STATE OF MICHIGAN

COURT OF APPEALS

SAIDA BANU TARIKONDA,

Plaintiff-Appellant,

v

BADE SAHEB PINJARI,

Defendant-Appellee.

UNPUBLISHED
April 7, 2009

No. 287403
Oakland Circuit Court
Family Division
LC No. 2008-746484-DM

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order recognizing the parties' earlier divorce in India and granting defendant's motion to dismiss the divorce complaint pursuant to MCR 2.116(C)(7). We reverse.

Plaintiff and defendant are Muslim citizens of India who were married in Hyderabad, Andhra Pradesh, India in 2001. They have one child, Maahira, born December 22, 2005, in Anaheim, California. Although Maahira was sent to live in India, the couple resided in Michigan from February 2006 to January 2008, when they separated. Plaintiff remained in Michigan and defendant moved to New Jersey.[1]

India has a two-tiered legal system with a universal civil code that applies to all citizens and individual personal laws that apply to each of the Christian, Hindu, and Muslim communities. Jain, *Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women's Rights in India*, 23 Berkeley J Int'l L 201, 204 (2005). India recognizes the Muslim personal law with respect to issues of marriage and divorce. Muslim Personal Law (Shariat) Application Act of 1937, Act no. 26 of 1937, section 2.[2] One method of divorce under the Muslim personal law is the triple talaq. Pursuant to the triple talaq, a husband

[1] At the time plaintiff filed the divorce complaint, Maahira lived with her in Michigan. It is unclear from the record when she moved from India to Michigan.

[2] This act may be accessed, according to act year, at <http://www.indiacode.nic.in/> (accessed March 17, 2009).

may summarily divorce his wife by pronouncing language such as, "I divorce thee," three times. Western, *Islamic "Purse Strings": The key to amelioration of women's legal rights in the Middle East*, 61 AF L Rev 79, 121-123 (2008).

In April 2008, defendant traveled to India and pronounced the following written triple talaq:

> Now this deed witnesses that I the said Bade Pinjari, do hereby divorce Saida Tarikonda, daughter of T. Babu Khan, by pronouncing upon her Divorce/Talaq three times irrevocably and by severing all connections of husband and wife with her forever and for good.
>
> 1. I Divorce thee Saida Tarikonda
>
> 2. I Divorce thee Saida Tarikonda
>
> 3. I Divorce thee Saida Tarikonda . . . .

The parties disagree regarding whether plaintiff was notified of this triple talaq. However, in May 2008, plaintiff filed a complaint for divorce in Michigan. Defendant filed a motion to dismiss the complaint pursuant to MCR 2.116(C)(7) because of the existing Indian divorce. To prove the divorce occurred, he offered a divorce certificate from a Wakf Board in Andhra Pradesh, India. The trial court granted his motion. It instructed plaintiff to register the Indian divorce in Michigan and file a separate complaint for custody and child support.

On appeal, plaintiff argues that the trial court erred when it recognized the Indian divorce, because the triple talaq is violative of due process and contrary to public policy.[3] We agree.

This Court reviews a lower court's determination regarding a motion for summary disposition de novo. *Hinkle v Wayne County Clerk*, 467 Mich 337, 340; 654 NW2d 315 (2002). Under MCR 2.116(C)(7), a party may move for dismissal of a claim on the ground that the claim is barred because of a "'prior judgment . . . or other disposition of the claim before commencement of the action.'" *Maiden v Rozwood*, 461 Mich 109, 118 n 3; 597 NW2d 817 (1999), quoting MCR 2.116(C)(7). A movant need not file supportive material. *Id.* at 119. However, if the movant submits affidavits, depositions, admissions or other documentary evidence, the evidence must be admissible and the trial court must consider it. *Id.* "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Id.*

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[3] Throughout her brief, plaintiff relies upon a recent Maryland case, in which the court refused to afford comity to a divorce arising from a pronouncement of the talaq in Pakistan. *Aleem v Aleem*, 404 Md 404; 947 A2d 489 (2008). A decision from a court in another state is not binding, but may serve as persuasive authority. *K & K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 559 n 38; 705 NW2d 365 (2005).

"Unlike the judgments of sister states, foreign country judgments are not subject to the command of the Full Faith and Credit clause of the United States Constitution, Art. IV, Sec. 1." *Electrolines, Inc v Prudential Assurance Co*, 260 Mich App 144, 152; 677 NW2d 874 (2003). Nevertheless, comity is one nation's recognition of the "legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." *Dart v Dart*, 460 Mich 573, 580; 597 NW2d 82 (1999) (*Dart I*). Our Supreme Court has adopted the following criteria, set forth in *Hilton v Guyot*, 159 US 113; 16 S Ct 139; 40 L Ed 95 (1895), with respect to comity:

> [W]here 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 was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact. [*Id.* at 581, quoting *Hilton, supra* at 202-203.]

Likewise, this Court has stated that a judgment should be accorded comity if: 1) "'the basic rudiments of due process were followed,'" 2) "the parties were present in court," and 3) "'a hearing on the merits was held.'" *Dart v Dart*, 224 Mich App 146, 155; 568 NW2d 353 (1997) (*Dart II)*, aff'd *Dart I, supra*, quoting *Growe v Growe*, 2 Mich App 25, 33; 138 NW2d 537 (1965).

