

Who Has Standing to File a Petition for Nullity of Marriage? Comparing Our Case with *Pryor v. Pryor*

By Drorit Bick Raiter, Esq.

This year our firm has been working on a nullity proceeding which has raised interesting questions of law with regard to third parties who have standing to file the Petition on behalf of a spouse. Our client filed a Petition for nullity on behalf of his grandmother, based upon the fact that at the time of the purported “marriage” to the 27 year old purported husband, his 80 year old grandmother was of “unsound mind,” and lacked mental capacity to enter into a marriage contract. A deposition of the Reverend who officiated the marriage revealed that upon request by the “husband,” he had issued a “confidential marriage license” to the couple. Several months after filing the Petition, our client’s grandmother passed away.

The Issue

When we appeared in Court on this matter, the Court, on its own motion, posed the following question: ***Whether, during the pendency of a nullity proceeding and before entry of Judgment, upon the death of a Party, does the Family Law Court lose Jurisdiction to enter a Judgment of Nullity of Marriage.*** At that hearing, the Court asked the Parties to brief the issue and pay particular attention to the recent case of *Pryor v. Pryor* (2009) 177 Cal.App.4th 1448, which involved the well known actor/comedian Richard Pryor.

The Pryor Case

In the *Pryor* case, Richard Pryor had married Jennifer Lee Pryor in 1981 but then divorced her in 1982, without having any children with her. Twenty years later, on June 8, 2001, Richard and Jennifer remarried pursuant to a confidential marriage license. On December 10, 2005, Richard passed away, leaving behind six children. At some point after his death, one of his children, Elizabeth, discovered her father's 2001 remarriage to Jennifer and on July 17, 2007, a year and a half after his death, she petitioned to annul the marriage on the grounds of fraud.

Our Argument

As we successfully argued in our brief, the pertinent statutes, *Family Code* § 2210 and *Family Code* § 2211 reflect that our client clearly has standing because, as differentiated from the facts in the *Pryor* case, in our case (1) the Petition for nullity was filed several months *before* his grandmother’s death and (2) the nullity action was based

on “unsound mind” and not on “fraud.”

Family Code § 2210 reads in pertinent part, as follows:

“A marriage is *voidable* and *may be adjudged a nullity* if any of the following conditions existed at the time of the marriage:...(c) ***Either party was of unsound mind***, unless the party of unsound mind, after coming to reason, freely cohabited with the other as husband and wife. (d) ***The consent of either party was obtained by fraud***, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife....” [Emphasis added].

Furthermore, under *Family Code* § 2211, the legislature has clearly delineated provisions for who has standing to file a nullity petition, and has provided different limitations periods, depending on the ***ground for annulment***. These distinctions are expressly stated in *Family Code* § 2211, which reads in pertinent part, as follows:

“A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 2210, must be commenced within the periods and by the parties, as follows:....(c) ***For causes mentioned in subdivision (c) of Section 2210***, by the party injured, ***or by a relative*** or conservator of the party of unsound mind, ***at any time before the death of either party***. (d) ***For causes mentioned in subdivision (d) of Section 2210, by the party whose consent was obtained by fraud, within four years after the discovery of the facts constituting the fraud....***” [Emphasis added].

In our brief to the Court, we argued that Family Code § 2211 reflects the legislature’s intention that standing for nullity actions based on “fraud” [*Family Code* § 2210(d)] be limited to “the party whose consent was obtained by fraud.” By contrast, standing for nullity actions based on “unsound mind” [***Family Code* § 2210(c)**], is extended to include **relatives**.

Additionally, the period in which to commence the action is limited differently for each cause upon which the nullity may be based. Specifically, a nullity action based on fraud is delimited by the period “***within four years*** after the discovery of the facts constituting the fraud....” By contrast, a Nullity action based on “unsound mind” can be brought, “at any time ***before the death*** of either party.”

In our case, because our client was a *relative* and had filed the Petition *within his grandmother’s lifetime* and the nullity action was based on “*unsound mind*,” the trial court ultimately found that our client had standing to file the Petition for Nullity.

However, the trial court also ruled that although his grandmother was personally served with a copy of the Petition prior to her death, our client should have joined his grandmother (or her conservator) as a Party and had failed to do so. Accordingly, the Court ordered the case stayed until we joined the grandmother's (as of yet, unappointed) personal representative. Appointing a personal representative for a person now-deceased is unusual, and, as explained below, in our case, this task fell to the Probate Court to accomplish.

Ancillary Probate Matters

In addition to the family law matter, our client is also in the midst of several probate cases concerning his grandmother's \$8 million estate. In the probate matters the salient issue is whether his grandmother had mental capacity to execute certain amendments made to her trust several years before her death. We have recently learned that our client's probate attorney has successfully petitioned the Court to appoint a personal representative, and the Court has appointed a neutral party to so act.

Conclusions

We are grateful that the issue of third-party standing is now behind us and we look forward to taking this complex and interesting case to Trial.