No. H034826

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IN THE

Supreme Court 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 Court of Appeal, Sixth Appellate District No. H034826
Santa Clara County Superior Court, Hon. Mary Jo Levinger,
Case Nos. CV112520 and CV115283

ANSWER BRIEF ON THE MERITS

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I ISSUE PRESENTED

The issue before this court is whether or not the Sixth District correctly held that a person seeking standing as a putative spouse under Code of Civil Procedure, section 377. 60, subdivision (b) *need not* demonstrate that her good faith belief in the validity of her marriage to the decedent was also "objectively reasonable" under section 377.60(b), which states that "[a]s 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."

II SUMMARY OF THE CASE

This matter is on appeal from the reversal of a grant of summary judgment in a wrongful death suit brought by Plaintiff and Appellant, Nancy Ceja, against Defendant and Respondent, Rudolph & Sletten, Inc., which employed her husband, Robert Ceja, at the time of his death in a workplace accident on September 19, 2007.

Nancy Ceja's situation presents a classic example of a person who believed in good faith that she was married. She and Robert had married, nearly four years before his untimely death, in a formal ceremony in front of 250 guests, in which she wore a white dress, and in advance of which they had obtained a marriage license. (Appellant's Appendix ("AA") at 000425.) She changed her last name to Ceja; they lived together; held themselves out as husband and wife; and had a joint checking account. (AA 000427.) It was only after Robert's death that she discovered that his prior marriage had not been formally dissolved until one month after her own wedding with Robert. Therefore, she filed this action as his putative spouse under section 377.60(b). (AA 000001.)

Respondent Rudolph & Sletten, Inc. (hereafter "R&S") filed a Motion for Summary Adjudication arguing that Nancy had no standing to maintain the case under section 377.60(b) because she lacked the requisite good faith belief in the validity of her marriage to Robert. (AA 000058.) In support of its motion, R&S asserted three facts: 1) that Nancy was aware of Robert's prior marriage; 2) that Robert had incorrectly stated on their marriage license application that he had not been previously married; and 3) that five months *after* she married Robert, in February of 2004, Nancy faxed a copy of the Notice of Entry of Judgment in Robert's divorce action with his prior wife to his union trust fund. (*Id.*) R&S neither alleged nor offered any proof that Nancy was actually aware, as of the date she married Robert, that he was not divorced from his prior spouse; nor any evidence that *Nancy* misrepresented anything on the marriage license application; or that at any time she read the Notice of Entry of Judgment prior to faxing it to the union trust fund or understood its implications.

The trial court granted R&S's summary adjudication motion, relying on *Marriage of Vryonis* (1988) 202 Cal.App.3d 712, and holding that Nancy was not Robert's putative spouse because she did not have an "objectively reasonable" belief that her marriage to Robert was valid. The Court of Appeal for the Sixth Appellate District reversed, holding that the trial court applied the wrong test to determine whether or not an alleged putative spouse "believed in good faith" that the marriage was valid so as to have standing to maintain a wrongful death cause of action under section 377.60(b). It held that:

> the issue before the trial court was 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.

(*Ceja v. Rudolf & Sletten, Inc.* (2011) 194 Cal. App. 4th 584, 587 [emphasis in original].)

R&S petitioned for review and this Court granted review on August 10, 2011. The Sixth District properly interpreted section 377.60(b) as not including an "objectively reasonable" standard, but instead held that the "good faith" of the person seeking putative spouse status was to be determined from her subjective view—taking into account the circumstances which might affect her credibility. Thus, the Court of Appeal rejected a gloss which had been put on the statute by cases following the opinion in *Vryonis*—a Family Law case, not decided under the wrongful death statute. For purposes of the wrongful death statute, it is not necessary for the Court to invent some rigid test based on the hypothetical actions of a "reasonable man" or "reasonable woman;" instead, it may grant putative spouse status where the applicant has a "good faith belief" as provided in section 377.60(b).

Nancy Ceja here represents all Californians who may one day need to rely upon their status as a putative spouse. The standard reaffirmed below is not an entirely subjective one. A good faith belief must be based in part on the factual circumstances and the credibility of the putative spouse in light of such facts. Affirming the Court of Appeal's decision here will uphold the principles of fairness, and recognition of human fallibility, that are embodied in the "good faith" requirement in both section 377.60(b) and in the long history of California jurisprudence with respect to marriage and the protection of those who in good faith believed they were married.

Under the law and policies of this State, Nancy Ceja and those like her have the right to have their good faith tested by a trier of fact and not decided by law based on assumptions regarding what a hypothetical "objectively reasonable" person would have done given a set of facts. They should be allowed their day in court. The decision of the Court of Appeal

should be affirmed.

III FACTUAL BACKGROUND OF NANCY CEJA'S MARRIAGE

Robert Ceja was married to his first and later ex-wife, Christina Ceja, in Nevada in 1995. (AA 000118.) In January of 2001, he sought to obtain primary custody of their children. (AA 000118.) They entered into a joint custody arrangement. (AA 000118.) Nancy and Robert began living together in 2001. (AA 000119.) Three days before their wedding, on September 24, 2003, Robert and Nancy obtained a "License and Certificate of Marriage" from the County of Santa Clara, California. (AA 000119.)

Nancy believed that the marriage at the time was entirely valid. (AA 0000425.) Nancy had a good faith belief that she was having a valid and legal marriage when she had a ceremony in a white dress in front of 250 friends and relatives in Salinas, California on September 27, 2003, almost four years to the day before Robert's death. (AA 425.) At all times, she believed that she had a valid marriage to Robert. (AA 000425.) She believed she was the lawfully wedded wife of Robert from September 27, 2003 to the date of the incident. (AA 000426.) Had Nancy doubted the validity of her marriage to Robert, they would have simply redone the ceremony. (AA 000427.) After the wedding, she took Robert's last name, held herself out to be his wife at all times, and believed that they were validly married up to and after the day on which Robert was killed. (AA, 426, 427.)

Nancy and Robert did the following acts to hold themselves out as a married couple: 1) She changed her last name to Ceja; 2) they had a joint checking account; 3) they lived together as husband and wife; 4) they filed taxes as married but filing separately; 5) they told anyone that asked that they were married; 6) they wore wedding rings indicating their marriage

together. (AA 000427.)

Upon learning that her marriage was invalid, Nancy Ceja filed this wrongful death action as the putative spouse of Robert Ceja. (AA 00001.)

IV ARGUMENT

A. The Determination Of Who Is A "Spouse" Is Of Fundamental Statewide Importance.

1. The determination of putative spouse status is of great importance to Nancy Ceja.

By engrafting onto the second sentence of section 377.60(b) a requirement that it does not contain, the trial court denied Nancy Ceja the opportunity to present evidence at trial of her good faith belief in the validity of her marriage to Robert. Because it held that certain circumstantial evidence indicated that her belief was not *objectively* reasonable, the trial court, as a matter of law, annulled Nancy's proud and cherished life and legacy as Robert's wife. The Sixth District held that the test stated in the second sentence of section 377.60(b) contains no objective test, and if this holding is affirmed, Nancy will be permitted to continue this action and present her evidence at trial as to her good faith belief in the validity of her marriage. However, the issue of who qualifies as a putative spouse has implications far beyond this case.

2. Putative spouse status arises in many contexts.

Putative spouse status arises in many other contexts in addition to wrongful death actions, including, among others, cases involving inheritance rights, Workers' Compensation benefits and private insurance benefits. (See *Estate of Leslie* (1984) 37 Cal.3d 186, 197 [entitlement to state death benefits]; *Brennfleck v. Workmen's Comp. App. Bd.* (1970) 3 Cal.App.3d 666 [entitlement to Workers' Compensation benefits]; and *Aetna Life Ins. Co. v. Primofiore* (1978) 80 Cal.App.3d 920 [private

insurance benefits].)

Perhaps the area in which the issue arises most often is family law cases. Family Code, section 2251, subdivision (a) authorizes the court to find that a party to a void or voidable marriage who "believed in good faith that the marriage was valid" and based thereon, to "[d]eclare the party or parties to have the status of putative spouse." This standard is the same as that stated in section 377.60(b). Under Family Code sections 2251 through 2254, once a party has been declared a putative spouse, she is entitled to a division of property acquired during the void or voidable marriage in the same manner as the division of community or quasi-community property, and to seek support, child custody and attorney fees in the action, rights that she would not have unless she was declared to be a putative spouse.

In fact, "[t]he purpose of the [putative spouse] doctrine is to protect the 'innocent' party or parties of an invalid marriage from losing community property rights." (*Marriage of Xia Guo and Xiao Hua Sun* (2010) 186 Cal.App.4th 1491, 1496.) Many Californians have claimed putative spouse status in order to protect their property and support rights, and courts have long granted them status on a finding of a good faith belief in the validity of their marriage.

The rights that flow from the determination that one is a "spouse" are fundamental to the lives of every Californian. "The right to marriage and procreation are now recognized as fundamental, constitutionally protected interests." (*Conservatorship of Valerie N.* (1985) 40 Cal.3d 143, 161.)

The issue is thus not simply whether or not Nancy is a putative spouse; it is also whether she and the many other Californians with a good faith belief in the validity of their marriages are entitled to the social approval and panoply of benefits flowing from their status as "spouses." This Court should affirm the Sixth District Court of Appeals panel, disapprove *Vryonis* at least as applied in cases under section 377.60(b) and hold that the test for

putative spouse status is as stated in the relevant statute: that Nancy Ceja "believed in good faith that the marriage to the decedent was valid." (Code Civ. Proc., section 377.60, subd. (b).)

B. The Sixth District Correctly Held That There Are Triable Issues Of Fact As to Nancy's Good Faith Belief Under The Statute At Issue.

For the following reasons, the Sixth District correctly interpreted section 377.60(b) and held that there are triable issues of fact as to whether Nancy Ceja had a good faith belief in the validity of her marriage to Robert there under, and she urges this Court to so hold.

1. This Court must apply statutes as written.

California courts must interpret statutes as written and do not insert provisions in them that are not there. "(S)eparation of powers principles compel courts to effectuate the purpose of enactments, and limit judicial efforts to rewrite statutes even where drafting or constitutional problems may appear." (*People v. Bunn* (2002) 27 Cal.4th 1, 16 [citation omitted].) For this reason, "the power of this court is to do no more than construe statutes as written." (*Barton v. Panish* (1976) 18 Cal.3d 624, 630) The wrongful death statute, section 377.60(b) only states a putative spouse is one "who is found by the court to have believed in good faith that the marriage to the decedent was valid." In a summary judgment proceeding, evidence showing triable issues of fact that the putative spouse "believed in good faith that the marriage to the decedent was valid" is all that is required, nothing more.

2. Section 377.60's definition of good faith contains no objective element.

This case is about the meaning of the second sentence of section

377.60(b): "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." This sentence requires the Court to hold that a person claiming putative spouse status under the section "believed in good faith" she is a putative spouse because the standard *contains no objective requirement.* It requires only a finding of "belief." In its opinion, the Sixth District held that:

> [T]he 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.

(*Ceja v. Rudolf & Sletten, Inc.* (2011) 194 Cal.App.4th 584, 605 (hereafter *Ceja*).)

The putative spouse doctrine is rooted in the community property system, and its intent was to "protect the expectations of innocent parties" when a marriage dissolves. (*Ceja, supra,* 194 Cal.App.4th at p. 598., citing *Schneider v. Schneider* (1920) 183 Cal. 335, 336–338 ; *Caldwell v. Odisio* (1956) 142 Cal. App. 2d 732, 736.) The innocent parties referred to by the court are those who, like Nancy Ceja, believe they are part of a valid marriage and tragically lose the person to whom they have made the most solemn and profound commitment two people can make to one another.

3. *Vryonis* improperly added an objective requirement to the longstanding test of putative marriage.

The trial court granted summary judgment primarily based on *Marriage of Vryonis* (1988) 202 Cal.App.3d 712, which is a marital dissolution case. In its opinion, the Sixth District panel reviewed the propriety of that analysis and concluded that *Vryonis* "added a further requirement for putative status: a party's good faith belief must also be objectively

reasonable." (*Ceja, supra*, 194 Cal.App.4th at p. 596.)

The Court of Appeal analyzed the cases on which *Vryonis* relied in great detail, and concluded "that courts and the Legislature consistently demonstrate their understanding that good faith is distinct from reasonableness and does not incorporate an objective standard," and further held that "[t]he *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." (*Id.* at p. 605.) It thus concluded that the trial court erred in relying on *Vryonis* rather than the myriad of other cases that defined "putative spouse" as requiring only a good faith belief in the validity of the marriage because *Vryonis* did not correctly state the standard.

Nancy Ceja completely agrees with the Sixth District panel's analysis of *Vryonis* and its inapplicability to this case. Notably, in support of its holding that "good faith belief must be objectively reasonable," *Vryonis* did not cite a single family law case. (See *Marriage of Vryonis* (1988) 202 Cal. App. 3d 712, 720.) Thus, it clearly engrafted an objective element onto the longstanding definition of "good faith belief" in the validity of a marriage *for purposes of dissolution cases*. This Court has long held to the contrary that a "putative" marriage existed "where one or both parties to an invalid marriage have in good faith believed such marriage to be valid...." (*Sanguinetti v. Sanguinetti* (1937) 9 Cal.2d 95, 99.)

The putative spouse doctrine was codified in its modern form in 1969, as part of the now-former Family Law Act. (*Ceja, supra*, 194 Cal. App.4th at p. 591.) The *Ceja* court found that "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." (*Id.*, citing *In re Marriage of Monti* (1982) 135 Cal.App.3d 50, 55; *In re Marriage Guo & Sun* (2010) 186 Cal.App.4th 1491, 1500; *County*

of Los Angeles v. Frisbie (1942) 19 Cal.2d 634, 644) The *Ceja* court was guided by the equitable purpose of the doctrine when they opted to reinterpret the *Vryonis* decision, which they held was out of line with both precedent and legislative intent. (*Ceja, supra,* 194 Cal.App.4th at p. 591.)

The Court of Appeal below explained that it interpreted the pre-codification cases as focusing mainly on the subjective component of a good faith belief, such that they treated it as a "factual question concerning a party's state of mind," and that "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." *Ceja, supra,* , 194 Cal.App.4th at 595. The Court of Appeal here concluded from this that "[i]f 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." (*Id*). The record in the trial court clearly shows there was substantial evidence to support a finding that Nancy harbored a good faith belief in the validity of her marriage.

R&S argues that none of the cases before 1969 noted by the Court of Appeal in *Ceja* affirmatively held *in the putative spouse context* that "a putative spouse could have a 'good faith' belief even if that belief was objectively unreasonable," or conversely, had not "explicitly rejected an objective standard." (R&S Opening Brief On the Merits at 19, 20.) While it is true that no case can be said to "hold" beyond what it actually decides, it is also true that the "question [of whether something was objectively reasonable] never came up" in *Figoni v. Figoni* despite the fact that the court there *upheld a finding of putative spouse status* in a case which would clearly have failed an "objective reasonable" test—the parties were unaware that an uncle-niece marriage had been illegal for over 50 years. (*Figoni v. Figoni* (1931) 211 Cal. 354.) Clearly, if the parties were to be

charged with knowledge of and attempted compliance with California law under R&S's proposed objectively reasonable standard, the "question" of what was objectively reasonable would have come up in *Figoni.* That the putative spouse status was upheld on the grounds of "substantial evidence" of the parties' actual ignorance of the law is certainly evidence that there was no "objectively reasonable" standard at the time.

Conversely, in *Flanagan v. Capital Nat. Bank of Sacramento* (1931) 213 Cal. 664, also cited by the Court of Appeal in *Ceja*, the California Supreme Court affirmed a denial of putative spouse status. In doing so, the court noted the Plaintiff's experience in California and the fact that "[e]verything in the record suggests she viewed the relationship not as a marriage, but as a satisfactory substitute for a marriage." (*Id.* at p. 667.) Again, the Supreme Court would not have needed to delve into whether she was in fact "experienced" in what constitutes a marriage, if her belief would have failed an "objectively reasonable test." The Court was ruling based on the plaintiff's lack of a subjective belief, or as the Court of Appeal below held, her state of mind.

