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.*

AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT · CASE NO. H034826

# OPENING BRIEF ON THE MERITS

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## ISSUE PRESENTED

"Code of Civil Procedure § 377.60(b) gives a decedent's 'putative spouse' standing to institute a wrongful-death action. It defines putative spouse as a person who 'believed in good faith that the marriage to the decedent was valid.' Does a person have the requisite 'good faith belief' where he or she has an unreasonable, albeit sincere, belief that the marriage was valid? Or is a subjective belief, no matter how unreasonable, sufficient to establish good faith?"

## INTRODUCTION

Under the putative-marriage doctrine—now codified at Code of Civil Procedure § 377.60(b) and elsewhere—a party to an invalid marriage may nevertheless enjoy certain of the civil benefits of marriage if he or she "believed in good faith" that the marriage was valid. For nearly a quarter century, California Courts have required parties asserting putative-spouse status to demonstrate that their belief in a valid marriage was objectively reasonable.[1] Under *In re Marriage of Vryonis* (2d Dist. 1988) 202

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[1] *See In re Marriage of Vryonis* (2d Dist. 1988) 202 Cal.App.3d 712; *In re Marriage of Xia Guo and Xiao Hua Sun* (2d Dist. 2010) 186 Cal.App.4th 1491; *In re Marriage of Ramirez* (4th Dist. 2008) 165 Cal.App.4th 751; *Welch v. State of California* (5th Dist. 2000) 83 Cal.App.4th 1374; *Estate of DePasse* (6th Dist. 2002) 97 Cal.App.4th. 92. *See also In re Domestic Partnership of Ellis & Aiaga* (4th Dist. 2008) 162 Cal.App.4th 1000.

Cal.App.3d 712, and its progeny, a subjective belief in a marriage's validity—no matter how sincerely held—was insufficient to establish putative-spouse status. The belief also must be reasonable. Put simply: a would-be putative spouse cannot turn a blind eye to facts that, to any reasonable person, would reveal a marriage to be invalid.

The Court of Appeal's decision[2] in the present case has upended this once-settled area of family law by substituting a subjective standard for the objective-reasonableness test. Under the Court of Appeal's decision, whether a party qualifies as a putative spouse hinges solely on whether the would-be putative spouse had a sincere belief that his or her marriage was valid.

This Court should reverse the Court of Appeal's decision for four reasons.

**First,** the Court of Appeal's subjective standard is inconsistent with the civil-law origins of the putative-marriage doctrine. California drew its putative-marriage doctrine from the decisions of other community-property states—e.g., Texas and Louisiana—whose family law, like California's, developed out of the civil-law tradition. Those states all have adopted a reasonableness standard for assessing putative-spouse status. Indeed, they had done so long before California adopted the putative-marriage doctrine in the 1910s and 1920s. Today,

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[2] *Ceja v. Rudolf & Sletten, Inc.* (2011) 194 Cal.App.4th 584. A copy of the opinion ("Op.") is attached in the appendix to this brief.

courts and commentators alike agree that, in the putative-spouse context, "good faith belief" means an objectively reasonable belief that the marriage was valid.[3] The objective-reasonableness standard is black-letter law. 52 Am. Jur. 2d Marriage § 91 ("The term 'good faith,' when used in connection with a putative marriage, means an honest and reasonable belief that the marriage was valid."). If the Court of Appeal's decision stands, California will be the lone jurisdiction to use a subjective test for good-faith status in the putative-spouse context.

**Second**, the Court of Appeal's subjective approach violates basic principles of statutory construction. The Court of Appeal interpreted "believed in good faith" to mean that the would-be putative spouse had an "honest, genuine, and sincere" belief in the marriage's validity. But all beliefs are, by logical necessity, "honest, genuine, and sincere." An "insincere belief" is a

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[3] *See, e.g., Succession of Pigg* (La. 1955) 84 So.2d 196, 197 ("It is well settled that the good faith referred to in these Articles [relating to putative spouses] means an honest and reasonable belief that the marriage was a valid one at the time of its confection."); *Garduno v. Garduno* (Tex. Ct. App. 1988) 760 S.W.2d 735, 740 ("[W]hen the putative spouse is aware that a former marriage existed at one time, the question becomes one of the reasonableness of that party's belief that the former marriage has been dissolved."); *Hicklin v. Hicklin* (Neb. 1994) 509 N.W.2d 627, 631 ("Good faith, in the context of a putative marriage, means an honest and reasonble belief that the marriage was valid at the time of the ceremony. . . . [A] party cannot close his or her eyes to suspicious circumstances."); *Williams v. Williams* (Nev. 2004) 97 P.3d 1124, 1128 ("'Good faith' has been defined as an honest and reasonable belief that the marriage was valid.").

contradiction in terms. Thus, an "honest, genuine, and sincere" belief is simply a belief. If so, however, the Court of Appeal's interpretation deprives the phrase "good faith" of all meaning. If a "good faith" belief is just an "honest, genuine, and sincere" belief, and an "honest, genuine, and sincere" belief is just a belief, then a "good faith" belief is just a belief. The phrase "good faith" adds nothing to the meaning of "belief." Statutes should not be interpreted to render terms within it meaningless. Accordingly, this Court should reject the Court of Appeal's construction of § 377.60(b).

**Third,** the Court of Appeal erred in concluding that the pre-codification case law supported a purely subjective standard. In its decision, the Court of Appeal claimed that California cases pre-dating the Legislature's 1969 codification of the putative-spouse doctrine had employed a subjective standard, not an objective standard, for good-faith belief in the validity of a marriage. But examination reveals that *none* of these cases discussed the relative merits of an objective versus subjective standard for evaluating good faith. The issue simply did not arise.

Although the Court of Appeal cites scores of decisions in its 59-page opinion, it fails to identify a single case in which a court explicitly chose a subjective standard over an objective standard. Nor can it. The issue was not addressed in California courts until *Vryonis*. And the *Vryonis* court, like every other jurisdiction before it, required that the would-be putative spouse's belief in a valid marriage be objectively reasonable.

**Fourth**, the Court of Appeal's decision represents poor public policy. Marital status plays a central role in countless societal decisions. Given the importance of marital status, it is vital that the law require would-be spouses to undertake reasonable efforts to ensure that their marriage is valid. But a purely subjective standard for "good faith belief" would mean that married parties no longer would have to trouble themselves with California's marriage prerequisites. Merely believing that one is married would have virtually the same legal effect as actually being married—regardless of whether that belief was a reasonable one. A subjective standard would eliminate the incentive for couples to ensure that they meet the requirements of a valid marriage. That, in turn, would unravel California's marriage laws.

A subjective standard also would be costly to administer. Because it hinges solely on the putative spouse's state of mind—something not amenable to resolution as a matter of law—nearly every case involving putative-spouse issues would require an evidentiary mini-trial to resolve the issue. And the error rates of those hearings would be high, as it is easy for parties either to misremember or to feign their subjective states of mind, particularly where the events in question happened years before. The Court of Appeal's subjective approach thereby imposes a significant burden on trial courts without offering any appreciable countervailing benefits.

For all these reasons, amplified below, this Court should hold that, in the putative-spouse context, "good-faith belief"

means a reasonable belief in the validity of one's marriage. Accordingly, it should reverse the Court of Appeal's decision and direct that judgment be entered in favor of Defendant.

## STATEMENT OF THE CASE

### *Factual Background*

Plaintiff Nancy Ceja ("Nancy") sued defendant R&S under Code of Civil Procedure § 377.60(b) for the death of her alleged putative husband, Robert Ceja ("Robert"). Robert was fatally injured in a workplace accident. The issue in this case is whether Nancy had standing to bring a wrongful-death action. That question hinges on facts surrounding Robert and Nancy's marital status.

Robert was previously married to Christine Ceja ("Christine"), by whom he had had two children. (Appellant's Appendix Volume I ("AA I:") at 128). Robert and Christine separated, and, by 2001, Robert and Nancy had begun living together. (AA I:119, 151). That same year, Robert initiated divorce proceedings and obtained joint custody of his and Christine's two children. (AA I:151). Nancy knew that Robert was married to Christine and had had two children with her. (AA I:118, 119, 128, 154; AA II:348, 403). Nancy also knew that Robert had filed for a divorce from Christine but says, "I did not talk about this subject with him at all." (AA II:350).

On September 24, 2003, Robert and Nancy completed an application for a "License and Certificate of Marriage." (AA

I:157). Although Nancy knew about Robert's prior marriage, she neglected to mention it on this form. The "groom personal data" section gives "0" as Robert's "number of previous marriages." (*Ibid.*). And the section asking how the previous marriage had been terminated—with check boxes for death, dissolution, or annulment—was left blank, as was the space for the date on which the prior marriage was terminated. (*Ibid.*).

Despite these false representations, Nancy signed the marriage license. Her signature appears in a box marked "affidavit," underneath a statement that she and Robert were unmarried and that "the foregoing information is correct and true to the best of our knowledge and belief." (AA I:157). When asked during discovery why she signed a marriage-license application that stated that Robert had never before been married, a fact that she knew was untrue, Nancy—an executive assistant in the high-tech industry—said that she did not review the license "in any detail." (AA II:348). She "simply signed the document." (*Ibid.*). Three days after they obtained the license, Robert and Nancy held a large wedding ceremony.

At that time, however, Robert was still married to Christine. Although Robert had initiated divorce proceedings in 2001, the dissolution did not become final until December 31, 2003—i.e., three months *after* Robert and Nancy's wedding ceremony. (AA I:159). Indeed, Robert did not even move for entry of judgment in his divorce with Christine until a month *after* the wedding. (AA I:161). Thus, Robert and Nancy's attempted September 27, 2003 marriage was void.

On December 31, 2003, the Santa Clara County Superior Court filed a "Notice of Entry of Judgment" in Robert and Christine's divorce. (AA I:159-61). The first page of the notice recites, in large upper-case text, that the judgment was entered "DEC 26 2003" and filed on "DEC 31 2003." (*Ibid.*). Furthermore, it contains a boxed warning that: (1) the divorce was effective only as of the date the judgment was filed (i.e., December 31, 2003), and (2) neither party could remarry until after the effective date. (*Ibid.*). This warning against remarrying, in bold type and all caps, states

> WARNING: NEITHER PARTY MAY REMARRY UNTIL THE EFFECTIVE DATE OF THE TERMINATION OF MARITAL STATUS AS SHOWN IN THIS BOX [i.e. December 31, 2003].

(*Ibid.*). It was sent to Robert and Nancy's home. (*Ibid.*).

Nancy admits that she saw the Notice shortly thereafter. (AA I:147). Sometime during January 2004, she faxed a copy of it to the Ironworkers Trust Fund to change the beneficiary designation on certain of Robert's benefits. (AA I:147-49). Despite the fact that the document clearly states the effective date of Robert and Christine's divorce, despite the fact that it contains a boxed warning against remarrying before that date, and despite the fact that Nancy admits seeing the Notice of Entry of Judgment and faxing it to the Ironworkers Trust Fund as part of an application to have her added to Robert's benefits, she maintains that she was "unclear on the specific date of the divorce for Mr. Ceja." (AA II:349).

Thus, Nancy claims that she thought her marriage to Robert was valid. (AA II:348). Robert and Nancy subsequently held themselves out as husband and wife but took no action to cure their invalid marriage.

### *Procedural History*

Nancy brought a wrongful-death action against R&S as Robert's "putative spouse."[4] (AA I:2). R&S moved for summary judgment or, in the alternative, for summary adjudication. (AA I:47). It argued, among other things, that under Code of Civil Procedure § 377.60 Nancy could not be Robert's putative spouse because she did not have a "good faith belief" that her marriage to him was valid. To support this argument, it cited an unbroken line of Court of Appeal cases holding that "good faith belief" imposes an objective "reasonableness" standard. (*Ibid.*). R&S contended that no reasonable person in Nancy's position would have believed that the marriage to Robert was valid. (AA I:68). The Superior Court agreed, holding that Nancy was not a putative spouse because "she did not have an objectively reasonable good-faith belief in the validity of her marriage to Robert." (AA III:706). Accordingly, it entered judgment for R&S. (*Ibid.*).

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[4] Robert's first wife, Christine, brought a separate wrongful death action on behalf of Robert and Christine's minor children. This action was consolidated with Nancy's action but was settled and dismissed by agreement. It is not part of this appeal.

### *The Court of Appeal's Opinion*

The Sixth District Court of Appeal reversed, relying principally on Nancy's statement that she believed the marriage was valid. *Ceja*, 194 Cal.App.4th at 609. It rejected the defense theory that Nancy's "lack of diligence" in reviewing the marriage certificate negated good faith. *Ibid.* And it held that there remained a triable issue of fact whether Nancy actually knew that Robert's marriage was not final before they got married. *Id.* at 610. Accordingly, it reversed the Superior Court's judgment.

