NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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Fairfax, Virginia 22030-4009

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October 1, 2020

LETTER OPINION

Mr. Lawrence Casanova
5834 White Lake Lane, Apt. 308
Frederick, MD 21703

Plaintiff Pro Se

Ms. Mengxin Cui
Chugh, LLP
1902 Campus Commons Drive, Ste. 440
Reston, VA 20191

Counsel for Defendant

Re: *Lawrence Anthony Casanova vs. Christy Nicole Casanova*
Case No. CL-2013-2497

Dear Mr. Casanova and Ms. Cui:

Defendant, Christy Nicole Carambia (formerly Christy Nicole Casanova), challenges the divorce decree of the parties entered by this Court on March 21, 2013, as being void *ab initio* because at the time of their marriage the Plaintiff Lawrence Anthony Casanova's California divorce had not yet been reduced to a written judgment of

OPINION LETTER

dissolution. The Court has before it the unusual question whether entry of a divorce order by a California court after Mr. Casanova remarried but *nunc pro tunc* to a date preceding the remarriage renders the Virginia divorce a valid court order. In analyzing this question, this Court must determine: A) whether the California *nunc pro tunc* order violates Virginia public policy such that it need not be given Full Faith and Credit under the U. S. Constitution; and B) whether the Virginia divorce order was void *ab initio*, and if so, whether such order may nevertheless be deemed validated by the California *nunc pro tunc* order, rendering any challenge to the validity of this Court's divorce decree moot.

This Court holds that: 1) although the California *nunc pro tunc* order was entered pursuant to a statute with no exact Virginia analog, it nevertheless does not offend Virginia public policy to recognize such decree, as the *nunc pro tunc* California order merely memorialized a judgment that the court had announced but failed to reduce to writing earlier; and 2) Ms. Carambia's challenge to the Fairfax decree is rendered moot in light of the *current* circumstance that California entered the written dissolution of the marriage—memorializing the prior oral ruling—*nunc pro tunc* to a date prior to the instant parties marriage. Therefore, Ms. Carambia's motion to set aside the decree as being void *ab initio* must be DENIED.

BACKGROUND

On May 2, 2008, Mr. Casanova appeared pro se in Placer County Superior Court in California via telephone in a divorce proceeding concerning a prior marriage. Counsel for Mr. Casanova's first spouse recited the terms of a custody, support, and property settlement agreement that had been reached by the parties, to which Mr. Casanova indicated assent. During the hearing, Mr. Casanova made clear that he needed the

judgment of dissolution in order to comply with some of the terms of the settlement agreement, specifically the waiver of Mr. Casanova's first spouse's claim to his military retirement in return for an equalizing payment. The following exchange occurred with the presiding judge:

> MR. CASANOVA: Dissolution of the marriage is effective the date that I receive confirmation from the Court, but it's effective today?
> THE COURT VALDEZ [the judge]: Right it will be effective today, but you have to wait until you receive the notice of entry -- it will be entered as of today's date, but you have to wait until you receive the notice of entry of judgment in the mail, to be safe.

Later in the hearing the California Court reiterated its judgment:

> MR. JOHNSON [counsel for Mr. Casanova's first spouse]: Do you request that the Court enter a judgment of dissolution of marriage today?
> MR. CASANOVA: Yes.
> THE COURT VALDEZ [the judge]: Okay. The Court accepts the jurisdictional facts as recited by Mr. Johnson. As I stated, the Court will be entering judgment of dissolution, which will be effective today.
> Mr. Johnson, you will be preparing the stipulated judgment?
> MR. JOHNSON [counsel for Mr. Casanova's first spouse]: Yes, I will.

A compliance review date was set for June 6, 2008, to "make sure everyone has done what they have agreed today." It appears the hearing was to occur not necessarily before the same judge. Mr. Casanova was instructed he would have to sign additional paperwork before a notary that he would receive from Mr. Casanova's first spouse's counsel and was told to check back with such counsel if he had not heard from him within two weeks. After the hearing, Mr. Casanova's first spouse's counsel did not timely submit the judgment order, nor was one entered by the California court forthwith, nor did Mr. Casanova pursue whether one had been timely entered. It is unclear from the record whether the compliance hearing ever transpired or why Mr. Casanova did not follow up with Mr. Casanova's first spouse's counsel as directed.

On April 16, 2009, Mr. Casanova's first spouse and Mr. Casanova entered into a "Stipulated Contingent Order" which reduced their settlement terms of May 2, 2008, into a written order which the parties had previously executed on December 15, 2008. The order specified that if Mr. Casanova paid his first spouse $10,000.00, "all the terms of this stipulated contingent judgment shall become the judgment." The Stipulated Contingent Order directed that if the payment was not made "within those sixty (60) days, then all issues will remain for trial." The order also stated that payment of the $10,000.00 was to be made "within sixty days of May 2, 2008 or thirty (30) days after entry of judgment, whichever is later." Lastly, the Stipulated Contingent Order stated that "[t]he effective date of dissolution of marriage is May 2, 2008."

On August 1, 2009, Mr. Casanova married Ms. Carambia in Virginia. On August 31, 2009, Mr. Casanova made his final payment of $1,000.00 of the $10,000.00 pursuant to the Stipulated Contingent Order.

On March 21, 2013, the Fairfax Circuit Court entered a decree granting Mr. Casanova and Ms. Carambia a divorce, and joint legal custody of their minor child, with the mother being the primary custodian and the father benefiting from a visitation schedule. Ms. Carambia has subsequently remarried.

On March 5, 2020, Ms. Carambia filed a Motion to Vacate requesting that the Court enter an order vacating the final decree and the subsequent custody and visitation order. The matter was docketed to be heard on the June 12, 2020 Friday Motions Docket but was continued to a future date to allow sufficient time for the presentation of evidence.

On July 24, 2020, the Superior Court of California, prompted by inquiry from Mr. Casanova, entered a final dissolution of his first marriage, *nunc pro tunc* to May 2, 2008.

On September 18, 2020, the parties appeared by video conference for oral argument on the Motion to Vacate. Ms. Carambia moved to set aside the Fairfax Divorce as being void *ab initio*, alleging that at the time she married Mr. Casanova he was not yet validly divorced and that the California *nunc pro tunc* order could not retroactively validate the Virginia marriage. Ms. Carambia posits that giving credit to the *nunc pro tunc* order is contrary to Virginia public policy because Virginia does not have an analogous statute to that of California, and that the divorce could not be finalized until the terms of the $10,000.00 payment had been satisfied under the Stipulated Contingent Order of April 16, 2009, which occurred 30 days after Mr. Casanova's new marriage. Ms. Carambia alleges she seeks to undo the Virginia divorce out of mere principle.

Mr. Casanova responds that the California order rendered his Fairfax divorce valid because it removed the legal infirmity in his second marriage. He relies on having been told by the California court that he was divorced as of May 2, 2008, on such date, and on the California *nunc pro tunc* statute. Mr. Casanova further asserts that Ms. Carambia seeks to invalidate the Fairfax decree to free herself from the terms respecting child visitation, enforcement of which is now being litigated in the Hampton Juvenile and Domestic Relations District Court, Virginia.

ANALYSIS

I. The California *Nunc Pro Tunc* Judgment of Dissolution Does Not Offend Virginia Public Policy and Therefore Must Be Given Full Faith and Credit

At issue, first, is whether the California *nunc pro tunc* judgment of dissolution of marriage offends Virginia public policy. The U. S. Constitution prescribes "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings

of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV, § 1. A qualifier to the giving of Full Faith and Credit is that the foreign order sought to be honored cannot be void as against Virginia public policy. "[T]he Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." *Nevada v. Hall,* 440 U.S. 410, 422 (1979). Determination of what is meant by "Virginia public policy" has most often occurred in the context of the validity of agreements.

> "* * * The term 'public policy' is equivalent to 'the policy of the law.' It is applicable to the spirit as well as the letter. Whatever tends to injustice or oppression, restraint of liberty, commerce, and natural or legal right; whatever tends to the obstruction of justice, or to the violation of a statute; and whatever is against good morals, when made the object of a contract, is against public policy and therefore void and not susceptible of enforcement." 4 M. J., Contracts, § 115, p. 484.
> "The meaning of the phrase 'public policy' is vague and variable; courts have not exactly defined it, and there is no fixed rule by which to determine what contracts are repugnant to it. The courts have, however, frequently approved Lord Brougham's definition of public policy as the principle which declares that *no one can lawfully do that which has a tendency to be injurious to the public welfare*. * * * The very reverse of that which is public policy at one time may become public policy at another time. Hence, no fixed rules can be given by which to determine what is public policy." 12 Am. Jur., Contracts, § 169, p. 666.

Wallihan v. Hughes, 196 Va. 117, 124-125 (1954) (emphasis added).

This Court has held that where the statutory practice of a sister state is not prohibited by federal or Virginia law, though not congruent with the practice in this state, such foreign practice must be given Full Faith and Credit. *See Soriano v. Commonwealth*, 98 Va. Cir. 243 (2018) (While both 18 U.S.C. § 3182 and Virginia Code § 19.2-87 require an extradition request be made by the Governor of California, neither provision specifies

he may not act through an agent, and therefore the California request had to be given Full Faith and Credit).

On July 24, 2020, the California Superior Court entered a judgment of dissolution of Mr. Casanova's first marriage, *nunc pro tunc* to May 2, 2008. The applicable California statute authorizing such order states as follows: "If the court determines that a judgment of dissolution of the marriage should be granted, but by mistake, negligence, or inadvertence, the judgment has not been signed, filed, and entered, the court may cause the judgment to be signed, dated, filed, and entered in the proceeding as of the date when the judgment could have been signed, dated, filed, and entered originally . . ." Cal. Fam. Code § 2346(a).

Though Virginia does not have a statute precisely analogous to the applicable California provision, the power of its courts to enter *nunc pro tunc* orders has long been recognized in the common law.

> The power of the courts to make entries of judgments and orders *nunc pro tunc* in proper cases, and in furtherance of the ends of justice, has been recognized and exercised from the earliest times; and the period in which the power may be exercised is not limited. Freem. Judgm. § 56; 1 Black, Judgm. §§ 126, 131; 16 Am. & Eng. Enc. Law, 1005, and note thereto; *Mitchell v. Overman*, 103 U.S. 62; and *Allen v. Bradford*, 37 Amer. Dec. 689. And this power may be exercised as well in criminal prosecutions as in civil cases. Freem. Judgm. note to section 56; *Burnett v. State*, 65 Am. Dec. 131. If a court would have the right to enter a judgment and authenticate the record thereof now for then, it follows as clearly as the greater includes the less, the whole a part, that the judge may sign in like manner the record of a judgment rendered or a proceeding had at a previous term and duly entered by the clerk upon the order book.

Weatherman's Case, 91 Va. 796, 799-800 (1895).

> More specifically, the purpose of a *nunc pro tunc* entry is to correct mistakes of the clerk or other court officials, or to settle defects or omissions in the record so as to make the record show what actually took place. *It is not the*

> *function of such entry by a fiction to antedate the actual performance of an act which never occurred, to represent an event as occurring at a date prior to the time of the actual event*, "or to make the record show that which never existed". 21 C.J.S., Courts, § 227(a), pp. 422, 423.
> "It is competent for the court to make an entry *nunc pro tunc* in order to correct its records so that they will speak the truth, particularly for the correction of merely formal and inadvertent errors. * * * It is held that the power of the court to make entries *nunc pro tunc* is inherent. Whether a record shall be corrected by entry *nunc pro tunc* is addressed to the discretion of the court, * * *." 21 C.J.S., Courts, § 227(b), pp. 423, 424.