Prior to the enactment of section 377.60(b), it was held that a plaintiff could be considered a putative spouse in circumstances somewhat similar to those here, based on the existing law as to who could inherit property. In *Kunakoff v. Woods,* the plaintiff brought a wrongful death action against the defendants, who brought a motion to dismiss based on their claim that the plaintiff lacked standing because she was not an "heir" of the decedent. (*Kunakoff v. Woods* (1958) 166 Cal.App.2d 59 (hereafter *Kunakoff*).) The undisputed facts revealed that the plaintiff and the decedent participated in a marriage ceremony in a church of which they were members, which was performed by a minister of that faith. (*Id.* at 59) Unlike Nancy and Robert Ceja, however, they obtained no marriage license "and no other ceremony or act was done to validate the marriage." (*Id.* at 61.) Until the decedent's

death, they "lived publicly and avowedly as husband and wife," having one child. (*Id.*) The trial court granted the defendants' dismissal motion because at the time, section 377 authorized only "heirs or personal representatives" to maintain a wrongful death cause of action, and it held that the plaintiff was not the decedent's "heir." (*Id.*)

The Court of Appeal for the Second District reversed. Referring to the meaning of "putative" or "de facto" spouse for family law and probate law purposes, because prior to 1977, the section contained no definition of "putative spouse," it concluded that "[a] putative marriage is a matrimonial union solemnized in due form and celebrated in *good faith* by at least one of the parties but which, by reason of some legal infirmity, is either void or voidable." (*Id.* at 63.)(emphasis added) That is *precisely* the definition of Nancy Ceja's marriage in this case, and the test used in *Kunakoff* closely echoes the definition under section 377.60. Furthermore, the court in *Kunakoff* also noted that the putative wife had a "very elementary education," and that the wedding had been set up by the couple's parents and neither she nor her husband were told that a license or marriage certificate were required. (*Id.* at 67, n.1). Thus, the court was clearly employing a subjective standard as to good faith belief.

Furthermore, in *Estate of Leslie,* only six years before *Vryonis* was decided, this Court held that "[b]y definition, a putative marriage is a union in which at least one partner believes in good faith that a valid marriage exists." (*Estate of Leslie*, *supra,* 37 Cal.3d at 197.)

4. Nancy Ceja is a "putative spouse" under section 377.60(b) regardless of what *Vryonis* held in the marriage dissolution context.

Even if this Court were to conclude that *Vryonis*' holding was correct in its holding, that does not end the analysis. The right to maintain a

wrongful death cause of action is wholly statutory. (*Kunakoff v. Woods* (1958) 166 Cal.App.2d 59, 62.) This Court can hold that the standard espoused in *Vryonis* as to martial dissolution cases, is not applicable to the statute in question, section 377.60 which provides that "*[a]s 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." (Emphasis added). Thus, this Court could simply hold that Nancy is a putative spouse under the definition provided in section 377.60(b). Nancy Ceja is clearly a putative spouse for purposes of this action because she meets the test stated in section 377.60(b), regardless of what *Vryonis* held in employing the definition of putative spouse in a divorce case that was interpreting a family law statute (then-current Civil Code, section 4522). The wrongful death statute is clear on its face.

The Sixth District panel in *Ceja* noted that the Legislature enacted and amended section 377.60(b) after the *Vryonis* decision, and that this implicated the rule of statutory construction that the Legislature was presumed to have been aware of and acquiesced in "the previous judicial construction" of the statute at issue. It found this presumption inapplicable because *Vryonis* created a conflict in existing case law; however, it could have as easily found it inapplicable because *Vryonis* was not a "previous judicial construction" of section 377.60, but rather of a Family Law Act statute, specifically then-current Civil Code, section 4452. Thus, unlike in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 735 where "the legislative documents establish[ed] beyond question that the Legislature was well aware of" a construction of the statute, there is no such unmistakable evidence here that the Legislature was aware of the *Vryonis* decision and tacitly approved of its construction of §377.60(b).

C. Even If Objective Standards Are To Be Applied, Nancy Ceja's Status Cannot Be Decided On Summary Judgment.

Summary judgment is a drastic procedure, and should not be used as 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) Clear pre-*Vryonis* precedent held that a grant of putative status only followed a factual examination of a party's state of mind to determine if the party held a good faith belief. (See *Neureither v. Workmen's Comp. App. Bd.* (1971) 15 Cal.App.3d 429; *Estate of Vargas* (1974) 36 Cal.App.3d 714, 717 [holding that the putative spouse's "credibility was a question for determination by the trial court"].) The Court of Appeal below simply returned the putative spouse doctrine to these roots, requiring that good-faith in the validity of one's marriage must be determined by the fact-finder, without any requirement of objective reasonableness.

1. There is substantial evidence supporting Nancy Ceja's good faith belief.

R&S argues that Nancy Ceja could not have had a "good faith" belief that she was married because on their marriage license, as to Robert, there was a box indicating that he had "0" prior marriages. But Nancy provided an uncontested declaration *that she did not read this section in any detail.* (AA 000425.) Furthermore, there is *no* case law which says that "inquiry notice" is the test.

