



ERETZ HEMDAH

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Witness Complication at a Wedding

Question: I was a witness at a wedding years ago and have been unsure if I did the right thing. After the *chupa*, the *kalla's* father (=kf), a learned but somewhat erratic person, came over and told me that he too had in mind to serve as a witness. I did not know if he was serious and ignored him. Could this have compromised the *kiddushin*, and should I do something now?

Answer: Before explaining, we assure you that you should do nothing now.

A *mishna* (Makkot 5b) derives that if one of the members of a group of witnesses (=eidim) is *pasul* (invalid to serve), so is the testimony of its kosher members. The *gemara* (ibid. 6a)

is bothered by the implication that events at which kosher and *pasul* (including relatives) *eidim* are together could not be halachically confirmed. The *gemara* provides a guideline: we ask if the people “came to see or to testify.” In other words, if they came to testify, there would be no testimony. *Kf* was apparently aware of this concept and was suggesting that your testimony, which was needed to effectuate the *kiddushin* (Kiddushin 65b), was *pasul*.

However, it is highly unlikely that this was a problem. *Rishonim* ask that if the presence of relatives *pasuls* kosher witnesses, what do we do at weddings? Tosafot (ad loc.) posits that just seeing an event does not turn an observer into an *eid*, which would happen only if he testified in *beit din*. Since this did not happen in your case, Tosafot would justify your inaction. The Shulchan Aruch (Choshen Mishpat 36:4) cites two opinions, with a preference toward the opinion that argues on Tosafot.

The Rosh (Makkot 1:11) says that even when *pasul eidim* would invalidate the function of kosher witnesses at the point of observation, if the kosher witnesses were appointed *eidim*, their status is unaffected by others. (A critical question, subject to *machloket*, is when one of the appointed *eidim* was *pasul*, whether kosher observers at the wedding can effectuate the *kiddushin*. This is beyond our scope – see Otzar Haposkim, Even Haezer 42:31.) Since here too, you and your co-witness were appointed (as is standard), the Rosh would also have you ignore *kf's* provocation.

Another approach in Tosafot (ibid.) is that the *gemara's* asking about the *eidim's*

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intention refers not to the *pasul eidim* but to the kosher ones. Specifically, we ask the kosher *eidim* whether they intended to join a witness group with the *pasul* ones or to remain separate. Since you did not intend to be *eidim* with *kf*, what he intended is irrelevant.

There is an approach that explains that we are not concerned at weddings because we assume that relatives do not intend to be witnesses (see Shach, CM 36:8). *Kf* seems to say that this wedding was a problematic exception. Apparently, though, even one who relies somewhat on the *pasul* observer's intention also accepts at least one of the previous distinctions (see *ibid.*), which do help in your case.

It is also not clear that we should trust *kf* that he intended to be an *eid* when there are no indications other than his word (and after all he is *pasul* for this too) that this is the case (see Ramban, Makkot 6a; Shach, CM 36:5). It is also difficult to understand exactly what he was saying about his intention and to put it in halachic perspective – did he actually plan to testify, did he just mean to cause a problem, and would that amorphous idea qualify? Did he have a real reason to disqualify the wedding? If he did, wouldn't he have sat down with the *mesader kiddushin* or the couple and explained himself? It is far more likely that he was trying to be "cute" or trying to get under your skin.

In summary, even if *kf* tried to disqualify the *kiddushin*, he almost definitely did not and could not do so. If it were so easy, any of the many relative guests at anyone's wedding

could, and Halacha does not want us to start worrying about that. While *kf* did say something unusual, a passing comment to you is definitely not enough for us to start worrying about it. Now, when the marriage is an established fact, it would be a big mistake to sow doubt about it. ■

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