Plaintiff did not enjoy the basic rudiments of due process in the instant Indian divorce. *Dart II, supra* at 155. She had no right to prior notice of defendant's pronouncement of the triple talaq. *Ara v Ahmad*, 2002 AIR 3551, Judgment of the Supreme Court of India, entered October 1, 2002 (Appeal No. 465 of 1996)[4]; *Pathan v Pathan*, Judgment of the Bombay High Court, entered May 2, 2002 (Criminal Writ Petition No. 94 of 2000), part 7, sections 24-25.[5] Further, she was not represented by an attorney and had no right to be present at the pronouncement. *Id.* The divorce provided no opportunity for a hearing on the merits and it was not overseen by a court of law. *Ara, supra; Pathan, supra.* Because plaintiff was denied due process in the Indian divorce arising from defendant's pronouncement of the triple talaq, the trial court erred by recognizing the divorce and dismissing the complaint pursuant to MCR 2.116(C)(7). *Dart I, supra* at 582.

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[4] This judgment may be found at Supreme Court of India, *Judgment Information System* <http://www.judis.nic.in/supremecourt/helddis3.aspx> (accessed March 17, 2009).

[5] This judgment may be found at Asian Legal Resource Center, *Criminal Writ Petition No.: 94 of* 2000, <http://www.alrc.net/doc/mainfile.php/india_94of2000> (accessed March 17, 2009).

Notably, the Equal Protection Clauses of the United States and Michigan Constitutions provide that no person shall be denied the equal protection of the law. US Const, Am XIV; Const 1963, art 1, § 2. "The essence of the Equal Protection Clauses is that the government not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment." *Crego v Coleman*, 463 Mich 248, 258; 615 NW2d 218 (2000). If the state distinguishes between persons, the distinctions must not be "'arbitrary or invidious.'" *Id.* at 259, quoting *Avery v Midland Co, Texas*, 390 US 474, 484; 88 S Ct 1114; 20 L Ed 2d 45 (1968). Wives have no right to pronounce the talaq. *Pathan, supra*, part 2, section 13; *Islamic "Purse Strings," supra* at 123. This distinction is arbitrary and invidious. To accord comity to a system that denies equal protection would ignore the rights of citizens and persons under the protection of Michigan's laws. *Dart I, supra* at 580.

Plaintiff also claims that it was contrary to public policy for the trial court to recognize the Indian divorce because the Muslim personal law and Michigan law differ substantially with respect to property division. Under Muslim personal law, wives may be entitled to a dower if it is afforded in their marriage contracts. Muslim Women (Protection of Rights on Divorce) Act, 1986, (Act no. 25 of 1986; 5/19/086), section 3(1)(c).[6] Absent a marriage contract, wives are limited to properties titled in their names. *Id.* at section 3(1)(d). Under Michigan law, trial courts recognize prenuptial agreements governing the division of property in the event of a divorce. *Reed v Reed*, 265 Mich App 131, 141-142; 693 NW2d 825 (2005). However, absent prenuptial agreements, trial courts equitably distribute marital property in light of all the circumstances. *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). Given this difference between the Muslim personal law in India and Michigan law, affording comity to the Indian divorce would again ignore the rights of citizens and persons under the protection of Michigan's laws. *Dart I, supra* at 580.

In light of our conclusion above, this Court need not address plaintiff's remaining claims that: 1) it would be contrary to public policy to recognize the Indian divorce because it failed to resolve issues of custody, child support, medical expenses, parenting time, and spousal support, and 2) the triple talaq and divorce certificate were invalid in India.

On appeal, defendant maintains that the lower court file is devoid of evidence of personal service. This claim fails. The lower court file includes an affidavit of service, certifying that plaintiff served a copy of the summons and complaint by registered mail. MCR 2.104. Plaintiff also attached a document from the United States Postal Service detailing the delivery information.

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[6] The full text of this act can be found at the Commonwealth Legal Information Institutes, *Indian Legislation*, <http://www.commonlii.org/in/legis/num_act/mworoda1986482> (accessed March 17, 2009). The full act may also be accessed, according to act year, at Government of India, *India Code Text Base*, <http://www.indiacode.nic.in/>, while Section 3 of the act may be found at <http://www.indiacode.nic.in/qrydisp.asp?tfnm=198602%20&tfnm2=3> (accessed March 17, 2009).

Next, defendant argues that, even if the trial court erred by dismissing plaintiff's complaint pursuant to MCR 2.116(C)(7), "additional issues as to jurisdiction remain." Defendant fails to support his claim with citations to the record or authority to sustain this position. *Flint City Council v Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002) ("this Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal."). This claim is abandoned on appeal. *Id.*

Finally, given the Indian divorce, defendant maintains that plaintiff should have filed a separate complaint for custody and child support. He objects to such a complaint on several grounds. However, because plaintiff has not yet filed a separate complaint for custody and child support in Michigan, defendant's objections are not ripe for review.

We reverse.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra