

Third District Court of Appeal

State of Florida

Opinion filed August 19, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1044
Lower Tribunal No. 18-4741

Aranzazu Sanchez Vicario,
Appellant,

vs.

Jose Santacana Blanch,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Maria Espinosa Dennis, Judge.

Kutner and Associates, and Maurice Jay Kutner; Young, Berman, Karpf & Gonzalez, P.A. and Cynthia L. Greene, for appellant.

The Padron Law Group, P.L.L.C. and Luis M. Padron and Brian D. Fell, for appellee.

Before SALTER, LINDSEY, and MILLER, JJ.

LINDSEY, J.

Appellant Aranzazu Sanchez Vicario appeals an order finding that jurisdiction over her divorce from Appellee Jose Santacana Blanch lies in Spain and deferring to Spain on all issues except for parental responsibility, child support, and timesharing related to the couple's two minor children. For the reasons set forth below, we reverse.¹

I. BACKGROUND

This case involves competing marital dissolution proceedings in Florida and Spain. Jose Santacana Blanch ("Husband") and Aranzazu Sanchez Vicario ("Wife") are Spanish nationals and citizens. However, they and their children have lived in Florida for over half a decade. The Wife is a world-famous tennis player from Barcelona, Spain.² She married the Husband in Spain in 2008. Two children, now ages seven and nine, were born during the marriage. In 2007, in anticipation of the marriage, the Husband and Wife entered into a Prenuptial Agreement in Spain. Following their marriage, the parties entered into a Postnuptial Agreement in Spain and registered it in the public records there. Irrespective of these agreements, the Wife claims she turned over the management of all her financial affairs to the Husband. He denies this.

¹ The parties both agree that issues of parental responsibility, child support, and timesharing related to the couple's two minor children (the "Children's issues") should be heard in Florida and, as such, these issues are not before us.

² (https://en.wikipedia.org/wiki/Arantxa_Sanchez_Vicario)

In November of 2016, a criminal complaint involving the Bank of Luxembourg was brought against the Husband and the Wife. The Bank also has a pending civil case against the Wife in Spain. These proceedings relate to a judgment that was entered against the Wife in favor of the Bank of Luxembourg in 2013 for the Bank's advanced payment of the Wife's taxes in the amount of 5.2 million Euros. The criminal proceedings remain ongoing in Spain.

Just before Christmas of 2017, according to the Wife, she and the Husband had a disagreement over her refusal to sign a contract the Husband presented to her. As a result of this disagreement, the Wife, claiming she was in fear, left Miami and took both children to Naples, Florida to stay with her brother. The Husband denies the Wife's version of events claiming instead that he was in the hospital at the time and did not know the children's whereabouts. The timeline of what transpired thereafter informs our decision herein.

II. PROCEDURAL HISTORY

On January 3, 2018, the Husband filed an emergency petition to pick up the minor children and a petition for dissolution of marriage in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (Case No. 2018-000167-FC-04). On January 24, 2018, the Husband filed an amended petition for dissolution of marriage in that case. The Wife appeared through counsel and litigation ensued. On February 20, 2018, the Husband filed a second petition for dissolution of marriage in Spain.

Six days later, on February 26, 2018, the Husband voluntarily dismissed his Florida petition. Less than five hours later, the Wife filed a petition for dissolution of marriage in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Wife’s petition was assigned to the same judge in the lower court who had been assigned to the Husband’s dismissed petition. It is the Wife’s petition from which this appeal arises.

On March 5, 2018, the Husband served the Wife with the petition for dissolution he had filed in Spain. On June 4, 2018, the court in Spain entered an order denying the Wife’s challenge to the jurisdiction of the court in Spain. On June 14, 2018, the Husband filed a Motion to Dismiss, Abate, or Stay All Matters Based on Principles of Priority and Comity, Choice of Law, and Due to Existing Divorce and Criminal Actions in Spain (the “Motion to Dismiss, Abate, or Stay”). At the time of the filing of this motion, the Wife had not yet served the Husband with the petition in the instant case below.³

On or about February 1 and 4, 2019, the lower court conducted a hearing on the Husband’s Motion to Dismiss, Abate, or Stay. The Husband and Wife both testified. In addition, both called experts in Spanish law to testify. On May 2, 2019,

³ The Wife asserts that she was unable to serve the Husband because she could not locate him. In his Motion to Dismiss, Abate, or Stay, the Husband alleges that the Wife never served him but that he “voluntarily made an appearance” by filing the Motion.

the lower court entered an order finding the court in Spain had first exercised jurisdiction over the parties and their marital dissolution proceeding and deferred to that court to determine all issues raised in this case except for the Children's issues. The Wife filed a motion for rehearing, which the lower court denied. This timely appeal followed.

