2012 IL App (1st) 113222-U

FOURTH DIVISION
May 10, 2012

No. 1-11-3222

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAMI KHATIB,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee	)	Cook County
	)	
v.	)	No. 11 D 3333
	)	cons. with 10 D 4949
NAJAT MURRAR,	)	
	)	Honorable
Respondent-Appellant.	)	William S. Boyd,
	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

Held: Circuit court may not recognize a divorce decree entered in the Hashemite Kingdom of Jordan under the Uniform Enforcement of Foreign Judgments Act, the Uniform Foreign Money-Judgments Recognition Act, or the principle of comity, where the decree was entered *ex parte* without adequate notice to respondent in violation of due process. Further, the recognition by the Department of Homeland Security of petitioner's Jordanian marriage following the entry of the divorce does not preempt our decision.

¶ 1 This is an interlocutory appeal pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010). Respondent, Najat Murrar, moved to strike and dismiss the petition to register foreign judgment filed by petitioner, Lami Khatib. The circuit court granted the motion to strike, but denied the motion to dismiss and certified the following question for our review: "Whether the trial court is allowed to recognize a foreign judgment, specifically a divorce decree entered in the Hashemite Kingdom of Jordan, which is the same location where the parties were married." For the reasons that follow, we answer the certified question in the negative.

¶ 2 BACKGROUND

¶ 3 Khatib and Murrar were married on September 8, 2000, in Amman, Jordan. At the time of the marriage, Khatib paid Murrar's father an advance dowry in the form of one golden dinar. The marriage contract also listed an amount of 5,000 Jordanian dinars as a deferred dowry.

¶ 4 Khatib and Murrar resided together in Jordan until the fall of 2009, when they entered the United States and proceeded to live separately. Khatib returned to Jordan alone, and on December 14, 2009, obtained a Certificate of First Revocable Divorce (Revocable Divorce Certificate) from the Religious Court of Sweileh. The notarized and sworn translation of the Revocable Divorce Certificate provided, in relevant part, that Khatib "has concluded a first revocable divorce on [Murrar], and that [Khatib] has the right to return [Murrar] to [Khatib's] matrimonial bond within the legally prescribed waiting period *** and [Khatib] has to record this officially in a religious court, as the waiting period stated of the date mentioned below, it has been decided to notify [Murrar] of this in due form."

¶ 5 Murrar first became aware that divorce proceedings had commenced when she received

the Revocable Divorce Certificate on December 27, 2009. According to Khatib, he also effected formal service of the Revocable Divorce Certificate on Murrar approximately one month later by way of a private process server. Ultimately, a final Certificate of Divorce (final Divorce Certificate) was registered in the Sweileh office of the Ministry of Interior in Jordan on March 15, 2010, in Murrar's absence.

¶ 6 Khatib remarried in Jordan that same day. He applied to the United States Department of Homeland Security (DHS) for a spousal visa for his new wife, which was granted on October 6, 2010.

¶ 7 Meanwhile, Murrar had filed a petition for dissolution of marriage in Cook County on May 13, 2010. In response, Khatib filed a motion to dismiss based on lack of subject matter jurisdiction, contending that he and Murrar had not been married since March 15, 2010, when the final Divorce Certificate was entered in Jordan. The circuit court denied his motion to dismiss on September 27, 2010, and Khatib appealed. We granted Murrar's motion to dismiss the appeal on November 19, 2010, after which Khatib filed another petition for leave to appeal from the same September 27, 2010 trial court order. This second appeal was denied for lack of jurisdiction.

¶ 8 Khatib then filed a verified petition to register foreign judgment, which was consolidated with Murrar's petition for dissolution of marriage. Murrar filed a motion to strike and dismiss Khatib's second amended verified petition to register foreign judgment on September 6, 2011, arguing that there was no legal basis to recognize the Divorce Certificate. The circuit court ultimately denied Murrar's motion to dismiss, but granted the motion to strike and certified the

previously stated question for our review.

¶ 9 Murrar timely filed her application for leave to appeal, which we allowed on December 1, 2011.

¶ 10 ANALYSIS

¶ 11 As this is an appeal pursuant to Illinois Supreme Court Rule 308, our review is limited to the certified question, which we review *de novo* as a question of law. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 58 (2007).

¶ 12 Initially, Khatib argues that we may recognize the Jordanian final Divorce Certificate under the Uniform Enforcement of Foreign Judgments Act (Enforcement Act), which provides that a foreign judgment authenticated in accordance with a Congressional act or Illinois statute shall be treated in the same manner as a judgment of the circuit court. 735 ILCS 5/12-652(a) (West 2010). Section 12-651 of the Enforcement Act defines a foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this State." 735 ILCS 5/12-651 (West 2010). This definition of 'foreign judgment' includes not only judgments of foreign states, but also of foreign nations, both of which may be recognized under full faith and credit. *Pinilla v. Harza Engineering Co.*, 324 Ill. App. 3d 803, 807, n. 3 (2001). Though Khatib devotes a significant portion of his brief to the argument that the final Divorce Certificate was authenticated by an act of Congress, the pivotal inquiry under the Enforcement Act is in fact whether the final Divorce Certificate is entitled to full faith and credit in Illinois. See *Massie v. Minor*, 307 Ill. App. 3d 115, 118 (1999). We hold that it is not.

¶ 13 Pursuant to the fourteenth amendment, a foreign judgment may be accorded full faith and credit only if it complies with the requirements of due process. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); see also *Sackett Enterprises, Inc. v. Staren*, 211 Ill. App. 3d 997, 1001 (1991). The fundamental strictures of due process, insofar as the enforcement of foreign judgments is concerned, are notice and the opportunity to be heard, as well as personal and subject matter jurisdiction in the rendering court. *Massie*, 307 Ill. App. 3d at 119.

¶ 14 We turn first to the issue of notice. Adequate notice is that which is reasonably calculated, under all circumstances, to '"apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Tri-G, Inc.v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244-45 (2006) (quoting *People ex rel. Devine v. $30,700.00 United States Currency*, 199 Ill. 2d 142, 156 (2002)). In the case *sub judice*, it is undisputed that Murrar did not receive notice of the divorce proceedings until over 10 days *after* the Sweileh court entered the Revocable Divorce Certificate. Further, Murrar was not made aware that final proceedings would occur on March 15, 2010, and therefore was not present in Jordan on that date when the final Divorce Certificate was entered. Nevertheless, Khatib maintains notice was adequate because Jordanian law allowed Murrar 90 days after the Revocable Divorce Certificate was entered in which to challenge the same, and she received notice within that time frame. However, there is no evidence in the record supporting this claim.

¶ 15 Importantly, because we cannot take judicial notice of the laws of a foreign nation (735 ILCS 5/8-1007 (West 2010)), such laws must be pled and proven as any other fact. *In re Marriage of Osborn*, 206 Ill. App. 3d 588, 593 (1990). Here, the only proof Khatib adduces to

support his argument regarding Jordanian divorce law is an averment in his affidavit that there is a legally prescribed waiting period of 90 days after a Revocable Divorce Certificate is entered.[1] Not only is this a conclusory statement lacking any factual basis in the form of citation to Jordanian statutes or case law, but it is silent as to what actions, if any, Murrar could have taken during this time to dispute the divorce decree.

¶ 16 Moreover, the Revocable Divorce Certificate itself appears to contradict Khatib's claim that the purpose of the waiting period is to allow the absent party time to challenge the divorce. Specifically, in the Certificate, the court does not state that it will entertain any objections from Murrar during the waiting period, but instead states that Khatib "has concluded a first revocable divorce on his aforementioned wife, and that *he has the right to return her to his matrimonial bond within the legally prescribed waiting period*." (Emphasis added). This suggests that the party benefitting from the waiting period is in fact the party seeking the divorce, who has the option to resurrect the "matrimonial bond" during this time. Under these circumstances, we conclude that notice to Murrar after the first revocable divorce was entered was inadequate to enable her to present a defense to the divorce. As such, the entry of the final Divorce Certificate did not comply with the fundamental requirements of due process (see *Massie*, 307 Ill. App. 3d at 119) and therefore is not a foreign judgment entitled to full faith and credit under the

[1] Khatib also states, without citation to the record or the briefs, that Murrar admittedly knew the waiting period allowed her the opportunity to contest the divorce. Our own review of the record reveals no such concession.

Enforcement Act.[2]

¶ 17 As an alternative basis for recognizing the final Divorce Certificate, Khatib cites the Uniform Foreign Money-Judgments Recognition Act (Recognition Act).[3] The Recognition Act is applicable to judgments "of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters." 735 ILCS 5/12-618 (West 2010) (repealed by Pub. Act 97-140, §10 (eff. Jan. 1, 2012)). Murrar argues that the final Divorce Certificate did not constitute a money judgment, given that no provision for the payment of money appeared on its face. We agree.

¶ 18 Our decision in *Bianchi v. Savino del Ben International Freight Forwarders, Inc.*, 329 Ill. App. 3d 908 (2002), informs our analysis in the instant case. There, the plaintiff sought recognition of an Italian judgment that ordered her employer to pay unspecified "back wages" or "matured salary" between the dates of her wrongful termination and her reinstatement. *Id.* at 911-12. We declined to recognize the judgment, explaining that judgments are only entitled to recognition under the Recognition Act where they grant or deny recovery of a sum of money, and the Italian judgment failed to adequately specify the actual amount of money owed. *Id.* at 923-24 (citing 735 ILCS 5/12-618 (West 1998)).

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[2] Because we hold that the notice requirement of due process was not satisfied, we need not determine whether the final Divorce Certificate met other due process requirements, such as entry by a court with personal jurisdiction over the parties.

[3] Although this Act was repealed as of January 1, 2012, the law forbids retroactive application of substantive statutory changes. 5 ILCS 70/4 (2010); see also *Caveney v. Bower*, 207 Ill. 2d 82, 95 (2003). Therefore, the provisions of the repealed Recognition Act continue to apply to the proceedings in the case at bar, which was filed prior to January 1, 2012.

¶ 19 Khatib attempts to distinguish *Bianchi* on the grounds that while the final Divorce Certificate at issue here did not indicate an amount of money due, he provided a marriage contract which specified a sum of 5,000 Jordanian dinars as a "deferred dowry." However, the plaintiff in *Bianchi* had also provided extrinsic evidence specifying the dollar amount due to her in the form of an "Intimation of Payment." According to the plaintiff, Italian law recognized such intimations as a means of notifying the opposing party of the actual damages due based on the formula in the court's judgment. *Id.* at 914. Nevertheless, we were not persuaded that the intimation cured the deficiencies in the Italian judgment sought to be recognized. *Id.* at 925. Specifically, we stated that if the plaintiff believed that "the intimation was dispositive of the parties' rights, it was incumbent upon her to factually plead and eventually prove the Italian law and circumstances that would lead *** to this conclusion," which she failed to do. *Id.* at 925-26. Khatib has likewise failed to plead the law that would allow us to conclude that the marriage contract was dispositive as to the issue of whether the final Divorce Certificate constituted a money judgment.

¶ 20 Significantly, the marriage contract itself makes no statement as to when, or even to whom, the deferred dowry is due; instead, it specifies only the amount of the deferred dowry. Thus, we are left with Khatib's conclusory statement in his affidavit attached to his petition to verify foreign judgment that the deferred dowry became payable to Murrar upon divorce by operation of law. Standing alone, this statement does not suffice as proof of Jordanian law. It has long been held that the best evidence of written laws of a foreign country is a copy of the constitution or the relevant statute, and laws based on court rulings may be proved by those with

expert knowledge. See *Groome v. Freyn Engineering Co.*, 374 Ill. 113, 122 (1940). As neither source of proof has been advanced here, we cannot accept Khatib's contention that a money judgment arose by operation of law upon entry of the final Divorce Certificate.

¶ 21 Even assuming *arguendo*, Khatib could prove that the final Divorce Certificate was a money judgment, the Recognition Act explicitly provides that a foreign judgment need not be recognized if "the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend." 735 ILCS 5/12-621 (West 2010) (repealed by Pub. Act 97-140, §10 (eff. Jan. 1, 2012)); see also *Najas Cortes v. Orion Securities, Inc.*, 362 Ill. App. 3d 1043, 1048 (2005). For the reasons discussed above, we found that notice to Murrar after the Revocable Divorce Certificate was entered was insufficient to enable her to mount a timely defense to the proceedings. Therefore, we reject Khatib's contention that the Recognition Act provides a basis for recognition of the final Divorce Certificate.

¶ 22 For similar reasons, Khatib's reliance on the principle of comity as a basis for recognizing the final Divorce Certificate also fails. Comity is a principle through which we may recognize judicial acts of a foreign jurisdiction "out of respect, goodwill and cooperation." *Ransom v. A.B. Dick Co.*, 289 Ill. App. 3d 663, 669 (1997). However, recognition may be withheld where the foreign court lacked jurisdiction over the parties or where the foreign judgment violates the laws and public policy of Illinois. *Id.*, see also *In re Marriage of Kohl*, 334 Ill. App. 3d 867, 881 (2002) (where Israeli court lacked jurisdiction over husband, who had no opportunity to appear and contest order to pay child support, comity did not warrant enforcement of Israeli court's *ex parte* order). Because we have held that Murrar was not given proper notice of the divorce

proceedings, in violation of the most rudimentary requirement of due process (see *Tri-G, Inc.*, 222 Ill. 2d at 244), we decline to recognize the Divorce Certificate on the basis of comity.

¶ 23 Finally, we address Khatib's argument that our decision is preempted by the federal law under which DHS recognized his subsequent marriage.

¶ 24 Federal law may preempt state law in one of three ways: first, where Congress has explicitly stated its intent to preempt state law; second, where Congress has indicated an intent to occupy an entire field of regulation; or third, where compliance with both state and federal law is impossible, or where the state law is an obstacle to the execution of the objectives and purposes of Congress. *Michigan Canners and Freezers Ass'n, Inc. v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461, 469 (1984). Here, Khatib argues that a decision not to recognize the final Divorce Certificate would stand as an obstacle to Congressional objectives in empowering DHS to administer and enforce laws relating to the immigration and naturalization of aliens. 8 U.S.C. 1103(a)(1) (West 2010).

¶ 25 As a starting proposition, we note that it is fundamental that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the law of the States and not the laws of the United States." *In re Burrus*, 136 U.S. 586, 593-94 (1890). As such, where state family law conflicts with a federal statute, the Supreme Court has limited its review to whether Congress has "'positively required by direct enactment'" that state law be preempted. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) (quoting *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904)). Stated differently, the state law must do "'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden." *Id.* (quoting *United*

States v. Yazell, 382 U.S. 341, 352 (1966)).

¶ 26 Khatib cites no authority for the proposition that a decision not to recognize a foreign divorce decree damages clear and substantial federal interests in regulating immigration. Instead, in order to support his argument, he overstates the effect of our decision today, claiming it amounts to an invalidation of his second marriage and a determination that his new wife's visa was improperly granted. Needless to say, our decision is not nearly so broad. Rather, we conclude only that an *ex parte* Jordanian divorce rendered without timely notice to one spouse does not satisfy federal or state due process requirements and so is not entitled to recognition under Illinois statutes such as the Enforcement Act or the Recognition Act. Thus construed, our decision in no way impacts, let alone damages, the interest of Congress in tasking DHS with implementing immigration law and policy.

¶ 27 This remains true even when we consider our decision in light of the specific findings made by DHS in approving the visa petition of Khatib's new wife. To be sure, when DHS found Khatib's subsequent marriage to be valid for immigration purposes, it necessarily determined that his previous marriages had been legally terminated. See *Jahed v. Acri*, 468 F.3d 230, 235 (4th Cir. 2006); see also 8 C.F.R. § 204.2(a)(2) (2007). However, in making this determination, it did not rely, as we do, on federal or state due process principles, but instead applied Jordanian law.

¶ 28 It is well settled that a marriage's validity is generally determined by application of the law of the place of celebration. *Loughran v. Loughran*, 292 U.S. 216, 223 (1934). Further, for immigration purposes, the law of the jurisdiction where the marriage was celebrated also governs the evaluation of the legality of the parties' prior divorces. *Jahed*, 468 F.3d at 235 (quoting

Matter of Hosseiniean, 19 I & N Dec. 453, 455 (BIA 1987)). Therefore, because Khatib's subsequent marriage was celebrated in Jordan, it was necessary for DHS to apply Jordanian law to evaluate the legality of Khatib's divorce from Murrar. See, *e.g.*, *Matter of Luna*, 18 I & N Dec. 385, 386 (BIA 1983) (where marriage was celebrated in New York, Immigration and Naturalization Service applied New York law in determining validity of beneficiary's Dominican Republic divorce decree). In contrast, our decision not to recognize the final Divorce Certificate was premised on the application of state law. Therefore, we find no inconsistency with the decision of DHS that would give rise to federal preemption.

¶ 29 To conclude, we answer the question of the circuit court in the negative and hold that no recognition is due the *ex parte* Divorce Certificate entered in the Hashemite Kingdom of Jordan.

¶ 30 CONCLUSION

¶ 31 Certified question answered.