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2019 IL App (3d) 180559-U

Order filed July 19, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

| | | |
|--------------------------|---|-------------------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the Circuit Court |
| |) | of the 3rd Judicial Circuit, |
| HANY SAYED ABUTALEB, |) | Will County, Illinois. |
| |) | |
| Petitioner-Appellee, |) | Appeal No. 3-18-0559 |
| |) | Circuit No. 16-D-834 |
| and |) | |
| |) | |
| MONA MOHAMED ABUTALEB, |) | Honorable |
| |) | Domenica Ann Osterberger, |
| Respondent-Appellant. |) | Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred by affording comity to the 2018 Egyptian divorce decree.

¶ 2 Petitioner, Hany Sayed Abutaleb, filed his petition for dissolution of marriage from respondent, Mona Mohamed Abutaleb. After two years of trial court proceedings, petitioner filed an emergency motion to dismiss his petition for dissolution because respondent obtained a divorce decree in Egypt. The trial court granted petitioner's motion to dismiss on comity principles. Respondent appeals.

I. BACKGROUND

¶ 3
¶ 4 Petitioner and respondent married on July 7, 1994, in Cairo, Egypt. In 1997, the parties emigrated from Egypt to the United States. The couple became citizens of the United States, had four children in the United States, and have remained residents of the United States since 1997.

¶ 5 On February 13, 2016, petitioner sent respondent a “confession for divorce,” which purported to comply with the requirements for a divorce under the tenets of Islam. In April 2016, petitioner conveyed his interest in a disputed marital property, located in Egypt, to petitioner’s brothers for \$5000.

¶ 6 Shortly thereafter, petitioner filed a petition for dissolution of marriage in the circuit court of Will County on May 17, 2016. On this date, the parties’ children were 17, 15, 13, and 11 years of age. On August 2, 2016, the trial court entered a temporary restraining order and preliminary injunction, barring the parties from disposing, transferring, or encumbering marital assets located in the United States and Egypt.¹ The trial court also ordered petitioner to pay the mortgages and household expenses on the marital homes, and to pay respondent \$2000 per month in child support and maintenance.

¶ 7 Petitioner’s brothers sold the disputed marital property, including the interest they acquired from petitioner, in August 2017 for an estimated \$300,000 to \$400,000. The property is located in Egypt. According to the record, petitioner received and is due to receive additional sums of money from his brothers for this transaction.²

¹On July 18, 2018, respondent filed an emergency petition for rule to show cause for why petitioner had not paid the mortgage on the marital residence. Petitioner allegedly failed to comply with orders from the trial court to pay the mortgage on August 2, 2016, and January 31, 2018.

²During the trial court proceedings, the ownership of this property was the subject of ongoing litigation between the parties in Egypt.

¶ 8 On October 20, 2017, petitioner filed a motion to bifurcate the dissolution proceedings in Will County. Petitioner alleged it would be difficult, if not impossible, for the trial court to completely distribute the parties' marital assets due to now pending litigation over the disputed property sold by petitioner's brothers in Egypt. With bifurcation, petitioner sought to have the trial court first terminate the marriage and then address the contested issues of child support, maintenance, allocation of parenting rights, and the distribution of marital property, including assets and debts, located in Illinois. On November 14, 2017, the trial court granted petitioner's motion to bifurcate the trial, reserving all issues related to Egyptian assets until after the dissolution of marriage.

¶ 9 On February 2, 2018, respondent filed a cross-petition for dissolution of marriage. During the trial court proceedings, respondent consistently alleged petitioner violated the terms of the trial court's temporary restraining order and preliminary injunction, barring the parties from disposing, transferring, or encumbering marital assets located in the United States and Egypt. The trial on the mutual petitions for dissolution began on February 13, 2018.

¶ 10 Two days later, on February 15, 2018, the trial court, *sua sponte*, vacated the order of bifurcation previously entered on November 14, 2017. The trial court reasoned respondent's property and maintenance requests were dependent upon whether the disputed property, located in Egypt, qualified as marital property of significant value. The trial court recessed the trial for the purpose of providing the parties with additional time for discovery on this issue. The trial court scheduled the dissolution proceeding to resume on June 28, 2018.

¶ 11 However, on June 25, 2018, petitioner filed an emergency motion to dismiss, citing, among other things, principles of comity.³ Petitioner alleged that respondent had initiated divorce proceedings in Egypt on November 30, 2016, which eventually resulted in an Egyptian court entering a divorce decree on April 30, 2018.⁴ Thus, petitioner asserted that the parties were divorced in 2018, and no further dissolution proceedings could take place in the trial court, except for a separate action to adjudicate the parties’ limited assets in Illinois.

