

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

KELLY MARIE BORGHOL

Appellant

v.

NAZIH MOHAMAD BORGHOL

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 254 WDA 2013

Appeal from the Order January 24, 2013  
In the Court of Common Pleas of Butler County  
Civil Division at No(s): FC-12-90519-D

BEFORE: PANELLA, J., ALLEN, J., and STRASSBURGER, J.\*

MEMORANDUM BY PANELLA, J.:

FILED: May 5, 2014

Appellant, Kelly Marie Borghol ("Wife"), appeals from the order entered January 24, 2013, by the Honorable Kelley T.D. Streib, Court of Common Pleas of Butler County, which granted Nazih Mohamad Borghol's ("Husband") Motion to Dismiss Complaint in Divorce. As we find the parties entered into a valid and enforceable Lebanese divorce decree prior to the filing of Wife's Complaint seeking a divorce in the Commonwealth of Pennsylvania, we affirm the trial court's order dismissing Wife's Complaint in Divorce.

The trial court summarized its findings of fact as follows.

Parties hereto were married January 7, 1993[,] in the ... [c]ourt [in] Dubai in the United Arab [Emirates]. During the marriage, the couple had two children: [Z.A.B.], DOB June 5,

---

\* Retired Senior Judge assigned to the Superior Court.

2000, and [M.J.B.], DOB August 22, 2003 (hereinafter "[c]hildren"). [Both] parties worked following the marriage[;] however, Wife stopped working after [the children's] births. Husband has worked as a partner for Ernst and Young.

Over the course of the marriage, Husband and Wife relocated several times. At the time of the marriage, [the] parties lived in Dubai for just over three years before moving to the United States and residing in Pittsburgh, Pennsylvania[,] for approximately one year. Following their short time in Pennsylvania, Husband and Wife again moved to the Middle East region, living in Bahrain for two years. Finally, the couple settled in Beirut, Lebanon, where they lived for twelve years. They did not leave Beirut until the [s]ummer of 2011, and Husband still travels to Beirut where he maintains a residence.

In the summer of 2011, [the children] completed their school year in Beirut and left with Mother for their yearly summer trip to Pennsylvania to visit with [m]aternal [g]randparents. Around this time, Husband's employer, Ernst and Young, requested he transfer to their office in Kuwait, which began on June 1, 2011. Husband moved to a hotel in Kuwait on June 1, 2011[,] to begin work in the new office. Beirut, Lebanon, is a two[-]hour plane trip from Kuwait.

Near the end of the summer of 2011, Husband traveled, as planned, to Pennsylvania for the end of Wife and [the children's] trip. While there, Husband felt that the marriage was over and left Wife a note while she showered that he was leaving and wanted a divorce. Before Wife saw the note, Husband had left for Beirut, and then Kuwait.

Following the incident, Husband and Wife began to communicate. Wife, who stated that she did not want a divorce, returned to Beirut with [the children] approximately two to three weeks after Husband's departure, with the intent to ultimately relocate with Husband to Kuwait and work on their marriage. Wife, throughout the course of the hearing, reiterated on numerous occasions that she never wanted a divorce and seemed to indicate that she was surprised when they began preparing for a divorce in September 2011. Wife also stated that she never considered staying in the United States and not moving to Kuwait after receiving Husband's note.

When Mother and [the children] arrived in Kuwait in August 2011, Husband obtained an apartment for the family to

live. However, shortly after the move to Kuwait, the couple's problems resurfaced and they began to discuss the possibility of divorce by September 2011. As a result, Husband spoke with Attorney Mohamad Ziadeh in Beirut, Lebanon on September 24, 2011, while he was in the country for other business, in order to understand the process for obtaining a divorce. Husband met with an attorney in Lebanon because he had just moved to Kuwait and was not a resident of the country, as Husband was in Kuwait on a visitor's visa. Husband was continuing to do business in Beirut at this time and maintained his residence in Beirut, which he still owned at the date of the hearing. In September of 2011, when it was decided that the couple would divorce, both Husband and Wife were citizens of Lebanon. Husband had only been in Kuwait for three months, while Wife had only been in Kuwait for one month.