This appeal followed.

## ARGUMENT

### I. The Court of Appeal erred in holding that a sincere belief—no matter how unreasonable—is sufficient to establish "good faith" for putative-spouse purposes.

California Code of Civil Procedure § 377.60(b) gives a decedent's "putative spouse" standing to assert a wrongful-death claim. It defines "putative spouse" as the surviving spouse of an invalid marriage who has a good-faith belief that his or her marriage to decedent was valid:

> As used in this subdivision, "putative spouse" means the surviving spouse of a void or voidable marriage who is found by the court to have **believed in good faith** that the marriage to the decedent was valid.

Code Civ. Proc. § 377.60(b) (emphasis added). The statute does not further define "good faith belief" or explain how it differs from an ordinary belief. To determine its meaning, one must look to the history of the putative-marriage doctrine in California and other states.

### A. California adopted the putative-marriage doctrine from other civil-law jurisdictions.

Although now codified at § 377.60(b) and elsewhere,[5] the putative-marriage doctrine has its origins in case law. It is generally recognized in those states whose family law derives from French and Spanish "civil code" legal systems, e.g., California, Texas, and Louisiana. *See* Christopher Blakesley, THE PUTATIVE MARRIAGE DOCTRINE, 60 Tul. L. Rev. 1, 7-10 (1985) (describing how the putative-marriage doctrine developed in civil-code jurisdictions); *Packard v. Arellanes* (1861) 17 Ca. 525, 537 ("Our whole system by which the rights of property between husband and wife are regulated and determined, is borrowed from the civil and Spanish law."). *See also Estate of*

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[5] The most significant provision is Fam. Code § 2251, which gives "putative spouses" rights to "quasi-marital property." As in Code Civ. Proc. § 377.60(b), it requires that the would-be putative spouse "believed in good faith that the marriage was valid." *Ibid.* The putative-spouse concept also appears in Code Civ. Proc. § 872.210, in Fam. Code §§ 17505, 17506, and in Pen. Code § 3524.

The Probate Code has not codified the putative spouse doctrine, but it still is recognized by California courts in that context. *See Estate of Sax* (1989) 214 Cal.App.3d 1300, 1305.

*Krone* (1948) 83 Cal.App.2d 766, 768 ("'Putative marriage' is a phrase derived from the civil law which once prevailed in the southwestern states and in Louisiana."); Comment, HUSBAND AND WIFE: RIGHTS OF A BIGAMOUS WIFE IN COMMUNITY PROPERTY, 9 Cal. L. Rev. 68, 69 (1921) (noting that the putative-marriage doctrine "is a heritage of the civil law, and accordingly is to be found in force in jurisdictions in which the influence of French and Spanish law has been felt."); John Carlson, PUTATIVE SPOUSES IN TEXAS COURTS, 7 Tex. Wesleyan L. Rev. 1, 3-5 (2000) (describing how Texas's putative-marriage doctrine arose out of Spanish Law's "Las Siete Partidas," which were first promulgated in 1348).

When this Court first adopted the putative-marriage doctrine in the 1910s and 20s, it used the standard that these other community-property states had applied, requiring that the would-be putative spouse have a "good faith" belief that the marriage was valid. *See Schneider v. Schneider* (1920) 183 Cal. 335. But prior to codification in 1969, no published California case addressed whether a sincere belief in the validity of a marriage—even if unreasonable—was sufficient to establish "good faith."[6]

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[6] As discussed *infra*, the Court of Appeal reads the pre-codification case law to have rejected an objective standard. But the cases it cites stand for no such thing. The issue simply was never presented. Until the Court of Appeal's decision in the present case, there was no published California case that held that an unreasonable, but sincere, belief in a marriage's validity was sufficient to establish good faith.

Statements in those earlier California cases, however, strongly suggested that "good faith" required that the would-be putative spouse act reasonably. The decisions recited that the doctrine was designed to protect "innocent" persons who had "reason" to believe that they were lawfully married. *Schneider*, 183 Cal. at 338 ("[W]here a woman is an *innocent party* to a void marriage she is entitled to the same interest in property acquired by the parties as if the marriage were valid.") (emphasis added); *Estate of Goldberg* (1962) 203 Cal.App.2d 402, 412 (finding that the plaintiff was a putative spouse because the putative husband told her he was a free man and "[s]he had *no reason* to disbelieve him and did believe him.") (emphasis added). *See also* Raj Rajan, The Putative Spouse in California Law, 11 J. CONTEMP. LEGAL ISSUES 19 (2000) ("The concept of innocence for which most courts reach in pondering good faith is that of the ordinary person who would reasonably believe that the marriage was truly valid.").

The pre-codification cases also stated that the doctrine protected the parties' "reasonable expectations" that a marriage is valid. *See, e.g., Vallera v. Vallera* (1943) 21 Cal.2d 681, 685 (noting that the putative-marriage doctrine arose out "[e]quitable considerations arising from the *reasonable expectation* of the continuation of benefits attending the status of marriage"). And in *Miller v. Johnson* (1963) 214 Cal.App.2d 123, the Court of Appeal opined that "there must also be a *diligent attempt to meet the requisites of a valid marriage.*" *Id.* at 126 (emphasis added). These cases all suggested that there was an objective-

reasonableness component to good faith. In none of them, however, was the issue dispositive.

The California Legislature first codified the putative-marriage doctrine in 1969. *See In re Marriage of Monti* (1982) 135 Cal.App.3d 50, 55 (describing the codification of the doctrine). This appeared in the context of the Family Law Act, and it gave putative spouses rights to marital property. (The corresponding Family Code provision now appears at Fam. Code § 2251.) The Legislature brought the putative-spouse concept to the wrongful-death statute in 1975, when it added putative spouses to the class of persons with standing to bring such claims. *See Ceja*, 194 Cal.App.4th at 592. The Legislature enacted the present iteration of the statute, Code of Civil Procedure § 377.60, in 1992.

These statutes all required the putative spouse to have "believed in good faith that the marriage was valid." Yet in none of them did the Legislature define "good faith." Nor did the Legislature otherwise indicate whether the term meant objective good faith or merely subjective belief.

### B. In the putative-spouse context "good faith" means an honest *and reasonable* belief that a marriage is valid.

The question whether "good faith" has an objective-reasonableness component in the putative-spouse context was first addressed in California in *In re Marriage of Vryonis* (1988) 202 Cal.App.3d 712. There, the parties conducted their own "Muta" marriage, a private Islamic ceremony with only the two of them present. The couple made no attempt to comply with

California's procedural requirements for a marriage. The plaintiff claimed that she believed this was a valid marriage and that, consequently, she was entitled to rights as a putative spouse.

The Court of Appeal disagreed. It held that, to be a putative spouse, a party must have had a *reasonable* belief in the marriage's validity:

> A proper assertion of putative spouse status must rest on facts that would cause a reasonable person to harbor a good faith belief in the existence of a valid marriage.

202 Cal.App.3d at 721. In other words, "[A] sincere but objectively unreasonable belief is not in good faith." *Id.* at 724. Applying that objective standard to the facts before it, the *Vryonis* court concluded that the plaintiff's belief in a valid marriage—even if honestly maintained—was in bad faith because it was not reasonable.

In the twenty-plus years since the Court of Appeal decided *Vryonis*, all the other Courts of Appeal addressing the issue had—until the present case—adopted its "objective reasonableness" standard for good faith in the putative-spouse context. *See, e.g., Xia Guo,* 186 Cal.App.4th at 1493 ("A determination of good faith is tested by an objective standard."); *Ramirez,* 65 Cal.App.4th at 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,* 83

Cal.App.4th at 1378 ("A determination of good faith is tested by an objective standard."); *Estate of DePasse,* 97 Cal.App.4th at 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 issue was thought to be well-settled.

### C. Other civil-law jurisdictions have unanimously required a putative spouse to have a reasonable belief in the validity of the marriage.

It *was* well-settled, and the objective-reasonableness test remains the law of every other American jurisdiction to have addressed the question. *See Blakesley*, THE PUTATIVE MARRIAGE DOCTRINE, 60 Tul. L. Rev. at 22 (observing that "All United States jurisdictions which recognize the putative spouse doctrine" hold that "civil effects cease to flow to the good faith putative spouse once he or she has acquired knowledge of the cause of nullity *or obtained enough evidence to require investigation and has failed to investigate.*") (emphasis added).[7]

As a matter of hornbook family law, "good faith belief" in the putative-marriage context means an honest *and reasonable* belief in the validity of a marriage. *See* 52 Am. Jur. 2d Marriage § 91 (emphasis added) (The term "good faith," when used in connection with a putative marriage, means an honest *and reasonable* belief that the marriage was valid.") (emphasis

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[7] As Blakesley notes, this was how Spanish courts had applied the putative-marriage doctrine.

added). *See also Blakesley*, THE PUTATIVE MARRIAGE DOCTRINE, 60 Tul. L. Rev. at 18-19 (noting that good faith is "an honest *and reasonable*" belief that the marriage is valid and that no legal impediment exists thereto.") (quotations and citations omitted and emphasis added).

Indeed, the law has been that way for over a century. When California adopted the putative-marriage doctrine in the 1910's and 1920's, both Texas and Louisiana—the states on whose putative-marriage doctrines this Court modeled California's rule—had expressly adopted an objective-reasonableness standard. *Smith v. Smith* (La. 1891) 10 So. 248 ("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.").

These states, and others, have consistently applied an objective standard in the intervening decades. *See, e.g.*, *Succession of Pigg* (La. 1955) 84 So.2d 196, 197 ("It is well settled that the good faith referred to in these Articles [relating to putative spouses] means an honest and reasonable belief that the marriage was a valid one at the time of its confection."); *Garduno v. Garduno* (Tex. Ct. App. 1988) 760 S.W.2d 735, 740 ("[W]hen the putative spouse is aware that a former marriage existed at one time, the question becomes one of the reasonableness of that party's belief that the former marriage has been dissolved.");

*Hicklin v. Hicklin* (Neb. 1994) 509 N.W.2d 627, 631 ("Good faith, in the context of a putative marriage, means an honest and reasonable belief that the marriage was valid at the time of the ceremony. . . . [A] party cannot close his or her eyes to suspicious circumstances.").

So when, in 2004, the Supreme Court of Nevada addressed the issue for the first time, it reviewed the case law of other states and concluded that "good faith" required reasonable conduct on the part of the would-be putative spouse. *Williams v. Williams* (Nev. 2004) 97 P.3d 1124, 1128 ("'Good faith' has been defined as an honest and reasonable belief that the marriage was valid at the time of the ceremony. . . . Persons cannot act blindly or without reasonable precaution.") (internal quotation marks omitted). An unreasonable belief in a marriage's validity—even if deeply felt and sincerely held—does not constitute "good faith" in the putative-spouse context.

### D. The Court of Appeal was wrong to say that, at the time the putative-marriage doctrine was codified, "good faith belief" did not require reasonableness.

In the present case, however, the Court of Appeal rejected the objective approach to good-faith belief. The central premise of its analysis is that, before 1969, "good faith belief" had a well-understood meaning that did *not* require that the would-be putative spouse have acted reasonably. Reasoning from this premise, the Court of Appeal claims that the Legislature intended to retain this subjective-belief standard when it codified the doctrine. 194 Cal.App.4th at 595.

The premise underlying the Court of Appeal's argument is false. Contrary to its opinion, the California cases before 1969 did *not* raise—and so did not resolve—the question whether courts should measure good-faith belief in the putative-marriage context using an objective rather than a subjective standard. Pertinent here, *none* of them held that a putative spouse could have a "good faith" belief even if that belief was objectively unreasonable.

The cases on which the Court of Appeal relies can be sorted into two broad categories. The first comprises cases in which the court did not discuss the reasonableness of the party's beliefs at all. *See Schneider*, 183 Cal. 335, *Figoni v. Figoni* (1931) 211 Cal. 354, *Estate of Krone* (1948) 83 Cal.App.2d 766, and *Estate of Goldberg* (1962) 203 Cal.App.2d 402. These cases, however, do not stand for the proposition that a reasonable belief is not necessary for good faith, as the question never came up. Absence of a holding is not a holding of absence. So the lack of a clear holding regarding reasonable belief is not a holding that a party can have good faith without having a reasonable belief. The issue simply did not arise.

The second category of cases comprises those in which the courts found that the would-be putative spouse did not actually believe that the marriage was valid. *Vallera v. Vallera* (1943) 21 Cal.2d 681; *Flanagan v. Capital Nat. Bank of Sacramento* (1931) 213 Cal. 664. In the present case, the Court of Appeal reasoned that—because these decisions hinged on factual questions about the would-be putative spouse's state of mind—"good faith"

depends exclusively on a would-be spouse's subjective state of mind.

