

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 2069

RICHARD MORRIS

VERSUS

DEBRA A. JORDAN MORRIS

Judgment Rendered: June 11, 2010.

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On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2007-004075

The Honorable W. Ray Chutz, Judge Presiding

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Debra A. Jordan Morris
Baton Rouge, LA

Defendant/Appellant,
Appearing In Proper Person

Bridgette Hebert
Baton Rouge, LA

Attorney for Plaintiff/Appellee,
Richard Morris

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BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

CARTER, C. J.

This is an appeal of a judgment denying a petition to nullify a divorce judgment.

FACTS AND PROCEDURAL HISTORY

Richard Morris and Debra A. Jordan Morris were married in 2006, by proxy pursuant to the laws of Texas while Richard was incarcerated in that state. After his release from prison, Richard and Debra resided in Louisiana. They physically separated, and Richard filed a petition for divorce in Tangipahoa Parish. Based on his allegations of unsuccessfully attempting to serve Debra with the petition for divorce, an attorney was appointed to represent Debra. The attorney's efforts to locate Debra were unsuccessful. After the attorney entered a general denial on Debra's behalf, the trial court rendered a judgment of divorce on April 1, 2008.

In September 2008, Debra filed a petition to vacate the divorce judgment "based on fraud or ill practices." Debra alleged that Richard had known of her whereabouts and fraudulently caused an attorney to be appointed. Debra also raised allegations regarding the marriage by proxy, including allegations that Richard "tricked" her into the marriage.

In response to Debra's petition, Richard filed a peremptory exception raising the objection of no cause of action. Richard contended that service was attempted on Debra at two different addresses, including the address that Debra had given as her residence in legal proceedings in another parish in November 2007. Richard further contended that the proxy marriage is presumed valid pursuant to LSA-C.C. art. 3520. Richard also pointed out that Debra only disputed the parties' entitlement to a judgment of divorce and did not dispute the validity of the marriage itself.

At the hearing on the matter, Debra admitted that she and Richard were married and had lived separate and apart for at least six months. Debra expressed, however, that she would have liked to pursue avenues available to her under Texas law.¹ Debra also contested the appointment of the attorney and sufficiency of the attorney's attempts to serve her. Specifically, Debra alleged that the marriage was kept a secret from her family and friends; therefore they would not have recognized that she was the person sought in legal notices that were published using her married name.

In response to questioning, Debra admitted that her maiden name is Jordan and that the curator's advertisement requested information regarding the whereabouts of "Debra A. Jordan Morris." She further admitted that in other court proceedings held shortly before Richard filed for divorce, she had stated as her address one of the addresses where service was attempted.

The trial court determined that Debra did not satisfy her burden of proof on the petition for nullity. In accordance with that finding, the trial court signed a judgment denying and dismissing the petition to vacate the divorce judgment. Debra now appeals.

DISCUSSION

At the outset, we note that Debra is appearing before this court *pro se* and her appellate brief consists largely of a summation of "new findings." Pursuant to LSA-C.C.P. art. 2164, an appellate court must render its judgment upon the record on appeal. An appellate court cannot review evidence that is not in the record on appeal and cannot receive new evidence. **Pinegar v. Harris**, 06-2489 (La. App. 1 Cir. 5/4/07), 961 So.2d

¹ While Debra did not expound on the avenues available to her under Texas law, she did state that "Richard purposely does not want to mess with Texas."

1246, 1249. Appellate briefs are not part of the record on appeal. **Capitol House Preservation Co., L.L.C. v. Perryman Consultants, Inc.**, 01-2524 (La. App. 1 Cir. 12/31/02), 836 So.2d 680, 685, writs denied, 03-0323 (La. 4/21/03), 841 So.2d 794 and 03-0324 (La. 4/21/03), 841 So.2d 795. This court has no authority to consider on appeal facts referred to in an appellate brief, or in exhibits attached thereto, if those facts are not in the record on appeal. **In re Succession of Badeaux**, 08-1085 (La. App. 1 Cir. 3/27/09), 12 So.3d 348, 352, writ denied, 09-0822 (La. 5/29/09), 9 So.3d 166; **Capitol House Preservation Co., L.L.C.**, 836 So.2d at 685. Accordingly, our review of the correctness of the trial court's judgment is limited to the record before us on appeal.

A final judgment obtained by fraud or ill practices may be annulled when: (1) the circumstances under which the judgment was rendered show a deprivation of the legal rights of the litigant seeking relief; and (2) enforcement of the judgment would be unconscionable or inequitable. LSA-C.C.P. art. 2004; **Johnson v. Cain**, 08-0936 (La. App. 1 Cir. 11/14/08), 999 So.2d 51, 52-53, writ denied, 09-0295 (La. 4/3/09), 6 So.3d 773. Trial courts have discretion in deciding when a judgment should be annulled on such grounds and reviewing courts will defer to that discretion. **Wright v. Louisiana Power & Light**, 06-1181 (La. 3/9/07), 951 So.2d 1058, 1067.

In attempting to establish that the divorce judgment should be declared null, Debra introduced evidence that the marriage was contracted by proxy pursuant to the laws of Texas. Although not attempting to have the marriage set aside as null, Debra argues that such a marriage is not legal in Louisiana.

Debra is correct in stating that Louisiana law prohibits marriage contracted by procuration (when one party is absent and represented by another). LSA-C.C. art. 92; LSA-C.C. art. 92, comment (b). However, the marriage between these parties was contracted under Texas law, which allows marriage by procurement or proxy. See V.T.C.A., Family Code §2.203.

It is the public policy of Louisiana that every effort be made to uphold the validity of marriages. If a foreign marriage is valid in the state where it was contracted, the marriage is accorded a presumption of validity. LSA-C.C. art. 3520; **Ghassemi v. Ghassemi**, 07-1927 (La. App. 1 Cir. 10/15/08), 998 So.2d 731, 738-739. The presumption may be rebutted by proving that recognition of the foreign marriage would violate a strong public policy of this state. LSA-C.C. art. 3520; **Ghassemi**, 998 So.2d at 742. That presumption has not been rebutted as there has been no showing that recognition of the Texas marriage by proxy would violate a strong public policy of Louisiana. In **Ghassemi**, this court recognized that “the mere fact that a marriage is absolutely null when contracted in Louisiana does not mean that such a marriage validly performed elsewhere is automatically invalid as violative of a strong public policy.” **Ghassemi**, 998 So.2d at 743. In **Ghassemi**, this court also cited the 1925 case of **U.S. ex rel. Modianos v. Tuttle**, 12 F.2d 927 (E.D. La. 1925), wherein the court held that Louisiana’s prohibition of marriage by procuration applied only to marriages contracted within Louisiana and that the marriage of a Louisiana resident and Turkish citizen that was celebrated by proxy was valid if it was valid under the laws of that country. **Ghassemi**, 998 So.2d at 743.

Debra's arguments regarding the proxy marriage do not present grounds for nullity of the judgment of divorce.²

Debra also claims that Richard knew her correct address, but did not serve her at that address. Debra argues that Richard improperly had an attorney appointed for her, but did not provide the attorney with her correct address.

The record reflects that in his petition for divorce, Richard requested service on Debra at addresses in Reserve and New Orleans. Richard later introduced evidence to show that a month prior to the filing of the petition, the parties appeared in court in another parish and Debra gave her address as the same Reserve address. In his motion to appoint an attorney for Debra, Richard represented that service was unsuccessfully attempted at those addresses and that her whereabouts were unknown. The attorney was appointed and attempted to locate Debra through a personal notice in a Reserve newspaper, which listed Debra's maiden and married names. Despite Debra's allegations that Richard knew her whereabouts, we cannot say that the trial court abused its discretion in determining that there was no fraud or ill practice in the appointment of the curator herein.

CONCLUSION

After reviewing the record herein, we defer to the discretion of the trial court in deciding that the judgment of divorce should not be annulled on

² Included in Debra's loosely framed arguments on this issue are assertions regarding the person who stood in for Richard during the marriage ceremony and also Richard's commitment to the parties' marriage. Many of these assertions are not found in the record before us, to which our review is limited. Moreover, in response to direct questioning by the trial court, Debra admitted that the parties were, in fact, married. We conclude that these assertions are unsupported by the record and do not rise to the level of fraud or ill practices in obtaining the divorce judgment.

grounds of fraud or ill practices. Accordingly, the trial court's judgment is affirmed. Costs of this appeal are assessed to Debra A. Jordan Morris.

AFFIRMED.