Under Lebanon law, Husband was not required to obtain Wife's consent to divorce, nor was he required to provide her with any portion of their marital estate. Wife, who has lived in the Middle East for many years, was aware of this law and knew that she had no rights as a woman in a Muslim country. Despite this, Husband decided to put together a divorce settlement agreement with Wife to memorialize what Wife would receive as a result of the divorce. Husband asked Attorney Ziadeh to draft an agreement. Attorney Ziadeh emailed a draft to Husband for a discussion between him and Wife. Included in the discussion was what Wife would need to set up a life in Pennsylvania as well as a discussion of all of the couple's assets.

After discussions, Husband and Wife reached a final agreement on October 12, 2011[,] that was sent to their lawyer, Attorney Ziadeh. Both Husband and Wife were represented by Attorney Ziadeh. On October 20, 2011, Wife traveled to Attorney Ziadeh's office in Beirut to sign the settlement agreement, which she signed and fingerprinted. Also at that time, Wife executed a Power of Attorney granting Attorney Ziadeh the right to appear on her behalf to obtain the divorce in Lebanon pursuant to the rules of Court in Beirut. This enabled Wife and [the children] to leave for the United States as soon as possible.

The Agreement of Divorce and Discharge and Settlement between the Two Divorcees (hereinafter "Settlement Agreement")<sup>[1]</sup> was signed and fingerprinted by both Husband and Wife. By the terms of the agreement, Wife and Children were to return to Pennsylvania and Husband would pay \$55,000 per year for the [c]hildren's expenses (which works out to be \$4,583 per month) and would provide [the children] and Wife with medical insurance. In addition to the payments for the [c]hildren, Wife was to receive \$260,000 for the purchase of a house, car, furniture, and other expenses to start her life in Pennsylvania. This agreement stated that it was to be a "total, complete and irrevocable discharge" of the marital estate and that it shall apply to parties wherever they may be.

Husband signed the agreement on November 9, 2011, which was the first day he could get vacation from work, and he, along with Attorney Ziadeh acting on Wife's behalf, appeared in a court in Lebanon on November 9th and 10<sup>th</sup> to obtain the divorce. The court issued the divorce on November 11, 2011.

Trial Court Opinion, 4/16/13 at 2-6 (footnotes omitted). On October 31, 2011, Wife returned to the United States with the children and moved in with the maternal grandparents. Wife and the children subsequently moved into a townhome in Pennsylvania in February 2012. Father has complied with all of the terms of the settlement agreement signed by the parties.

On August 7, 2012, Wife filed a Complaint in Divorce in Butler County, Pennsylvania. Husband filed an Answer on August 23, 2012, and on August 31, 2012, Husband filed a Motion to Dismiss Complain in Divorce. A hearing was held on the motion on November 19, 2012, at which the parties

---

<sup>1</sup> It appears from the face of the document that the Lebanese divorce decree and the settlement agreement are merged into a single agreement. Therefore, we use the terms "divorce decree" and "agreement" interchangeably through the course of this memorandum.

testified. On January 24, 2013, the trial court entered an order granting Husband's motion to dismiss the divorce complaint. This timely appeal followed.

On appeal, Wife raises the following issues for our review:

1. Whether the [t]rial [c]ourt erred in failing to apply contract principles of duress that have been adopted by the Pennsylvania Superior Court when the [t]rial [c]ourt considered [Wife's] assertion that the Lebanese divorce decree should be set aside because [Husband] obtained the divorce from [Wife] through means of duress?
2. Whether the [t]rial [c]ourt erred in its application of the discretionary doctrine of comity when the [c]ourt upheld the [p]arties' Lebanese divorce decree and dismissed [Wife's] Complaint in Divorce?
  - a. Whether the [t]rial [c]ourt erred by failing to recognize that the Sunni Court of Beirut granted the divorce decree without proper jurisdiction over the parties?
  - b. Whether the [t]rial [c]ourt erred by failing to recognize that the Lebanese divorce decree is invalid under Pennsylvania law because both [p]arties were domiciled in Kuwait at the time the divorce was sought by [Husband] in Lebanon?

Appellant's Brief at 7.