This does not follow. The objective standard for "good faith," too, requires an actual belief in the validity of marriage. A person who does not have an actual belief that her marriage is valid *a fortiori* does not have a reasonable belief. An actual belief is a necessary condition, though not a sufficient condition, of good-faith belief. So these cases are entirely consistent with an objective standard.

Tellingly, the Court of Appeal does not point to any part of these decisions that explicitly rejected an objective standard in favor of a subjective standard. The cases are, in fact, completely silent on this critical issue. Examination reveals that these earlier California Cases are entirely consistent with an objective-reasonableness good-faith standard.

Petitioner is not the first to observe this. In *Spearman v. Spearman* (5th Cir. 1973) 482 F.2d 1203, 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).

In short, a review of the cases shows that the central premise of the Court of Appeal's opinion—i.e., that pre-1969 case law specifically did *not* require the belief to be reasonable—is false. This is not surprising. Rejecting an objective-reasonableness standard in favor of a pure subjective standard would mark a radical departure from the objective-reasonableness standard that other states uniformly have applied in putative-marriage cases. One would expect that if California wished to make such an unorthodox step, it would have done so explicitly, in capital letters. Yet the cases are silent about it. The fact that none of the pre-codification cases even *mentions* the objective-reasonableness versus subjective-belief issue is telling evidence that the question had not been presented. It is the dog that did not bark.

## II. The Court of Appeal's construction of "believed in good faith" violates basic rules of statutory interpretation.

### A. The Court of Appeal's construction of "good faith" renders the expression meaningless.

Not only does the Court of Appeal misread the putative-spouse case law, its decision also violates ordinary rules of statutory interpretation. The question raised in this case is, at bottom, one of statutory construction—i.e., what is the meaning of "believed in good faith" in Code of Civil Procedure § 377.60(b). Courts narrowly construe the provisions of § 377.60 that confer standing to bring wrongful-death claims. *Phraner v. Cote Mark, Inc.* (1997) 55 Cal.App.4th 166, 168.

Yet the Court of Appeal did not narrowly construe the statutory language in the present case. Indeed, its interpretation of "believed in good faith" broadened the class of putative spouses so extensively as to render the qualifying phrase "good faith" entirely meaningless. Under the Court of Appeal's construction, "good faith" means that a belief is held "honestly, genuinely, and sincerely." But all beliefs are—by psychological necessity—honest, genuine, and sincere. Although one can make a dishonest or insincere *statement*, it is logically impossible to have an insincere *belief*. Either you believe something or you do not.

But if that is so, then this means that the Court of Appeal's interpretation of "good faith" renders the phrase entirely meaningless in the context of Code of Civil Procedure § 377.60(b). If a "good faith" belief is just an "honest, genuine, and sincere"

belief, and an "honest, genuine, and sincere" belief is just a belief, then a "good faith" belief is just a belief. Under this construction, the phrase "good faith" is superfluous. It adds nothing to the meaning of "belief" and could have been omitted by the Legislature.[8]

This Court rejects interpretations of statutory language that render phrases meaningless or redundant. *See, e.g.*, *Klein v. United States of America* (2010) 50 Cal.4th 68, 80 ("[C]ourts must strive to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous."). Thus, this Court should reject the Court of Appeal's attempt to interpret "good faith" out of existence in § 377.60(b).

### B. The Legislature has tacitly approved *Vryonis's* objective standard by retaining the "believed in good faith" language in subsequent modifications to the statute.

The Court of Appeal also violated the long-accepted interpretive canon that a legislature is presumed to have acted with the knowledge of definitive interpretations that courts have

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[8] A construction that interprets "good faith" to create an objective standard, by contrast, suffers no such problems. Under this view, "good faith belief" differs from "belief" insofar as it adds a requirement of objective reasonableness. Thus, one can have a belief without that belief being reasonable. The concept of "good faith belief" is not coextensive with "belief." Under this interpretation—the correct interpretation—"good faith" has a clear purpose for being in the statute: it restricts the general class of *beliefs* to the subclass of *reasonable beliefs*.

placed on statutory language. When courts have construed a statutory term in a certain way, and a legislature subsequently amends a provision *but leaves the interpreted portion intact*, the legislature is presumed to have implicitly acquiesced to the construction that the courts have, prior to the amendment, placed on the retained language. *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734-35.

In the two decades following the *Vryonis* decision, the Courts of Appeal have consistently interpreted the phrase "believed in good faith" to have an objective component. Since that time, there have been numerous amendments to the statutory language, both in the context of the wrongful-death statute[9] and in the context of the Family Code.[10] But the phrase "believed in good faith" has remained intact, with no changes whatsoever. Had the California Legislature wished to reject the *Vryonis* decision's objective-reasonableness analysis it could have—and should have—altered the statutory definition of "putative spouse." The fact that it did not do so is strong evidence that the Legislature agrees with the *Vryonis* court's objective-reasonableness interpretation of "believed in good faith."

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[9] *See* Stats 1996 ch 563 § 1; Stats 1997 ch 13 § 1, Stats 2001 ch 893 § 2; Stats 2004 ch 947 § 1.

[10] *See* Stats 1992 ch 162 § 10.

### C. The Court of Appeal's discussion of what "good faith" means in other, unrelated, contexts is largely irrelevant.

Finally, the Court of Appeal spends a large portion of its opinion explaining how "good faith" is used in different areas of the law (e.g., criminal law, the Tort Claims Act, and Civil Code § 1780(e), etc.). It then attempts to apply the usage of "good faith" in these contexts to the putative-marriage doctrine.

This is an exercise doomed to failure. The term "good faith" is a legal chameleon, with no fixed meaning. *See FEI Enterprises, Inc. v. Yoon* (2011) 194 Cal.App.4th 790, 800-04 (explaining that, under California law, "good faith" can have an objective or subjective meaning, depending on the particular legal context). *See also* BLACK'S LAW DICTIONARY 713 (8th Ed. 2004) ("Good faith is an elusive idea, taking on different meanings and emphases as we move from one context to another.") (quoting Roger Brownsword et al., "Good Faith in Contract," In *Good Faith in Contract: Concept and Context* 1, 3 (Roger Brownsword Ed. 1999).

Sometimes "good faith" denotes objectively reasonable conduct. *See FEI Enterprises*, 194 Cal.App.4th at 801 (noting that "where the bona fides of a legal dispute are at issue, courts routinely apply an objective standard" and citing cases). *See also People v. Camarella* (1991) 54 Cal.3d 592, 602 (noting that the "good faith" exception to the exclusionary rule requires that the officer reasonably believe that the warrant was properly issued). Other times it simply means a subjective belief. *FEI Enterprises*,

194 Cal.App.4th at 800 (citing examples). *See also Lee v. Lee* (Tex. App. 2001) 47 S.W.3d 767, 794 (""In different contexts, 'good faith' can be a subjective or an objective standard.").

There is no single, correct, definition of "good faith" that applies universally across all legal contexts. *In re Schaitz* (7th Cir. 1990) 913 F.2d 452, 453 (Posner, J.) (noting that good faith "bears different meanings in different legal settings"). Nor need the Court in the present case determine, for all time and in all contexts, what "good faith" means.

The question, rather, is what "good faith" means in the context of the putative-marriage doctrine. And on this question, the courts have been unanimous: good faith means a *reasonable* belief that one's marriage is valid. *See supra.* Because the Court of Appeal misconstrued the meaning of "good faith" in Code of Civil Procedure § 377.60(b)'s phrase "believed in good faith," this Court should reverse.

## III. The Court of Appeal's interpretation of "good faith belief," if allowed to stand, will unravel California's marriage laws.

In addition to being bad law, the Court of Appeal's adoption of a subjective standard for putative-spouse status is poor public policy.

### A. A subjective standard would eliminate the incentive to exercise reasonable care in undertaking to be married.

Marriage is "a personal relation arising out of a civil contract"—a relation that plays a central role in countless societal decisions. Civ. Code § 4100. Marital status affects property rights upon the termination of a relationship. It affects distributions upon death. It affects who may bring a wrongful-death action. It affects eligibility for employment benefits. It affects taxation. It affects who may make decisions for incapacitated persons. The list goes on.

When spouses sign a marriage license, they place the public on notice of their legal union. Likewise, a Notice of Judgment of Dissolution places the public on notice of the termination of that contract. Third parties—e.g., potential spouses, lenders, creditors, insurers, employers—rely on these representations. Because of this reliance, it is vital that parties who undertake to be married take reasonable precautions to see that their marriage is actually valid. This is why marriage-license applications require parties to sign a statement affirming that they know of no impediment to their marriage.

If the Court of Appeal's subjective standard is upheld, however, married parties no longer need to trouble themselves with California's marriage prerequisites. Merely *believing* that one is married would have virtually the same legal effect as actually *being* married. And according to the Court of Appeal,

this would be so regardless of whether that belief was a reasonable one.

The net effect of this would be to eliminate the incentive for couples to ensure that they satisfy the requirements of a valid marriage. Indeed, it would eliminate the incentive even to learn what one needs to do in order to get properly married in the State of California. If mere belief in a valid marriage—no matter how unreasonable—is sufficient to secure the benefits of marriage, why bother investigating the law's requirements? To effect a putative marriage, couples need not go to a courthouse. They need only to put their heads in the sand.

This would unravel California's marriage laws. If a would-be married couple "honestly, genuinely, and sincerely" believed that a common-law marriage was valid in California, then—under the Court of Appeal's holding—a court would have to honor their belief, no matter how unreasonable. The same would hold true for a bigamous marriage, a marriage to a sibling, or any other marriage that California law now forbids. By honoring unreasonable beliefs, the courts would, for all practical purposes, be forced to honor those proscribed unions. This would undermine California's strong public policy in favor of promoting lawful marriages. *See Elden v. Sheldon* (1988) 46 Cal.3d 267, 279 (rejecting cohabiting partner's consortium claim because of "the state's interest in promoting the responsibilities of marriage and the difficulty of assessing the emotional, sexual and financial relationship of cohabiting parties to determine whether their arrangement was the equivalent of a marriage").

Undoubtedly, this is why every jurisdiction to have addressed the question has held that "good faith belief" in the putative-marriage context means a sincere *and reasonable* belief. The putative-marriage cases are replete with warnings that a party cannot turn a blind eye to circumstances showing that a marriage was invalid. *See supra*. So if a party wishes to avail herself of the putative-marriage doctrine, she must demonstrate that she has made a reasonable attempt to enter into a valid marriage.

### B. A subjective standard would be costly to administer.

As a practical matter, a subjective standard would be costly to administer. Because it hinges solely on the putative spouse's state of mind—something not amenable to resolution as a matter of law—nearly every case involving putative-spouse issues would require an evidentiary mini-trial to resolve the issue. And the error rates of those hearings would be high, as it is easy for parties either to misremember or to feign their states of mind, particularly where the events in question happened years before. The Court of Appeal's subjective approach thereby imposes an extra burden on trial courts without offering any significant countervailing benefits. It will also invite many spurious claims by persons falsely purporting to be putative spouses.

### C. An objective standard protects "innocent" spouses.

A good-faith standard, by contrast, suffers none of these defects. The would-be putative spouse is the person who is in the

best position cure any defects with the marriage. Requiring a party to exercise reasonable care in undertaking to marry another will ensure that the would-be putative spouse take sensible precautions—e.g., carefully reviewing the facts recited on a marriage-license application and/or inquiring into suspicious circumstances regarding the would-be spouse—before entering into a marriage. The net result will be fewer invalid marriages. And that, in turn, will reduce the incidence of the thorny legal disputes that invalid marriages inevitably create.

The reasonable-belief standard is also consistent with the putative-marriage doctrine's stated aim of protecting truly "innocent" persons. A would-be putative spouse who negligently fails to take any reasonable precautions against an invalid marriage is not an innocent spouse. *See* Raj Rajan, The Putative Spouse in California Law, 11 J. CONTEMP. LEGAL ISSUES 19 (2000) ("The concept of innocence for which most courts reach in pondering good faith is that of the ordinary person who would reasonably believe that the marriage was truly valid."). The law—even when acting according to broad equitable principles—generally does not help those who fail to act vigilantly on their own behalf. *See, e.g.*, Cal. Civ. Code § 3527 ("The law helps the vigilant, before those who sleep on their rights.").

Other community-property states have applied the reasonableness standard for over a century with no untoward

results.[11] And, until the decision in the present case, California courts had consistently applied it for nearly a quarter of a century—again, with no adverse effects.

The Court of Appeal, for its part, fails to show that the objective standard has led to abuses. Nor does it explain how an objective standard is inconsistent with the putative-marriage doctrine's aim of protecting the innocent. It has not done so because it cannot do so. By protecting the innocent without rewarding the neligent, the reasonable-belief standard strikes a sensible policy balance that has well withstood the test of time.

