

[Cite as *Radwan v. Radwan*, 2020-Ohio-1613.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

AMINA AHMED RADWAN, :
 :
 Plaintiff-Appellant, :
 : No. 108649
 v. :
 :
 AHMED LOUTFY RADWAN, :
 :
 Defendant-Appellee. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: April 23, 2020

Civil Appeal from the Cuyahoga County Common Pleas Court
Domestic Relations Division
Case Nos. DR-15-358277 and DR-17-368933

Appearances:

Stafford Law Co., L.P.A., Joseph G. Stafford, and Nicole A. Cruz, *for appellant*.

Coyne Stahl Jansen L.L.C., Richard J. Stahl, III and Edward R. Jansen, *for appellee*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Amina Ahmed Radwan appeals the decision of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, that dismissed the action for lack of subject-matter jurisdiction. Upon review, we find

that the trial court does have subject-matter jurisdiction in this case and that the trial court erred in granting appellee Ahmed L. Radwan's motion to dismiss. We reverse the trial court's decision and remand the case for further proceedings on the merits of the action.

Background

{¶ 2} Amina and Ahmed were married in 1974. During their marriage, the parties purchased a residence and resided in Strongsville, Ohio. In 2014, after 40 years of marriage, Ahmed moved to Texas while Amina continued to reside in Ohio. Ahmed filed a petition for divorce in Texas in February 2015, and Amina filed a complaint for divorce in Ohio in August 2015.

{¶ 3} In the Texas case, No. 275,695-E, 426th Judicial District, Bell County, Texas, the court issued a final decree of divorce on November 17, 2015, granting the divorce and dissolving the marriage. The Texas court found that it lacked personal jurisdiction over Amina, and it did not issue any orders regarding the marital estate or spousal support.

{¶ 4} In the initial Ohio case, Cuyahoga County C.P. No. DR-15-358277, the court issued an order for temporary support on September 20, 2017. On September 25, 2017, Amina filed a second complaint for divorce in Ohio, Cuyahoga County C.P. No. DR-17-388933. The initial Ohio case was voluntarily dismissed pursuant to an agreed judgment entry in which the parties acknowledged that all prior pleadings, claims, motions, and orders from the prior case would carry forward and remain in full force and effect.

{¶ 5} After trial dates were set in the Ohio divorce proceeding, Ahmed filed a complaint for writ of prohibition in *State ex rel. Radwan v. Jones*, 8th Dist. Cuyahoga No. 108462 (dismissed Aug. 28, 2019), and the trial court stayed the underlying proceeding. Because the trial court retained jurisdiction to adjudicate the underlying case, Ahmed filed a limited motion to lift the stay and a limited motion to dismiss the divorce action, claiming that the trial court lacked subject-matter jurisdiction because the marriage had been terminated by the Texas court.

{¶ 6} On June 5, 2019, the trial court lifted the stay and granted Ahmed's limited motion to dismiss. The trial court found that the parties had previously divorced in Texas and that the action must be dismissed pursuant to Civ.R. 12(H)(3) because it lacked subject-matter jurisdiction.

{¶ 7} Amina timely appealed the trial court's decision.

Law and Analysis

{¶ 8} Amina raises two assignments of error for our review. She claims that the trial court erred by granting the motion to dismiss and by failing to provide her an opportunity to respond to the motion to dismiss after lifting the stay order.

{¶ 9} The trial court dismissed the complaint pursuant to Civ.R. 12(H)(3) for lack of subject-matter jurisdiction. Civ.R. 12(H)(3) provides that “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” It is well recognized that “[t]he issue of subject-matter jurisdiction cannot be waived and therefore can be raised at any time during the proceedings.” *Byard v. Byler*, 74 Ohio St.3d 294, 296,

1996-Ohio-163, 658 N.E.2d 735, citing Civ.R. 12(H)(3). “A court’s subject-matter jurisdiction ‘connotes the power to hear and decide a case upon its merits.’” *State ex rel. Novak, L.L.P. v. Ambrose*, 156 Ohio St.3d 425, 2019-Ohio-1329, 128 N.E.3d 209, ¶ 10, quoting *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. We review a trial court’s decision to dismiss a complaint for lack of subject-matter jurisdiction de novo. *Assn. of Cleveland Firefighters v. Cleveland*, 2015-Ohio-1538, 31 N.E.3d 1285, ¶ 14 (8th Dist.).

{¶ 10} Article IV, Section 1 of the United States Constitution mandates that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” “Ohio courts are required to recognize the validity of a foreign judgment rendered by a court of competent jurisdiction.” *Wyatt v. Wyatt*, 65 Ohio St.3d 268, 269, 602 N.E.2d 1166 (1992), citing *Durfee v. Duke*, 375 U.S. 106, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963).

{¶ 11} In this case, after finding that the parties had already been divorced in Texas, the trial court determined that it lacked subject-matter jurisdiction over the underlying case. However, under the circumstances herein, full faith and credit to the Texas decree of divorce was required only insofar as it effectively dissolved the marital relationship of the parties. Because the Texas court did not have personal jurisdiction over Amina, it did not adjudicate the division of property or spousal support. Therefore, the trial court had subject-matter jurisdiction over those matters and we must reverse its decision to dismiss the action.

{¶ 12} We recognize the trial court’s reliance on Civ.R. 12(H)(3) would under normal circumstances have properly ended this case. This case presented the trial court with a unique and unusual process not normally seen in the typical divorce action. It is understandable how the trial court concluded there was a lack of subject-matter jurisdiction. Nevertheless, we must more closely examine the concept of a divisible divorce, which results in our conclusion to reverse the decision of the trial court.

{¶ 13} In *Estin v. Estin*, 334 U.S. 541, 549, 68 S.Ct. 1213, 92 L.Ed. 1561 (1948), and *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418-419, 77 S.Ct. 1360, 1 L.Ed.2d 1456 (1957), the United States Supreme Court recognized the concept of divisible divorce, under which an ex parte divorce decree issued by a court that does not have personal jurisdiction over one spouse, is only effective insofar as it affects marital status, and is ineffective and not entitled to full faith and credit on extinguishing personal rights or obligations, such as spousal support. In *Estin*, the Court stated that “the result in this situation is to make the divorce divisible — to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony.” *Id.* at 549. In *Vanderbilt*, the Court recognized that it was not material that “the wife’s right to support had not been reduced to judgment prior to the husband’s *ex parte* divorce” and that “[s]ince the wife was not subject to its jurisdiction, the Nevada divorce court had no power to extinguish any right which she had under the law of New York to financial support from her husband.” *Vanderbilt* at 418.

{¶ 14} Many states, including Ohio, have recognized the concept of divisible divorce. *E.g.*, *Collins v. Collins*, 165 Ohio App.3d 71, 2006-Ohio-181, 844 N.E.2d 910, ¶ 11 (1st Dist.) (“In a divorce proceeding, the trial court must have personal jurisdiction over a nonresident defendant in order to determine issues of spousal support and property division.”); *Walker v. Walker*, 10 Haw.App. 361, 366-367, 873 P.2d 114, 116-117 (1994); *Woods v. Woods*, 285 Ark. 175, 178, 686 S.W.2d 387, 389 (1985); *White v. White*, 83 Ariz. 305, 307-308, 320 P.2d 702, 703-704 (1958); *Hudson v. Hudson*, 52 Cal.2d 735, 740, 344 P.2d 295, 297 (1959) (1959 case finding “Of the 33 jurisdictions that have passed on this question, 23 states and the District of Columbia have held that a wife may obtain support or alimony following the entry of an ex parte divorce.”); *Armstrong v. Armstrong*, 162 Ohio St. 406, 406-411, 123 N.E.2d 267 (1954), *aff’d*, 350 U.S. 568, 76 S.Ct. 629, 100 L.Ed. 705 (1956) (“Florida court had no jurisdiction over the person of Mrs. Armstrong and that court could not by its decree effectively preclude her from obtaining an alimony award in Ohio.”); *see also* 24 American Jurisprudence 2d, Divorce and Separation, Section 179.

{¶ 15} In *Armstrong*, the United States Supreme Court affirmed an Ohio court’s award of alimony to a wife in a divorce action in which full faith and credit was given to an ex parte divorce decree issued by a Florida court, which did not adjudicate the wife’s right to alimony. *Armstrong v. Armstrong*, 350 U.S. 568, 568-569, 76 S.Ct. 629, 100 L.Ed. 705 (1956). The court stated as follows:

There was a valid decree in Florida dissolving the bonds of matrimony. There was no decree as to alimony. Ohio had personal service on both parties in a suit for divorce and alimony brought there by Mrs. Armstrong. The court denied her a decree of divorce because Florida had already dissolved the bonds of matrimony. The Ohio court found that, but for the decree in Florida, Mrs. Armstrong had established grounds for divorce in the Ohio suit. It considered that the matter before it was not a division of property, but an application for alimony, and it proceeded to hear evidence on that basis and finally entered a personal judgment against the defendant husband for alimony. The Ohio court, which had complete jurisdiction of both parties and the cause of action, entered a decree as to alimony only, which decree seems clearly authorized by the Ohio cases. *Slapp v. Slapp*, 143 Ohio St. 105, 54 N.E. 2d 153 [1944]; *Cox v. Cox*, 19 Ohio St. 502 [1869]. The Florida judgment was given full faith and credit by Ohio as far as the judgment in Florida went, and no other questions are presented here.

Id. at 571-572.

{¶ 16} In cases such as this, the ex parte divorce decree “is not a bar to a subsequent action for alimony.” *Krajcik v. Krajcik*, 9th Dist. Wayne C.A. No. 1658, 1980 Ohio App. LEXIS 11063, 5 (July 16, 1980). The Texas decree is entitled to full faith and credit only insofar as it dissolved the marital relationship. It does not preclude the trial court from adjudicating the property and spousal support rights herein.¹ Likewise, in this situation, the doctrine of res judicata applies to a valid final decree of divorce, only insofar as it effectively dissolves the marital relationship of the parties. It does not preclude issues of alimony, child support, and property division. *See Hathorn v. Hathorn*, 5th Dist. Fairfield No. 7-CA-88, 1988 Ohio App.

¹ We note that Ohio Civ.R. 4.3(A)(8) permits the exercise of long-arm jurisdiction over a nonresident partner to a marriage who had been “(8) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state.”

LEXIS 5140, 4 (Dec. 8, 1988). We also find that neither the jurisdictional priority rule nor the mootness doctrine prohibits the trial court from proceeding in this matter.

{¶ 17} Nonetheless, Ahmed argues the jurisdiction of the trial court is limited by statute and requires a valid ongoing marriage. Ahmed refers to the language of R.C. 3105.171, which addresses a court's authority to divide property in "divorce proceedings," and R.C. 3105.08, which addresses a court's authority to award spousal support in "divorce and legal separation proceedings." These are not limiting provisions but, rather, are a specific grant of authority.

{¶ 18} We find nothing that would compel this court to conclude that an Ohio domestic relations court would not have jurisdiction over a spouse's cause of action for spousal support or the division of marital property when an ex parte decree of divorce has been issued in another jurisdiction. R.C. 3105.011 provides in pertinent part that "[t]he court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters." In divorce proceedings, the jurisdiction of the domestic relations court is not limited to the dissolution of the marriage, but also includes the adjudication of personal rights arising from the marital relationship, such as the division of marital property and a determination of spousal support. Although full faith and credit is required to be given to the Texas decree of divorce insofar as it dissolved the marital relationship of the parties, the

trial court has subject-matter and statutory authority to adjudicate other aspects of the divorce.

{¶ 19} Accordingly, we sustain the first assignment of error. The second assignment of error is moot.

{¶ 20} Judgment reversed; case remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
ANITA LASTER MAYS, J., CONCUR