Nancy and Robert did the following acts to hold themselves out as a married couple: 1) She changed her last name to Ceja; 2) they had a joint checking account; 3) they lived together as husband and wife; 4) they filed taxes as married but filing separately; 5) they told anyone that asked that they were married; 6) they wore wedding rings indicating their marriage together. (AA 000427.) In the end, under either standard before the Court, objectively reasonable or good faith belief, there are triable issues of fact

that Nancy was the putative spouse of Robert and should be allowed to proceed to trial.

At the time of the ceremony, Nancy believed that Robert's divorce was final. (AA 000425-427.) Even if she later found out that this was not the case, the *Vryonis* opinion itself recognizes that "[s]ubsequent events are not germane to whether there was a proper effort to create *a valid marriage in the first instance*." (*Vryonis, supra,* 202 Cal.App.3d at 722 (emphasis added).) In essence, the trial court charged Nancy Ceja with "constructive knowledge" that her marriage was not valid, by virtue of her possession of a dissolution document regarding Robert's first marriage, that *might* have put a person on notice that there *might* be a problem *if* they had read it *and* seen the date of the dissolution of Robert's prior marriage.[1]

The facts show they continued to live together and act as man and wife for nearly five years following her sending a fax in 2004 (in order to obtain union benefits) showing that the prior marriage had been dissolved. (AA 000425-427.) Even assuming that she read the dissolution papers, — as to which there is no evidence, and indeed there is evidence to the contrary, (AA 00425)—this is clearly a "subsequent event" which should not be considered as to whether there was a proper effort to create a valid marriage in the first place. There is therefore also a triable issue of fact, *even assuming* Nancy did learn Robert's divorce became final three months after their wedding, as to whether said knowledge would engender a reasonable belief or undermine a claim of good faith belief that they were validly married as a result of the dissolution of the prior marriage.

Finally, even if Nancy had seen the "0" in the box as to the number of prior marriages Robert was claiming, it is unclear why this would render

[1] "Constructive knowledge" may be a concept familiar to lawyers, but it is not one commonly employed by the public. This is not the same as saying "ignorance of the law is no excuse;" here, Nancy thought she had complied with California law in getting a marriage license.

her belief in his marital status—as being already divorced—unreasonable. She could simply have thought that he erred, or that the typist had erred, or that it did not matter since she believed he was in fact divorced. The error on the form did not in and of itself render the license and marriage invalid. (*See Argonaut Ins. Co. v. Industrial Acc. Com.* (1962) 204 Cal.App.2d 805 [even where marriage applicant provided false names, properly solemnized marriage was valid].)

2. The facts supporting Nancy Ceja's good faith belief are in sharp contrast with the facts of *Vryonis*

The critical point in the analysis in *Vryonis* was that "[w]here there has been *no* attempted compliance with the procedural requirements of a valid marriage, and where the usual indicia of marriage and conduct consistent with a valid marriage are absent, a belief in the existence of a valid marriage, although sincerely held, would be unreasonable and therefore lacking in good faith." (*Vryonis, supra,* 202 Cal.App.4th at 721 (*emphasis added*).)

In *Vryonis*, at no point did the couple attempt to comply with any procedural requirements for a valid California marriage. (*Id.* at p. 716.) They held a private Muslim ceremony in the "wife's" apartment, conforming to "Muta" requirements, with no witnesses. (*Id.)* The parties kept the marriage secret, did not hold themselves out as husband and wife, did not cohabit, did not inform family or friends, the "husband" never had a key to his "wife's" apartment, she had a key to his apartment for three months, he continued to date others, she did not use his surname, there was no comingling of finances or support obligations or joint property. (*Id.*) They each filed separate tax returns, *claiming single status*, they spent 22 nights together in 1982, a few nights in 1983 and none in 1984. (*Id.*) Though the "wife" frequently asked the "husband" to solemnize their marriage in a mosque or religious setting, he refused. (*Id.*)

The *Vryonis* court held that the plaintiff's belief, even if it was sincere and credible, also needed to meet the test of objective reasonableness. (*Id.* at pp. 714, 720-22.) The court found that because her belief lacked objective reasonableness, it could not be held in good faith. (*Id.*) Accordingly, the plaintiff was not entitled to putative status. (*Id.*)

Unlike the parties in *Vryonis*, Robert and Nancy Ceja made every effort to comply with California's procedural requirements for marriage: they obtained a California marriage license, and participated in formal wedding ceremony. (AA 000425.) The statutory scheme requires that parties complete several steps in the marriage process: mutually consent; obtain a license from the county clerk; and solemnize the marriage. (Fam. Code, § 300 *et seq.*; Health & Saf. Code, §§ 103125, 103175.) Further, the person conducting the marriage ceremony must satisfy additional requirements. That person must: determine that the parties have obtained a valid marriage license; authenticate the marriage by signing the certificate of registry and arranging for at least one witness to sign the certificate; and finally, return the certificate of registry to the county clerk for filing. *(Id.)* Nancy and Robert complied with each of these requirements, whereas the parties in *Vryonis* did not comply with *any* of them. This factual distinction alone was enough to prompt the Court of Appeal to reconsider application of *Vryonis* to every case.

