

Sara Abdalrhman Mohamed Ali,
Plaintiff,
vs.
Mojahid Faroug Saeed Osman,
Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

File No. 09-2024-DM-00784

¶1 Defendant Mojahid Faroug Saeed Osman (“Mojahid”) moves the Court to dismiss Plaintiff Sara Abdalrhman Mohamed Ali’s (“Sara”) divorce action against him. Mojahid argues the Court lacks subject matter jurisdiction in this case because the parties are no longer married. Plaintiff argues the parties are still legally married.

¶2 For the reasons stated below, the Court **DENIES** Mojahid’s Motion to Dismiss.

FINDINGS OF FACT

¶3 Sara and Mojahid were married on February 5, 2001 in Sudan.

¶4 Under Islamic law, a husband has the right to initiate a divorce (“talaq”) against his wife. All that is required to achieve talaq is for a husband to pronounce his intent to divorce his wife on three separate occasions, either verbally or in writing. The husband does not need to communicate his three pronouncements to his wife. She need not be present for them or even aware of them. A wife cannot object to a talaq.

¶5 Unbeknownst to Sara, Mojahid pronounced talaq three times prior to December 11, 2022.

¶6 On or about December 11, 2022, Mojahid obtained a Certificate of Divorce from Sara in Sudan (the “Divorce Certificate”) based on his pronouncement of talaq. When he obtained the Divorce Certificate, neither Mojahid nor Sara lived in Sudan. They lived in the United Arab

Emirates (“UAE”) at the time, which had been their residence since 2015. Additionally, Sara was not present when Mojahid obtained the Divorce Certificate. Mojahid emailed Sara the Divorce Certificate on December 19, 2022.

[¶7] Sara had been discussing a divorce from Mojahid with an attorney in the UAE in 2021 and 2022. At some point therein, Sara commenced a divorce action against Mojahid in the UAE. Mojahid responded to the action by stating the parties were already divorced in light of the Divorce Certificate. The parties eventually dismissed the UAE action.

[¶8] In February 2023, Sara moved to the United States, where Mojahid had accepted a position at a university. The parties moved back in together in May 2023.

[¶9] Sarah filed for divorce in the present action on July 26, 2024. In her Complaint, she alleges the parties have been married ever since February 5, 2001.

[¶10] Mojahid was served the action, filed an answer and counterclaim, and brought the present Motion to Dismiss before the Court. Mojahid denies that the parties are still married. He asserts the parties are divorced due to the Divorce Certificate.

CONCLUSIONS OF LAW

[¶11] Mojahid brings his Motion to Dismiss pursuant to N.D.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction over this matter. “Subject matter jurisdiction is a court’s power to hear and decide the general subject involved in the action.” Env’l Law & Pol. Ctr. v. N.D. Pub. Serv. Comm’n, 2020 ND 192, ¶ 16, 948 N.W.2d 838. In deciding jurisdiction under N.D.R.Civ.P. 12(b)(1), the district court may consider matters outside the pleadings without converting the proceedings to summary judgment. Id. “[A]s a general rule, it is presumed that district courts have subject matter jurisdiction, and the party challenging the court’s jurisdiction bears the burden

of proving the district court lacks subject matter jurisdiction.” Lavallie v. Jay, 2020 ND 147, ¶ 7, 945 N.W.2d 288.

¶12] Mojahid alleges this Court lacks subject matter jurisdiction over Sara’s divorce action because the parties are already divorced by way of Mojahid’s pronounced talaq followed by him obtaining the Divorce Certificate. In order to determine whether this Court has subject matter jurisdiction, this Court need not decide whether talaq or the Divorce Certificate are valid means for Mojahid to divorce Sara under their religion or the laws of Sudan. Rather, this Court need only determine whether it should exercise comity to recognize the foreign divorce decree as determinative of this divorce action.

¶13] The doctrine of comity relates to the recognition and enforcement of foreign orders, judgments, and decrees:

Comity, in the legal sense, is neither a matter of absolute obligation, on the one hand nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislature, 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.

Med. Arts Building Ltd. v. Eralp, 290 N.W.2d 241, 243 (N.D. 1980) (quoting Hilton v. Guyot, 159 U.S. 113, 164 (1895)).

