

## IN THE SUPREME COURT OF ILLYRIA

Olivia, )  
Petitioner, )  
v. ) No. 2016-3  
Sebastian, )  
Respondent. )

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In the space of minutes, in a swirl of feuds, fights, accusations, curses, maskings and unmaskings, Countess Olivia mistakes Sebastian for his twin, Cesario/Viola, with whom she is madly in love. As reflected in the record of these strange events (William Shakespeare’s *Twelfth Night*), Olivia proposes to the astonished Sebastian, whom she calls “Dear Cesario.”

Sebastian, recently washed ashore without passport, visa, or other documents, immediately suspects “this may be some error,” but does nothing to halt the wedding ceremony under his assumed identity of “Cesario.” During the ceremony, in response to the officiant’s question about his intent, he intones, “I, Sebastian, take thee, Olivia, as my wedded wife. . . .”

Within a month of their marriage, Olivia meets the real Cesario and realizes her mistake: “how am I beguiled!” she cries, recognizing that she has bound herself to a stranger, a foreigner, and (as she imagines) a deceiver. For the first time, Olivia grasps that her beloved “Cesario” is, in fact Viola, a woman and Sebastian’s twin. Olivia finds that she was not enamored of an appearance – Cesario – but of a person – Viola – to whom, as a result of a recent decision of the Supreme Court of Illyria, she could have proposed marriage. She also suspects that Sebastian was aware of her error and believes he deceived her into marriage to secure her fortune and protect himself from deportation as an undocumented person in Illyria. She claims that in her besotted condition, she did not notice that in his wedding vows he stated his name as “Sebastian.”

Immediately upon her realization that her husband is not the person she thought he was, Olivia sues for annulment under Illyria Stat. § 16-904(d) (“[m]arriage contracts may be annulled . . . where such marriage was procured by fraud”) and § 46-403 (“Any marriage the consent to which of either party has been procured by . . . fraud” is “illegal, and shall be void from the time

when their nullity shall be declared by decree”). Olivia contends that her marriage fits within these statutes because she entered into it based on deceit, fraud, and false identification. She further alleges that no valid marriage had taken place because no “Cesario” exists so that the marriage was a sham. Olivia also contends that Sebastian sought to deceive her into marriage to become an “immediate relative” under prevailing Illyrian law and, thus, be protected from deportation. Alternately, Olivia claims that Viola’s mis-statement of her gender and cross-dressing defrauded her, and that Viola’s deception provides additional grounds for the annulment of her marriage to Viola’s twin brother.

Sebastian opposes the annulment action and counterclaims for declaratory judgment that his marriage to Olivia is binding under Illyria Stat. § 16-921 (“When the validity of an alleged marriage is denied by either of the parties thereto the other party may institute an action for affirming the marriage, and upon due proof of the validity thereof the court shall decree it to be valid. The decree shall be conclusive upon all parties concerned.”). Sebastian insists that Olivia may “have been mistook” but was not “deceived” by him, noting that Olivia sought him out, insisted that he be ruled by her, arranged for a priest, and rushed him into marriage, and that he used his real name in making his wedding vows. Sebastian also states that Olivia confirmed her decision even after “these things [were] further thought on.” Sebastian claims his marriage to Olivia is as real as his love for her, hasty as they were. Sebastian reminds that other records of Mr. Shakespeare affirm that Olivia’s love for him and his for her was true and normal: “Whoever loved that loved not at first sight?” Sebastian also contends that the phrase “procured by fraud” in Illyria’s annulment statutes means that one *spouse’s* fraudulent behavior induced the other to wed; this statutory prerequisite could not be satisfied by the behavior of a third party, such as Viola.

Sebastian also insists that there is no basis for an annulment, and that he is a devoted husband and one of the few stable influences in Olivia’s passion-swept life. As he has his own fortune and rank, Sebastian claims he had no need to deceive Olivia into marriage for her fortune or status. Further, Sebastian notes that Duke Orsino recently affirmed the Illyrian policy of DACA –Deferred Action for Cast Aways – so Sebastian does not need to be married to an Illyrian to be assured of a life in Illyria out of the shadows.

The all-male lower courts ruled that fraud provides a basis for annulment only when one spouse’s deceptive behavior induces the other to marry, and held that Olivia’s wishes, not any fraud by Sebastian, prompted their marriage. Lower courts thus granted Sebastian’s request for declaratory judgment that his marriage to Olivia was valid; they rejected Olivia’s request for the marriage’s annulment, holding that she had made her bed and must sleep in it – with Sebastian. The Supreme Court of Illyria has granted Olivia’s petition for a writ of certiorari.

Question presented: Should Olivia’s marriage to Sebastian be declared binding or annulled?