* * *

To summarize: The Court of Appeal's adoption of a subjective standard for "good faith belief" in the putative-spouse context is a departure from precedent, is a departure from ordinary rules of statutory procedure, and is a departure from sound policy. For all of the foregoing reasons, this Court should reject the subjective standard and should adopt the reasonable-belief standard for determining putative-spouse status.

## IV. Nancy's belief that she was married to Robert was unreasonable.

If the Court of Appeal had applied an objective standard, it would have reached a completely different conclusion. The

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[11] And Spain and France did so for many centuries before.

undisputed facts show that Nancy did not undertake reasonable efforts to ensure that her marriage to Robert was valid.

To begin, Nancy knew that Robert had a prior marriage. Indeed, Nancy had helped cared for Robert and Christine's children. Given this knowledge, Nancy had an obligation to take reasonable precautions to determine whether Robert and Christine's divorce was final before undertaking to marry Robert.

Nancy did not take reasonable precautions. According to Nancy, Robert refused to discuss the proceedings at all with her. Thus, prior to his death, Nancy never determined the date when Robert and Christine's divorce became final. Nancy could have learned these facts before the wedding ceremony—either by asking Robert point blank or by consulting public records. Yet she did not do so. No reasonable person would undertake to marry a previously married person without an explicit assurance that the prior marriage had been terminated.[12]

Worse, Nancy signed a marriage license that plainly misrepresented Robert's prior marital status. As noted above, the license stated that Robert had "0" prior marriages. And it left blanks where the date of his divorce from Christine would have been indicated—had they, in fact, been divorced. These

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[12] Thus, this case presents a completely different circumstance from the line of cases where the putative wife was assured by the would-be spouse that, at the time of their marriage, he had obtained a valid divorce from his former wife. *See Estate of Vargas* (1974) 36 Cal.App.3d 714.

misrepresentations and omissions were obvious red flags. They would have put any reasonable person on inquiry notice about the status of Robert's marriage to Christine. Any reasonable person in Nancy's position would have demanded a satisfactory explanation of this discrepancy.

Nancy, however, claims that she did not notice the misrepresentation because she did not review the certificate "in any detail." (AA II:348). Even if true, this is no excuse. This was an official California vital record. Nancy affixed her signature to a box entitled "affidavit," which stated "the foregoing information is true to the best of our knowledge." (AA I:157). No reasonable person would have signed an official document of this nature without first reviewing it. And even the most cursory review would have revealed the misrepresentation about Robert's prior marital status.

Contrary to the Court of Appeal's suggestion in its opinion, this was *not* a minor mistake, easily overlooked. *Ceja*, 194 Cal.App.4th at 610. It went to the heart of whether Robert was legally eligible to be married. The whole reason that marriage licenses require applicants to disclose prior marriages—and provide their dates of termination—is to avoid the situation that arose here. The policy considerations requiring due care are at their apex when a person reviews and signs a marriage application. A reasonable person in Nancy's position would have read the entries on the marriage license, would have inquired why the form failed to mention Robert's prior marriage to Christine, would have demanded to know when Robert and

Christine's divorce had become final, and thus would have learned that Robert was still married to Christine. Nancy's failure to do these things was, as the Superior Court found, objectively unreasonable.

Finally, Nancy admits seeing the Notice of Entry of Judgment announcing the December 31, 2003 termination of Robert and Christine's marriage. (AA I:147). Among other things, she faxed those papers to the Ironworkers Trust Fund in January 2004. (AA I:147-49). But as with the marriage license, Nancy claims that she did not examine this document closely. (AA II:348-49).

Again, Nancy's conduct amounted, at best, to willful blindness. Nancy knew that Robert filed for divorce but claims she was never told when, exactly, the divorce became effective. (AA II:348). Yet he gave her the legal document that stated exactly that. A reasonable person in Nancy's circumstances would have examined it. Doing so would have revealed that Nancy's marriage to Robert was invalid. This was apparent on the face of the notice—the front page bore a prominent warning that (1) Robert's divorce from Christine was final on December 31, 2003, and (2) Robert was legally prohibited from marrying any person before that date. Robert and Nancy's wedding was on September 27, 2003. So Nancy should have known that her purported marriage to him—which had occurred three months *before* Robert's divorce from Christine was final—was invalid.

In short, this case presents a situation of a would-be putative spouse who could have discovered the truth with little or no effort, who should have opened her eyes to facts that literally were staring her in the face, and who thus did not have an objectively reasonable good-faith belief that her marriage was valid.

## CONCLUSION

Because the Court of Appeal incorrectly applied a subjective standard for determining good-faith belief in the putative-spouse context and because no reasonable person in Nancy's position would have failed to discover that Robert was still married to Christine at the time of Robert and Nancy's wedding ceremony, this Court should reverse the judgment of the Court of Appeal.

DATED: Sept. 8, 2011

RESPECTFULLY SUBMITTED
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## CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies, pursuant to Rule 8.520(c) of the California Rules of Court, that the foregoing brief was produced using 13-point type, including footnotes, and contains 8174 words. Counsel relies on the word count feature of Microsoft Word 2003, the computer program used to prepare this brief.

DATED: Sept. 8, 2011

RESPECTFULLY SUBMITTED
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# OPINION

Filed 4/19/11

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

NANCY CEJA et al.,

Plaintiffs and Appellants,

v.

RUDOLPH & SLETTEN, INC.,

Defendant and Respondent;

PHOENIX CEJA et al.,

Respondent.

H034826
(Santa Clara County
Super. Ct. Nos. CV112520 &
CV115283)

## I. INTRODUCTION

Nancy and Robert Ceja were married by the pastor of a Pentecostal church in a big wedding ceremony attended by many guests. Four years later, Robert Ceja was killed in an accident at work. Nancy Ceja sued his employer for wrongful death. However, before filing the action, she learned that her marriage was void because the wedding had taken place a few months before Robert Ceja's divorce from his first wife became final. Consequently, to establish her standing to sue, Nancy Ceja alleged that she was a "putative spouse" under Code of Civil Procedure section 377.60, which defines a putative spouse as party to a void or voidable marriage who is found by the court to have "believed in good faith that the marriage . . . was valid."[1] (§ 377.60, subd. (b).)

[1] Section 377.60 provides, in relevant part, as follows. "A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by

The employer moved for summary judgment claiming that Nancy Ceja did not qualify as a putative spouse. The trial court agreed and granted summary judgment. Applying an objective test for putative status, the court found that it was not objectively reasonable for Nancy Ceja to have believed that her marriage was valid.

We conclude that the court applied the wrong test. Section 377.69 requires only that an alleged putative spouse "believed in good faith" that the marriage was valid. We hold that this language does not establish an objective standard; rather it refers to the alleged putative spouse's state of mind and asks whether that person actually believed the marriage was valid and whether he or she held that belief honestly, genuinely, and sincerely, without collusion or fraud. In so holding, we disagree with *In re Marriage of Vryonis* (1988) 202 Cal.App.3d 712 (*Vryonis*), which held that the statutory language incorporates an objective test.

It follows from our holding that the issue before the trial court on summary judgment was *not* whether there were triable issues of fact concerning whether Nancy Ceja's belief was objectively reasonable. The issue was whether there were triable issues concerning whether Nancy Ceja harbored a good faith belief. Because the record before us reveals a number of disputed facts necessary to resolve that issue, we reverse.

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any of the following persons or by the decedent's personal representative on their behalf: [¶] (a) The decedent's surviving spouse . . . . [¶] (b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse . . . . As used in this subdivision, 'putative spouse' means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid."

All further unspecified statutory references are to the Code of Civil Procedure.

## II. STATEMENT OF THE CASE

Plaintiff Nancy Ceja appeals from a judgment entered after the trial court granted defendant Rudolph & Sletten, Inc.'s motion for summary judgment.[2] She claims the trial court erred in granting the motion on the ground that she lacked standing to sue as a putative spouse. We agree that the court erred and reverse the judgment.

## II. FACTUAL BACKGROUND[3]

In 1995, Robert married Christine. During their marriage, they had two children. Robert and Christine separated, but they shared custody of the children. In 1999, Robert met Nancy. He told her he was married but separated. In 2001, they started living together, and Robert filed for divorce. During this time, Nancy and Christine saw each other at events involving the children.

On September 24, 2003, Robert and Nancy obtained a marriage license. The form contained areas for personal information, including whether the parties had been married before; how many times; when the marriages ended; and how they ended. Robert and Nancy each put zero for the number of prior marriages. Robert and Nancy signed the form, which included a preprinted declaration that they were "an unmarried man and unmarried woman" and that the information provided was "true to the best of [their] knowledge."

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[2] In a second amended complaint, Nancy Ceja added Jose Delgadillo as a plaintiff. He too worked for defendant and was injured in the same accident. The trial court denied defendant's motion for summary judgment against Delgadillo.

We further note that Christine Ceja, Robert Ceja's first wife, filed a separate wrongful death action against defendant on behalf of their children.

[3] Because Robert Ceja, Christine Ceja, and Nancy Ceja share the same surname, we use their first names for convenience and clarity and intend no disrespect. (See, e.g., *Blache v. Blache* (1945) 69 Cal.App.2d 616, 618 (*Blache*); *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 803, fn. 2.).

On September 27, 2003, Nancy and Robert were married in a ceremony in San Juan Bautista performed by Andy Salinas, the pastor of a Pentecostal church. According to Nancy, over 250 people attended. Thereafter, Nancy and Robert lived together as husband and wife until his death in 2007.

On November 23, 2003, Robert signed a declaration in support of his petition for dissolution, asserting, among other things, that he and Christine had entered a stipulated judgment concerning property rights. On December 26, 2003, a judgment of dissolution of marriage was entered, and notice was sent to him. The notice warned against marrying before the judgment of dissolution was filed In 2004, Nancy forwarded copies of Robert's divorce papers to his union so that she could be added to his insurance.

On September 19, 2007, Robert was killed in an accident at work.

### III. THE MOTION FOR SUMMARY JUDGMENT AND COURT'S RULING

In moving for summary judgment, defendant claimed that the evidence conclusively negated Nancy's alleged putative status. Defendant noted that (1) they were married before his divorce became final, and therefore, the marriage was bigamous and void (Fam. Code, § 2201, subd. (b) [a bigamous marriage is void or voidable]); (2) before their marriage, Nancy knew that Robert had been married to Christine; (3) both of them signed a marriage license in which Robert falsely represented that he had not been married before; and (4) after the marriage, Nancy sent Robert's divorce papers to the union. Defendant argued that it was not objectively reasonable for Nancy to believe her marriage was valid, that is, a reasonable person, knowing these facts, could not believe in good faith in the validity of the marriage.

In opposition, Nancy declared that she knew Robert had been married to Christine. However, they had separated, and in 2001, she understood that Robert had filed for divorce. She did not know what happened after that because he refused to discuss the subject. Nancy further declared that she did not read the marriage license closely before

signing it. Nor did she read Robert's divorce papers closely before forwarding them to his union.

In addition, Nancy declared that after their marriage, she and Robert wore wedding rings, they lived together as husband and wife, they told people they were married, they filed taxes as a married couple, and they shared a bank account. She also adopted Robert's surname. Nancy stated that she always believed their marriage was valid. She averred that if she had doubted its validity before the wedding, she would have postponed it; and after the wedding, if she had discovered the problem, they would have simply gotten remarried.

As noted, the court granted defendant's motion. Relying on *Welch v. State of California* (2000) 83 Cal.App.4th 1374 (*Welch*) and *Vryonis, supra*, 202 Cal.App.3d 712, the court found that Nancy could not qualify as a putative spouse because a belief in the validity of her marriage was not objectively reasonable. Thus, since Nancy lacked standing to sue as a putative spouse, defendant was entitled to judgment.

## IV. STANDARD OF REVIEW

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (§ 437c, subd. (c).) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

Summary judgment is a drastic procedure, however, and should be used cautiously so that it is not a substitute for a trial on the merits as a means of determining the facts. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 183.) "Upon a motion in summary judgment, the controlling question before the trial court is whether there is a material issue of fact to be tried. If the trial court determines there is one, it is powerless to proceed further. The issue must be decided in trial by the finder of fact." (*Haskell v.*

*Carli* (1987) 195 Cal.App.3d 124, 132; see also *Brown v. Bleiberg* (1982) 32 Cal.3d 426, 436, fn. 7.) On appeal from a summary judgment, an appellate court "review[s] the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

## VI. THE PUTATIVE SPOUSE DOCTRINE

To explain our analysis and conclusion concerning the standard for determining putative status, we consider it helpful to review the origin and development of the putative spouse doctrine (the doctrine).

In California, the doctrine first arose as a judicially recognized equitable corollary of the community property system, which California inherited from Spanish civil law and formally adopted by statute in 1850. (See Comment, *Husband and Wife: Rights of Bigamous Wife in Community Property* (1920-1921) 9 Cal. L.Rev. 68, 68-71; Comment, *Domestic Relations: Rights and remedies of the Putative Spouse* (1949) 37 Cal. Law.Rev. 671, 672; Rajan, *The Putative Spouse in California Law* (2000) 11 J. Contemp. Legal Issues 95, 97; Carlson, *Putative Spouses in Texas Courts* (2000) 7 Tex. Wesleyan L.Rev. 1, 3-4 [discussing origin of the doctrine in Spanish law]; 11 Witkin, Summary of California Law (10th ed. 2005) Community Property, § 1, p. 529.)

The community property system rests on the concept that marriage is a partnership, and the property and earnings acquired during a valid marriage are the property of both partners in equal shares. (*Packard v. Arellanes* (1861) 17 Cal. 525, 537; *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 12.) The putative spouse doctrine extends this partnership concept to innocent parties of an invalid marriage. Thus, in *Vallera v. Vallera* (1943) 21 Cal.2d 681 (*Vallera*), the Supreme Court considered it "well settled that a woman who lives with a man as his wife in the belief that a valid marriage exists, is entitled upon termination of their relationship to share in the property acquired by them

during its existence." (*Id.* at p. 683.) The purpose of the doctrine is to protect the expectations of innocent parties and achieve results that are equitable, fair, and just. (*Coats v. Coats* (1911) 160 Cal. 671, 675; *Schneider v. Schneider* (1920) 183 Cal. 335, 336-338 (*Schneider*); *Caldwell v. Odisio* (1956) 142 Cal.App.2d 732, 736.)[4]

The doctrine is typically applied to distribute quasi-marital property at the end of a putative marriage. The doctrine has also been recognized in a number of related contexts, for example, in determining (1) the interest of a putative spouse in a decedent's property (*Feig v. Bank of Italy etc. Ass'n.* (1933) 218 Cal. 54); (2) the right to statutory benefits upon the death of a police officer (*Adduddell v. Board of Administration* (1970) 8 Cal.App.3d 243); and (3) the applicability of the rule of imputed contributory negligence applied (*Caldwell v. Odisio, supra*, 142 Cal.App.2d 732). The doctrine has also expanded beyond putative spouses to putative domestic partners. (*In re Domestic Partnership of Ellis* (2008) 162 Cal.App.4th 1000; but see *Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1172-1174 [doctrine not applicable to domestic partnership law].)

***Codification of the Judicial Doctrine***

In 1969, the Legislature codified the doctrine in former Civil Code section 4452, which was then part of the new, now former, Family Law Act. (Former Civ. Code § 4400 et seq.; Stats. 1969, ch. 1608, § 8, p. 3314.) That section provided, in relevant

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[4] In *Coats v. Coats, supra,* 160 Cal. 671, the court opined, "To say that the woman in such case, even though she may be penniless and unable to earn a living, is to receive nothing, while the man with whom she lived and labored in the belief that she was his wife shall take and hold whatever he and she have acquired, would be contrary to the most elementary conceptions of fairness and justice." (*Id.* at p. 675; see *Jackson v. Jackson* (1892) 94 Cal. 446, 463-464 (conc. opn. Harrison, J.) [recognizing "equitable grounds" to divide property between spouses upon annulment of marriage].)

In contrast, common law jurisdictions apply the rule that a party to a void or voidable marriage gains no rights to property acquired during the "marriage." (See *Schneider, supra,* 183 Cal. at pp. 337-339 [discussing difference between common law and community property jurisdictions]; *DeFrance v. Johnson* (1886) 26 Fed. 891, 894 [applying common law rule].)

part, "Whenever a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall declare such party or parties to have the status of a putative spouse . . . ." (See Stats. 1969, ch. 1608, § 8, pp. 3322-3323.) This particular provision authorized the equal distribution of property acquired during the putative marriage. (Former Civ. Code, §§ 4452, 4455, 4800; see *In re Marriage of Monti* (1982) 135 Cal.App.3d 50, 54-55 (*Monti*) [discussing adoption of the former Family Law Act]; Luther & Luther, *Support and Property Rights of the Putative Spouse* (1973) 24 Hastings L.J. 311, 311-319.) In codifying the doctrine, the Legislature simply adopted existing case law and did not intend to change the definition of a putative spouse or restrict application of the doctrine. (*Monti, supra*, 135 Cal.App.3d at p. 55; *Vryonis, supra,* 202 Cal.App.3d at p. 719 [codification "was merely declaratory of existing law and not intended to work significant substantive changes"]; see *In re Marriage of Xia Guo and Xiao Hua Sun* (2010) 186 Cal.App.4th 1491, 1500 [purpose of codification was same as equitable purpose of the judicially created doctrine]; see also, *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 644 [intent to overthrow "long-established principles of law" not presumed from new enactments unless such a legislative intent is expressed or necessarily implied].)

In 1992, the Legislature repealed the former Family Law Act and enacted the Family Code, in which section 2251 reiterates the former Family Law Act provision concerning putative spouses. (Stats. 1992, ch. 162, §§ 3 & 10, p. 464.)

In 1975, the Legislature codified the doctrine again when it amended the wrongful death statute, former section 377. (Stats. 1975, ch. 334, §2, p. 784; ch. 1241, § 5.5, p. 3190; compare with Stats. 1968, ch. 766, §1, p. 1488 [no reference to putative spouses].) Among other things, the amendment added the previously codified definition of putative spouse and added putative spouses to the list of those with standing to sue.

Here too, the amendment did not change the doctrine or even the scope of the statute; it merely conformed the statute to existing case law holding that a putative spouse had standing to sue.[5] (See *Kunakoff v. Woods* (1958) 166 Cal.App.2d 59, 63-68 [under former § 377, "heirs" had standing, and putative spouses qualified as heirs].) In 1992, the Legislature repealed former section 377 and reenacted its content as section 377.60. (Stats. 1992, ch. 178, §§ 19-20, p. 893.)[6]

***The State of the Doctrine when Codified***

We now turn to a number of cases that show how the doctrine was applied at the time it was codified, that is, cases that reveal what was required to establish putative status and how courts determined it.

In *Schneider, supra*, 183 Cal. 335, a woman remarried, erroneously thinking her first marriage had been dissolved after some unspecified judicial hearing. The court believed her version of what had happened and implicitly found that she had remarried in good faith and thus qualified for putative status. The court did not discuss the nature of the prior judicial proceeding or whether it provided a reasonable basis to believe that the first marriage had been dissolved. (See *Macchi v. La Rocha* (1921) 54 Cal.App. 98 [putative status where parties obtained a marriage license but never solemnized the

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[5] The primary purpose of the 1975 amendment was to overrule the holding in *Steed v. Imperial Airlines* (1974) 12 Cal.3d 115, where the court held that former section 377 did not authorize unadopted stepchildren to sue for the wrongful death of stepparents. (See Stats. 1975, ch 334, §2, p. 784 [uncodified section stating intent to overrule *Steed*].)

[6] In an uncodified section of the Family Code, the Legislature declared, "A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered a restatement and continuation thereof and not as a new enactment." (Stats. 1992, ch. 162, § 10, p. 464.)

The Legislature has also recognized putative spouse status in a number of other statutes. (§ 872.210 [relating to partition actions]; Fam. Code, §§ 17505 and 17506 [relating to the enforcement of child support orders and location of parents]; and Pen. Code § 3524 [granting putative spouses standing to sue for the wrongful death of a prisoner].)

marriage because they thought the license was enough]; *Santos v. Santos* (1939) 32 Cal.App.2d 62 [same].)

In *Figoni v. Figoni* (1931) 211 Cal. 354, a niece sought to have the marriage to her uncle declared void. In granting her putative status, the court found that neither party knew that such marriages between uncles and nieces had been prohibited since 1872. (See former Civ. Code, § 59; *People v. Baker* (1968) 69 Cal.2d 44, 46 [prohibition enacted in 1872].) Because there was substantial evidence to support the trial court's finding, the Supreme Court affirmed without discussing whether it was reasonable to believe that such an incestuous marriage was valid.

On the other hand, in *Flanagan v. Capital Nat. Bank of Sacramento* (1931) 213 Cal. 664, the court denied a woman putative status. It found that she had not genuinely believed her marriage was valid. The record revealed that the couple had not obtained a license or had a ceremony. Moreover, the woman testified that her putative husband had told her they did not need a license because they could get along " 'as good as any couple that is married and better.' " (*Id.* at p. 666.) The court opined, "It would be difficult to believe that even an inexperienced foreigner, unacquainted with the laws and customs of this country, would consider that by this arrangement she had contracted a valid marriage. But plaintiff was not inexperienced. She had lived all her life in California, and had been previously legally married and divorced. Everything in the record suggests that she viewed the relationship not as a marriage, but as a satisfactory substitute for a marriage." (*Ibid.*; see *Miller v. Johnson* (1963) 214 Cal.App.2d 123 [no honest belief where parties obtained no license, they secured Mexican divorce and fake divorce decree under suspicious circumstances, they gave inconsistent testimony about the decree, and they had a perfunctory marriage ceremony].)

In *Vallera, supra,* 21 Cal.2d 681, the court denied putative status to a woman who had lived with a man for several years. She said she thought they had entered into valid

common law marriage in Michigan. However, the court found that she had not genuinely believed the marriage was valid. There had been no ceremony, there was no evidence of a common law marriage, and she actually knew that her putative husband was still married and legally unable to remarry.

In *Estate of Krone* (1948) 83 Cal.App.2d 766, a woman obtained an interlocutory divorce decree and remarried someone else 10 months later, unaware that she was required to wait one year. Later her divorce became final. She thought the marriage was valid, and when he died, she sought a determination of her rights. The court found that she had married in good faith. The court did not discuss whether it was reasonable for her to think her marriage was valid after she received notice that her divorce was final. (See *Sanguinetti v. Sanguinetti* (1937) 9 Cal.2d 95 (*Sanguinetti*) [putative status where woman believed marriage between interlocutory and final divorce decree was valid.]; *Estate of Foy* (1952) 109 Cal.App.2d 329 [same].)

In *In re Goldberg's Estate* (1962) 203 Cal.App.2d 402 (*Goldberg's Estate*), around 1943, a man told a woman he had separated from his first wife and was getting divorced. This was in 1943. They never discussed the subject again. The woman had been married twice before and divorced once, and she thought her second marriage had been annulled, although there was no documentary evidence of it. In March 1944, the two were married in Mexico in a ceremony performed in Spanish. Thereafter, they lived as husband and wife. In July 1944, there was an interlocutory divorce decree, and the man's divorce became final in July 1945. The woman testified that all the documents concerning marriages and divorces had been stolen during a trip to Alaska. The trial court found that the woman had married the man believing in good faith that both were eligible to marry. (*Id.* at pp. 404-405, 411.)

On appeal, the reviewing court observed that there was substantial evidence undermining the woman's claim that she thought her marriage was valid. The court

noted, however, that the trial court had observed her testify and believed her testimony that she thought her marriage had been annulled and his marriage had been dissolved. The court opined, "If [the woman] believed in good faith that a valid marriage existed, then in law she was a putative spouse. [Citation.] The belief held at the time of the alleged marriage is the determining factor . . . ." (*Goldberg's Estate, supra,* 203 Cal.App.2d at pp. 411-412.) The court further explained that although the woman's testimony was pretty "weak," "the testimony of a party to the action, if believed, is sufficient to support the judgment of a trial court even though contradicted by a great deal of contrary evidence. [Citation.] Whether or not the required belief was held in good faith by [the woman] *was a question of fact* to be resolved by the trial court. [Citation.]" (*Id.* at p. 412, italics added.) In this regard, the court opined that the conduct of their parties after their marriage and for the next 16 years supported the trial court's finding of a good faith belief. (*Ibid.*; see *Partrick v. Partrick* (1952) 112 Cal.App.2d 107 [where evidence concerning good faith belief is in conflict, reviewing court bound by trial court's finding].)

As these cases reveal, when the putative spouse doctrine was codified, courts treated putative status as a factual question concerning a party's state of mind: did he or she honestly and genuinely believe that the marriage was valid. The answer hinged in large part on the credibility of the alleged putative spouse. And in determining credibility, courts also considered the circumstances surrounding the putative marriage and the person's level of education, marital experience, intelligence, and even the conduct after the putative marriage. If the trial court found that a party harbored a good faith belief, and if there was substantial evidence to support it, the reviewing court upheld the finding of putative status.

For many years after codification, courts understood and applied the doctrine in this way.

For example, in *Neureither v. Workmen's Comp. App. Bd.* (1971) 15 Cal.App.3d 429 (*Neureither*), a referee disbelieved a woman who said she thought her prior marriage had been dissolved and denied her benefits as a putative spouse. Citing *Goldberg*, the reviewing court observed that it was bound by the trial court's factual determination of putative status when it was supported by substantial evidence.