3. The other cases relied upon by the Trial Court do not support a holding in favor of R&S.

The cases cited by the trial court do not compel a finding that Nancy Ceja could not have had a reasonable belief that she was married. In *Welch v. State of California* (2000) 83 Cal.App.4th 1374, the wife who was asserting that she was a putative spouse had been married twice before and "neither acquired a marriage license nor engaged in a solemnization ceremony." (*Id.* at p. 1376.) The spouse in *Welch* testified that "she

believed that a common law marriage was valid," and did not think it was "necessary to have a marriage license or a formal wedding ceremony." (*Id* at p. 1377.) By contrast, Nancy and Robert Ceja did get a marriage license and did have a formal ceremony involving their friends and family. (AA 000425.) Again, Nancy wore a white wedding gown and the ceremony, attended by over 250 people, was presided over by a pastor. (*Id.*) Thus, they tried to comply with the legal requirements for being married in California, and also conducted themselves as if married afterward.

The cases granting putative spouse status have done so by considering whether the subjective belief was held in good faith—in consideration of all the circumstances and the witness' credibility in light of those circumstances. In *Estate of Vargas, supra*, 36 Cal.App.3d 714 Juan Vargas had first married Mildred in 1929 and then Josephine in 1945, and lived a double life for 24 years with neither wife knowing about the other. Upon Juan's death, the second wife claimed putative spouse status seeking an equal division of his estate. (*Id.* at p. 716.) As in this case, Josephine knew that Juan had been previously married, but had been assured that he had obtained a divorce. (*Id.*) After marrying in 1945 in Las Vegas, Juan and Josephine lived in West Los Angeles together and raised four children. (*Id.*) After 1949, Juan did not spend nights at home but explained that he was staying in Long Beach to be closer to work. (*Id.*)

The Court of Appeal in *Vargas* held that "[t]he . . . evidence amply support's the court's finding that Josephine was a putative spouse." (*Id.* at p. 717.) Furthermore, the Court held:

> [a]lthough Josephine's marriage was void because Juan was still married to Mildred, Josephine, according to her testimony, married Juan *in the good-faith belief he was divorced* from his first wife. Her testimony was not inherently improbable; her credibility was a question for determination by the trial court.

(*Id.* at p. 717 (*emphasis added*).)

Here, as in *Vargas* Nancy Ceja married in the good faith belief that Robert was divorced. (AA 000425-427.) R&S's attempt to distinguish *Vargas* on the ground that the husband there assured the putative wife of the validity of the marriage that he was divorced, fails because Nancy has not been asked that question here, or allowed to even testify as to what Robert told her. Again, R&S is hanging its hat on the marriage license as determinative.

In *Lawrence v. City of San Bernardino* (C.D. Cal., May 16, 2006, No. CVO 4-00336 FMC) 2006 WL 5085247, the plaintiff claiming putative spouse standing, Priscilla Carr, admitted that she had not applied for a marriage license, and that there was no one to "solemnize" the ceremony, no signature on the marriage registry, and no return of the certificate from the county clerk. (*Id.* at p. *8.) The District Court held:

> Circumstances considered in determining whether a spouse had a good faith belief that the marriage was valid include: (1) the claimant's educational background; (2) the claimant's degree of sophistication; (3) the claimant's familiarity and experience with marriage and divorce requirements and laws; (4) the claimant's reliance on assurances made by the bad faith party, and how those assurances were affected by differences in the parties' age, education, and sophistication; and (5) other facts evidencing the claimant's good faith belief in the marriage, such as standing in the community, marriage documents, and family activities.

(*Id.* at p. *8, *citing Spellens v. Spellens* (1957) 49 Cal.2d 210.) Thus, the court held that "the question of whether Priscilla Carr had good faith belief in the validity of her marriage, in light of these five factors, is a question for the jury." (*Id.* at *8.)

In this case, there is no evidence in the record showing Nancy had any familiarity and experience with marriage and divorce law requirements or

that she is in any way a sophisticated, highly educated individual. There are, however, overwhelming "other facts evidencing" Nancy's good faith belief in the marriage. These include their solemnization of the marriage; obtaining a license; their cohabiting and co-mingling of funds; and how they happily held themselves out as husband and wife.

4. As acknowledged by the Court of Appeal, the *Vyronis* court's focus on an "objective standard" was in error.

The *Vryonis* case's focus on an entirely "objective" standard is also unsupported by the case law on which it relied. For example, *Vryonis* cites *Russ Bldg. Partnership v. City & County of San Francisco* (1988) 44 Cal.3d 839, 853 for the proposition that "[a] vested right requires more than a good faith subjective belief that one has it." But that proposition only addresses the requirements for creating a vested right, and does nothing to distinguish "good faith" from a subjective standard. To the contrary, the quote appears to link the two into a single concept—"*a good faith subjective belief.*" Virtually every case cited in *Vryonis* specifically links the concept of "good faith" with the qualifier "subjective," and does so *within the very quotes relied upon* by the *Vryonis* court.

The *Vryonis* court cited *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 141 for the proposition that "[t]he essence of the good faith covenant is objectively reasonable conduct." But the "good faith covenant" is merely shorthand for the implied covenant of good faith ***and fair dealing***. As explained by the California Supreme Court, 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." (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 372 (italics added.) "[T]he covenant of good faith can be breached for objectively

unreasonable conduct, regardless of the actor's motive." (*Id.* at p. 373.) Thus, the cases make it clear that there is a recognized distinction between subjective intentions (good faith) and objectively reasonable conduct. (See *People v. Maury* (2003) 30 Cal.4th 342, 424 [discussing the *Mayberry* defense; the subjective component asks whether the defendant honestly acted in good faith, albeit mistakenly; the objective component asks whether the defendant's mistake was reasonable under the circumstances].)

