

What Constitutes the Essentials of Marriage for Annulment Purposes in Illinois?

In Illinois, the Illinois Marriage and Dissolution of Marriage Act 750 ICLS 5/301 Declaration of Invalidity – Grounds, governs when the court shall enter a judgment declaring the invalidity of a marriage, formerly known as an annulment. As detailed in section 301, a declaration of invalidity of a marriage shall be entered if a party lacked capacity to consent to the marriage because of mental incapacity or because of the influence of incapacitating substances, or a party was induced to enter into marriage by force or duress or by fraud involving the essentials of marriage, a party lacks the physical capacity to consummate the marriage and the other party was not aware of this, a party was aged 16 or 17 and did not have parental or judicial approval, or the marriage is prohibited. Illinois legislature has not outlined precisely what constitutes the essentials of marriage, and understanding case law is the best way to gauge where a court will stand in a particular case.

In the 1929 Illinois Supreme Court case *Bielby v. Bielby*, the wife filed suit seeking separate maintenance from the husband, who countered with a suit seeking annulment of the marriage on the ground of fraud. *Bielby v. Bielby*, 165 N.E. 231, 232(1929). Here, the wife alleged that her husband left her after their marriage and refused to live with or provide for her. *Id.* Her husband, however, alleged that he had offered a home but that his wife refused to live with him at any place, and only married him for the purpose of defrauding him out of his property, as she conditioned their marriage on her husband deeding his land to them both as joint tenants. *Id.* The husband alleged that he wanted a home, and that his wife failed to fulfil her obligations as a wife, which he argues are essential to marriage. *Id.* at 233. The trial court granted annulment, but on appeal the court emphasized that, “False representations as to fortune, character and social standing are not essential elements of the marriage, and it is contrary to public policy to annul a marriage for fraud or misrepresentations as to personal qualities.” *Id.* Further, the law does not consider future promises, to be fraudulent should they not prove true. *Id.* In order to be fraudulent, the misrepresentation must be regarding a present or past fact. *Id.* With that guidance, the court here determined that there was no basis for granting annulment and reversed the trial court’s ruling. *Id.*

In the 1979 Illinois Supreme Court case *Wolfe v. Wolfe*, the wife filed suit against the husband for divorce, and in response the husband filed suit against the wife for an annulment on the basis of fraud involving the essentials of marriage. *Wolfe v. Wolfe*, 389 N.E.2d 1143, 1143 (1979). In this case, the wife had told the husband before marriage that she was a widow, however, her previous husband was still alive. *Id.* at 1144. In addition to the dishonesty, this was an issue for the husband because in discussing marriage, the husband had explained that it was against his Roman Catholic religion to marry someone who had been previously divorced, unless they were widowed. *Id.* The wife converted to Catholicism and under oath stated that her former husband had passed. *Id.* At trial on these issues, the husband testified that he would not have married the wife had he not believed she was a widow. *Id.* While the court had no doubts that this constituted fraud, the question of this case was whether the fraud affected the essentials of the marriage. *Id.* Significantly, the court noted that what is essential to one marriage differs on a case by case basis. *Id.* Quoting decisions in *Lyon v. Lyon* and *Bielby v. Bielby*, the court noted that to be an essential of marriage an element must be something that makes it impossible to perform the duties and obligations of that relation or rendering its assumption and continuance dangerous to health or life. *Id.* Here, the court ultimately determined that this marriage would not have occurred without the fraudulent inducement, and to deny an annulment would cause the husband to bear the consequences of the deception without punishment to the wife. *Id.* Therefore, the court deemed this a case of essentials of marriage and an annulment was granted. *Id.*

In the Illinois Appellate Court, a case regarding a marriage and three children whose parentage was in question approached a similar question as to what constituted essentials of marriage. *Hill v. Hill*, 398 N.E.2d 1048, (Ill. App. Ct. 1979). Here, the wife petitioned for a dissolution of marriage, and the husband counterclaimed for an annulment, claiming that the plaintiff had fraudulently represented to him that she was pregnant with his child, which caused him to marry her. *Id.* at 1051. The husband testified that upon determining the wife had not been pregnant, he moved out of the house the two were sharing. *Id.* However, the wife testified that she did not know that she was pregnant or tell the husband that she

was pregnant prior to the marriage. *Id.* The trial court initially granted the husband's counterclaim for annulment, finding that prior to the marriage, the wife had represented to the husband that she was pregnant, and that this statement was untrue and caused the husband to consent to the marriage. *Id.* However, on appeal the court reversed the grant of annulment, finding that courts are in general agreement that an annulment will not be granted to a man who has married a woman based on her representation of pregnancy, because a false pregnancy does not go to the essentials of the marriage as the wife could still perform her marital duties of bearing only the children of her spouse. *Id.* at 1052-53.

While Illinois statute clearly lays out some provisions including capacity to consent, age restrictions, and physical capacity to consummate, fraud involving the essentials of marriage is left open ended and vague. Case law shows that the courts have been hesitant to interpret this provision broadly, and do not include misrepresentations regarding character, personal qualities, or even pregnancies causing consent to marriage.