2019 IL App (2d) 180332-U
No. 2-18-0332
Order filed April 15, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF TANVEER BASITH,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellant,	)	
	)	
and	)	No. 17-D-1693
	)	
ABUZAFFER BASITH,	)	Honorable
	)	Raymond D. Collins,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Birkett and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in dismissing wife's dissolution petition based on foreign divorce decree that she did not have notice of.

¶ 2 The petitioner, Tanveer Basith, appeals from the order of the circuit court of Lake County dismissing her petition for dissolution of marriage to the respondent, Abuzaffer Basith. The trial court dismissed her petition after it determined that the parties' marriage had already been dissolved in India. On appeal, Tanveer argues that the trial court erred in relying on the Indian divorce decree because she did not have notice of the dissolution proceedings in India and

because the terms of that decree were unconscionable. We reverse and remand for additional proceedings.

¶ 3 I. BACKGROUND

¶ 4 On September 29, 2017, Tanveer filed a petition for a dissolution of her marriage to Abuzaffer. The petition alleged that the parties were married in 1979 in India. Six children were born to their marriage. Tanveer was 63 years' old and Abuzaffer was 68 years' old. The petition further alleged that Abuzaffer had entered into a fraudulent divorce in India and that Tanveer had not been given notice of those proceedings.

¶ 5 On December 28, 2017, Abuzaffer filed a motion to dismiss Tanveer's petition pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). Abuzaffer asserted that the parties' marriage had already been dissolved in India on May 10, 2017, and that Tanveer had accepted a financial settlement of 31,000 rupees, which was equivalent to about $447. Because she had accepted the financial settlement, Abuzaffer argued that Tanveer's action was barred by *res judicata*.

¶ 6 On March 22, 2018, Tanveer filed a response to Abuzaffer's motion to dismiss. She asserted that she was never properly served with notice of the petition for dissolution filed in India, nor did she consent to the entry of that judgment.

¶ 7 On April 9, 2018, Abuzaffer filed a reply. He asserted that Tanveer had requested a divorce. Therefore, pursuant to their culture and religion, he went to India in order to grant her request and obtain a divorce. Abuzaffer further stated that as he and Tanveer were pious Muslims, his actions complied with sharia law that governs aspects of Islamic life for pious Muslims. As the trial court had the right to consider sharia law, Abuzaffer requested that the Indian divorce decree be upheld and Tanveer's action be dismissed.

¶ 8 On April 11, 2018, the trial court conducted a hearing on Abuzaffer's motion. Abuzaffer's attorney acknowledged that Tanveer "didn't have formal notice that we talk about in our country [*i.e.*, the United States]" regarding the dissolution proceedings in India. Nonetheless, Abuzaffer's attorney argued that Tanveer's petition should be dismissed anyway. The trial court agreed and dismissed Tanveer's petition. The trial court made the following comments that reflected its reasoning:

> "Well, when they were married in India, are there certain restrictions and guidelines that they need to follow? That's what I don't know. If [and] when they get married there, the marriage is valid if they follow certain rules, and I'm assuming they're religious about getting divorced, then they would have jurisdiction, if she accepted the jurisdiction of the country when they got married there.
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> * * *
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> But my question is, when they got married in India, there were certain things that they signed and agreed to when it comes to getting divorced. And, again, I'm assuming that's religious in nature that they have to agree to, then they would have jurisdiction. So because it's inequitable, that's not a reason to dismiss it.
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> * * *
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> [T]hey were following strict Muslim religion when they got married and he was following it when they got divorced[.]
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> * * *
>
> Well, it may be egregious in that the disposition of property may not have been equitable, but I don't think I have any choice but to dismiss under 2-619."

¶ 9 On May 1, 2018, Tanveer filed a timely notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Tanveer argues that the trial court erred in granting Abuzaffer's motion to dismiss her dissolution petition. Specifically, she contends that the trial court abused its discretion by improperly granting comity to the Indian divorce decree. She argues that the decree should not have been recognized because it was entered without notice to her and because the parties resided in Illinois and all of their assets were in Illinois.

¶ 12 The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). A section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). "[W]hen ruling on a section 2-619 motion to dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *Id*. On appeal from the grant of a section 2-619 motion, the reviewing court must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 18.

¶ 13 Comity has been defined as the "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 v. Clubb*, 402 Ill. 390, 399-400 (1949), citing *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). Under the doctrine of comity, Illinois courts may choose to recognize orders issued by foreign courts, although recognition may be withheld where the foreign court lacked jurisdiction over the cause and the parties. *Hager v. Hager*, 1 Ill. App. 3d 1047, 1051

(1971) (judgment of Greek court that did not have personal jurisdiction will not be enforced in Illinois); *Ransom v. A.B. Dick Co.*, 289 Ill. App. 3d 663, 669 (1997) (comity is to be accorded to an act of a foreign court as long as that court is of competent jurisdiction and the laws and public policy of the forum state are not violated). A decision by the circuit court to grant or deny comity will not be reversed absent an abuse of discretion. *In re Marriage of Kohl*, 334 Ill. App. 3d 867, 881 (2002).

¶ 14 Here, the trial court abused its discretion in granting comity to the Indian divorce decree. This was because Tanveer was never afforded the opportunity to appear, present her case, and be heard before the Indian tribunal. Thus, that tribunal never obtained personal jurisdiction over her. See *Morey Fish Co. v. Rymer Foods, Inc.*, 158 Ill. 2d 179, 187-89 (1994) ("It is essential that a defendant whose personal jurisdiction a foreign court seeks to determine actually be afforded the opportunity to appear, present its case and be heard"). Moreover, the trial court's decision constituted an abuse of discretion because the Indian tribunal's decision violated the laws and public policy of this state. The Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2016)) provides that marital property must be divided in "just proportions" considering all relevant factors. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042 (2008). The Act also provides that maintenance should be awarded if it is just and equitable. 750 ILCS 5/504(a) (West 2016); *In re Marriage of Hochleutner*, 260 Ill. App. 3d 684, 690 (1994). Here, the Indian tribunal awarded all of the marital assets to Abuzaffer except for approximately $447 that it awarded Tanveer. The Indian tribunal also did not award Tanveer any maintenance despite Tanveer earning substantially less than Abuzaffer during the parties' more than 37 years of marriage. As the Indian tribunal's decision was inconsistent with Illinois concepts of fairness and equity, the trial court should not have granted it comity.

¶ 15 We note that Abuzaffer cites numerous authorities in support of his argument that the trial court's decision should be affirmed. However, none of those authorities provide that a foreign decree should be recognized if a party did not have notice and an opportunity to defend her interests in the foreign tribunal. Further, although Abuzaffer asserts on appeal that the record is somewhat ambiguous as to the sufficiency of the notice Tanveer received, his attorney acknowledged at the hearing that she did not have "formal notice," and he cannot raise a contrary argument before us now. *McLaughlin v. Sternberg Lanterns, Inc.*, 395 Ill. App. 3d 536, 545 (2009).

¶ 16 Finally, we note that we find the trial court's ruling troubling. The trial court's comments reflect that, in dismissing Tanveer's petition, it did not consider American law and fundamental precepts of due process such as the right to notice and the right to defend one's interests. *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"). Rather, the trial court's reasoning indicates that its decision was based on what it *assumed* the law was in India for pious Muslims. The trial court's carelessness in rendering its decision has caused an unnecessary year-long delay in the proceedings as Tanveer has had to needlessly wait for her equitable rights afforded under the Act. As our courts have repeatedly observed, "justice delayed is justice denied." *Daewoo Int'l v. Monteiro*, 2014 IL App (1st) 140573, ¶ 90; *People v. Ladd*, 294 Ill. App. 3d 928, 930 (1998); *Gray v. Gray*, 6 Ill. App. 2d 571, 578-79 (1955) ("The law's delay in many lands and throughout history has been the theme of tragedy and comedy. * * * 'Justice delayed is justice denied,' and regardless of the antiquity of the problem and the difficulties it presents, the courts and the bar

must do everything possible to solve it"). We therefore strongly encourage the trial court to be more cognizant of the parties' fundamental rights and controlling case law before dismissing an action.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we reverse the judgment of the circuit court of Lake County and remand for additional proceedings.

¶ 19 Reversed and remanded.