Council v. Commonwealth, 198 Va. 288, 293 (1956) (emphasis added). Ms. Carambia asserts precisely that the California order antedates the judgment of dissolution to a date wherein the divorce could not have been entered based on the averred prerequisite contingency to satisfy payment under the Stipulated Contingent Order. Ms. Carambia, however, misreads the impact of the factual evidentiary record.

On May 2, 2008, Mr. Casanova appeared by telephone at the California Superior Court divorce hearing, and the following exchange ensued at the conclusion of the proceeding between Mr. Casanova and the presiding judge:

> MR. CASANOVA: Dissolution of the marriage is effective the date that I receive confirmation from the Court, but it's effective today?
> THE COURT VALDEZ [the judge]: Right it will be effective today, but you have to wait until you receive the notice of entry -- it will be entered as of today's date, but you have to wait until you receive the notice of entry of judgment in the mail, to be safe.

Later in the hearing the California Court reiterated its judgment:

> MR. JOHNSON [counsel for Mr. Casanova's first spouse]: Do you request that the Court enter a judgment of dissolution of marriage today?
> MR. CASANOVA: Yes.
> THE COURT VALDEZ [the judge]: Okay. The Court accepts the jurisdictional facts as recited by Mr. Johnson. As I stated, the Court will be entering judgment of dissolution, which will be effective today.
> Mr. Johnson, you will be preparing the stipulated judgment?
> MR. JOHNSON [counsel for Mr. Casanova's first spouse]: Yes, I will.

This exchange makes clear that the California court announced its judgment of dissolution on May 2, 2008. The ruling was not qualified as being subject to the later contingency maintained to exist by Ms. Carambia. Additionally, the Stipulated Contingent Order even stated "[t]he effective date of dissolution of marriage is May 2, 2008." The statute under which the Stipulated Contingent Order was entered has no clear equivalent under Virginia law, so it is understandable it would be confusing to Ms. Carambia. The statute is set forth as follows:

> If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Cal. Civ. Proc. Code § 664.6. This section stands independent of the divorce dissolution statute. It simply enables the parties to enter into a settlement of terms respecting pending litigation and for the California courts to turn such settlement into an order.

The Stipulated Contingent Order specified that if Mr. Casanova paid his first spouse $10,000.00 "all the terms of this stipulated contingent judgment shall become the judgment." That is, the order settled permanently the stated terms only upon satisfaction of such contingency. The contingency is internal to the order and not dependent on entry of the additional judgment of dissolution of marriage. The Stipulated Contingent Order specified that if the payment was not made "within those sixty (60) days, then all issues will remain for trial." Earlier in the Stipulated Contingent Order, payment of the $10,000.00 was called on to be made "within sixty days of May 2, 2008 or thirty (30) days after entry of judgment, whichever is later." The Stipulated Contingent Order, however, was not

entered until April 16, 2009, a time well beyond sixty days after the original May 2, 2008 divorce hearing. Courts do not tend to enter orders contingent on a date that has already passed, for reading this clause by itself would mean that the financial terms would have been automatically left for trial on the date of the order. The only contingency remaining was that such payment was to be made by "thirty (30) days after entry of judgment." The "judgment" can logically only refer to the final judgment of divorce, the judgment of dissolution. Thus, contrary to the assertion of Ms. Carambia, the entry of the final judgment of dissolution was *not* contingent on compliance with payment under the Stipulated Contingent Order. Rather, payment under the Stipulated Contingent Order finalized the terms contained therein *contingent* on payment within thirty (30) days *after* the entry of the final divorce order in California. If payment were not made by that time, the matters settled under the Stipulated Contingent Order would "remain for trial." Thus, the California judgment of dissolution entered July 24, 2020, *nunc pro tunc* to May 2, 2008, does not antedate a date before which it could have not been entered.

Virginia courts are empowered to do precisely what the California court did, enter a divorce decree *nunc pro tunc* to a date earlier in time when the ruling had been announced. *See Blackson v. Blackson,* 40 Va. App. 507, 515 (2003) ("The court entered its order on August 1, 2000, *nunc pro tunc* [to] June 15, 2000, the date of the *ore tenus* hearing."). Further, marriage and therefore divorce, stand on a different legal pedestal from more mundane orders of this Court.

> "The public policy of Virginia . . . has been to uphold the validity of the marriage status as for the best interest of society," *Needam v. Needam*, 183 Va. 681, 686, 33 S.E.2d 288, 290 (1945), and thus, the presumption of the validity of a marriage ranks as "one of the strongest presumptions known to the law," *Eldred v. Eldred*, 97 Va. 606, 625, 34 S.E. 477, 484 (1899). This

> presumption is not unique to our Commonwealth. "[I]t will be readily conceded that English and American tribunals tend, in construing the marriage acts, to uphold every marriage, if possible, notwithstanding a non-compliance with the literal forms." 2 James Schouler & Arthur W. Blakemore, A Treatise on the Law of Marriage, Divorce, Separation and Domestic Relations § 1191, at 1446 (6th ed. 1921). In our opinion, this robust presumption withstands all of Levick's arguments against it.

Levick v. MacDougall, 294 Va. 283, 291 (2017).

Thus, the California *nunc pro tunc* order does not offend Virginia public policy in the sense that it was entered to the date of May 2, 2008. Adherence to the Full Faith and Credit Clause of the U.S. Constitution has been codified in Virginia. "Every court of this Commonwealth shall give such records of courts not of this Commonwealth the full faith and credit given to them in the courts of the jurisdiction from whence they come." Va. Code § 8.01-389(B). Therefore, the California order must be deemed valid under Virginia law, but this does not settle fully, the impact of such order on the validity of *this* Court's decree of divorce.

II. Ms. Carambia's Challenge to the Fairfax Divorce Decree Has Been Rendered Moot by the California *Nunc Pro Tunc* Order of Dissolution of Marriage, and Therefore the Motion to Set Aside the Decree as Being Void *Ab Initio* Must Be Denied.

Ms. Carambia maintains that her marriage to Mr. Casanova was void *ab initio,* and therefore the divorce order of this Court was equally void at the time of its entry and may not be retroactively cured. Ms. Carambia's argument rests primarily on the question of whether Virginia public policy prevented this Court from giving Full Faith and Credit to the California judgment of dissolution of marriage. This was answered in Part I of this opinion. Nevertheless, the question of whether a decree of this Court could for a period of time

have been void *ab initio* and then validated by the California order bares further examination.

Whether the Fairfax decree was void *ab initio* or merely voidable is a subtle question. *See Cilwa v. Commonwealth,* 298 Va. 259, 266 (2019). "[A] judgment may be void *ab initio* if . . . the judgment is of a character that the court lacked power to render[.]" *Watson v. Commonwealth,* 297 Va. 347, 350 (2019) (emphasis added and citing *Evans v. Smyth-Wythe Airport Comm'n*, 255 Va. 69, 73 (1998)). Clearly, the marriage itself was void *ab initio*, though the invalidity was subject to the pregnant contingency that the California court could potentially enter a *nunc pro tunc* divorce. For a period of time, the marriage could have been relied upon as being void *ab initio* without further court process, that is, from the date of the parties' marriage until entry of the California *nunc pro tunc* order. *See* Va. Code § 20-43 ("All marriages that are prohibited by law on account of either of the parties having a former spouse then living shall be absolutely void, without any decree of divorce or other legal process.").