In *Estate of Vargas* (1974) 36 Cal.App.3d 714, a man married a woman in 1929, and they raised a family. In 1942, while still married, the man married another woman, falsely assuring her that he was divorced. They too raised a family, although at one point he stopped spending nights with them. The trial court found that the second wife believed in good faith that her marriage was valid. In affirming, the court noted that her testimony "was not inherently improbable," "her credibility was a question for determination by the trial court," and its "acceptance of her testimony established her status as a putative spouse." (*Id.* at p. 717.)

In *Wagner v. County of Imperial* (1983) 145 Cal.App.3d 980 (*Wagner*), a particularly pertinent case, a couple, Sharon and Clifton, exchanged personal marriage vows, Sharon used Clifton's name, they held themselves out as husband and wife, and they had a child. When Clifton was killed in a car accident, Sharon sued for wrongful death under former section 377, alleging that she was a putative spouse. Although the trial court found that she harbored a good faith belief in the validity of her common law marriage, it denied her standing because her putative marriage had not been solemnized.[7] (*Id.* at p. 982.)

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[7] Under Family Code section 300, a valid marriage requires solemnization—i.e., a marriage ceremony performed by a person authorized to perform it. (See Fam. Code, §§ 400-401 [authorized persons].) No particular form of ceremony is required, but the parties must "declare, in the physical presence of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife." (Fam. Code, § 420, subd. (a).)

On appeal, the court reversed. The court noted that solemnization had never been a prerequisite for putative status. It further observed that the statutory definition of a putative spouse did not require solemnization. Rather, to qualify as a putative spouse, "Sharon must only prove she had a good faith belief her marriage to Clifton was valid; solemnization would be at most evidence of such good faith belief. . . . '[T]he essence of a putative spouse is a good faith belief in the existence of a valid marriage.' Here the superior court specifically found Sharon believed in good faith she was validly married to Clifton. The court's legal conclusion Sharon was not Clifton's putative spouse is contrary to such express finding of good faith. The court should have held Sharon was Clifton's putative spouse." (*Wagner, supra,* 145 Cal.App.3d at p. 983.)

***Vryonis and the Requirement of an Objective Standard***

With this understanding of how courts applied the doctrine before and after codification, we turn to *Vryonis, supra,* 202 Cal.App.3d 712, which added a further requirement for putative status: a party's good faith belief must also be objectively reasonable.[8]

The pertinent facts in *Vryonis* are as follows. A visiting Iranian professor at UCLA named Fereshteh alleged that she was the putative spouse of a resident professor named Speros. She was a Shia Muslim, and he was a nonpracticing member of the Greek Orthodox Church. They went out together, but her religion prohibited dating without a

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[8] Years before *Vyronis,* the Fifth Circuit in *Spearman v. Spearman* (5th Cir.1973) 482 F.2d 1203 upheld the trial court, which had applied an objective test. In finding no error, the Fifth Circuit concluded that an objective test was "perfectly consonant with the California decisions that have developed and applied the 'putative spouse' doctrine." (*Id.* at p. 1207.) The court acknowledged that no court had ever applied such a test but opined that no court that had discussed good faith had rejected or precluded such a test. (*Ibid.*)

*Spearman* is not binding on us, and we do not consider its seems-all-right analysis to be persuasive support for an objective test. (See *People v. Williams* (1997) 16 Cal.4th 153, 190 [decisions of lower federal courts are not binding authority].)

marriage or formal commitment. At Fereshteh's request, Speros agreed to a marriage authorized by her religion. Fereshteh performed the private ceremony in accordance with religious liturgical requirements. Later, she sought to solemnize the marriage in a mosque, but Speros refused. Nevertheless, he assured her that they were married. A couple of years later, however, he announced that he was going to marry another woman. Fereshteh publicly revealed their marriage, but he married the other woman anyway. Fereshteh then sought a determination of her rights as a putative spouse. (*Vryonis, supra*, 202 Cal.App.3d at pp. 715-716.)

The trial court found that Fereshteh had believed in good faith that she was validly married. It noted that Speros had agreed to be married, and they had a proper, albeit private, marriage ceremony authorized by her religion. Speros had also assured Fereshteh that they were married, although he did not think the marriage was valid under California law. Fereshteh was unaware of his views or California's requirements for marriage. (*Vryonis, supra*, 202 Cal.App.3d at pp. 715-716.)

On appeal, the *Vryonis* court rejected the trial court's factual finding of putative status. It held that Fereshteh's good faith belief, no matter credible and sincere, was simply not enough. Her belief had to be tested against an objective standard. It had to be objectively reasonable, that is, it had to rest on facts that would cause a reasonable person to believe the marriage was valid under California law. Noting that Fereshteh had made no effort to comply with California's statutory marriage requirements, the court concluded that a reasonable person would not have believed he or she was validly married after some private religious ceremony. Thus, because Fereshteh's belief was not objectively reasonable, she could not have held it in good faith and was not entitled to putative status. (*Vryonis, supra*, 202 Cal.App.3d at pp. 714, 720-722.)

We first observe that in imposing an objective test for putative status, the *Vryonis* court, in effect, gave appellate courts the opportunity to determine putative status de

novo. As noted, putative status had always rested on the trial court's factual finding concerning good faith belief, and that finding was upheld if supported by substantial evidence. Whether a good faith belief is objectively reasonable added a purely legal question to the determination of putative status, a question subject to independent review. (Cf. *City of Stockton v. Workers' Comp. Appeals Bd.* (2006) 135 Cal.App.4th 1513, 1524 ["whether the employee's belief was objectively reasonable . . . is a question of law that we determine independently"].)

Next we observe that appellate courts, including this court, have adopted *Vryonis,* 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. (See, e.g., *Centinela Hospital Medical Center v. Superior Court* (1989) 215 Cal.App.3d 971, 975 (*Centinela Hospital*); *Welch, supra*, 83 Cal.App.4th 1374, 1378; *Estate of DePasse* (2002) 97 Cal.App.4th 92, 107-108; *In re Marriage of Xia Guo and Xiao Hua Sun, supra,* 186 Cal.App.4th 1491, 1497.)

However, the time has come, belatedly, to review the analysis in *Vryonis,* and because we reject it, we shall do so in detail.[9]

In adding an objective test, the *Vryonis* court did not rely on the long history of putative spouse cases or cite cases suggesting that a good faith belief, by itself, was not enough to qualify for putative status. Nor did the court find a legislative intent to establish an objective test in the history of codification of the doctrine. Rather, the source of the test was the court's simple declaration that a " '[g]ood faith belief' is a legal term of art, and in both the civil and criminal law a determination of good faith is tested by an objective standard." (*Vryonis, supra*, 202 Cal.App.2d at p. 720.) In other words, the

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[9] We are not alone in rejecting *Vryonis*. (See Bassett, *California Community Property Law* (2011 ed.) § 2:8, pp. 71-78 [criticizing *Vryonis* and its progeny].)

phrase "good faith belief" necessarily and automatically incorporates an objective standard of reasonableness.

In support, the court quoted excerpts from *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839 (*Russ Bldg. Partnership*), *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913 (*Perdue*), *Theodor v. Superior Court* (1972) 8 Cal.3d 77 (*Theodor*), *People v. Ruggles* (1985) 39 Cal.3d 1 (*Ruggles*), and *In re Arias* (1986) 42 Cal.3d 667 (*Arias*).

These excerpts share two qualities. None suggests that "good faith belief" inherently means a belief that is also objectively reasonable; and they are irrelevant in determining what the requirements for putative status are or arguably should be.

From *Russ Bldg. Partnership, supra,* 44 Cal.3d 839, the court quoted this sentence: "A vested right requires more than a good faith subjective belief that one has it." (*Id.* at p. 853; *Vryonis, supra*, 202 Cal.App.3d at p. 720.) In that case, the Supreme Court held that the scope of a developer's vested right to complete a project depended on a permit condition, and the meaning of the condition posed a legal question of statutory construction. Thus, the developer's subjective understanding of the condition did not determine the scope of its vested rights.

Viewed in context, the excerpt does not imply that "good faith belief" imports an objective standard of reasonableness. The court did not mention or use that standard to evaluate the developer's subjective understanding of the permit condition. It simply interpreted the condition under the rules of statutory construction. Thus, it is illogical to assert that because the developer's subjective understanding of the condition did not determine its vested rights, a good faith belief should not be enough to establish putative status. On the contrary, prior to *Vryonis*, a good faith belief had always been enough. Finally, and ironically, we note that the excerpt does not separate or distinguish "good

faith" from "subjective belief"; rather, it expressly joins the two into a single phrase, implicitly acknowledging that a "good faith belief" can be purely subjective.

From *Perdue, supra,* 38 Cal.3d at page 924, the *Vryonis* court quoted the following passage: " 'The recent decision in *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128 offers an analogy to the present litigation. Hertz' car rental agreement permitted it to determine unilaterally the price charged for gas used to fill the tanks of returned rental cars. Plaintiff's suit alleged that Hertz fixed unreasonably high prices, in breach of its duty of good faith and fair dealing. Discussing this cause of action, the court said that "[*t*]*he essence of the good faith covenant is objectively reasonable conduct.* Under California law, an open term in a contract must be filled in by the party having discretion within the standard of good faith and fair dealing." [Citation.]' " (*Vryonis, supra,* 202 Cal.App.3d at p. 720.)

In *Perdue* (and the *Hertz* case it cited) the issue was whether a contracting party breached the implied covenant of good faith and fair dealing.[10] In *Storek & Storek, Inc. v. Citicorp Real Estate, Inc.* (2002) 100 Cal.App.4th 44 (*Storek*), the court explained that on the issue of breach, "the concepts of objective reasonableness and subjective good faith do merge. The Supreme Court has said that the implied covenant of good faith and fair dealing has both a subjective and an objective component—*subjective good faith* and objective fair dealing. 'A party violates the covenant if it subjectively lacks belief in the validity of its act *or* if its conduct is objectively unreasonable.' [Citation.] '[T]he covenant of good faith can be breached for objectively unreasonable conduct, regardless of the actor's motive.' [Citations.]" (*Id.* at pp. 61-62, fn. 13, first italics added, quoting

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[10] "In every contract there is an implied covenant of good faith and fair dealing that neither party will do anything which injures the right of the other to receive the benefits of the agreement." (*Brown v. Superior Court* (1949) 34 Cal.2d 559, 564; accord, *Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 43.)

*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 372-373.)

Viewed in light of this distinction between subjective intent (good faith) and objectively reasonable conduct (fair dealing), the excerpt does not mean that the subjective element of good faith must itself be objectively reasonable. Moreover, unlike the dual aspects of the implied covenant, putative status has always been defined only in terms of a good faith belief. Thus, this excerpt does not, in our view, establish that "good faith belief" incorporates an objective standard. Nor does the excerpt suggest that a good faith belief in the validity of a marriage should be tested against an objective standard of reasonableness.

The *Vryonis* court's reliance on excerpts from criminal cases is also misplaced. From footnote 13 in *Theodor, supra*, 8 Cal.3d at page 98, the court quoted this passage: " ' "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, house, papers, and effects,' only in the discretion of the police." [Citation.] "Good faith . . . is immaterial, and cannot serve to rehabilitate an otherwise defective warrant." [Citation.]" (*Vryonis, supra*, 202 Cal.App.3d at p. 720.) From *Ruggles, supra*, 39 Cal.3d 1, the court offered this sentence: " 'The probable cause determination that will validate a warrantless search of defendant's vehicle must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely the subjective good faith of the police officers.' " (*Vryonis, supra*, 202 Cal.App.3d at p. 720.) And from *Arias, supra*, 42 Cal.3d at page 696, the court reiterated " ' "[r]easonableness," of course, is an objective standard, requiring more than good faith.' " (*Vryonis, supra*, 202 Cal.App.3d at p. 721.)

In *Theodor, supra*, 8 Cal.3d 77, the Supreme Court decided what types of false or erroneous statements must be excised from a search warrant affidavit before it is tested for probable cause. The court held that if it was reasonable for the affiant to include such

statements, they could be considered; if it was unreasonable, the statements must be disregarded. The court further explained that in evaluating whether it was reasonable to include a particular statement, the affiant's good faith belief that it was accurate is irrelevant. In *Ruggles, supra*, 39 Cal.3d 1, the court held that a police officer's belief that he had probable cause for a search was irrelevant in determining its propriety because probable cause is tested by an objective standard. In *Arias, supra*, 42 Cal.3d 667, the court held that whether Youth Authority officials acted in good faith was irrelevant in determining whether the installation of listening devices in a chapel violated Penal Code section 2600, which prohibits restrictions on the right of religious expression unless the restriction is *reasonably* related to a legitimate penalogical interest.

Neither the excerpt nor the criminal cases they came from suggest that "good faith belief" incorporates an objective standard. In each of these cases, the objective standard was required by the Fourth Amendment and Penal Code section 2600.[11] In contrast, the definition of putative spouse has never required a *reasonable* good faith belief or even used the word "reasonable."

