

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SASA STOJCEVSKA,

Plaintiff-Appellee,

v

LUBISA ANIC,

Defendant-Appellant.

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UNPUBLISHED

January 11, 2000

No. 210144

Macomb Circuit Court

LC No. 95-003873 DZ

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant appeals of right the circuit court's order granting an annulment of the parties' marriage. We affirm.

Plaintiff and her family are ethnic Macedonians. Plaintiff is an American citizen, has lived with her parents all her life, and has resided in the United States with them since she was very young. Plaintiff's parents arranged the parties' marriage. The parties had a civil ceremony, followed by a religious ceremony, in Macedonia in May 1994, when plaintiff was twenty-three years old. Plaintiff's complaint for annulment alleged that the marriage was induced by fraud on defendant's part, for the purpose of defendant emigrating to the United States, and had never been consummated. Defendant answered plaintiff's complaint and filed a counter-complaint for divorce. Pursuant to stipulation, the matter was referred to the friend of the court for a report and recommendation. Following an evidentiary hearing, the referee issued a report and recommendation, to which defendant submitted objections. The circuit court adopted the referee's recommendations in their entirety and granted an annulment. This appeal ensued.

Defendant first argues that the circuit court erred in not applying the presumption of the validity of the marriage under the circumstance that the parties had an extensive marriage ceremony and that plaintiff failed to overcome the presumption.

We review findings of fact in domestic relations cases for clear error. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). The law presumes that ceremonial marriages are valid. *Weinert v Tallman*, 346 Mich 388, 391-392; 78 NW2d 141 (1956); see also *People v Calder*, 30 Mich 85

(1874) (noting that “[p]rima facie the fact of a marriage, celebrated according to the forms of a religious denomination, embraces the requisite assent of the married parties to take each other as husband and wife). The law presumes that the marriage relation dates from the time of the marriage until ended by death or divorce. *In re Leonard Estate*, 45 Mich App 679, 682; 207 NW2d 166 (1973). The presumption of validity is not conclusive, however, and “may be rebutted by a showing of facts or circumstances which either may establish the validity or invalidity of the marriage conclusively or raise an issue to be determined upon preponderance of the evidence.” *In re Adams Estate*, 362 Mich 624, 626; 107 NW2d 764 (1961). Where the consent of one of the parties was obtained by force or fraud, and there was no subsequent voluntary cohabitation, the marriage is void without a divorce judgment or other legal process. MCL 552.2; MSA 25.82, MCL 552.37; MSA 25.113.<sup>1</sup> The legal theory of an annulment is that no marriage ever existed because there was fraud in the inception. *In re Kinsella Estate*, 120 Mich App 199, 205; 327 NW2d 437 (1982).

The transcript of the evidentiary hearing before the friend of the court referee supports that plaintiff’s consent was obtained by force and that she did not voluntarily consent to cohabiting with defendant after the wedding. MCL 552.2; MSA 25.82. It is undisputed that the parties’ marriage was arranged. Plaintiff testified that at no time did she consent to the marriage. She testified that while she was in Europe visiting relatives for approximately three weeks in 1994, she was introduced to defendant, informed that they were engaged, and that they were married shortly after. Plaintiff had met defendant on two occasions before the wedding. Plaintiff testified that she did not want to marry defendant and did so out of fear that she would not be able to return to the United States from Macedonia, because her parents had her passport and she had no money. Plaintiff testified that defendant married her only in order to obtain a visa. She testified that approximately one year after the wedding, defendant obtained a visa and came to the United States, flying into Chicago instead of Detroit, without advising her. Plaintiff testified that she and defendant did not have sexual relations at any time. Both plaintiff and her sister testified that during the time the parties lived together for about one month in plaintiff’s parents’ home, plaintiff slept on the sofa every night.

Under these circumstances, we reject defendant’s argument that the circuit court erred in finding that duress existed. Ample evidence supported plaintiff’s claim that she was under duress when she married defendant. Given the presence of duress and the fact that plaintiff did not voluntarily consent to cohabiting with defendant after the wedding, the annulment was properly granted. MCL 552.2; MSA 25.82.

Defendant’s last argument is that the circuit court erred in denying his motion to supplement the record with testimony.

We review the circuit court’s decision to admit evidence for abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 613-614; 580 NW2d 817 (1998). The circuit court’s opinion and order states in pertinent part:

. . . . As the record indicates, defendant’s testimony was stopped when it came to the attention of Referee Toler that defendant had failed to procure the services of an unbiased, certified translator. As defendant has very little grasp of the English language,

it was necessary for a translator fluent in the Macedonian language to translate the questions asked of defendant into Macedonian and then translate defendant's answers into English. The evidentiary hearing was adjourned until September 9, 1996, in order to allow defendant sufficient time to obtain the services of a certified translator. Defendant failed to do so on September 9, 1996, and a second adjournment was granted until November 18, 1996. Defendant subsequently chose not to appear for this hearing. Transcript at 96-109. Defendant then filed a motion to allow additional testimony, which the Court denied. See file entry dated January 13, 1997.

The Court disagrees with defendant's stated objection. As summarized above, defendant had ample time to obtain the services of a certified translator. Additionally, defendant failed to appear for a scheduled hearing on November 18, 1996. Therefore, the Court finds defendant's first objection to the Report and Recommendation of the referee to be without merit.

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Defendant next challenges the referee's Recommendation on the basis that the initial adjournment was caused by plaintiff's objection to his translator. Additionally, defendant claims his failure to appear for the hearing scheduled November 18, 1996 was beyond his control. In this regard, defendant maintains he would have lost his employment if he had appeared on said date. The Court notes it has already addressed this issue in its response to defendant's first objection. Nevertheless, the Court reminds defendant he had two opportunities after the initial adjournment to appear and testify, first on September 9, 1996, and then on November 18, 1996. In light of defendant's failure to appear on either date, the Court is not persuaded defendant's objection is valid. Accordingly, the Court agrees with the findings contained in the November 20, 1996 Report and Recommendation, which are appropriate and reasonable under the facts as stated.

The circuit court's determination is amply supported by the record. At the evidentiary hearing plaintiff objected during defendant's testimony on the basis that defendant's interpreter, who was not certified as a translator, was not interpreting defendant's testimony verbatim and was adding statements to defendant's testimony. Although defendant had several months to procure a certified translator and testify at the evidentiary hearing, he failed to do so.

We also reject defendant's argument that he was entitled to a de novo hearing before the circuit court, and that the court erred in relying on the testimony of the hearing before the referee and the friend of the court report. The case was tried to the referee pursuant to the parties' stipulation, which stipulation stated that a party objecting to the referee's recommendation must schedule a judicial hearing and that the judicial hearing "shall be based solely on the record of the Referee hearing . . . provided, however, the court may direct such additional testimony and evidence considered necessary for entry of judgment/order." Under these circumstances, the circuit court was not precluded from adopting the referee's findings as its own, and defendant was not entitled to a de novo hearing. See *Balabuch v*

*Balabuch*, 199 Mich App 661, 662; 502 NW2d 381 (1993); and *Constantini v Constantini*, 171 Mich App 466, 469, 471; 430 NW2d 748 (1988).

Under these circumstances we conclude that the circuit court properly refused to allow defendant to supplement the record with additional testimony.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Kathleen Jansen

<sup>1</sup> MCL 552.2; MSA 25.82 provides in pertinent part:

In case of a marriage . . . [where] the consent of 1 of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed void, without any decree of divorce or other legal process.

MCL 552.37; MSA 25.113 provides

No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife.