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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001832-MR

CHAITANYA BHANDARU,
FORMERLY SYAMA C. VUKKUM — APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 12-CI-502751

SUDHAKAR VUKKUM — APPELLEE

NO. 2014-CA-001875-MR

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ACTION NO. 12-CI-502751

SYAMA VUKKUM,
N/K/A CHAITANYA BHANDARU — APPELLEE

OPINION
VACATING AND REMANDING AS TO APPEAL NO. 2014-CA-001832-MR;
AFFIRMING AS TO APPEAL NO. 2014-CA-001875-MR

** ** ** ** **

BEFORE: COMBS, THOMPSON AND VANMETER, JUDGES.

COMBS, JUDGE: Syama Vukkum, n/k/a Chaitanya Bhandaru (Chaitu), appeals from those parts of the Jefferson Family Court's decree dissolving her marriage to Sudhakar Vukkum (Sudhakar) that established the parties' child support obligations and found that Sudhakar had not dissipated assets of the marital estate before September 15, 2012. Sudhakar also appeals. He contends that the family court's application of our no-fault divorce provisions to the dissolution of the parties' marriage violates his constitutional rights. In the alternative, he argues that principles of comity require the family court to apply Hindu law to the proceedings. These separate appeals have been assigned to be heard together.

Chaitu and Sudhakar were married on April 29, 2004, in Andhra Pradesh, India. Neither is a citizen of the United States. The record indicates that they have resided in the Commonwealth of Kentucky since June 2008. Two children were born of the marriage; they are still minors. The parties separated on June 30, 2011. Chaitu filed a petition for dissolution of the marriage on August 13, 2012, and she moved out of the marital residence with the children on September 15, 2012.

The family court's decree of dissolution was entered on August 26, 2014. The parties had stipulated that their child support obligations were to be set

pursuant to the statutory guidelines. However, the court concluded that a deviation from the guidelines was appropriate. Also relevant to these proceedings, the family court concluded that Sudhakar had not begun to dissipate the marital estate until after September 15, 2012, since Chaitu was living in the marital home until that date and "should have been aware of [Sudhakar's] day-to-day spending."

On appeal, Chaitu contends that the family court abused its discretion, in part, by deviating from the child support guidelines since the parties had stipulated before trial that the statutory guidelines should govern their obligations. She also contends that the family court erred by failing to conclude that Sudhakar had dissipated marital assets by transferring $117,000 out of their joint bank account during the two-year period in which they were discussing dissolution of the marriage.

Sudhakar submitted what was apparently meant to be an appellant's brief (identifying himself as "appellant/cross-appellee") in which he challenged the Jefferson Family Court's choice of laws. However, he did not respond to either of Chaitu's arguments on appeal by way of an appellee's brief and merely addressed his own separate arguments. CR[1] 76.12 establishes the requirements for the organization and contents of an appellee's brief. CR 76.12(4)(d)(iv) requires the appellee to set forth in his brief an "ARGUMENT" section conforming to the arguments as raised by the appellant in her brief. It has been held that "[a]n appellant's failure to discuss particular errors in his brief is the same as if no brief

[1] Kentucky Rule of Civil Procedure.

at all had been filed on those issues." *Milby v. Mears,* 580 S.W.2d 724, 727(Ky.App.1979). We believe that the same principle is applicable and is interchangeable with respect to a brief from either an appellant or an appellee/cross-appellant.

Chaitu filed a motion to strike Sudhakar's brief. She contended that a particular "exhibit" to the brief had been filed with the family court out of time and, consequently, had not been considered by the family court. Sudhakar did not respond, and disposition of the motion was passed to this panel. While inclusion of the disputed item was patently improper, we elect not to strike the brief and by separate order have denied the motion to strike. We agree that the disputed "exhibit" is not properly before us, and we have not considered it nor any argument connected with it.

CR 76.12(8)(c) sets forth the penalties for the failure of an appellee to file a brief. The rule provides as follows:

> (c) If the appellee's brief has not been filed within the time allowed, the court may: (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

Under the circumstances of this case, we believe that it is appropriate to apply the provisions of CR 76.12(8)(c)(iii). Since we regard Sudhakar's failure to file a properly responsive brief as a confession of error, we vacate that portion of the family court's decree that establishes the parties' child support obligations and

addresses the extent of Sudhakar's alleged dissipation of assets. Upon remand, a decree consistent with Chaitu's position with respect to each issue as set forth in her brief shall be entered in her favor.

In his separate appeal, Sudhakar contends that the application of our no-fault divorce act by the Jefferson Family Court violated his constitutional rights. He contends that relevant provisions of India's Hindu Marriage Act of 1955 prohibit dissolution of marriage except where sufficient grounds are alleged and proven. He argues that application of our no-fault divorce provisions eliminating the necessity of stating grounds for dissolution of his marriage violates his faith as a practicing Hindu and that it is, therefore, unconstitutional. In the alternative, he argues that principles of comity require that provisions of the Hindu Marriage Act of 1955 be applied to the proceedings.

At the commencement of these proceedings, Sudhakar resisted the jurisdiction of the Jefferson Family Court. He made a limited appearance solely to contest the court's jurisdiction. He argued vehemently that only the courts of India could adjudicate the matter. Ultimately, the family court concluded that it had jurisdiction to dissolve the marriage. Sudhakar also challenged the application of our no-fault divorce provisions. He asserted that a grant of divorce without proof of sufficient grounds to dissolve the marriage under the provisions of the Hindu Marriage Act of 1955 violated constitutional rights guaranteed to him under our state and federal constitutions.

On appeal, Sudhakar contends that the United States Constitution's Establishment Clause and Free Exercise Clause and Kentucky's Bill of Rights prohibit the application of our no-fault divorce provisions to the parties' marriage as restricting his freedom to exercise his faith. And his faith requires that **some grounds** be established to justify a dissolution of marriage. We disagree.

In *Gingrich v. Commonwealth*, 382 S.W.3d 835 (Ky. 2012), the Supreme Court of Kentucky held that the free-exercise-of-religion protections afforded by Section 1 and Section 5 of the Kentucky Constitution offer no more protection than the similar provisions of our federal constitution. The *Gingrich* Court observed that our federal courts have determined that laws instituted for the health, safety, and welfare of the public, and which are applied generally to everyone, need only have a rational basis to survive constitutional challenge. This holding is true even where the disputed provisions may have an incidental effect on religious practices. Sudhakar submits that his faith is substantially burdened by Kentucky's no-fault divorce provisions. However, since the provisions are of general applicability, we must presume that they are constitutional unless there is **absolutely no rational basis** for them.

Our no-fault divorce provisions are not aimed at preventing any religious practice. They were enacted as part of an effort to "[s]trengthen and preserve the integrity of marriage and safeguard family relationships." KRS[2] 403.110(1). Our legislature clearly articulated that abandoning the necessity of

[2] Kentucky Revised Statutes.

proving fault upon divorce would "[p]romote the amicable settlement of disputes that [had arisen] between parties to a marriage" and would "[m]itigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage." KRS 403.110(2), (3). Thus, the legislature stated and relied upon a rational basis for the provisions, and they are not unconstitutional.

In the alternative, Sudhakar contends that based upon principles of comity, the Jefferson Family Court should have applied the provisions of the Hindu Marriage Act to the dissolution proceedings. It does not appear that Sudhakar relies upon principles related to comity of courts, which would require judges to decline to exercise jurisdiction over matters more appropriately adjudged in another judicial forum. Instead, his argument appears to be based upon "prescriptive comity," which involves application of a choice-of-law analysis. By its terms, the Act extends to "the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories." The parties and their children are domiciled in Kentucky and have been for a significant period. Neither the provisions of the Hindu Act nor the interests of a different forum are relevant to the dissolution of their marriage.

The family court did not err by dissolving the marriage pursuant to our no-fault divorce provisions, and we affirm entry of a decree of dissolution pursuant to Kentucky's no-fault statute.

In summary, we deny the outstanding motion by separate order. We vacate and remand with respect to appeal NO. 2014-CA-001832 MR; we affirm as to appeal NO. 2014-CA-001875-MR.

ALL CONCUR

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