III. STANDARD OF REVIEW

Decisions on priority and comity are reviewed for an abuse of discretion. See OPKO Health, Inc. v. Lipsius, 279 So. 3d 787 (Fla. 3d DCA 2019).

IV. ANALYSIS

The Husband contends the trial court correctly concluded that the court in Spain first exercised jurisdiction over the parties' marital dissolution and, therefore, the trial court should defer to the court in Spain as a matter of priority. He asserts that the priority comparison is between his dissolution proceeding in Spain and the Wife's dissolution proceeding in the instant case. The Wife disagrees and asserts the court in Florida first exercised jurisdiction because the Husband filed and litigated a dissolution proceeding in Florida before filing a second dissolution proceeding in Spain. Thus, according to the Wife, the priority comparison is between the Husband's filed, then dismissed, petition in Florida and his later filed petition in Spain.

The Husband counters that he had the right to voluntarily dismiss his Florida petition and that when he did, Florida was divested of jurisdiction. Moreover, he argues, there are no “special” or “exceptional circumstances” present to justify declining to apply principles of priority.

“In general, where courts within one sovereignty have concurrent jurisdiction over substantially similar parties and claims, the court which first exercises its jurisdiction acquires exclusive jurisdiction to proceed with that case.” Parker v. Estate of Bealer, 890 So. 2d 508, 512 (Fla. 4th DCA 2005) (quoting Siegel v. Siegel, 575 So. 2d 1267, 1272 (Fla. 1991)). This is known as the principle of priority. Id. The principle of priority “is not applicable between sovereign jurisdictions as a matter of duty.” Id.; see also In re Guardianship of Morrison, 972 So. 2d 905, 908 (Fla. 2d DCA 2007). “As a matter of comity, however, a court of one state may, in its discretion, stay a proceeding pending before it on the grounds that a case involving the same subject matter and parties is pending in the court of another state.” Parker, 890 So. 2d at 512 (quoting Siegel 575 So. 2d at 1272). The principles of comity apply not only to proceedings pending in two different state courts but to proceedings pending in a state court and a foreign court. Maraj v. Maraj, 642 So. 2d 1103, 1104 (Fla. 4th DCA 1994) (citing Norris v. Norris, 573 So. 2d 1085 (Fla. 4th DCA 1991); Reuther v. Reuther, 524 So. 2d 1035 (Fla. 4th DCA), rev. denied, 534 So. 2d 401 (Fla. 1986); Robinson v. Royal Bank of Canada, 402 So. 2d 101 (Fla. 4th

DCA 1985); Bedingfield v. Bedingfield, 417 So. 2d 1047 (Fla. 4th DCA 1982), rev. dismissed, 427 So. 2d 736 (Fla. 1983)).

Here, it was the Husband who initiated dissolution proceedings against the Wife. He filed the first action in Miami, Florida. See Case No. 2018-000167-FC-04 (11th Jud. Cir. January 3, 2018). In that case, he requested a distribution of the marital assets. The Wife appeared through counsel in that case and litigation ensued. A month and a half later, on February 20, 2018, the Husband flew to Spain and filed a dissolution proceeding there. However, he did not seek a distribution of the marital assets in that case. Rather, he only sought a decree that the marriage be dissolved. Further, he did not inform the court in Spain of his pending case in Florida.

Five days later, having not yet served the Wife with his newly filed case in Spain, the Husband dismissed his Florida case. Less than five hours later that same day, the Wife filed the instant action. A cursory review of the docket in the lower court shows there were more than 150 entries on the lower court's docket, including five court orders, prior to the Husband filing his Motion to Dismiss, Abate, or Stay. And, the docket shows an additional 200 or more entries, including six court orders, between the filing of the Husband's Motion to Dismiss, Abate, or Stay and the trial court's order granting it.

While the court in Florida first exercised jurisdiction over the Husband and the Wife and their marital dissolution proceeding in the Husband's first-filed case,

it lost jurisdiction when the Husband voluntarily dismissed that case. See Fla. R. Civ. P. 1.420(a); Pino v. Bank of New York, 121 So. 3d 23, 31-32 (Fla. 2013); Rebolledo v. Cordero, 217 So. 3d 147, 149 (Fla. 3d DCA 2017). Although the Wife filed the dissolution proceeding below less than five hours after the Husband's dismissal, she did not serve the Husband prior to the Husband serving her with the petition he filed in Spain. The Wife accuses the Husband of "implementing a brazen forum-shopping scheme." While the Husband is correct that motive is irrelevant to the analysis of his decision to voluntarily dismiss his case in Florida, we have stated that "Florida courts, including this one, regard forum shopping with displeasure . . ." Pilevsky v. Morgans Hotel Grp. Mgmt., LLC, 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007). Irrespective thereof, a trial court is not always required to stay proceedings when prior proceedings involving the same issues and the same parties are pending before a court in another jurisdiction. Siegel, 575 So.2d at 1272. While trial courts should ordinarily do so, they must not always. Id.