We must first address Wife's preliminary contention, that the trial court should have treated Father's Motion to Dismiss Complaint in Divorce as a Motion for Summary Judgment. In response, Father aptly notes that section 3323 of the Divorce Code stipulates that "[i]n all matrimonial causes, the court may either *dismiss the complaint* or enter a decree of divorce or annulment of the marriage." 23 PA.CON.S.TAT.ANN. 3323(a) (emphasis added). Section 3323 empowers the trial court to dismiss a complaint in

divorce. Therefore, we find the trial court correctly treated Father's motion as a motion to dismiss. **See, e.g., Stackhouse v. Stackhouse**, 862 A.2d 102 (Pa. Super. 2004) (reviewing trial court's order granting Husband's motion to dismiss complaint in divorce).

Our standard when reviewing a trial court's order granting or denying a motion to dismiss is for an abuse of discretion. **See Sigall v. Serrano**, 17 A.3d 946, 949 (Pa. Super. 2011).

Judicial discretion requires action in conformity with law on facts and circumstances before the trial court after hearing and consideration. Consequently, the court abuses its discretion if, in resolving the issue for decision, it misapplies the law or exercises its discretion in a manner lacking reason. Similarly, the trial court abuses its discretion if it does not follow legal procedure.

**Id.** (citation omitted). On appeal, we are bound by the trial court's credibility determinations, "unless it appears that the court abused its discretion or that the court's findings lack evidentiary support or that the court capriciously disbelieved the evidence." **Hart v. Arnold**, 884 A.2d 316, 331 (Pa. Super. 2005) (citation omitted). "A reviewing court must defer to the findings of the trier of the facts if they are supported by the evidence." **Luber v. Luber**, 614 A.2d 771, 773 (Pa. Super. 1992) (citation omitted).

Here, Wife first argues that the trial court erred when it failed to set aside the Lebanese divorce decree because Husband allegedly obtained Wife's acquiescence to the agreement using duress.

The determination of marital property rights through ... settlement agreements has long been permitted, and even encouraged. Settlement agreements are governed by the same rules of law as used in determining the validity of contracts.

Absent fraud, misrepresentation, or duress, parties are generally bound by the terms of their agreements. Mutual assent [necessary] to a contract does not exist, however, when one of the contracting parties elicits the assent of the other contracting party by means of duress.

**Adams v. Adams**, 848 A.2d 991, 993 (Pa. Super. 2004) (internal quotes and citations omitted). “We have long defined duress as that degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness.” **Id.** at 994 (citations and internal quotation marks omitted).

The trial court conducted an extensive evidentiary hearing on November 19, 2012. At the hearing, Wife testified that when she read the settlement agreement Husband had drafted, she was concerned with the financial terms and Husband’s eight-week vacation with the children. **See** N.T., Hearing, 11/19/12 at 125. Wife also testified that when she expressed her dissatisfaction with the terms of the agreement, Husband told her she did not have to sign the agreement but could instead leave for the United States without any money or the children. **See id.** at 131. Wife stated that during this time she experienced anxiety and felt as though she was forced to sign the agreement in order to keep her children. **See id.** at 132-133.

The trial court ultimately discredited Wife’s testimony and determined that “[t]here is simply no evidence that Husband made any threats at the time of the negotiations for the divorce settlement.” Trial Court Opinion, 4/16/13 at 10. Specifically, the trial court relied upon emails Wife sent prior

to signing the settlement agreement as evidence belying her claim that she did not participate in settlement negotiations. Wife wrote in the first email, sent October 13, 2011, as follows:

I did speak to him briefly. He can give me \$260,000 now, possibly \$300,000. I told him I want half of what our Beirut apartment is worth. He wanted to subtract his debt on that because he had to borrow against it. I said no, I want half of the current appraised value not including any debt. Let's say he owes me a total of \$500,000. He is going to have to pay me whatever he can to me over time. If he gives me \$260,000 now, he can still owe me \$240,000. I told him I don't care how long it takes for him to pay me. I want to end the agreement that money is owed to me. I will leave him alone on the investments if he gives me more monthly. The investments are complicated. The value has gone down with stock market problems, so I don't really want to get into that. He reiterated that he would love for me to have the house in the U.S. I did speak (e-mail) to the agent, and she said that with a new construction the payments are over time during the construction. So, I am not really sure what to do there. With the cash he would give me now I would have enough for the townhome and car I wanted. If I tried to get the house, I am screwed on the car.