Normally, this would end the analysis as to whether the Fairfax divorce is a nullity. However, while it is true that Mr. Casanova's second marriage was *prohibited* at the time Mr. Casanova entered into the same because it was "entered into prior to the dissolution of an earlier marriage of one of the parties," it is equally true that "[w]hen the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirmance of the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid . . ." *Cf.*, Va. Code § 20-38.1 and § 20-90(A). Thus, the Virginia General Assembly accounted for precisely this instance in its public policy, that an apparent infirmity in the marriage may be determined at a particular point, to no longer

render the marriage that was void, currently void. This situation can best be described as accounting for that hopefully rare circumstance, where a circuity in the timing of the entry of orders of sister courts, causes a subsequent divorce order to be both first void and then subsequently valid. The point for determining those rights in the context of a *nunc pro tunc* divorce order is when those rights are first asserted to achieve a legal status or a judicial determination. This is not to hold that another state may in all instances render a bigamous marriage valid *nunc pro tunc*. The Court's holding is limited to determination of the validity of the parties' Fairfax divorce at the time it is being challenged. That is, the *nunc pro tunc* California order has rendered Ms. Carambia's challenge moot.

Application of these delineated concepts is best illustrated in a Supreme Court of Virginia precedent, coincidentally also involving a California *nunc pro tunc* order. Mary Allbee Bennett was married to Donald Allbee, but left Allbee and married Ronald Bennett. *Bennett v. Commonwealth*, 236 Va. 448, 454-55 (1988). Prior to leaving Allbee, Mary had sought a divorce, but the same was not properly finalized by the California court. *Id.* at 455. Sometime thereafter defendant Bennett stood trial for murder. *Id.* at 454. After the murder, Mary left him and moved to California, taking with her a custom-made ring that had belonged to the victim and which Bennett had given to her on the morning of the murder. *Id.* Approximately a year after the murder, Mary came forward to serve as a witness against Bennett. *Id.* Bennett sought to prevent Mary from testifying relying upon Virginia Code § 19.2-271.2, which provides that in criminal cases a spouse shall not "be compelled to be called as a witness against the other." *Id.* at 455. Bennett contended at trial he was married to Mary. *Id.*

The trial was set for August 20, 1987. *Id.* Days prior to the trial, Bennett sought a continuance and provided his reasoning to the court in an *ex parte* discussion. *Id.* Bennett needed additional time to request that the California court *nunc pro tunc* the dissolution of Mary's first marriage so that Mary's marriage to Bennett was validated. *Id.* at 455-56. Bennett explained that Mary had been awarded an interlocutory judgment of divorce, which he as an interested third party, could move to finalize. *Id.* The court granted the continuance. *Id.* at 456. The trial commenced on October 13, 1987. *Id.* At the trial, Bennett's counsel "introduced into evidence a California court order dated August 20, 1987, granting Mary and [Allbee] a final divorce *nunc pro tunc* to March 2, 1980 — a date more than six months prior to the marriage ceremony involving Bennett and Mary." *Id.* at 457. Surprised by this evidence, the Commonwealth sought and obtained a continuance of the trial proceedings to make inquiry into the introduced order. *Id.*

Subsequently, the California court set aside the prior order as Mary and Allbee did not receive proper notice of Bennett's petition to *nunc pro tunc* their divorce. *Id.* The trial resumed, and the Commonwealth introduced the order that vacated the *nunc pro tunc* order. *Id.* at 458. The court found that Mary could testify as Mary and Allbee were still married thus rendering Mary's marriage to Bennett void. *Id.* Bennett appealed the ruling arguing that the trial court had to give immediate effect to the *nunc pro tunc* order pursuant to the Full Faith and Credit Clause. *Id.* The Supreme Court of Virginia found that:

> We do not agree that the Full Faith and Credit Clause requires instantaneous acceptance of every authenticated judgment from a sister state. Code § 8.01-389(B) provides in pertinent part that "[e]very court of this Commonwealth shall give such records of courts not of this Commonwealth the full faith and credit *given them in the courts of the jurisdiction from whence they came.*" (Emphasis added.) The italicized language is fully in keeping with Supreme Court jurisprudence concerning