The reported cases which have followed *Vyronis* have adopted its statement that the good faith belief standard for establishing putative spouse status refers to an objectively reasonable belief without any independent analysis of the underpinnings for the use of the standard. (See *Welch, supra*, 83 Cal.App.4th 1374, 1378; *Centinela Hosp. Med. Ctr. v. Superior Court* (1989) 215 Cal.App.3d 971, 975 (hereafter *Centinela.*) As shown above and by the Sixth District in its opinion, *Vryonis*'s holding cannot withstand an analysis of its underpinnings.[2]

The proper standard for a good faith belief is a subjective one, based upon facts which would lead a person in the person's situation and with their background to believe that a valid marriage had taken place. *Vryonis*, and the standard advocated by R&S, would impose not only a requirement that the person claiming putative spouse status be acting reasonably given their circumstances—but that they would be "objectively" reasonable based upon some assessment of how a hypothetical "reasonable" person would act based upon the black letter of California law. Such a standard would be unfair and the inevitable mistakes made by laypersons of varying degrees of knowledge and experience, would cut off the rights of innocent persons. By definition, a putative spouse has a void or voidable marriage, for failure

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[2] The Court in *Lawrence v. City of San Bernardino, supra,* cited to both *Welch* and *Centinela*, and nevertheless held that the issue of the plaintiff's good faith must go to the jury. 2006 WL 5085247 at *8.

to comply with some requirement of California law.

The trial court took it upon itself to hold that *as a matter of law*, no person with access to or possession of the documents—not the facts—which Nancy Ceja had, could not be considered "objectively reasonable" in believing that she was married. R&S argues that Nancy Ceja "*could have discovered* the truth with little or no effort, who *should have* opened her eyes to the facts that literally were staring her in the face..." R&S Opening Brief at 35. This is not the test which the Legislature has imposed. There was substantial evidence Nancy Ceja had a good faith belief in the validity of her marriage at the time of her marriage, and summary adjudication of her status as a putative spouse was improper.

D. Leaving The Standard Intact Will Not Adversely Impact The Institution Of Marriage, But Will Instead Honor It

Contrary to R&S's overblown fears, the Court of Appeal's decision in *Ceja* does not create a situation in which any two people may arbitrarily declare themselves married and expect to receive the benefits of putative spouse status. Instead, the decision merely returns the doctrine to its pre-*Vryonis* requirement: that a finder of fact must determine whether one holds a good faith belief in the validity of their marriage. (See *In re Marriage of Monti*, *supra*, 135 Cal.App.3d at p. 56.) This also ensures that putative spouses who innocently believed in the validity of their marriage will receive equitable treatment in the event of an untimely death such as occurred here.

R&S also asserts a wrongful reading of the *Ceja* opinion, whereby a mere *belief* in the validity of a marriage, standing alone, is enough to render that marriage valid. This assertion fails because it ignores the actual holding of the *Ceja* opinion which recognizes the crucial role of the fact-finder. In a case where putative spouse status is asserted, the party

asserting a putative marriage would not be relieved of its obligation to convince the fact-finder that his or her belief was indeed held in good faith.

Prior to *Vryonis*, there were numerous cases that denied putative spouse status to parties who alleged good faith belief. (See *Flanagan v. Capital Nat. Bank* (1931) 213 Cal. 664; *Miller v. Johnson* (1963) 214 Cal.App.2d 123; *Vallera v. Vallera* (1943) 21 Cal.2d 681.) In those cases, the plaintiffs' assertions of good-faith beliefs crumbled under the scrutiny of the fact finder, whose responsibility it is to determine whether an alleged good-faith belief is genuine. Following *Ceja*, a plaintiff who asserts putative spouse status will still bear the burden of proving to the finder of fact, by a preponderance of evidence, that their good-faith belief in the validity of their marriage is genuine.

Here, Nancy's good faith belief is amply supported by the numerous actions she and Robert took to establish themselves as married and to live their lives as a married couple. The analysis of the reasonableness of a belief may in part turn on what the putative spouse knows about California law on marriage, in terms of what formalities may be required, but it cannot and should not entail a requirement that requires knowledge of all that may be required. By definition, the marriage in such cases is not valid, but void or voidable, and as the Court of Appeal noted, "inevitable" mistakes would and will be made by persons as to what the law requires.

The facts of *Vryonis* itself—where no attempt was made whatsoever to comply with the usual trappings of a traditional marriage ceremony—may constitute such a departure from what most of the public knows to be the law, as to allow a *finder of fact* to determine that the belief in the validity of the marriage was not reasonable. However, whether Nancy's belief is genuine, based on the information which she had, is a triable issue

of fact which the Court of Appeal properly returned to the trial court. [3]

In this case and in any subsequent putative spouse action, the finder of fact will act as a gate-keeper, preventing frivolous claims for putative spouse status. The Courts of Appeal will examine such determinations, where necessary, to see if they are supported by "substantial evidence." (*Ceja*, 194 Cal.App.4th at 595) With such safeguards in place, the possibility that the Court of Appeal's decision in *Ceja* will unravel California's marriage laws is unlikely in the extreme.

E. Public Policy Considerations Require This Court To Affirm The Sixth District's Holding

Public policy considerations also mandate that affirmation of the Sixth District's holding that there is no such "objectively reasonable" standard for putative spouse status under section 377.60(b).

