Circuit Court for Montgomery County
Case No. 138142FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 744

September Term, 2019

TOUFIC MELKI

v.

CYNTHIA MELKI

Arthur,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 29, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On March 26, 2019, the Circuit Court for Montgomery County entered a judgment granting Ms. Cynthia Samaha ("Wife") an absolute divorce from Dr. Toufic Melki ("Husband") on the grounds of a twelve-month separation. On April 5, 2019, Husband moved to alter or amend the judgment, requesting that the court vacate its order granting an absolute divorce. The court denied the motion.

Husband appealed the circuit court's judgment and its denial of the motion to alter or amend its judgment. We affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2009, Husband and Wife were married in Tripoli, Lebanon, at an Orthodox Christian church. Husband is an Orthodox Christian, and Wife is a Catholic. The couple had met a year earlier in Beirut, where Wife, a citizen of Lebanon, worked as an opera singer. Husband, a dual citizen of Lebanon and the United States, has resided in the United States for over 30 years, but often travels to Lebanon to vacation and visit family members.

Soon after their marriage, the parties moved to Montgomery County, where Husband operates a medical practice. Wife began working at Husband's practice, while Husband took over the management of Wife's opera career. The parties have three children from their marriage.

On August 4, 2016, Wife moved herself and her children out of the couple's home in Montgomery County. On that same day, Wife filed for a limited divorce in the Circuit Court for Montgomery County.

On October 30, 2017, the parties entered into a consent custody order, detailing a bi-weekly parenting schedule and awarding Wife primary physical custody and joint legal custody of the children. On December 17, 2017, the parties entered into a *pendente lite* support order, which required Husband to pay Wife counsel fees and monthly support, provide health insurance for Wife and their children, and continue to pay private school tuition for two of the children during the pendency of the litigation. Wife amended her complaint twice before trial to seek an absolute divorce on the ground of a twelve-month separation. *See* Md. Code (1984, 2019 Repl. Vol.), § 7-103(a)(4) of the Family Law Article ("FL").[1]

Throughout the litigation, Husband "strenuously object[ed] to the divorce" and regularly demonstrated combative and belligerent behavior toward the court and Wife. He refused to comply with court orders imposing sanctions on him and did not consistently pay the legal fees awarded to Wife. Husband testified that the divorce "will not happen as long as [he is] alive," that he did "not take no for an answer," and that he would appeal the divorce "all the way to the Supreme Court."

[1] Wife also included grounds of constructive desertion under FL section 7-103(a)(2). The court did not rely upon those grounds in granting the divorce. Wife's second amended complaint included adultery as grounds for divorce, but she withdrew that ground at trial.

The court found that Husband was “not credible” and that he “used his resources to disrupt and delay the divorce trial, filing multiple appeals on dubious grounds, failing to cooperate with discovery, and hiring and then firing counsel.”[2]

On August 29, 2018, Husband moved for summary judgment, arguing that only Lebanese courts have jurisdiction over the divorce and that the court’s dissolution of the marriage would infringe on his free exercise of religion as an Orthodox Christian. Husband further argued that Maryland’s no-fault divorce statute, FL § 7-103, as applied to him, violated his constitutional right to marry; that the divorce would infringe on his children’s fundamental rights; and that the dissolution of his marriage would impair the obligations under his marriage contract, in violation of the Contracts Clause of the United States Constitution.[3]

At the beginning of the trial on October 29, 2018, the circuit court denied Husband’s motion for summary judgment in an oral ruling.

From October 29 to November 1, 2018, the circuit court held a trial on alimony, child support, equitable distribution of marital property, and attorneys’ fees. On March 26, 2019, the court entered an opinion and order granting Wife an absolute divorce based on the parties’ separation of more than twelve months. Among other things, the court’s

[2] At the time when the circuit court handed down its judgment, Husband had changed counsel six times. He has engaged yet another lawyer to handle this appeal.

[3] Wife notes that, despite Husband’s stated objection to divorce, he was divorced twice before he married her. Husband distinguishes those marriages from his marriage to Wife, because only the latter was a religious marriage.

order required Husband to pay indefinite alimony in the amount of $9000 per month, a monetary award in the amount of $400,000, child support in the amount of more than $4500 per month, and attorneys' fees and expert fees in the total amount of $122,000; it required Husband to purchase Wife's interest in two businesses (valued at approximately $169,000); it awarded use and possession of the marital home to Wife for three years (after which she could purchase his interest or have the property sold, at her option); and it obligated Husband to continue to pay the medical and dental expenses for Wife and the children.

On April 5, 2019, Husband moved to alter or amend the judgment, requesting that the court vacate its order granting an absolute divorce. Husband largely reiterated the arguments from his motion for summary judgment in opposition to the divorce order and challenged the court's several awards to Wife. The court denied the motion on May 22, 2019.

Husband noted his timely appeal thereafter.

STANDARD OF REVIEW

"When an action has been tried without a jury," as in this case, "the appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). Appellate courts review an order that "involves an interpretation and application of Maryland statutory and case law" to determine "whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Walter v. Gunter*, 367 Md. 386, 392 (2002). In general, we review the denial of a motion to alter or amend a judgment for abuse of discretion. *See*, *e.g.*, *Halstad v. Halstad*, 244 Md. App. 342, 349 (2020).

