



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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RETIRED JUDGES

March 11, 2020

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Re: *Shireen Ishaq Najati Alkhairy vs. Laith Atoum*, Case No. CL-2019-14379

Dear Counsel:

This cause came to be heard during a three-hour Plea in Bar on February 27, 2020. Laith Atoum (hereinafter "Defendant") asserted that the parties were divorced by Final Divorce Order issued by the Suweileh Sharia Court of Jordan on September 12, 2018. Shireen Ishaq Najati Alkhairy (hereinafter "Plaintiff") filed this case for divorce on October 21, 2019, arguing that the Jordanian divorce is against public policy and should not be recognized or granted *comity*.

The issue to be decided is whether the Virginia court system should grant *comity* of the Jordanian divorce rendering this case moot. This Court finds the Jordanian divorce will not be granted *comity* as the procedures employed by the Jordanian court system are not in alignment with those required to obtain a divorce in the Commonwealth of Virginia. Thus, the Defendant's Plea in Bar is denied.

OPINION LETTER

I. BACKGROUND

The pertinent facts for purposes of this motion are in 2004, Defendant immigrated to the United States. Since 2011-2012, Defendant has resided in the Commonwealth of Virginia and subsequently became a naturalized citizen of the United States. In 2014, Defendant travelled to Jordan, where Plaintiff resided and where the parties were married in an Islamic Ceremony on December 22, 2014. In 2016, Plaintiff immigrated from Jordan to the United States and obtained her permanent residency through her marriage with Defendant. Since 2016, Plaintiff has been a resident and domiciliary of the Commonwealth of Virginia and has resided in Virginia continuously and without interruption.

The parties' share a minor son who was born on [REDACTED], in Virginia. Both parties are employed in Virginia and since 2016 both have been residents of Fairfax County.

On August 31, 2018, the parties separated as husband and wife. On September 4, 2018, Defendant filed for divorce, through power of attorney in Jordan. On September 12, 2018, Defendant obtained a provisional divorce in Jordan. Notice of these proceedings was posted to Plaintiff's parents' home in Jordan. On October 29, 2018, parties executed a Marital Settlement Agreement in the United States. On November 1, 2018, the parties went to the Jordanian Embassy in Washington, D.C., and signed a General Release Agreement. This was incorporated into the final divorce from the Suweileh Sharia Court on November 11, 2018. The agreement addressed custody and visitation but no order from any court has been entered.

II. ARGUMENTS

Defendant argues that the Commonwealth of Virginia does not have jurisdiction over this case because the parties are no longer married as evident by the Jordanian divorce decree. Further, Defendant states that both Defendant and Plaintiff signed documents to accomplish the divorce, thus it was not a divorce conducted by one party with no notice or ability to participate given to the other. Therefore, the case should be dismissed.

Plaintiff contends the Jordanian divorce violates Virginia public policy and should not be granted *comity* by the Commonwealth of Virginia. Specifically, that the procedures employed by the Jordanian Courts do not comport with Virginia public policy. Jordan only requires a 90-day waiting period to obtain a divorce. Whereas, Virginia requires a one-year separation for parties with minor children before filing a divorce. Va. Code Ann. § 20-91(9)(a).

III. ANALYSIS

A. Standard of Review

A plea in bar is a defensive pleading which "shortens the litigation by reducing it to a distinct issue of fact which, if proven, creates a bar to the plaintiff's right of recovery. The moving party carries the burden of proof on that issue of fact." *Tomlin v. McKenzie*, 251 Va. 478,

480 (1996) (citation omitted). “[A] plea, whether at law or equity, is a discrete form of defensive pleading. As distinguished from an answer or grounds of defense, it does not address the merits of the issues raised by the bill or complaint or the motion judgment. *Nelms v. Nelms*, 236 Va. 281, 289 (1988). Yet, a plea is a pleading which alleges a single state of facts or circumstances which, if proven, constitutes an absolute defense to the claim.” *Id.* at 289.

B. Application

Comity is defined as “the recognition which one nation allows within its territory to the legislative, executive, or judicial action of another, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its law. *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895). In *Humphreys v. Humphreys*, the Supreme Court of Virginia reasoned that it was public policy of Virginia to recognize foreign divorce decrees under the grounds of *comity*, where such decrees were obtained without fraud, constructive or actual service, and where they were not otherwise against Virginia’s public policy or statutes. 139 Va. 146, 154-55 (1924).

The issue in this case, is whether the procedures employed in Jordan comport with or offend Virginia public policy. Specifically, whether there was some reasonable residency and domiciliary requirement prior to the divorce proceedings being instituted.

Here, Defendant filed the divorce through an agent (a relative) in Jordan. At that time, neither Defendant nor Plaintiff were present in Jordan. Notice to Plaintiff of the proceedings was subsequently posted to her parents’ home in Jordan. Further, prior to and during the divorce proceedings both parties were and continue to be residents and domiciliaries of the Commonwealth of Virginia. The marital home is located in Virginia and both parties are employed in Virginia. Moreover, Virginia Code § 20-91(9)(a) requires that parties with minor children, wait one-year after separation has been continuous and uninterrupted before filing for divorce. Jordan only requires a 90-day waiting period irrespective of whether or not parties have minor children.

Therefore, the Jordanian procedures should not be granted *comity* in this case because there were no reasonable residency and domiciliary requirements prior to the divorce proceedings being instituted. In fact, neither Defendant nor Plaintiff were present at the time the divorce was filed in Jordan or after the provisional divorce was granted through final decree. Thus, this court denies the Defendant’s Plea in Bar and refrains from granting *comity* to the Jordanian divorce.

IV. CONCLUSION

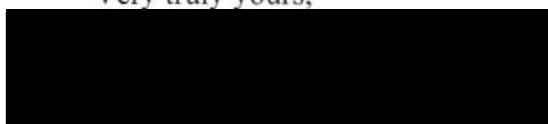
For the reasons stated herein, this Court holds that the Jordanian divorce should not be granted *comity* and thus the Commonwealth of Virginia has jurisdiction to hear this case. Therefore, the Defendant’s Plea in Bar is denied.

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Parties are to circulate and submit an appropriate order reflecting the Court's ruling by March 24, 2020.

And this matter continues.

Very truly yours,

A large black rectangular redaction box covering the signature of the court clerk.

Grace Burke Carron

OPINION LETTER