

2015 IL App (1st) 142656-U
No. 1-14-2656
September 29, 2015

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

<i>In re</i> MARRIAGE OF TAMARA XOUBI,)	Appeal from the Circuit Court
)	Of Cook County.
Petitioner-Appellee,)	
)	
and)	No. 11 D 530842
)	
MICHAEL XOUBI,)	The Honorable
)	Patrick T. Murphy,
Respondent-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit courts have subject matter jurisdiction over petitions for dissolution of marriage. Principles of comity do not require circuit courts to recognize or enforce foreign decrees, so the circuit court is not divested of subject matter jurisdiction and parties are not estopped from proceeding with dissolution proceedings. Finally, circuit courts do not abuse their discretion when they deny motions for reconsideration when the court's factual findings are not against the manifest weight of the evidence and the court did not apply the wrong legal standard.

¶ 2 Tamara Xoubi (Tamara) filed a petition for dissolution of marriage in the circuit court of Cook County on November 2, 2011 and named Michael Xoubi (Michael) as the respondent.

On March 4, 2014, the circuit court entered (1) a judgment dissolving the marriage and (2) a qualified domestic relations order (QDRO). Michael filed a motion to reconsider and vacate the judgment dissolving the marriage and the QDRO on March 25, 2014. On July 31, 2014, the circuit court denied the motion in part and granted it in part. Michael timely appealed and sought review of both the March 4, 2014 judgment dissolving the marriage and the July 31, 2014 order which denied, in part, his motion to reconsider. In this appeal, Michael challenges the subject matter jurisdiction of the circuit court and argues that the court erred in granting a judgment of dissolution in Cook County because the parties were already divorced in Jordan. Michael also argues that Tamara was estopped from challenging the Jordanian divorce because she had received a financial benefit of the Jordanian divorce in the form of her dowry.

¶ 3 We find that a dissolution action is a justiciable matter over which the circuit court has jurisdiction (Ill. Const. 1970, art. VI, §9), and therefore, the circuit court acquired subject matter jurisdiction over the case when Tamara filed her petition for dissolution of marriage. We also find that the circuit court was not divested of subject matter jurisdiction over Tamara's dissolution action or estopped from dissolving Michael and Tamara's marriage because Michael presented a Jordanian certificate of divorce which indicated that he obtained an *ex parte* divorce in Jordan.

¶ 4 We hold that the circuit court did not err when it found that it had subject matter jurisdiction over Tamara's petition for dissolution and entered the judgment dissolving the marriage. We also hold that the circuit court did not abuse its discretion when it denied

Michael's motion for reconsideration. Accordingly, we affirm the circuit court's order denying Michael's motion for reconsideration.

¶ 5

BACKGROUND

¶ 6

Michael and Tamara were married in the country of Jordan on December 25, 1996. After their marriage, Michael and Tamara moved to Cook County, Illinois, where they had three children and resided during their marriage.

¶ 7

A copy of a Jordanian certificate of divorce and order (the absent retroactive first divorce document) in the record indicates that the parties were divorced in Jordan on September 13, 2011. Tamara maintains that she did not receive notice of the divorce case. There are no affidavits from a process server, no certified mail receipts or any other evidence in the record which establishes that notice of the Jordanian divorce was given to Tamara. The Jordanian certificate of divorce and order did not address the custody of the parties' three minor children, nor did it address the division of the parties' property.

¶ 8

On November 2, 2011, Tamara filed a petition for dissolution of marriage in Cook County, Illinois. Michael filed an appearance, through counsel, on November 17, 2011. Later, Michael remarried and had a child with his second wife¹.

¶ 9

On July 18, 2013, Tamara filed a motion in the circuit court to declare the Jordanian divorce judgment invalid because of the lack of notice and Michael's failure to meet Jordan's residency requirements. We did not find an order in the record ruling on this motion.

¹ Although the record is silent as to the exact date of Michael's second marriage, both parties acknowledge that it occurred before the circuit court of Cook County entered its judgment of dissolution on March 4, 2014.

¶ 10 "A Private Proxy" and a trustee's authorization in the record indicate that Tamara executed a private proxy and authorized her trustee to hire an attorney to act on her behalf in Jordan to collect her dowry. On November 17, 2013, Tamara obtained a "Verdict Notification in Jordan" that stated in pertinent part:

"[P]etitioner (Tamara) aforementioned was given the right to receive her postponed dowry totaling (five Thousand [sic] Jordan dinar) from the defendant (Mohammad)² listed in their marriage contract *** The petitioner is to be paid this beginning from the date of the verdict issuance, including paying all fees and legal expenses and twenty Jordan Dinar as attorney fees."