¶ 12 Respondent resisted petitioner’s emergency motion to dismiss, claiming “no proceedings of divorce have been ongoing in Egypt” while matters were pending in the trial court. Respondent argued “no Egyptian divorce case is pending[.]”

¶ 13 On June 28, 2018, rather than resuming the trial, the trial court conducted an evidentiary hearing on petitioner’s emergency motion to dismiss.⁵ The trial court heard testimony from Mohammed El-Sharnoby, an Egyptian law expert. According to El-Sharnoby, Egypt’s civil court is not an Islamic or Sharia court, and the presiding judges are not religious clerics. However, while Egyptian divorce law is not based upon religious tenets, Egyptian divorce law also does not conflict with the tenets of Sharia law. El-Sharnoby testified that, in Egypt, issues of maintenance, child support, and marital property are heard separately from a dissolution proceeding. According to El-Sharnoby, principles of joint ownership govern property distribution.

³Petitioner also made arguments under section 2-619(a)(3) of the Code of Civil Procedure (the Code), 735 ILCS 5/2-619(a)(3) (West 2018), and principles of *forum non conveniens*.

⁴The Egyptian court purportedly found that the “confession for divorce,” sent by petitioner to respondent on February 13, 2016, was enough to notify respondent of and prove an Islamic divorce.

⁵The record on appeal does not include a complete report of proceeding for this evidentiary hearing. Therefore, we reference the facts contained in the trial court’s final order and decision, dated September 14, 2018, as well as the parties’ written closing arguments.

¶ 14 Respondent called Will Ubaydullah Evans, an expert in Islamic law, as her expert witness. Evans stated, and El-Sharnoby agreed, that a husband may unilaterally divorce his wife under *Islamic law*, as petitioner did in this case by sending respondent a “confession for divorce” on February 13, 2016. Evans and El-Sharnoby agreed a civil divorce decree from the Egyptian court was not necessary to confirm the unilateral, *Islamic divorce*.

¶ 15 Respondent explained to the trial court during her testimony that the Egyptian divorce proceeding was necessary, regardless of the proceedings being held in Will County, to prevent petitioner from exercising Islamic spousal rights over respondent in Egypt in the event Egyptian authorities refused to recognize a judgment of dissolution of marriage from Illinois. Respondent testified that her father initiated the Egyptian divorce proceedings, with her knowledge, and caused an attorney to appear on her behalf. Respondent claimed that she did not realize the Egyptian proceedings would impact the pending dissolution proceedings in the trial court. According to the record, petitioner cooperated and voluntarily participated in the action in Egypt.

¶ 16 Following the June 28, 2018, hearing, the trial court received written closing arguments from the parties pertaining to petitioner’s emergency motion to dismiss. Petitioner stated in his closing arguments that, although the parties were residents of Illinois, they have regular dealings, properties, and significant financial interests in Egypt. Further, respondent’s claim that Egypt would not recognize an Illinois judgment was unsupported by any evidence of record.

¶ 17 Petitioner strenuously asserted that since respondent’s actions resulted in a termination of the marriage in Egypt, the parties were already divorced. Therefore, the trial court lost jurisdiction to resolve any divorce related matters. Petitioner emphasized that, while the “parties each cooperated with the proceedings in Egypt to obtain a [divorce],” it was respondent who initiated the divorce in Egypt. In petitioner’s view, this also undermined respondent’s arguments

of fraud and duress. Petitioner argued that, as was stated by his Egyptian law expert, El-Sharnoby, respondent is free to resolve all other issues related to the 2018 divorce and disputed property, located in Egypt, in an Egyptian court.

¶ 18 Respondent argued that the trial court was not required to dismiss the action in Will County based upon principles of comity. First and foremost, respondent stated that Illinois has significant and substantial interests in the parties' dissolution of marriage, as both parties and their children have long been citizens and residents of Illinois.

¶ 19 Alternatively, respondent urged the trial court to consider that Egypt would not recognize an Illinois divorce decree. According to this argument, the trial court should not afford comity to the Egyptian order of divorce. Finally, respondent argued petitioner, while knowing respondent desired civil protection in Egypt, cooperated with the proceeding before the court in Egypt to later take advantage of favorable Egyptian laws that would divide property unequally, would not afford maintenance and alimony to respondent as a matter of right, and would decide child custody matters in accordance with the Islamic faith. Consequently, respondent urged the trial court not to apply principles of comity under circumstances that amount to fraud or duress.