> the Full Faith and Credit Clause. *See, e.g., Durfee v. Duke*, 375 U.S. 106, 109 (1963); *Halvey v. Halvey*, 330 U.S. 610, 614 (1947). The language of Code § 8.01-389(B) makes clear that it is appropriate to determine what credit the originating state would give its own judgment when that state is advised of the full circumstances surrounding the entry of the particular judgment. In this case, the California court, by vacating the *nunc pro tunc* judgment, showed, in effect, that it would not have entered that judgment had it known that Mary and Donald did not receive notice of the [*nunc pro tunc*] proceeding . . . Moreover, from a full faith and credit standpoint, the trial court gave effect to the most recent California order, the October 19 order which vacated the August 20 *nunc pro tunc* order. We hold that there was no violation of the Full Faith and Credit Clause in this case.

Id. at 458-459.

As the Supreme Court of Virginia illustrated in *Bennett*, Bennett's bigamous marriage to Mary before she had divorced her prior spouse Allbee was validated for a period of time by Bennett's procured *nunc pro tunc* California divorce order reaching back some seven years. The trial court continued the proceedings to enable the review and subsequent invalidation of the California *nunc pro tunc* order. The period of validity of Bennett's marriage to Mary was then cut short and restored to a bigamous status by the California court setting aside its *nunc pro tunc* order for lack of proper notice. The Supreme Court did not fault the trial court for allowing California to in effect determine the validity of a Virginia marriage. Similarly, the bigamous marriage of Mr. Casanova to Ms. Carambia was validated by the California *nunc pro tunc* order, only here, permanently. Although Mr. Casanova's prior marriage was not reduced to written dissolution at the time of the filing of the Motion to Vacate, currently, California has fixed its error and entered the written dissolution *nunc pro* tunc to May 2, 2008. Like in *Bennett*, this Court must give effect to this most recent California order. Thus, whether the Fairfax divorce order was void *ab initio* or merely voidable is of little import, because the infirmity in the order was

cured by the California *nunc pro tunc* judgment of dissolution of Mr. Casanova's prior marriage.

CONCLUSION

The Court has considered Defendant Christy Nicole Carambia's challenge to the divorce decree of the parties entered by this Court on March 21, 2013, as being void *ab initio* because at the time of their marriage the Plaintiff Lawrence Anthony Casanova's California divorce had not yet been reduced to a written judgment of dissolution. The Court has before it the unusual question whether entry of a divorce order by a California court after Mr. Casanova remarried but *nunc pro tunc* to a date preceding the remarriage renders the Virginia divorce a valid court order. In analyzing this question, this Court must determine: A) whether the California *nunc pro tunc* order violates Virginia public policy such that it need not be given Full Faith and Credit under the U. S. Constitution; and B) whether the Virginia divorce order was void *ab initio*, and if so, whether such order may nevertheless be deemed validated by the California *nunc pro tunc* order, rendering any challenge to the validity of this Court's divorce decree moot.

This Court holds that: 1) although the California *nunc pro tunc* order was entered pursuant to a statute with no exact Virginia analog, it nevertheless does not offend Virginia public policy to recognize such decree, as the *nunc pro tunc* California order merely memorialized a judgment that the court had announced but failed to reduce to writing earlier; and 2) Ms. Carambia's challenge to the Fairfax decree is rendered moot in light of the *current* circumstance that California entered the written dissolution of the marriage—memorializing the prior oral ruling—*nunc pro tunc* to a date prior to the instant

parties marriage. Therefore, Ms. Carambia's motion to set aside the decree as being void *ab initio* must be DENIED.

The Court shall enter an order incorporating its ruling herein, and until such time THIS CAUSE CONTINUES.

Sincerely,

David Bernhard
Judge, Fairfax Circuit Court

OPINION LETTER