Tamara maintained that she never received her dowry, and Michael asserted that he made payment to the attorney Tamara retained in Jordan. The record contains no receipts, no checks, no electronic transfers, or any other evidence to establish Michael paid the dowry to Tamara either in Jordan or in Illinois.

¶ 11 On December 4, 2013, the court entered an order setting the trial date for December 19, 2013, but the case was continued, and on January 30, 2014, the circuit court conducted a trial and entered the following order:

"1. Judgment for dissolution of marriage to be prepared and presented for entry by this court on March 4, 2014.

2. Said Judgment [sic] shall include the following findings by This [sic] Court:

²It appears, from the record, that Michael's Jordanian name is "Mohammad Saleem Soud Al Zoubi." The parties do not dispute that the November 17, 2013 Jordanian judgment, which awarded Tamara the \$5,000 Dinar dowry, was against Michael.

- a. Parties shall have joint-custody of the minor children
- b. Respondent shall pay petitioner unallocated support and maintenance in the amount of \$2,287.00 monthly.
- c. A qualified Domestic Relations order (QDRO) [sic] shall be prepared awarding petitioner Tamara Xoubi 50% of pensions and Retirement Plans [sic].
- d. Respondent shall pay attorneys [sic] fees to the Law Office of Rouhy J. Shalabi, in the amount of five-thousand (\$5,000.00) dollars.
- e. any and all other issues and orders of this court to be set forth in Judgment of Dissolution of Marriage [sic].

3. This matter is continued to March 4, 2014 at 1:30pm for presentation of Judgment of Dissolution of Marriage, Joint parenting agreement [sic], Qualified Domestic Relations Order, [and] withholding [sic] order."

¶ 12 On March 4, 2014, the circuit court entered a judgment of dissolution of marriage stating the date of divorce as January 30, 2014 and awarding Tamara a portion of Michael's retirement benefits through January 30, 2014. The circuit court also entered a QDRO on March 4, 2014, awarding Tamara 50% of the benefits under Michael's 457 Plan that he has with his employer, the Metropolitan Water Reclamation District of Greater Chicago (Metropolitan), as of January 30, 2014. In addition, on March 4, 2014, the circuit court entered a Qualified Illinois Domestic Relations Order (QIDRA) which awarded Tamara 50% of Michael's benefits through the Metropolitan Water Reclamation District Retirement Fund

(Metropolitan RF) "from the date of marriage 12/25/1996 *** to the date of divorce 03/04/2014."

¶ 13 On March 25, 2014, Michael's counsel filed a substitute appearance and a motion for reconsideration asking the court to vacate the March 4, 2014 judgment of dissolution and the QDRO. On April 28, 2014, the circuit court denied Michael's motion to vacate and continued the motion for reconsideration. On July 31, 2014, the circuit court heard the motion, granted it in part and denied it in part, and made the following statement at the hearing on the motion:

"THE COURT: -- and she's got three children. And you want to argue that she's not entitled to the money? I believe she is. I don't think estoppel applies in this case."

¶ 14 On August 25, 2014, Michael timely filed his appeal seeking review of the March 4, 2014 judgment of dissolution and the July 31, 2014 order, which denied, in part, Michael's motion for reconsideration. Specifically, the record reflects that the court denied Michael's motion to the extent that he argued: (1) that the date of divorce should be recognized as "September of 2011"; (2) that the circuit court lacked subject matter jurisdiction to hear the case; and (3) that Tamara is estopped from challenging the Jordanian divorce.

¶ 15 ANALYSIS

¶ 16 I. Standard of Review

¶ 17 Michael argues that the circuit court did not have subject matter jurisdiction to enter a judgment dissolving the parties' marriage because he had obtained a certificate of divorce in Jordan. Michael also argues that because Tamara ratified the Jordanian divorce decree by

receiving a financial benefit of the divorce - - the return of her dowry - - she was estopped from attacking the validity of the divorce. Michael further argues that the circuit court failed to do substantial justice when it denied his motion for reconsideration and refused to vacate the March 4, 2014 dissolution judgment and the QDRO.

¶ 18 We must first determine whether the circuit court had subject matter jurisdiction over Tamara's dissolution action. Our supreme court has held that determining whether the circuit court has subject matter jurisdiction to entertain a claim presents a question of law. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corporation*, 2011 IL 111611, ¶ 26. Therefore, we will apply a *de novo* standard of review to the subject matter jurisdiction question presented in Tamara's dissolution case. *McCormick v. Robertson*, 2015 IL 118230, ¶ 18; *Crossroads*, 2011 IL 111611, ¶ 26.

¶ 19 II. Subject Matter Jurisdiction

¶ 20 Michael argues that the circuit court did not have subject matter jurisdiction to enter the March 4, 2014 judgment of dissolution because the parties were already divorced on September 13, 2011 by a Jordanian tribunal. Michael's argument presents this court with two issues. The first issue is whether the circuit court had subject matter jurisdiction over the dissolution action in Cook County. The second issue is whether the circuit court was divested of subject matter jurisdiction over the dissolution action because a Jordanian tribunal issued a certificate of divorce.

¶ 21 A. Cook County Judgment for Dissolution of Marriage

¶ 22 In *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), our Supreme Court held that subject matter jurisdiction is conferred only by this state's constitution:

" 'Subject matter jurisdiction' refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. [Citations.] With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred *entirely by our state constitution*. [Citations.] *Belleville*, 199 Ill. 2d at 334-35; Ill. Const. 1970, Art. VI § 9.

¶ 23 The *Belleville* court also held that "Under section 9 of article VI, that jurisdiction extends to all "justiciable matters." [Citation.] Thus, in order to invoke the subject matter jurisdiction of the circuit court, a plaintiff's case, as framed by the complaint or petition, must present a justiciable matter. [Citations.]" (Emphasis added.) *Belleville*, 199 Ill. 2d at 334-35; Ill. Const. 1970, Art. VI, § 9.

¶ 24 The supreme court defined a justiciable matter as:

" 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' [Citation.] To invoke a circuit court's subject matter jurisdiction, a petition or complaint need only 'alleg[e] the existence of a justiciable matter.' " *In re Luis R.*, 239 Ill. 2d 295, 301 (2010).

¶ 25 Here, because Tamara filed a petition for dissolution which presents a controversy which is definite, touching upon the legal relations of Tamara and Michael, who have adverse interests, Tamara's petition for dissolution is a justiciable matter, and the circuit court had subject matter jurisdiction over Tamara's dissolution proceedings. *Belleville*, 199 Ill. 2d at 334-35; Ill. Const. 1970, Art. VI, §9.

¶ 26 B. Jordanian Divorce Decree

¶ 27 Next, Michael argues that the circuit court was divested of jurisdiction when the Jordanian tribunal issued its certificate of divorce. Michael's argument assumes that an Illinois court must recognize and enforce a certificate of divorce from Jordan. Our Supreme Court addressed the effects of a foreign divorce judgment on an Illinois court in *Clubb v. Clubb*, 402 Ill. 390 (1949) and held:

"Section 1 of article IV of the constitution of the United States provides: 'Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other *State*. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.' Most of the cases cited by both sides are based upon judicial proceedings of some other *State of our Union* and are controlled by the above constitutional provision. We must not, however, construe that provision as embracing public acts, records and judicial proceedings of *other countries*. Such broad construction could lead us into

troublesome situations and would not be within the intent of the framers of the constitution." (Emphasis added.) *Clubb*, 402 Ill. at 393-94.

¶ 28 Therefore, the *Clubb* court held that the full faith and credit clause applies only to sister states in the United States and does not apply to divorce decrees issued by foreign tribunals. *Clubb*, 402 Ill. at 393-94.

¶ 29 The *Clubb* court did not end its discussion of the effects of foreign divorce decrees on Illinois' courts with the full faith credit clause. Next, the *Clubb* court discussed the rule of comity and found that comity may allow, but also does not require Illinois courts to enforce divorce decrees of foreign countries:

"[T]he comity of this country does not require that judgments of a foreign country be recognized as conclusive in this country.

* * *

Comity *** is neither matter [sic] of absolute obligation on the one hand nor of mere courtesy and good will on the other, but it is a recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to the international duty and convenience and to the rights of its own citizens who are under the protection of its laws." *Clubb*, 402 Ill. at 395, 399-400.

¶ 30 In *In Re Marriage of Murugesh and Kasilingam*, 2013 IL App (3d) 110228, ¶40, the court held, in a dissolution case where the parties were both residents of Illinois, that when an action has "a legitimate and substantial relationship to Illinois, the action should not be

dismissed pursuant to principles of comity." In *Whittmanhart, Inc. v. CA, Inc.*, 402 Ill. App. 3d 848, 854-55 (2010), a contract case, the court held that the principles of comity did not apply since Illinois had a legitimate and substantial interest in the case because one litigant's principle place of business was in Illinois, the parties' contracts contemplated performance in Illinois, the complaint alleged that a substantial number of the events that led to the breach of the contracts took place in Illinois, and the Illinois case was properly filed before the New York case.