N.T., Hearing, 11/19/12 at 153-154. In the second email, sent later that same day, Wife indicated:

I actually feel he's doing the best he can. Because I know he doesn't want this to drag on. Basically I just want the money and I don't care about the time frame. I think I should just forget about the house. Those two townhomes he showed you have been for sale for several months. I would ... I think he would for one I saw which is \$217,500. I'm sure since I'm paying cash, I can get the price down. How much, I don't know. Why should I go beyond my means? Maybe it's not fair but it's reality. This way, I can have my brand new BMW.



**Id.** at 154-155. The trial court considered the emails as evidence that Wife not only negotiated to her benefit, but also that she did not sign the agreement under duress. **See** Trial Court Opinion, 4/16/13 at 7-8.

The court further reasoned that, even assuming Wife had established that she signed the agreement under duress, “she ratified the agreement when she accepted the benefits under the cont[r]act, making it no longer voidable.” **Id.** at 10.

Ratification of a contract “results if a party who executed a contract under duress accepts the benefits flowing from it, or remains silent, or acquiesces in the contract for any considerable length of time after the party has the opportunity to annul or avoid the contract.” **Sams v. Sams**, 808 A.2d 206, 212 (Pa. Super. 2002) (citation omitted). In its well-reasoned opinion, the trial court noted that

Wife accepted all benefits due to her under the settlement agreement before attempting to void the divorce and settlement agreement. Over the course of almost a year that Wife was accepting benefits under the contract, she failed to indicate to Husband that she would no longer abide by the terms of the contract and considered it invalid. It was not until after she had received the entire \$280,000 due to her under the prior settlement agreement that she filed for divorce, despite being able to file months prior (Wife could have filed for divorce in Pennsylvania in May of 2012, but [waited] until after she received her last payment in July of 2012 before filing for divorce).

Additionally, Wife remained silent for a considerable lengthy of time following the signing of the settlement agreement when she could have voided the contract. When Wife returned to the United States with [the children], any possible threat of Husband keeping [them] was obsolete. At that time,

she could have voided the entire contract by informing Husband that she considered the agreement to be invalid. She could have also annulled the agreement by filing for divorce in Pennsylvania in May 2012 when the state would have first assumed jurisdiction over the divorce action.<sup>[2]</sup> Wife did not do so. Thus, Wife cannot claim duress and try to void the agreement after she received all benefit owed to her.

Trial Court Opinion, 4/16/13 at 10-11.

We agree with the trial court's analysis. Even assuming, for the sake of argument, that Wife had conclusively established that she signed the settlement agreement under duress, her subsequent acceptance of all benefits accrued under the very terms of the agreement she now hopes to negate constituted a ratification of the agreement. **See *Sams, supra***. Having accepted the benefits of the agreement, Wife cannot now belatedly attempt to void the agreement and obtain a different deal.

Wife alternatively argues that the trial court erred in extending comity to the parties' Lebanese divorce decree where the court in Beirut was without proper jurisdiction over the parties. **See** Wife's Brief at 27. This Court has previously explained the legal principle of comity as follows:

Although we must give full faith and credit under the mandate of the United States Constitution to a decree ... by a court of a sister state if such court had jurisdiction over the parties and the subject matter, judicial decrees rendered in foreign countries depend for recognition in Pennsylvania upon comity.

---

<sup>2</sup> Section 3104(b) of the Divorce Code provides that "[n]o spouse is entitled to commence an action for divorce or annulment ... unless at least one of the parties has been a bona fide resident in this Commonwealth for at least six months immediately previous to the commencement of the action." 23 PA.CON.S.TAT.ANN. § 3104(b).

\* \* \*

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. Comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.

***Sinha v. Sinha***, 834 A.2d 600, 604 (Pa. Super. 2003) (citation omitted), ***appeal denied***, 577 Pa. 724, 847 A.2d 1288 (2004). The Pennsylvania Supreme Court has sanctioned the recognition of foreign judgments under circumstances where

there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect.