¶ 20 The trial court heard additional oral arguments from the parties on August 31, 2018.⁶ The matter was then taken under advisement. The trial court filed its final order on September 14, 2018. The trial court's order was based upon principles of comity, and stated:⁷

“[Respondent] chose to obtain an Egyptian divorce decree for a stated civil purpose, even though she knew or should have known that Egyptian law does not

⁶The record on appeal does not include a report of proceeding for this hearing.

⁷The trial court rejected petitioner's arguments under section 2-619(a)(3) of the Code and principles of *forum non conveniens*, stating “[t]here is no pending Egyptian case, and, even if there were, neither argument is viable.” See 735 ILCS 5/2-619(a)(3) (West 2018).

provide for the expansive relief that Illinois divorce law provides. That was a poor decision. It is plain to the Court that [respondent] seeks to forum shop and obtain another divorce decree in Illinois in order to avail herself of this state’s maintenance and property division laws. *** The motion to dismiss is granted, as there is no divorce decree to grant— Egypt has already done so at [respondent’s] request.”

¶ 21 In so stating, the trial court rejected respondent’s claims that the Egyptian divorce proceedings were initiated to affirm the Islamic divorce, arising from petitioner’s “confession for divorce,” for civil protection, and that respondent did not realize the impact of the Egyptian proceedings in the trial court. The trial court bluntly stated respondent was “willfully ignorant” of the legal ramifications of her actions in Egypt, or “deliberately concealed” the Egyptian proceedings from both the trial court and her legal counsel in the Will County proceedings.

¶ 22 The trial court also reasoned that there is “nothing inherently contradictory” between Illinois public policy and the 2018 Egyptian divorce decree, as to prohibit affording comity to that decree. According to the trial court’s reasoning, by respondent’s own admission, the Egyptian divorce was initiated for the purpose of “obtain[ing] *civil protection* [for respondent] in Egypt.” (Emphasis in original.) Thus, in the trial court’s view, estoppel barred respondent’s comity challenge in this case.

¶ 23 As a result, the trial court dismissed the petitions for dissolution of marriage. The trial court explained that the trial court lost the statutory authority to dispose of the parties’ property or award maintenance because, by affording comity to the 2018 Egyptian divorce decree, the parties were already divorced in Illinois, Egypt, and everywhere else. However, the trial court

observed that respondent could still petition the trial court for the allocation of parenting time and a determination of child support. Respondent filed a notice of appeal on September 19, 2018.

¶ 24

II. ANALYSIS

¶ 25

Initially, petitioner has forgone his right to file a brief. Thus, under *First Capitol Mortgage Corporation v. Talandis Construction Corporation*, we are left with “three distinct [and] discretionary options” on appeal, including: (1) if justice requires, advocating for petitioner or searching the record to sustain the trial court; (2) deciding the merits if the record is simple and the issues can be easily decided; or, (3) reversing the trial court for *prima facie* reversible error that is supported by the record. See 63 Ill. 2d 128, 133 (1976); *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 76. In this case, the issues can be easily decided on a simple record. Thus, we proceed under *Talandis*’s second option. See *Talandis*, 63 Ill. 2d at 133.

¶ 26

On appeal, respondent, proceeding *pro se*, argues the trial court erred by dismissing the petitions for dissolution of marriage on principles of comity.⁸ Comity has long been described as the recognition by one nation of the legislative, executive, or judicial acts of another nation. *Clubb v. Clubb*, 402 Ill. 390, 400 (1949); Accord *In re Marriage of Murugesh and Kasilingam*, 2013 IL App (3d) 110228, ¶ 40. Due regard is given to international duty and convenience, and to the rights of the former nation’s citizens who are under the protection of its laws. *Clubb*, 402 Ill. at 400; *In re Marriage of Murugesh and Kasilingam*, 2013 IL App (3d) 110228, ¶ 40.