In sum, the *Vryonis* court's declaration that "good faith belief" necessarily incorporates an objective standard of reasonableness lacks any supportive authority. Moreover, even cursory research refutes that notion and reveals that long before *Vryonis*, courts have understood the concepts of good faith and reasonableness to be separate and distinct and, as a consequence, used different tests to evaluate them. (*Mattei v. Hopper*

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[11] The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (Italics added.)

Penal Code section 2600 provides, in relevant part, "A person sentenced to imprisonment in a state prison may during that period of confinement be deprived of such rights, and only such rights, as is *reasonably* related to legitimate penological interests." (Italics added.)

(1958) 51 Cal.2d 119, 123; *Guntert v. City of Stockton* (1974) 43 Cal.App.3d 203, 210-211 (*Guntert*); *Storek, supra,* 100 Cal.App.4th at p. 59.)

In *People v. Nunn* (1956) 46 Cal.2d 460, the court explained that "[t]he phrase 'good faith' in common usage has a well-defined and generally understood meaning, being ordinarily used to describe that *state of mind* denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation." (*Id.* at p. 468, italics added; see *Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal.4th 93, 106, fn. 3 [good faith is "commonly thought of as subjective in essence"]; *Brown Derby Hollywood Corp. v. Hatton* (1964) 61 Cal.2d 855, 858-860 [good faith belief is a subjective state of mind and can exist even if belief is erroneous]; *Heney v. Sutro & Co.* (1915) 28 Cal.App. 698, 702 [good faith means honestly, without collusion, fraud, knowledge of fraud, or intent assist in unlawful design]; cf. *Smith v. Selma Community Hosp.* (2010) 188 Cal.App.4th 1, 35 ["bad faith" is a subjective standard].)

Reasonableness, on the other hand, refers to an objective quality determined with reference to common experience and generally refers to something that is arrived at logically, enjoys factual support, and is not arbitrary or capricious. (*Guntert, supra,* 43 Cal.App.3d at pp. 203, 210-211; *Storek, supra,* 100 Cal.App.4th at p. 59.)

Thus, when the question is whether a party acted in good faith, the inquiry concerns the party's subjective state of mind and whether it is genuine and sincere or tainted by fraud, dishonesty, collusion, deceit, and unfaithfulness. Whether a reasonable person would have acted similarly under the same conditions is not relevant to that inquiry. On the other hand, when the question is whether a party acted reasonably, the inquiry *is* whether a reasonable person under the similar circumstances would have acted in the same way. In this context, whether the party acted in good faith is not relevant.

Both civil and criminal cases reflect the distinction between good faith and reasonableness and the difference in how each is determined.

In *Knight v. City of Capitola* (1992) 4 Cal.App.4th 918 (*Knight*) (disapproved on other grounds in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, fn. 7), this court reviewed an award of costs to the defendant under section 1038, which permits such recovery when a proceeding under the Tort Claims Act is not brought "with reasonable cause and a good faith belief that there was a justifiable controversy." (§ 1038, subd. (a).) We explained that "[g]*ood* faith, or its absence, involves a factual inquiry into the plaintiff's subjective state of mind [citations]: Did he or she believe the action was valid? What was his or her intent or purpose in pursuing it? A subjective state of mind will rarely be susceptible of direct proof; usually the trial court will be required to infer it from circumstantial evidence. Because the good faith issue is factual, the question on appeal will be whether the evidence of record was sufficient to sustain the trial court's finding." (*Id.* at p. 932.) On the other hand, "*Reasonable cause* is to be determined objectively, as a matter of law, on the basis of the facts known to the plaintiff when he or she filed or maintained the action. Once what the plaintiff (or his or her attorney) knew has been determined, or found to be undisputed, it is for the court to decide ' "whether any reasonable attorney would have thought the claim tenable . . . ." ' [Citations.] Because the opinion of the hypothetical reasonable attorney is to be determined as a matter of law, reasonable cause is subject to de novo review on appeal." (*Ibid.*; accord, *Langhorne v. Superior Court* (2009) 179 Cal.App.4th 225, 238-239 ["good faith mistake" under Welf. & Inst. Code, § 6601, subd. (a)(2) posed factual question reviewed on appeal for substantial evidence]; *Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Cas. & Sur. Co. of America* (2005) 133 Cal.App.4th 1319. 1338-1339 [penalty assessments under Bus. & Prof. Code, § 7108.5 and Civil Code, § 3260 based on lack of

a " 'good faith' " or " 'bona fide' " dispute involves personal qualities and a factual inquiry into subjective state of mind].)

*Corbett v. Howard Dodge, Inc.* (2004) 119 Cal.App.4th 915 (*Corbett*) is particularly pertinent here. It involved Civil Code section 1780, subdivision (e), which authorizes an award of reasonable attorney fees to a prevailing defendant if the trial court finds that "the plaintiff's prosecution of the action was not in good faith." The issue there was whether a subjective or objective test governed the determination of good faith. (*Corbett, supra,* 119 Cal.App.4th at pp. 920-921.) In holding that a subjective test applied, the court pointed out that this subjective test also applied in determining whether to award expenses under section 128.5 that a party incurred because of an opposing party's "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (§ 128.5, subd. (a); *Corbett, supra*, 119 Cal.App.4th at pp. 921-923.) The court further observed that "good faith" had uniformly been construed to require a subjective test involving a factual inquiry into the actor's actual state of mind. (*Corbett, supra*, 119 Cal.App.4th at p. 923.)

Criminal cases similarly distinguish the concepts of good faith and reasonableness. For example, it is settled that in certain circumstances, a good faith mistake of fact or law constitutes a defense when it negates the knowledge or specific intent element of a charged offense.[12] (*People v. Russell* (2006) 144 Cal.App.4th 1415, 1425-1427 (*Russell*); see Pen. Code, § 26, subd. Three; e.g., *People v. Eastman* (1888) 77 Cal. 171, 171-172; *People v. Holmes* (1910) 13 Cal.App. 212, 216-217; *People v. Bernhardt* (1963) 222 Cal.App.2d 567, 592.) In such situations, the good faith mistake need not be objectively reasonable, and it is error to instruct jurors that it must be. (*People v. Navarro* (1979) 99

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[12] " ' "A mistake of fact" is where a person understands the facts to be other than they are; whereas a "mistake of law" is where a person knows the facts as they really are, but has a mistaken belief as to the legal consequences of those facts.' [Citations.]" (*People v. LaMarr* (1942) 20 Cal.2d 705, 710.)

Cal.App.3d Supp. 1, 10; see Bench Notes to CALCRIM No. 3406 (2011) p. 1009 [do not instruct that good faith belief must be reasonable knowledge or specific intent element of offense].)

On the other hand, where the defendant is charged with a general intent crime or where consent is a defense to a sexual offense, a good faith mistake of fact or law or a good faith but mistaken belief in consent constitutes a defense only if it is also objectively reasonable. (See, e.g., *People v. Mayberry* (1975) 15 Cal.3d 143, 155; *People v. Cole* (2007) 156 Cal.App.4th 452, 483; *People v. Noori* (2006) 136 Cal.App.4th 964, 976-977; *People v. Vineberg* (1981) 125 Cal.App.3d 127, 137.)

Similarly, a good faith but mistaken belief in the need to defend oneself or another against imminent danger of great bodily injury will negate the malice element required for a murder conviction and thus can limit a defendant's culpability for an unlawful homicide to voluntary manslaughter. (*People v. Randle* (2005) 35 Cal.4th 987, 996-997, overruled on other grounds in *People v. Sarun Chun* (2009) 45 Cal.4th 1172, 1201; *People v. Blakeley* (2000) 23 Cal.4th 82, 88; *People v. Barton* (1995) 12 Cal.4th 186, 199.) Again, if the mistaken belief is held in good faith, it need not be objectively reasonable to have an exculpatory effect. On the other hand, if one reasonably believes in the need to defend oneself or another against imminent peril, one's conduct is justified and criminal. (See 1 Witkin & Eptstein, California Criminal Law (3d ed. 2000) Defenses, §§ 64, 65, pp. 400-401.)[13]

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[13] We acknowledge that in *People v. Stewart* (1976) 16 Cal.3d 133, the court rejected a proposed mistaken-belief instruction because it did not require a *good faith* belief. (*Id.* at pp. 138-140.) In dicta, the court explained, " 'Whether a claim is advanced in good faith does not depend solely upon whether the claimant believes he was acting lawfully; the circumstances must be indicative of good faith.' [Citations.] For example, the circumstances in a particular case might indicate that although defendant may have 'believed' he acted lawfully, he was aware of contrary facts which rendered such a belief wholly unreasonable, and hence in bad faith." (*Id.* at p. 140.)

Last, we observe that courts and the Legislature consistently demonstrate their understanding that good faith is distinct from reasonableness and does not incorporate an objective standard. For example, when courts intend to require conduct that is both in good faith and objectively reasonable, they do so expressly and unequivocally. (See, e.g., *United States v. Leon* (1984) 468 U.S. 897 [creating exception to the exclusionary rule based on good faith *and* objectively reasonable reliance on warrant]; *People v. Salas* (2006) 37 Cal.4th 967 [recognizing defense to sale of unregistered securities based on reasonable good faith belief that securities were exempt]; *People v. Mayberry, supra,* 15 Cal.3d 143 [recognizing defense to rape based on reasonable and good faith belief that victim consented]; *People v. Hernandez* (1964) 61 Cal.2d 529 [same re statutory rape based on good faith and objectively reasonable belief that victim was not underage]; *People v. Vogel* (1956) 46 Cal.2d 798 [same re defense to bigamy based on reasonable good faith belief in divorce]; *Baker v. American Horticulture Supply, Inc.* (2010) 186 Cal.App.4th 1059 [recognizing defense to willful failure to pay commission based on reasonable good faith belief that claim for commission is invalid].)

Likewise the Legislature uses express, unequivocal language when it intends to require conduct or belief that is both held in good faith and objectively reasonable. (See, e.g., §§ 1985.3, subd. (g) ["a reasonable and good faith attempt"]; 1985.6, subd. (f)(4) [same]; 2023.010, subd. (i) [same]; Civil Code, § 56.36, subd. (d)(1) [same]; Fin. Code,

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We do not read the court's comment to mean that to qualify as a *good faith* belief, it must be objectively reasonable. In our view, the court was merely explaining that if a person knows facts that refute a rational belief in something and willfully ignores those facts in order to maintain that belief, then that "belief" is not held honestly—i.e., in good faith. (See, e.g., *In re Marriage of Recknor* (1982) 138 Cal.App.3d 539 [party's knowledge that first marriage had not been dissolved before second marriage precluded finding of putative status]; *People v. Vineberg, supra,* 125 Cal.App.3d 127 [facts known to defendant negate alleged good faith belief]; *Miller v. Johnson, supra,* 214 Cal.App.2d 123 [while still married, plaintiff went to Mexico and went through farcical divorce and marriage procedures]; *People v. Proctor* (1959) 169 Cal.App.2d 269 [known facts negate actual belief].)

§ 50124, subd. (a)(4) [same]; Gov. Code, §§ 11507.7, subd. (a) [same]; 60373, subd. (b) [same]; 68092.5, subd. (c) [same]; Pen. Code, § 278.7 ["with a good faith and reasonable belief"]; Pub. Util. Code, § 588, subd. (b)(1) ["reasonable, good faith belief"]; compare with Fin. Code, § 5204, subd. (b) [requiring only good faith belief]; Gov. Code, § 8547.2 [same].)

In this case, we have found no evidence suggesting that when the Legislature codified the doctrine, it intended to require that an alleged putative spouse's belief in the validity of a marriage be both held in good faith and objectively reasonable. This is understandable because, as noted, the Legislature intended only to continue the judicial doctrine as it had been understood and applied.

At this point, it is helpful to recap our analysis and discussion. The original judicial definition of a putative spouse required only a good faith belief in the validity of a marriage. The Legislature codified that definition without intending to change it. The *Vryonis* court engrafted an objective test to the statutory definition based on the legally unsupported view that "good faith belief" necessarily incorporates an objective standard. However, good faith and objective reasonableness are separate and distinct concepts, and each is evaluated differently. The determination of good faith belief focuses on a party's subjective state of mind and evidence of honesty, sincerity, faithfulness, fraud, or collusion and not on whether the belief is objectively reasonable. And when courts and Legislature intend to require conduct or belief that is both held in good faith and objectively reasonable, they do so clearly.

In light of our discussion, we hold that the statutory definition of putative spouse in section 377.60 is clear and unambiguous. It requires a good faith belief in the validity of a marriage. Giving the statutory language its ordinary meaning, we hold that the phrase "believed in good faith" refers to a state of mind and a belief that is held honestly,

genuinely, and sincerely, without collusion or fraud. It does not require that the belief also be objectively reasonable.