***Hilkmann v. Hilkmann***, 579 Pa. 563, 574, 858 A.2d 58, 65 (2004) (citing ***Hilton v. Guyot***, 159 U.S. 113, 202-203 (1895)).

Prerequisite to judicial recognition of a foreign divorce decree in this Commonwealth, the party obtaining the divorce “must have resided in the state or country for a minimum period of residency as determined by local authority [a]nd that the residency be accompanied by ‘domiciliary intent’,

i.e., an intent to remain in the foreign jurisdiction.” **Sargent v. Sargent**, 307 A.2d 353, 356 (Pa. Super. 1973) (citing **Dimilia v. Dimilia**, 203 A.2d 382 (Pa. Super. 1964); **Fishman v. Fishman**, 74 A.2d 682 (1950)). “This requirement is jurisdictional and cannot be waived by the acts of the parties.” **Id.** (citation omitted).

Wife argues that the trial court failed to consider the couples’ residency status in Lebanon before concluding that the Lebanon divorce decree was valid and enforceable in Pennsylvania. **See** Wife’s Brief at 28. It is undisputed that prior to Husband’s transfer to Kuwait in June 2011, the couple lived in Beirut, Lebanon for approximately 12 years. **See** N.T., Hearing, 11/19/12 at 6. Wife and the children joined Husband in Kuwait in late August 2011, and Husband told Wife he wanted a divorce in September of that year. **See id.** at 7, 11. Husband met with Attorney Ziadeh in Beirut and a draft of the agreement was produced on September 26, 2011. **See id.** at 20. On October 21, 2011, Wife met with Attorney Ziadeh in Beirut, Lebanon, and signed both the divorce agreement and a special power of attorney authorizing Attorney Ziadeh to obtain the divorce decree in the Beirut court. **See id.** at 141-142. Husband signed the divorce agreement on November 9, 2011, and the decree was entered on November 11, 2011. **See id.** at 26, 31.

Wife contends that because Husband obtained Kuwaiti residency on October 25, 2011, prior to signing the divorce agreement, the court in Beirut no longer had jurisdiction over the parties’ divorce. **See** Wife’s Brief at 32.

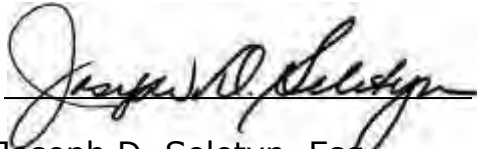
We disagree. The record establishes that in September 2011, when the parties decided to divorce and Husband commenced the divorce proceedings with Attorney Ziadeh, neither party had yet obtained residency in Kuwait, and thus Kuwait clearly had no jurisdiction over the parties' divorce. Husband had no choice but to seek a divorce decree in Beirut where the parties had maintained residency for the preceding 12 years. Both parties willingly invoked the jurisdiction of the Lebanese court when they traveled to that country to sign the divorce agreement and to authorize Attorney Ziadeh to finalize the divorce in the Lebanese court. We do not find that the court in Beirut was deprived of jurisdiction over the parties' divorce merely because Husband obtained Kuwaiti residency during the pendency of the divorce proceedings; nor do we find any evidence to suggest Husband maintained a Lebanese residence solely to obtain a divorce decree in that jurisdiction. ***Cf. Sargent v. Sargent***, 307 A.2d 353, 356 (Pa. Super. 1973) (holding Mexican divorce decree obtained by Husband was subject to collateral attack where Husband went to Mexico solely to obtain a divorce and where Wife was not a party to the divorce proceedings).

Accordingly, as Wife has failed to establish that the Lebanese court did not have proper jurisdiction over the parties' divorce and has presented no compelling reason why we should not extend comity to the Lebanese divorce

decree and settlement agreement,<sup>3</sup> we agree with the trial court that Wife cannot now collaterally attack that agreement and obtain a Pennsylvania divorce decree. We therefore affirm the order of the trial court dismissing Wife's Complaint in Divorce.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 5/5/2014

---

<sup>3</sup> Insofar as Wife discusses the issue of comity in her appellate brief, she focuses solely on the jurisdictional issue. **See** Wife's Brief at 27-33.