In Siegel, the Florida Supreme Court explained that "[t]here may well be circumstances under which the denial of a stay could be justified upon a showing of the prospects for undue delay in the disposition of a prior action." Id. (quoting Schwartz v. DeLoach, 453 So. 2d 454, 455 (Fla. 2d DCA 1984)). The Court further elaborated, without additional specificity, that "[t]here may also be additional factors or circumstances which would also warrant a denial of stay by the trial court." Id.;

see also Morrison, 972 So. 2d at 910; Nahar v. Nahar, 656 So. 2d 225, 230 (Fla 3d DCA 1995); Markofsky v. Markofsky, 384 So. 2d 38, 39 (Fla. 3d DCA 1980). “At least one court has found special circumstances in a dissolution proceeding when primary residences, property, business interests, and most of the parties’ children were in Florida.” Morrison, 972 So. 2d at 910. Such is the case here.

At the commencement of the hearing on the Motion to Dismiss, Abate, or Stay, the Husband advised the lower court that he had filed a response in opposition to the Wife’s memorandum in support of her request that the court draw adverse inferences as a result of the Husband’s invocation of his Fifth Amendment privilege during his deposition.⁴ The Husband further sought a ruling on his cross-motion in limine under sections 90.402 and 90.403, Florida Statutes, to limit the scope of the hearing solely to non-prejudicial and non-privileged matters that were relevant to priority and comity and alleging that none of the issues related to the Husband’s finances were relevant.⁵ The Husband further requested that the court defer only

⁴ According to the Husband, the Wife was seeking to gain information regarding his finances in order to pin responsibility on him for the payment of the back taxes she owes in Spain.

⁵ The Florida Evidence Code provides for the admissibility of relevant evidence. § 90.402, Fla. Stat. (2019). However, “[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.” § 90.403, Fla. Stat. (2019).

issues of equitable distribution and alimony to the court in Spain. The court deferred ruling until such time as the evidence was sought to be introduced.⁶ Four witnesses testified: The Husband; the Wife; Carmen Para Rodriguez, retained by the Husband as an expert; and Joaquin Bayo Delgado, retained by the Wife as an expert.

The Husband called Mr. Bayo to testify first.⁷ He agreed that there was a case pending between the parties in Spain and that the court in Spain has “declared its jurisdiction on the issues which were petitioned there.”⁸ However, Mr. Bayo explained that when both parties are Spanish citizens, as here, the Spanish court has jurisdiction only to “pronounce divorce” and nothing more. He further elaborated that the terms of the Postnuptial Agreement provide that the parties agreed that “what’s mine is mine, what’s yours is yours.” He further stated that they each agreed, at the time they entered into the Agreement, to renounce only two claims:

⁶ Throughout the two-day hearing, the lower court sustained numerous objections made by the Husband to the Wife’s questions concerning his tax returns, employment status, income, investments, ownership of property, and finances. The court allowed only limited inquiry into those areas.

⁷ Mr. Bayo presently works as an expert in international family law. He previously served for twenty-five years as a judge in Spain. During that time, he served as an appellate judge in the family law section.

⁸ Mr. Bayo testified about only the Postnuptial Agreement because he stated it is the only relevant agreement. He explained the “so-called prenuptial agreement is not prenuptial.” Rather, “[i]t was an agreement under the Catalan law for de facto couples living together.”

“economical compensation and maintenance.” In so doing, Mr. Bayo expressly stated that

the renouncement covered by this nuptial, postnuptial agreement, which is the only relevant [agreement] whatsoever, is that they renounce to any sort of economical compensation, which is not equitable distribution.

Mr. Bayo elaborated that neither party has asked for any economic issues to be decided in Spain and that the Wife has not done so because she has been litigating those matters in the instant case. Thus, he testified, the court in Spain would only pronounce that the parties are no longer married.