¶14] “Comity is a nation’s voluntary recognition and execution of another nation’s law where the rights of individuals are concerned.” Fredericks v. Eide-Kirschmann Ford, Mercury, Lincoln, Inc., 462 N.W.2d 164, 167 (N.D. 1990). Before comity may be relied upon, “it is necessary that the court which issued the order or judgment had jurisdiction over the matter and the parties involved and that due process was afforded to the parties in the proceedings.” Malaterre v. Malaterre, 293 N.W.2d 139, 145 (N.D. 1980). In examining comity, the North Dakota Supreme Court has accepted the following approach:

When an action is brought in a court of this country . . . and the foreign judgment appears to have been rendered by a competent court having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.

Med. Arts Building Ltd., 290 N.W.2d at 245.

[¶15] North Dakota courts have not yet examined the issue of comity specifically for divorce decrees. However, other jurisdictions have analyzed comity in circumstances similar to this case.

[¶16] For instance, in In re Ramadan, 891 A.2d 1186 (N.H. 2006), the respondent in a New Hampshire divorce action moved to dismiss, asserting the trial court lacked jurisdiction because he had already obtained a divorce decree in Lebanon. Before the petitioner filed for divorce in New Hampshire, the respondent unilaterally initiated a divorce under Islamic law by declaring “I divorce you” three times and traveling to Lebanon to see his attorney and “sign the necessary papers.” In re Ramadan, 891 A.2d at 227. The court denied the respondent’s motion to dismiss. Id. at 228.

[¶17] The New Hampshire Supreme Court affirmed on appeal, noting that while the courts may recognize foreign divorce decrees as a matter of comity, comity is discretionary and “will not be applied if it violates a strong public policy of the forum state, or if it leaves the court in a position where it is unable to render complete justice.” Id. at 230. According to New Hampshire Supreme Court, public policy considerations supported the trial court’s decision to retain subject matter jurisdiction and not enforce the Lebanese divorce decree. Id. at 231. Namely, the court recognized:

Courts of a foreign country have no jurisdiction to dissolve the marriage of parties not domiciled in such foreign country at the commencement of the proceedings for divorce, and recognizing an *ex parte* divorce obtained in a foreign nation where neither party is domiciled would frustrate and make vain all State laws regulating and limiting divorce.

Id. (quoting Slessinger v. Sec. of Health & Hum. Servs., 835 F.2d 937, 942-43 (1st Cir. 1987)).

[¶18] The court reached a similar conclusion in Tarikonda v. Piniari, 2009 WL 930007 (Mich. Ct. App. 2009). In Tarikonda, the defendant pronounced talaq to divorce the plaintiff prior to the plaintiff commencing a divorce action in Michigan. 2009 WL 930007, at *1. The defendant moved to dismiss the action based on the existing divorce, which was evidenced by a divorce certificate the defendant obtained from a Wakf Board in India. Id. The trial court granted the defendant's motion, but the Michigan Court of Appeals reversed, citing public policy concerns in recognizing the Indian divorce. Id.

[¶19] The court stated 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 was held on the merits. Id. at *2. None of these elements were satisfied with respect to the Indian divorce for the court to extend comity and recognize it. The plaintiff had no right to prior notice of the defendant's pronouncement of talaq; she was not represented by an attorney and had no right to be present at the pronouncement; and the divorce provided no opportunity for a hearing on the merits. Id. Because the plaintiff was denied due process in the Indian divorce arising solely through the defendant's declaration of talaq, the Michigan Court of Appeals concluded the trial court erred in recognizing the divorce and dismissing the complaint. Id.

[¶20] In this case, the Court has similar public policy concerns as those expressed in In re Ramadan and Tarikonda in recognizing the Divorce Certificate. Mojahid obtained the Divorce Certificate in Sudan at a time when neither party resided in the country. He further obtained the

Divorce Certificate after unilaterally declaring talaq outside the presence of Sara. She was not provided notice of Mojahid pronouncing talaq or that he was seeking the Divorce Certificate in Sudan. Sara did not receive a copy of the Divorce Certificate until Mojahid emailed it to her days later. At no point in this process was Sara provided basic rudiments of due process, which is fundamental to divorce proceedings in North Dakota.

[¶21] Due to this Court's concerns that Sara was not afforded proper due process for the divorce sought by Mojahid, the Court concludes it would not be appropriate to exercise comity to recognize and enforce the Divorce Certificate.

ORDER

[¶22] For the foregoing reasons, Mojahid's Motion to Dismiss is **DENIED**.

Dated this 27th day of January, 2025.

BY THE COURT:



Hon. Stephanie R. Hayden
Judge of District Court