> Marriage is a contract viewed by the law with such especial favor, and the family relation is one so deep seated at the root of our institutions, that contracts in restraint of marriage are void as against public policy, while anything which tends to prevent marriage, or to disturb the marriage state, is viewed by the law with suspicion and disfavor.

(*Owens v. McNally* (1896) 113 Cal. 444, 453.)

The addition of an objective component to the test for the putative spouse status stated in section 377.60(b) would obviously limit the ability of some people to maintain wrongful death causes of action. It would have that effect even where the claimant believed she or he *did everything right*

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[3] The Court of Appeal noted that Nancy's statements, to the effect that she did not read the marriage license or Robert's final divorce papers closely, if true, would support a finding of good faith belief and would establish putative status. (*Ceja.*, *supra*, 194 Cal.App.4th at p. 609.) R&S' motion for summary judgment relied on an implicit discrediting of Nancy's statements, which the Court of Appeal held could only be adequately assessed by the finder of fact. (*Id.*)

to enter into a valid marriage, and in a situation in which the other party to the marriage is not available to give evidence, because, of course, he is dead. That is precisely the situation here; if public policy is to view marriage "with especial favor," then this Court *must* uphold the Sixth District's decision.

The policy considerations behind putative spouse status for *any* purpose have always been fairness and equity. *Schneider, supra,* 183 Cal. at p. 339, appears to be the first time this Court dealt with the issue of "what right, if any, has the plaintiff in the property acquired by the joint efforts of herself and the defendant during their cohabitation entered upon innocently upon the faith of their admittedly void marriage?" After reviewing cases from other states, common law, Spanish law and even a Canadian case, this Court held that:

> we agree with the Texas courts that the common-law rule as to the consequences of a void marriage upon the mutual property rights of the parties to it is inapplicable where the community property regime prevails. *This conclusion is dictated by simple justice*, for where persons domiciled in such a jurisdiction, believing themselves to be lawfully married to each other, acquire property as the result of their joint efforts, they have impliedly adopted, as is said in the Texas case cited, the rule of an equal division of their acquisitions, and the expectation of such a division should not be defeated in the case of innocent persons.

(*Id.*, at p. 340 (emphasis added).)

This rule of "simple justice" as the guiding principle behind the conferring of putative spouse status has not changed in the 91 years since *Schneider*. This Court has said the same thing over and over and in many contexts. In *Temescal Rock Co. v. Industrial Acc. Commission* (1919) 180 Cal. 637, 638, this Court affirmed a Workmen's Compensation Act award in the favor of a woman who cohabited with the decedent believing they were validly married, holding that. It held that the statute in question

compensates those who are dependent upon the decedent for support, and:

> [C]ompletely takes away, for that purpose, the immorality of parties *who in good faith were living together as Lopez and Dolores Rodriguez were living.* It also declares a different public policy with reference to such cases and completely removes, the objection that it is not sound policy to allow compensation in such a case.

(*Id.* at p. 642)(emphasis added).)

In *Estate of Leslie, supra*, 37 Cal.3d at 197, 199, this Court said in 1984 that:

> To accord a surviving putative spouse the status of 'surviving spouse' simply recognizes that a good faith belief in the marriage should put the putative spouse in the same position as a survivor of a legal marriage.

Putative spouse status is based on fairness, equity and "good conscience." (*See Sancha v. Arnold* (1952) 114 Cal. App. 2d 772, 779)

Fairness, equity and the policies supporting marriage compel that this Court not deny Nancy Ceja the right to present evidence that she had a good faith belief in the validity of her marriage to Robert. To hold otherwise would be to deprive Nancy Ceja of rights to which she is entitled under the statute and would be inherently unfair, as stated in case after case.

IV CONCLUSION

For all the foregoing reasons, the Court of Appeal for the Sixth District correctly held that there are triable issues of fact whether Nancy Ceja in good faith believed she had a valid marriage and is therefore entitled to the status of putative spouse, and its Order reversing the grant of summary judgment should be affirmed.

RESPECTFULLY SUBMITTED
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CERTIFICATION REGARDING LENGTH OF BRIEF

I hereby certify pursuant to Rule 8.520(c) of the California Rules of Court, that this brief contains 8,386 words, including footnotes, as established by the word count of the computer program utilized for the preparation of this brief.

I declare and certify under the laws of the State of California that the foregoing statement is true and correct and that this certification was executed on Thursday, November 10, 2011 at San Francisco, California.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to, nor interested in, the above-entitled action. I am an employee of The Arns Law Firm, A Professional Corporation, and my business address is 515 Folsom Street, 3rd Floor, San Francisco, CA 94105

On the date indicated below I served the following **ANSWER BRIEF ON THE MERITS** on all interested parties in the above cause, by:

___XX___ **HAND DELIVERY** by placing a true and correct copy thereof enclosed in a sealed envelope with the name and address of the party to receive the document. Such document was then given to the service or individual signing the bottom of this Proof of Service showing delivery made.

___XX___ **OVERNIGHT MAIL** by placing a true and correct copy thereof enclosed in a sealed overnight service envelope with postage thereon fully prepaid. Said envelope was thereafter deposited with the overnight service at San Francisco, California in accordance with this firm's business practice of collection and processing correspondence for overnight service of which I am readily familiar. All correspondence is deposited with the United States Postal Service on the same day in the ordinary course of business.

The envelopes were addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 14, 2011 at San Francisco, California.

ALEXIS BLOOM