Ms. Para⁹ agreed, acknowledging that “[t]he decision of the Spanish court will be just to the termination, to the dissipation, to the termination of marriage, dissolution of marriage.” Regarding to the Postnuptial Agreement, Ms. Para stated that “there is no proceeding to liquidate or to separate anything because it has already been separated.” In other words, “spouses maintain their properties as two separate sets during the entire pendency of the marriage, as well as after in the proceeding of the divorce they remain as such.” Ms. Parra explained that in Spain, with respect to the economic issues of a marital dissolution, there could be two different courts with

⁹ Ms. Para is a full-time professor at a law school where she teaches international law and is licensed to practice law in Barcelona. Previously, she worked as an attorney in combination with her work at the University and most recently maintained a private office 15 years ago.

one court deciding the dissolution of marriage, and the other one deciding the economic issues.

Following the testimony of the Spanish attorneys, the Husband called the Wife to testify. She acknowledged that she is a Spanish citizen and had lived in Spain for majority of her life before moving to Florida. She testified that the Prenuptial Agreement and the Postnuptial Agreement were executed “to protect [her] with what she had” at the time, given that she was still playing tennis. Specifically, she stated that the purpose of the Postnuptial Agreement

was for the purpose of protecting of everything, of all the assets that I had. I had assets from before and then since my husband took the reins of managing, administrating all of the assets that we had, he took the responsibility of everything I had from there on. He was responsible, he was the manager. I fell in love with him and I released all of this to him for him to administrate all that.

The Wife further testified that before the marriage, she owned 14 properties, that the Husband stole all her assets, and that she does not know the location of the allegedly stolen assets.

The Husband testified and agreed that although the Wife was a famous person when they married, he was not. He further conceded that the Wife had significant assets before they married and that the purpose of the Postnuptial Agreement was to protect her. The Husband testified that under the Postnuptial Agreement, the parties waived “everything” and that each would “continue in two parallel ways but each

one holding on to their own separate assets.” He further denied that he was the administrator of the Wife’s 14 properties. The Husband explained that he initially filed a petition for dissolution in Florida but later dismissed it because he learned that a criminal matter was being prosecuted in Spain against him, the Wife, and others. He stated that “the justice in Spain is something I understand a little bit better than the American system of which I do not understand anything.” On cross-examination, the Husband acknowledged that he was not required to disclose his assets as part of the Spanish dissolution proceeding, but claimed, “there are other procedures that [the Wife] can seek, seek remedy with, with respect to any doubts that she may have into the financial issues.”

When asked if he had a job, the Husband replied, “I dedicate myself to real estate.” When asked if he received any form of salary, the Husband replied, “[i]t depends if there are sales taking place and real estate of the investments given a return.” He explained that there “could be six or seven months that you are not making anything and then in two months you make some in the monetary sense.” Regarding his real estate investments, the Husband testified that he owns, exclusive of the Wife, a 40% interest in a Florida shopping center and a condominium unit on Brickell Avenue. He further testified that since moving to Florida in 2012, he has formed and/or maintains an interest in an additional five or more corporations for the purpose of real estate investments. He testified that for at least one or more of

those investments, the Wife contributed over a million dollars of her own funds. The Husband presently has three bank accounts in Florida, holds a Florida driver's license, and owns a car with a Florida license tag. The vehicle registered in Florida that the Wife drives is also in his name.

In contrast, the Husband owns no real estate in Spain nor any businesses or active corporations there, has no bank accounts in Spain, and has no other contacts in Spain other than friends and family. Notwithstanding, the Husband's entire premise for urging the court below to defer all issues as to the parties' dissolution of marriage proceeding to the court in Spain was expressed as follows:

Q: Sir, other than what [the Wife's counsel] asked you about, which was the contacts that you have with Spain, that you have a postnuptial agreement and a premarital agreement in Spain, that you have a divorce pending in Spain, that you are a Spanish national, and that you have family and friends in Spain. Is there any other contacts or reason why you feel that the case should be in Spain?

A: No. I think that is enough.

Following the Husband's testimony, the Wife recalled Mr. Bayo to testify pertaining to Spanish law, specifically Catalan law. Mr. Bayo explained that the court in Spain has no jurisdiction over any of the assets not located in Spain, i.e., the substantial assets located in Florida. The Husband's expert, Ms. Para Rodriguez, agreed.

It is wholly undisputed on the record in this case that the court in Spain lacks the authority or the jurisdiction to fully adjudicate all the issues involved in the dissolution of marriage case herein. As established by the testimony of both parties' expert witnesses regarding Spanish law: (1) only the Husband and the Wife may be parties to the divorce and, therefore, the court in Spain is unable to rule upon corporate entities allegedly holding assets of the parties in this case; (2) the court in Spain has no jurisdiction over the parties' assets and/or real property located in Florida; (3) the court in Spain cannot adjudicate issues of fraud in the marital dissolution proceeding pending there;¹⁰ and (4) the parties have strong ties to Florida but only significantly limited ties to Spain.

