

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-657

S.A.R.

vs.

L.V.R.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a two-day trial on a complaint for annulment filed by the plaintiff, S.A.R. (husband), a Probate and Family Court judge found that the husband and the defendant, L.V.R. (wife), had entered into a valid marriage. Accordingly, the judge entered a judgment dismissing the complaint. On appeal, the husband contends essentially that the judgment was against the weight of the evidence. For the reasons set forth by the trial judge in his findings of fact and rationale, we affirm.

1. Sufficiency of the evidence. The husband alleged that the wife fraudulently "enticed him into marriage for the sole purpose of obtaining" permanent residency in the United States. After hearing the evidence, including the testimony of the husband and the wife, the judge declined to credit the husband's testimony in support of this allegation. To the contrary, the

judge found that the husband and the wife "loved each other when they got married" and that "[a]llthough the parties' marriage deteriorated shortly after its inception, this does not demonstrate . . . that the marriage was perpetuated by fraud."

"The [husband] disagrees with the judge's weighing of the evidence, but '[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.'" Mason v. Coleman, 447 Mass. 177, 186 (2006), quoting Mass. R. Dom. Rel. P. 52 (a). "A finding is clearly erroneous when there is no evidence to support it, or when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" Schechter v. Schechter, 88 Mass. App. Ct. 239, 245 (2015), quoting Custody of Eleanor, 414 Mass. 795, 799 (1993). Having reviewed the record, we conclude that the judge's findings and credibility determinations are supported by the evidence and entitled to deference.¹

Specifically, the wife testified that she was in love with the husband at the time of their marriage. Her testimony was

¹ Because the case went to trial, the pleading requirements are not relevant to our review and we do not, as the husband contends, view the evidence in the light most favorable to him.

supported by two of the couple's wedding guests, who testified that the husband and the wife showed affection for each other and appeared happy and in love, and by another witness, a coworker and neighbor, who testified that they appeared happy together at Christmas and Super Bowl parties shortly after their wedding. Additionally, the couple exchanged loving and affectionate text messages throughout much of the first year of their marriage.

By contrast, the record did not support the husband's allegation that the couple retained separate apartments for nine months after their wedding due to the wife living with a boyfriend. One month after their wedding they jointly signed a lease for an apartment and listed both of their names on the apartment's utility accounts. They also established a joint bank account from which they paid rent and utilities. The husband requested that the United States Postal Service forward his mail to the shared apartment, filed joint Federal tax returns with the wife using the apartment's address, and told Federal immigration authorities under the penalties of perjury that he resided at the apartment. The judge credited the wife's testimony that the alleged boyfriend was in fact just a roommate who lived in the apartment prior to the couple's wedding and for several months after.

Although the husband's former roommate testified that the husband lived with him continuously for nine months after the wedding, his testimony was discredited because he had been out of the country for the first five months of the couple's marriage and lacked personal knowledge about the husband's primary residence during that time. The testimony was also contradicted by that of the neighbor, who testified that she saw the husband and the wife together coming and going from their apartment complex.

Nor did the record support the husband's accusation that the wife learned how to get married solely for immigration purposes from the neighbor who had allegedly done the same with her husband. When the husband struggled to elicit relevant testimony from the neighbor on cross-examination, the judge helpfully suggested relevant questions that, depending on the answers, could have developed evidence of collusion between the wife and the neighbor. However, even when the judge eventually took it upon himself to ask the questions he had suggested, the neighbor's answers failed to establish any hint of collusion. Although the judge made no written factual findings on the issue, the judge's attentiveness to the husband's accusation of collusion strongly suggests that he considered and rejected the husband's claim. The record does not demonstrate that the judge was plainly wrong.

Finally, the husband and the wife offered conflicting testimony about whether their relationship was ever sexual. The judge found it unnecessary to make any factual findings on the topic. Rather, the judge noted, correctly, that "the consummation of the marriage by sexual relations is not necessary to its validity." See Franklin v. Franklin, 154 Mass. 515, 516 (1891). The judge concluded that resolution of the factual issue one way or the other would not affect his ultimate determination that the marriage was not fraudulent. We discern no error in the judge's handling of the issue.

2. Denial of continuance. Two weeks before trial, the judge allowed the husband's attorney to withdraw his representation due to "a fundamental disagreement" with the husband. At the same time the judge denied the husband's motion for a continuance of the trial, leaving him the option of retaining another lawyer or representing himself. A recurring theme in the husband's brief is that the denial of a continuance deprived him of a fair trial.

"The need to move a court's docket forward is often compelling, and the allowance, or denial, of a motion for a continuance of trial -- including a motion based on a claim that successor counsel cannot be retained (a claim that, from time to time, we are well aware, may be utilized as a litigation tactic for delay) -- is generally, and should be, a matter well within

a judge's discretion." E.H. v. S.H., 59 Mass. App. Ct. 593, 597 (2003). By the time counsel moved to withdraw, the husband had had ample time to prepare for trial. He had been on notice of the impending trial date for more than three months and, with the help of counsel, had already stipulated to the specific evidence he anticipated introducing. The wife had also already produced witness and exhibit lists and objected to delaying the trial. Under the circumstances, we discern no abuse of discretion in the judge implicitly giving greater "weight to the public interest in the efficient operation of the trial list and to the interests of [the wife]" than to the interests of the husband. Fontaine v. Ebtac Corp., 415 Mass. 309, 316 (1993), quoting Castellucci v. United States Fidelity & Guar. Co., 372 Mass. 288, 292 (1977).

3. Other issues. Although we have addressed the husband's principal claims, we note that he failed to provide a complete record of the proceedings, which in itself could be grounds for affirming the judgment. See Mass. R. A. P. 18 (a), as appearing in 481 Mass. 1637 (2019); Shawmut Community Bank, N.A. v. Zagami, 411 Mass. 807, 811 (1992) ("appellant must provide the reviewing court with all relevant portions of the record"). Although the wife had no obligation to do so, the panel appreciates her effort to supplement the record appendix and

provide the court with the materials necessary to evaluate the lower court proceedings.

Finally, the husband's arguments concerning the judge's "skills" -- which is completely unfounded -- and the wife's eligibility for citizenship do not present cognizable legal issues for this court.

Judgment affirmed.²

By the Court (Massing,
Singh & Englander, JJ.)³,

Clerk

Entered: June 21, 2022.

² The wife's request for appellate attorney's fees is denied. Although the husband has not prevailed on his principal claims, they were not frivolous.

³ The panelists are listed in order of seniority.