¶ 31 In light of the preceding, we will apply a substantial relationship test to determine if Tamara's dissolution action should be dismissed pursuant to the principles of comity. See *In re Marriage of Murugesh*, 2013 IL App (3d) 110228, ¶40. We find that although the parties were married in Jordan, the parties resided in Illinois during their marriage. In addition, the parties had three children that were born during the marriage and they resided in Cook County, Illinois. The parties also own real and personal property that is located in Illinois. Therefore, we find that Tamara's Cook County dissolution proceedings had a substantial relationship to Illinois and so we find that the principles of comity will not govern because of the substantial relationship that Tamara, Michael and their children have to Illinois. Accordingly, we hold that the principles of comity do not mandate that Illinois courts recognize and enforce the Jordanian certificate of divorce or order and this court will not use the Jordanian certificate of divorce or the order to nullify Tamara's Illinois judgment of dissolution. *Clubb*, 402 Ill. at 395, 399-400; *Murugesh*, 2013 IL App (3d) 110228, ¶40.

¶ 32 Michael also argues that because Tamara received the benefits of the Jordanian divorce decree by being awarded her dowry, she is now estopped from challenging the validity of the Jordanian divorce. We refuse to recognize the Jordanian certificate of divorce or the order based on principles of comity and elect not to recognize Tamara's dowry judgment based on principles of comity. Therefore, we refuse to find that the circuit court failed to do substantial justice when it refused to adopt Michael's estoppel argument.

¶ 33 III. Motion for Reconsideration

¶ 34 Next, Michael challenges the circuit court's denial of his motion to reconsider. We apply an abuse of discretion standard of review to the question of whether the circuit court erred when it denied Michael's motion for reconsideration which requested that we vacate the March 4, 2014 dissolution judgment and the QDRO. *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 24. A trial court abuses its discretion by making or adhering to factual findings that are against the manifest weight of the evidence or by applying the wrong legal standard. *Shulte*, 2013 IL App (4th) 120132, ¶ 23.

¶ 35 We find that Michael's argument is based on the assumption that the circuit court must recognize and enforce a divorce decree from a foreign country. We follow *Clubb* and find that the rule of comity does not require that judgments of Jordan and other foreign countries be recognized and enforced as conclusive in this country. *Clubb*, 402 Ill. at 395, 399-400.

¶ 36 Therefore, because the circuit court had subject matter jurisdiction, because Tamara, Michael and their three children have a legitimate and substantial relationship to Illinois, the circuit court was not required to recognize or enforce the Jordanian certificate of divorce or

the order under principles of comity, and because we refused to use principles of comity to estop Tamara from seeking a judgment of dissolution in Illinois (*Murugesh*, 2013 IL App (3d) 110228, ¶40), the circuit court did not err when it granted Tamara the judgment for dissolution of marriage. Finally, because the circuit court did not make factual findings that are against the manifest weight of the evidence and did not apply the wrong legal standard, there is no basis for holding that the circuit court abused its discretion when it denied Michael's motion to reconsider the March 4, 2014 judgment of dissolution and the QDRO. *Shulte*, 2013 IL App (4th) 120132, ¶ 23.

¶ 37

CONCLUSION

¶ 38

A circuit court's subject matter jurisdiction flows from the Illinois Constitution (Ill. Const. 1970, art. VI, §9), and it applies to all justiciable matters, including dissolution proceedings. *Belleville*, 199 Ill. 2d at 334-35. Illinois has a substantial interest in Tamara's dissolution proceedings so a Jordanian certificate of divorce or order will not divest an Illinois circuit court of subject matter jurisdiction over an Illinois dissolution proceeding under the principles of comity. *Murugesh*, 2013 IL App (3d) 110228, ¶40. The circuit court is not required to recognize or enforce a Jordanian certificate of divorce or an order so Tamara was not estopped by principles of comity from filing a dissolution proceeding in Illinois. *Clubb*, 402 Ill. at 395, 399-400; *Murugesh*, 2013 IL App (3d) 110228, ¶40. The circuit court did not abuse its discretion when it denied Michael's motion to reconsider because its factual findings were not against the manifest weight of the evidence and it did not apply the wrong legal standard. *Shulte*, 2013 IL App (4th) 120132, ¶ 23. Therefore, we affirm the circuit

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court's March 4, 2014 judgment of dissolution and its July 31, 2014 order denying Michael's motion for reconsideration.

¶ 39 Affirmed.