This Court held in Markofsky, that “[t]he trial court was not required, either as a matter of jurisdiction or comity, to dismiss the dissolution of marriage action below in deference to the Spanish divorce proceeding because the parties and their children are, and have been for a considerable time, residents of Florida.” 384 So.2d at 39. By deferring all issues except for the Children’s issues to the court in Spain, the lower court allowed the Husband to “freeze out” the Wife from any relief pertaining to the parties’ marital assets and liabilities in Florida. The court in Spain can only adjudicate the parties’ dissolution of their marriage. The only court that

¹⁰ Although no allegations of fraud have been pleaded in this case, the Wife has sought financial discovery and information from third parties in pursuit of her theory that the Husband “stole” all her assets.

would have jurisdiction over the parties' marital assets and liabilities in Florida, and all Children's issues, is the court herein below.

Further, because it is undisputed that the court in Spain has no authority or jurisdiction to determine anything other than the actual dissolution of the parties' marriage, the scope of the proceeding in Spain is limited, and, therefore, cannot be said to involve "substantially similar parties and substantially similar claims." And, admittedly, the court in Florida had—and continued to exercise—jurisdiction over the parties, the Children's issues and the financial issues from the time of the Husband's initial filing of the first case in January of 2018 until the lower court's order entered May 2, 2019, save for a period of less than five hours.

In Benihana of Tokyo, Inc. v. Benihana, Inc., cited by the Husband in his Answer Brief, this Court held, "Comity principles dictate that an action should be stayed, and a trial court departs from the essential requirements of law by failing to grant such a stay, when the first-filed lawsuit involves substantially similar parties and substantially similar claims." 129 So. 3d 1153, 1154 (Fla. 3d DCA 2014) (quoting Sorena v. Gerald J. Tobin, P.A., 47 So. 3d 875, 877 (Fla. 3d DCA 2010)). "It is sufficient that the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently-filed case." Id. (quoting Sorena, 47 So. 3d at 877)

Here, however, the court in Spain cannot and will not address any matters pertaining to the parties' assets and liabilities or the Children's issues and, therefore, cannot be said to be capable of "resolving many of the issues" raised in the Florida case.

Turning next to the Husband's reliance upon Morrison, the court recognized that "the purpose of applying the principle of priority as a matter of comity is to prevent 'unnecessary and duplicitous lawsuits' that 'would be oppressive to both parties.'" 972 So. 2d at 908 (quoting Siegel, 575 So. 2d at 1272). Because the court in Spain has no jurisdiction beyond its ability to grant a divorce and can do nothing more thereafter, there is little possibility of duplication of the issues between the case below and the case in Spain.

Similarly, in OPKO Health, this Court observed that it is an abuse of discretion "to refuse to stay a subsequently filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues." 279 So. 3d at 791 (quoting Fla. Crushed Stone Co. v. Travelers Indem. Co., 632 So. 2d 217, 220 (Fla. 5th DCA 1994)). This Court specifically stated that "when a previously filed federal action is pending between substantially the same parties on substantially the same issues, a subsequently filed state action should be stayed pending the disposition of the federal action." Id. (quoting Beckford v. Gen. Motors Corp., 919 So. 2d 612, 613 (Fla. 3d DCA 2006)). This Court further held, "it is sufficient that the two actions involve a single set of

facts and that resolution of the one case will resolve many of the issues in the subsequently filed case.” Id. (quoting Pilevsky, 961 So. 2d at 1035). But that is not the situation here because the court in Spain cannot adjudicate all the issues raised herein. Cf. Pilevsky, 961 So. 2d at 1036 (“Because many of the issues in the Florida action will be resolved by the New York action, it is necessary to stay the Florida action until such time as the New York action is concluded.”); Maraj v. Maraj, 642 So. 2d 1103 (Fla. 4th DCA 1994) (petition seeking review of trial court’s order denying husband’s motion to dismiss, or abate, a pending Florida dissolution action filed by the wife and declining to defer, as a matter of comity, to a divorce suit previously filed by the husband in Trinidad and Tobago denied where the parties’ children, primary residences, property, and extensive business interests were located in Florida).

V. CONCLUSION

For the reasons set forth above, we reverse the lower court’s order granting the Husband’s Motion to Dismiss, Abate, or Stay and remand for further proceedings.

Reversed and remanded.