

**[J-135-2002]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

LOUIS J. PORRECO,	:	No. 9 WAP 2001
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered June 6, 2000 at No.
	:	1502WDA1999 affirming the Order of the
v.	:	Court of Common Pleas of Erie County
	:	entered March 5, 1999 at No. 13920-
	:	1994.
SUSAN J. PORRECO,	:	
	:	
Appellee	:	ARGUED: September 11, 2001
	:	
	:	RESUBMITTED: June 6, 2002

**DISSENTING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: NOVEMBER 27, 2002**

A groom must expect matrimonial pandemonium  
when his spouse finds he's given her a cubic zirconium  
instead of a diamond in her engagement band,  
the one he said was worth twenty-one grand.

Our deceiver would claim that when his bride relied  
on his claim of value, she was not justified  
for she should have appraised it; and surely she could have,  
but the question is whether a bride-to-be *would* have.

The realities of the parties control the equation,<sup>1</sup>

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<sup>1</sup> We cannot measure the justification for this appellee's reliance as if she were of equal age and experience.

It is held by the weight of authority that ordinary representations are not actionable unless the hearer was justified in relying thereon in the exercise of common prudence and diligence. But the respective character, intelligence, experience, age, and mental and physical condition of the parties are considerations which may vary this rule....

(continued...)

and here they're not comparable in sophistication;  
the reasonableness of her reliance we just cannot gauge  
with a yardstick of equal experience and age.

This must be remembered when applying the test  
by which the "reasonable fiancée" is assessed.  
She was 19, he was nearly 30 years older;  
was it unreasonable for her to believe what he told her?

Given their history and Pygmalion relation,  
I find her reliance was with justification.  
Given his accomplishment and given her youth,  
was it unjustifiable for her to think he told the truth?

Or for every prenuptial, is it now a must  
that you treat your betrothed with presumptive mistrust?  
Do we mean reliance on your beloved's representation  
is not justifiable, absent third party verification?

Love, not suspicion, is the underlying foundation  
of parties entering the marital relation;  
mistrust is not required, and should not be made a priority.  
Accordingly, I must depart from the reasoning of the majority.

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(...continued)

Emery v. Third National Bank of Pittsburgh, 171 A. 881, 882 (Pa. 1934).

Determining whether reliance on a misrepresentation is justified is generally  
dependent, at least in part, upon such factors as the respective intelligence  
and experience of the parties....

Benevento v Life USA Holding, Inc., 61 F. Supp.2d 407, 417 (E.D. Pa. 1999)(citations  
omitted). See also Fort Washington Resources v. Tannen, 858 F. Supp. 455, 460 (E.D.  
Pa. 1994)(court may consider sophistication and history of parties); Siskin v. Cohen, 70  
A.2d 293, 295 (Pa. 1950)(rescission for purchase of bar granted based on fraud; purchaser  
working under "handicap of inexperience").