We presume that the *Vryonis* court considered it sound policy to impose an objective test for putative status and give reviewing courts authority to independently review putative status determinations by trial courts. We observe that before the doctrine was codified, it was an equitable judicial doctrine, and courts were free to mold and modify it in response to changing social conditions and evolving notions of fairness and justice. However, once the doctrine became a creature of statute, deciding policy and changing the definition of putative spouse and the application of the doctrine in response to it became the sole prerogative of the Legislature.

In our view, the *Vryonis* court intruded upon the Legislature's prerogative. It is a well-settled rule that courts must not add provisions to a statute under the guise of statutory interpretation to accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*People v. Morris* (1988) 46 Cal.3d 1, 15, disapproved on other grounds in *In re Sassounian* (1995) 9 Cal.4th 535, 543-544, fn. 5; *People* v. *One 1940 Ford V-8 Coupe* (1950) 36 Cal.2d 471, 475; see § 1858.) Here, the court's addition of objective reasonableness to the statutory requirement of a good faith belief amounted to judicial legislation without even an attempt to disguise it as statutory construction.

We acknowledge that courts have uncritically accepted *Vryonis* and applied its objective test for many years. However, this history does not automatically give its analysis legitimacy or forever protect it from critical scrutiny, and we are not bound to follow it. (See 9 Witkin, California Procedure (5th ed. 2008) Appeal, § 498, pp. 558-559.) Although stare decisis is a sound rule of public policy and serves the interests of certainty, stability, and predictability in the law, "it nevertheless should not shield court-created error from correction." (*Cianci v. Superior Court* (1985) 40 Cal.3d 903, 924.)

Indeed, the field of legal history is littered with reexamined and then discarded judicial holdings that had been binding precedent for years. (E.g., *People v. Mendoza* (2000) 23 Cal.4th 896, 924 [reexamining and rejecting the holding in *People v. McDonald* (1984) 37 Cal.3d 351]; *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 510 [same re holding in *Alexander v. State Personnel Bd.* (1943) 22 Cal.2d 198]; *Freeman & Mills, Inc. v. Belcher Oil Co.* (1995) 11 Cal.4th 85, 93 [same re holding in *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752].)

Here, the policy of stare decisis carries little weight. Despite its widespread acceptance, *Vryonis* did not solely occupy the field. Rather, its holding created a conflict with prior cases holding that putative status was a factual question that required only a finding of good faith belief, which was upheld if supported by substantial evidence. (E.g., *Goldberg's Estate, supra,* 203 Cal.App.2d 402; *Neureither, supra,* 15 Cal.App.3d 429; *Wagner, supra,* 145 Cal.App.3d 980; see *Centinela Hospital, supra,* 215 Cal.App.3d at pp. 975-976 [recognizing conflict.)

Finally, on the issue of legislation, we acknowledge that after *Vryonis*, the Legislature enacted section 377.60 and amended it a few times. (See Stats. 1992, ch. 178, § 20, p. 893; Stats. 1996, ch. 563, § 1, p. 3143; Stats. 1997, ch. 13, § 1, p. 31; Stats. 2001, ch. 893, § 2, p. 7283; Stats. 2004, ch. 947, § 1, p. 7297.)[14] These circumstances implicate the rule of statutory construction "that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment.

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[14] After *Vryonis*, the Legislature also repealed former Civil Code section 4452, the original codification of the doctrine, and reenacted it as section 2251 of the Family Code. (Stats. 1992, ch. 162, §§ 3 & 10, p. 464.)

[Citations.]" (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734-735.) However, we find the presumption inapplicable.

As noted, *Vryonis* created a conflict with prior cases holding that putative status required only a good faith belief and not a good faith *and reasonable* belief. When there is an unresolved conflict in the judicial holdings concerning the application of a statute, its reenactment cannot reasonably be deemed legislative acquiescence in either side of the conflict.[15]

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[15] Although our discussion focuses solely on the addition of an objective test, the *Vryonis* court added another requirement. The court opined that it was not enough to believe in the validity of *a* marriage. Rather, to qualify for putative status, one had to believe in good faith that the marriage complied with California's statutory requirements for a lawful marriage. Turning to the facts before it, the court reasoned that because Fereshteh had made no attempt to comply with the statutory prerequisites for lawful marriage, she could not have actually believed that her private religious ceremony had resulted in a lawful California marriage. (*Vryonis*, *supra*, 202 Cal.App.3d at p. 722-723.)

We need not analyze the court's reasoning because here, the record establishes that Nancy and Robert attempted to comply with the statutory requirements. We note, however, that at least one commentator—Professor Bassett—finds this aspect of *Vryonis* particularly troubling. He questions the equation of a belief that a marriage is valid, as required by statute, with the belief that a marriage is *lawful* in that it complied with the California's statutory requirements. He opines that this equation considerably narrows the traditional scope of the putative spouse doctrine and suggests that ignorance of the statutory requirements and the inevitable failure to comply with them preclude a good faith belief. According to Professor Bassett, this approach to determining putative status is overly formalistic and inconsistent with the equitable origin and purpose of the doctrine. (Bassett, *California Community Property Law, supra,* § 2:8, pp. 74-79.) Professor Bassett's critique raises legitimate concerns about the propriety of this additional requirement.

We note that while the circumstances surrounding a marriage are relevant in determining good faith belief, ignorance of the law and failure to comply with statutory prerequisites have not invariably precluded a finding of good faith belief and putative status. (See, e.g., *Vallera, supra*, 21 Cal.2d at pp. 682-684 [no effort to get married in California]; *Wagner, supra*, 145 Cal.App.3d 980 [solemnization not a prerequisite to putative status]; *Monti, supra*, 135 Cal.App.3d at pp. 52-54, 56 [no effort to comply with California law]; *Sancha v. Arnold* (1952) 114 Cal.App.2d 772 [putative status based on common law marriage]; *Santos v. Santos, supra*, 32 Cal.App.2d 62 [putative status despite inability to speak English and ignorance of marriage laws].)

***Error in Granting Summary Judgment***

Given our rejection of *Vryonis,* we conclude that the trial court erred in applying an objective standard to determine Nancy's putative status and granting summary judgment on the ground that a belief in the validity of her four-year marriage to Robert was not objectively reasonable.[16] That error, however, does not necessarily require reversal. On appeal "[w]e need not defer to the trial court and are not bound by the reasons in its summary judgment ruling; we review the ruling of the trial court, not its rationale. [Citation.]" (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 630.)

Again, the issue before the trial court was not whether there were triable issues concerning whether Nancy's belief was objectively reasonable. The determinative question was whether there were triable issues concerning whether Nancy believed in good faith that her marriage was valid. We conclude that there were.

Whether Nancy harbored a good faith belief involves a factual inquiry into her subjective state of mind: what did she know and believe; and was her belief honest, sincere, and genuine or tainted by fraud or collusion. (See *Knight, supra*, 4 Cal.App.4th at p. 932.) The determination of putative status also involves an inquiry into the circumstances before, during, and after the marriage.

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For example, suppose in *Vryonis* that Fereshteh had lived with Speros for many years after their religious marriage, raised a family, and accumulated a substantial amount of property, and he then decided to lawfully marry one of his students. In our view, denying Fereshteh a share of the property as a putative spouse because she was unaware of and thus made no attempt to comply with California's marriage laws would seem inconsistent with the fundamental equitable purpose of the doctrine: to protect the expectations of innocent parties to a marriage that later proves to be invalid.

[16] Although the trial court also relied on *Welch, supra*, 83 Cal.App.4th 1374, that case simply applied *Vryonis* to deny an alleged putative spouse standing to sue for the wrongful death of the man with whom she had lived as husband and wife for 30 years. Simply put, as goes reliance on *Vryonis*, so goes reliance on *Welch.*

In her declaration, Nancy said she believed her marriage was valid. She stated that Robert told her he was getting a divorce from Christine and then refused to discuss it any further. (Cf. *Goldberg's Estate, supra*, 203 Cal.Appl.2d 402 [man told woman that he was separated and getting a divorce].) She said she did not read the marriage license closely, implying that she did not know that Robert had falsely represented his marital history. She stated that she did not read the final divorce papers that he received and she then forwarded to his union. (Cf. *Sanguinetti, supra,* 9 Cal.2d 95 [woman believed her marriage was valid although divorce not yet final]; *Estate of Foy, supra,* 109 Cal. App.2d 329 [same].) Nancy also asserted, in essence, that if she had known that there was a problem before her wedding she would have postponed it; and if she had later learned that the wedding took place a few months too soon, they would have gotten remarried after the divorce became final.

If true, these statements could support a finding of good faith belief and establish putative status. However, the truth of Nancy's statements depends on her credibility. The credibility of a declarant, in general, cannot be assessed adequately in a motion for summary judgment; it is more appropriately determined through actual examination and cross-examination, during which the trier of fact can hear her testimony, observe the witness's demeanor, and decide whether the witness is being truthful. (See *Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 856; *McCaskey v. California State Auto. Assn.* (2010) 189 Cal.App.4th 947, 987, fn. 24; *Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 539; see also 437c, subd. (e).)

Defendant's argument below and the trial court's reasoning were that given the misrepresentation in the marriage license that Robert had no prior marriages, a reasonable person could not believe in good faith that the marriage was valid. As we have explained, whether a reasonable person would harbor a belief is irrelevant. Therefore, that theory does not support denial of putative status on summary judgment.

Although that theory is not viable, it could still be argued that even if, as Nancy stated, she did not read the license carefully, her failure to do so and her signing it despite the misrepresentation reflect a lack of diligence that, as a matter of law, negates a good faith belief. However, we reject this theory as a ground for granting summary judgment as well.

Although a marriage license is a requirement for a valid marriage (Fam. Code, §§ 300, 350), some defects in a marriage license, including intentional misrepresentations, do not invalidate a subsequent marriage. (See *id.*, § 306.) In *Argonaut Ins. Co. v. Industrial Acc. Com.* (1962) 204 Cal.App.2d 805, the court held that although the applicants knowingly provided false names on their marriage license, their subsequent marriage, which was properly solemnized, was valid. (*Id.* at pp. 809-810.)

It follows that one who provides false information on a marriage license can still believe in good faith that his or her marriage was valid because the misrepresentation does not necessarily preclude one from believing in good faith that a later, properly solemnized marriage was valid. This would especially be so where, as here, a party claims that he or she was unaware of the misrepresentation on the license.

Moreover, even if a marriage was rendered void for some reason completely unrelated to the misrepresentation in a license such as consanguinity, we would fail to see why the misrepresentation in the license should preclude putative status, where the parties solemnized the marriage and thereafter held themselves out as husband and wife, raised a family, and acquired property together. In our view, it would be anomalous and unfair to ignore the defects in a license when a marriage is otherwise valid but use the defects to deny putative status to parties whose marriage is rendered void for some reason unrelated to the defective marriage license.

It is true that when a party knows facts that are inconsistent with a rational belief in the validity of a marriage—e.g., actual knowledge that a previous marriage has not

been dissolved—that very knowledge can undermine an honest and sincere belief in the validity of the marriage. However, knowing that a license is inaccurate is not necessarily the same as knowing there is a legal impediment to a lawful marriage and not necessarily inconsistent with a good faith belief in the validity of a later properly solemnized marriage.

In short, if knowing that a marriage license is defective does not necessarily preclude putative status, then we do not consider the failure to read a license and discover an inaccuracy or misrepresentation necessarily to be so inconsistent with a good faith belief in the validity of a marriage as to preclude putative status.

Here, the license was inaccurate and misleading because it represented that Robert had no previous marriage. This inaccuracy does not necessarily establish an impediment to marriage, and whether Nancy knew about it is a triable issue of fact. The more pertinent question, however, is whether Nancy knew that Robert's divorce was not final before they got married. That too was a triable issue of fact.

In sum, having independently reviewed the pleadings in support of and opposition to the motion for summary judgment, we find triable issues of fact that preclude summary judgment on the issue of Nancy's putative status.

## VII. DISPOSITION

The judgment is reversed. Plaintiff is entitled to her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.

*Ceja et al. v. Rudolph & Sletten, Inc.*
**H034826**

| | |
|---|---|
| Trial Court: | Santa Clara County Superior Court<br>Superior Court Nos.: CV112520 and CV115283 |
| Trial Judge: | The Honorable<br>Mary Jo Levinger |
| Attorneys for Plaintiffs and Appellants Nancy Ceja et al.: | The Arns Law Firm<br><br>Robert S. Arns<br>Jonathan E. Davis<br>Steven R. Weinmann |
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***Ceja et al. v. Rudolph & Sletten, Inc.***
**H034826**

State of California )
County of Los Angeles )
)

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**On** 09/09/2011 declarant served the within: Opening Brief on the Merits **upon:**

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