spearman v. Spearman*, 482 F.2d 1203 (5th Cir. 1973), the United States Court of Appeals for the Fifth Circuit—reviewing exactly the same pre-1969 cases that the Court of Appeal in this case relied on—concluded that the objective-versus-subjective question presented an unsettled question of California law. And, contrary to the Court of Appeal in this case, it held that an objective standard was "perfectly consonant" with pre-codification case law:

> [A]n objective test is perfectly consonant with the California decisions that have developed and applied the "putative spouse" doctrine . . . Although no California case has been cited to us that tests good faith by examining its reasonability, *the cases that have discussed good faith do not preclude such an approach*. . . . Nowhere do these cases explicitly reject an objective test of good faith.

Id. at 1207 (emphasis added) (citing, *inter alia*, *Flanagan v. Capital Nat. Bank of Sacramento* (1931) 213 Cal. 664, *Estate of Krone* (1948) 83 Cal.App.2d 766, *Schneider v. Schneider* (1920) 183 Cal. 335, *Vallera v. Vallera* (1943) 21 Cal.2d 681, and *Estate of Foy* (1952) 109 Cal.App.2d 329).

III. Plaintiff fails to cite a single case—in California or elsewhere—that has rejected the objective standard in favor of a subjective standard.

Plaintiff's Answer is also noteworthy for the arguments that she does *not* make. Like the Court of Appeal, Plaintiff fails to cite *any* California case that rejects an objective "good faith" standard in favor of a subjective standard. More to the point, she cites no California case holding that a subjective belief, no matter how unreasonable, is sufficient to establish a "good faith belief" in the putative spouse context. And she cites no California case holding that the reasonableness of a belief in a marriage's validity is not important in determining whether a party is a putative spouse. She has not because she cannot. Until the Court of Appeal's decision in the present case, all of the California cases on point reached the opposite conclusion: i.e., that "good faith belief" has a reasonableness component.

For that matter, Plaintiff has not even cited a single case outside of California that endorses the subjective approach. Again, she has not done so because there is no such authority. All of the jurisdictions that have considered the matter have adopted an objective-reasonableness standard for determining whether a party has a good faith belief in the validity of a marriage. *Christopher Blakesley*, THE PUTATIVE MARRIAGE DOCTRINE, 60 Tul. L. Rev. 1, 22 (1985).

Indeed, the issue has been settled for well over a century. Even before California adopted the "putative spouse" doctrine in the early 20th century, the states from which it drew the doctrine

held that "good faith belief" required reasonableness on the part of the would-be putative spouse. *Smith v. Smith* (La. 1891) 10 So. 248, 250 ("The good faith referred to, means an honest and reasonable belief that the marriage was valid."); *Walker v. Walker* (Tex. Civ. Ct. App. 1911) 136 S.W. 1145, 1148 ("Good faith, we think, cannot be predicated upon negligent failure to ascertain a fact [about her husband's marital status] which was of so much importance to her and which was of such easy ascertainment.").

In her Answer, however, Plaintiff characterizes the *Vryonis* decision as an "outlier in the putative spouse case law." (Answer at 8). She could not be more wrong. *Vryonis's* objective-reasonableness standard is black-letter law. It is the Court of Appeal's opinion in the present case—not *Vryonis*—that is an "outlier." If the decision in this case is left standing, California will be the lone jurisdiction to disregard the reasonableness of a would-be putative spouse's conduct when evaluating her "good faith belief."

Altering long-settled doctrine regarding putative spouses is a matter better left to the Legislature. In the past two decades, the Legislature repeatedly has amended the putative-marriage statutes. Yet it has never indicated disapproval with *Vryonis's* objective reasonableness standard for "good faith." It has kept the good faith standard unchanged. This is compelling evidence of the Legislature's intent that good faith be measured by *Vryonis's* objective-reasonableness standard.

CONCLUSION

The Court of Appeal's decision in this case is an aberration that will upset long-settled California law regarding putative spouses. This Court should accept this case for review, should expressly adopt an objective-reasonableness standard for good faith, and should reverse the Court of Appeal's decision.

DATED: July 11, 2011

RESPECTFULLY SUBMITTED
LECLAIRRYAN, LLP

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) of the California Rules of Court, the enclosed Reply Brief of Petitioner is produced using 13-point or greater Roman type, including footnotes, and contains 2,591 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 11, 2011

RESPECTFULLY SUBMITTED

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