

SUPREME COURT OF CALIFORNIA

In re Marriage of Park

In re Marriage of Park, 27 Cal.3d 337, 165 Cal.Rptr. 792, 612 P.2d 882 (Cal. 1980) · No. L.A. 31143

SUMMARY

The California Supreme Court held that a divorce judgment obtained after a wife's involuntary deportation must be vacated for extrinsic fraud where the husband concealed from the court that her absence was involuntary, depriving her of a fair adversary hearing. The court also found that the wife was denied adequate representation because no formal substitution of attorneys occurred and the attorney who appeared on her behalf failed to present evidence, cross-examine, or even know the cause of her absence. The wife's delay in seeking relief was not inexcusable neglect given her reasonable efforts to contact counsel and re-enter the United States. The case establishes that a party's failure to disclose a spouse's forced absence from dissolution proceedings constitutes extrinsic fraud warranting equitable relief.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Bird, Chief Justice; Tobriner; Mosk; Clark; Richardson; Manuel; Newman
JURISDICTION	California
DOCKET	L.A. 31143
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from denial of motion to vacate judgment of dissolution
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	published
PARTIES	Duck Soon Park v. Sang Hyub Park

TOPICS

- family law
- dissolution of marriage
- civil procedure
- due process
- appellate procedure

PRACTICE AREAS

- Family Law

QUESTIONS PRESENTED

1. Whether the trial court erred in denying appellant's motion to vacate the judgment of dissolution based on extrinsic fraud and inadequate representation.

HOLDINGS

1. Yes, because extrinsic fraud (concealment of involuntary deportation) and inadequate representation by an unauthorized attorney deprived appellant of a fair adversary hearing, and no equitable defenses bar relief.

KEY QUOTATIONS

“The concealment of facts which, if revealed to the trial court, might result in the postponement of an adjudication until the absent party can be heard constitutes extrinsic fraud.” (27 Cal.3d at 342-343)

“it would be an exaltation of form over substance to conclude that the mere presence of an attorney resulted in a fair adversary hearing sufficient to foreclose the remedy of equitable relief.” (27 Cal.3d at 345)

FACTUAL BACKGROUND

Mrs. Park and Mr. Park married in 1968, separated in 1972. Mrs. Park filed for dissolution. During proceedings, she was involuntarily deported to Korea by the INS, taking only one suitcase. Mr. Park was present at her arrest and knew of the deportation but did not inform the court. A new attorney appeared at the interlocutory hearing without formal substitution and provided inadequate representation. The court awarded most community property to Mr. Park. Mrs. Park returned to the U.S. in 1977 and promptly moved to vacate.

PROCEDURAL HISTORY

Appellant wife filed a petition for dissolution in 1972. An OSC hearing was held. During pendency, she was involuntarily deported to Korea. An interlocutory hearing was held with a new attorney appearing. Judgment of dissolution was entered in 1973. In 1977, she returned and filed a motion to vacate, which was denied. She appealed.

DISPOSITION

reversed

CASES CITED

- *Olivera v. Grace* (1942) 19 Cal.2d 570
- *Landon v. Landon* (1946) 74 Cal.App.2d 954
- *Wells Fargo & Co. v. City Etc. of S.F.* (1944) 25 Cal.2d 37
- *McMunn v. Lehrke* (1915) 29 Cal.App. 298
- *Weitz v. Yankosky* (1966) 63 Cal.2d 849
- *Kulchar v. Kulchar* (1969) 1 Cal.3d 467
- *Zastrow v. Zastrow* (1976) 61 Cal.App.3d 710

- In re Marriage of Coffin (1976) 63 Cal.App.3d 139
- Davis v. Davis (1960) 185 Cal.App.2d 788
- Edison v. Edison (1960) 178 Cal.App.2d 632
- Rice v. Rice (1949) 93 Cal.App.2d 646
- Epley v. Califro (1958) 49 Cal.2d 849
- Saunders v. Saunders (1958) 157 Cal.App.2d 67
- Dei Tos v. Dei Tos (1951) 105 Cal.App.2d 81
- Wilson v. Wilson (1942) 55 Cal.App.2d 421
- Hallett v. Slaughter (1943) 22 Cal.2d 552
- Orange Empire Nat. Bank v. Kirk (1968) 259 Cal.App.2d 347
- Watson v. Watson (1958) 161 Cal.App.2d 35
- Karlein v. Karlein (1951) 103 Cal.App.2d 496
- Bennett v. Hibernia Bank (1956) 47 Cal.2d 540
- In re Marriage of Folsb (1975) 53 Cal.App.3d 862
- Dingwall v. Vangas, Inc. (1963) 218 Cal.App.2d 108

CITED IN

- In re Marriage of Park, In re Marriage of Park, 27 Cal.3d 337 (1980)