¶ 27

Under comity principles, courts may, but are not required to, defer to laws or interests of a foreign country and decline to exercise properly asserted jurisdiction. *In re Marriage of Murugesh and Kasilingam*, 2013 IL App (3d) 110228, ¶ 40. Where an action is properly filed

⁸In her brief, respondent argues a dismissal under section 2-619(a)(3) and principles of *forum non conveniens* would be improper. However, the trial court expressly rejected petitioner’s arguments on those grounds. Thus, respondent’s arguments have limited relevance on appeal.

and has a legitimate and substantial relationship to Illinois, dismissal is improper. *Id.* Also, recognition of a foreign judgment may be withheld if (1) the foreign judgment is contrary to the public policy of Illinois, (2) the foreign country does not recognize American judgments, or (3) the foreign judgment was obtained as a result of bad faith, fraud, or by taking advantage of the foreign country’s laws. *Id.* at ¶ 41. A court also considers if the foreign court “can do complete justice to those affected by the decree.” *Id.* The trial court’s decision to grant comity is reviewed for an abuse of discretion, and is reversed if the decision is arbitrary, fanciful, or unreasonable. *In re Parentage of A.H. v. Harlow H.*, 2017 IL App (1st) 133703, ¶ 17; *Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, ¶¶ 34, 37.

¶ 28 Initially, we note it was petitioner—not respondent—who formally initiated the dissolution proceedings in Will County to terminate the Egyptian marriage. This was after petitioner sent respondent the “confession for divorce,” which was the only step necessary for a divorce under the Islamic faith. Consequently, we do not share the trial court’s concerns that respondent, based upon her claimed desire for civil protection from the Islamic spousal rights afforded to husbands in Egypt, engaged in forum shopping. The record reflects that respondent’s family resides in Egypt, and that travel by respondent and her children to Egypt might be necessary or reasonably desired in the future.

¶ 29 Further, we understand that the trial court was presented with a unique set of facts. However, we believe there is binding precedent from this court that should have guided the trial court’s decision on the comity issue. See *In re Marriage of Murugesh and Kasilingam*, 2013 IL App (3d) 110228. Most importantly, Illinois has legitimate and substantial interests in the parties’ dissolution of marriage. The parties were married in Egypt in 1994, before the birth of their children, then moved to the United States in 1997. It is undisputed that the couple then

chose to become United States Citizens and reside in Illinois during the pendency of this case. See *id.* ¶¶ 40, 42. Indeed, the parties lived in Egypt for only the first three years of their marriage, and their children have never resided in Egypt. These facts indicate Illinois’ legitimate and substantial interests in the parties’ dissolution of marriage. See *id.*

¶ 30 Moreover, respondent filed a motion to expedite her appeal on July 1, 2019. According to respondent, the length of the proceedings in the trial court and now on appeal, as well as the alleged violations of trial court orders by petitioner, have resulted in respondent’s home, located in Will County, being sold at auction. Thus, respondent and her children will soon have nowhere to live. Respondent has outstanding credit card debt that was previously being paid by respondent with maintenance and child support payments received from petitioner. These considerations also demonstrate the legitimate and substantial interests of Illinois in this case, which are to prevent displacing children and creating uncertainty regarding the basic requirements of parenthood—providing stable housing and support for children of the marriage.

¶ 31 Affording comity to the 2018 Egyptian divorce decree should have also been denied as against public policy. Our court has explicitly stated that there is a “strong public policy in favor of deciding marital controversies locally.” *Id.* ¶ 36. In domestic relations cases, “there is a strong tie to the county where the marital home is located and where the children of the marriage reside.” *Id.* Here, the marital home is located, and the children have resided and continue to reside in, Illinois. Therefore, public policy favors deciding this marital controversy in Will County, and the finding to the contrary was an abuse of discretion by the trial court. *Id.*

¶ 32 In conclusion, after our careful review of this fairly simple record, we conclude Illinois’ legitimate and substantial interests in the parties’ dissolution of marriage, as well as Illinois’ public policy, required the trial court to deny comity to the 2018 Egyptian divorce decree and to

resolve all dissolution matters in this State. The trial court's contrary decision, despite the parties' residency and Illinois' public policy, constituted an abuse of discretion.

¶ 33 On remand, the trial court is directed to resume the dissolution proceedings, on a bifurcated basis if necessary, recognizing the trial court may need to reserve certain decisions until the property litigation in Egypt is resolved. Having issued this decision shortly after respondent's motion to expedite, we now consider the subject of that motion moot. Due to the necessity of expediency in this case, the clerk of this court should issue the mandate immediately.

¶ 34 III. CONCLUSION

¶ 35 The judgment of the trial court of Will County is reversed and remanded with directions.

¶ 36 Reversed and remanded with directions.