DISCUSSION

Husband appeals the circuit court's judgment granting Wife an absolute divorce and its denial of the motion to alter or amend the judgment. He presents the following questions for our review:

1. Whether the Circuit Court lacked the legal authority to grant [Wife] an absolute divorce based on a one-year separation.

2. Whether the Circuit Court abused its discretion in denying [Husband's] Motion to Alter or Amend the Judgment of Absolute Divorce.

Husband presents several arguments contending that the circuit court erred in granting the divorce and abused its discretion in denying the motion to alter or amend the judgment. For the reasons discussed herein, we reject each argument and affirm.

A. **<u>The Circuit Court's Jurisdiction over the Dissolution of the Marriage</u>**

Husband argues that the circuit court lacked "subject matter jurisdiction" over the divorce proceeding because the parties were married in an Orthodox Christian ceremony in Lebanon and, thus, he says, only Lebanese courts have jurisdiction to dissolve the marriage. According to Husband, Lebanon does not recognize civil marriages, permits divorces only in limited circumstances, and does not permit a no-fault divorce. He contends that a Maryland court has no power to dissolve a marriage, celebrated in Lebanon, between two persons who are now residents of Maryland.[4]

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[4] In support of his contention concerning the limited circumstances under which a person may obtain a divorce in Lebanon, Husband does not cite any provisions of Lebanese law. Instead, he cites a sworn translation of the Civil Status Law of Procedure of the Greek Orthodox Patriarchate of Antioch and the Rest of the Levant and an expert opinion to the effect that an ecclesiastical court would have "exclusive jurisdiction to dissolve an Orthodox marriage in Lebanon." The expert asserts that the ecclesiastical

This argument has no merit. Indeed, Dr. Melki cites no case law or any other authority in support of his argument, nor are we aware of any supporting authority.

"'[A]n essential element of the judicial power to grant a divorce, or jurisdiction,'" is that one spouse be domiciled within the state at the time the complaint was filed. *Fletcher v. Fletcher*, 95 Md. App. 114, 123 (1993) (quoting 24 Am. Jur. 2d, *Divorce and Separation* § 238).

> "A court must have jurisdiction of the res, or the marriage status, in order that it may grant a divorce. The res or status follows the domicils of the spouses; and therefore, in order that the res may be found within the state so that the courts of the state may have jurisdiction of it, one of the spouses must have a domicil within the state.

Id. (quoting 24 Am.Jur.2d, *Divorce and Separation*, supra, § 238); *accord Williams v. North Carolina*, 325 U.S. 226, 229 (1945) (stating that, "[u]nder our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on domicil"); *Perrin v. Perrin*, 408 F.2d 107, 109 (3d Cir. 1969) (stating that "domicile is regarded as the basis for jurisdiction to grant a divorce in the United States") (citing *Granville-Smith v. Granville-Smith*, 349 U.S. 1 (1955)).

A "domicile" is the place with which a person "has a settled connection for legal purposes" and the place where the person has a "true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place [the person] has, whenever . . . absent, the intention of returning." *Dorf v. Skolnik*, 280 Md. 101, 116 (1977). A party's "domicile, generally, is that place where

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court would apply canon law (i.e. religious law) to determine whether a party was entitled to a divorce.

[the party] intends to be." *Oglesby v. Williams*, 372 Md. 360, 373 (2002) (quoting *Roberts v. Lakin*, 340 Md. 147, 153 (1995)). Intent "is best shown by objective factors," most importantly "where a person actually lives." *Fletcher v. Fletcher*, 95 Md. App. at 124 (citations omitted).

"The question, then, as to subject matter jurisdiction, is whether, applying these standards and factors," Husband or Wife "is a Maryland resident." *Fletcher v. Fletcher*, 95 Md. App. at 125. The record demonstrates that both Husband and Wife have lived in Montgomery County since August 2009 and that Husband has operated a medical practice in the area since 1992. Husband continues to reside at the parties' marital home, and Wife has lived in an apartment in Montgomery County since moving out of the home in 2016. Husband testified at trial that he planned to open a surgical center in North Potomac, Maryland, in Montgomery County, and that he has formed an LLC and purchased a property for the business. "To conclude, on this record," that Husband or Wife are not domiciled in Maryland would "not only [be] error, but clear, patent, obvious error." *Id.* The circuit court, therefore, had subject-matter jurisdiction over the divorce.[5]

[5] Husband's argument is better understood not as a contention that a Maryland court lacks the power to determine whether one Maryland domiciliary must remain married to another person against her will, but as a contention that Maryland should apply (what he claims to be) Lebanese law in determining the grounds for a divorce. Even when understood in that light, however, Husband's contention is incorrect. *See* Restatement (Second) of Conflicts of Laws § 285 (1971) (stating that "[t]he law of the domiciliary state in which the action is brought will be applied to determine the right to divorce"). For example, some states (such as Louisiana) permit couples to enter into "covenant marriages," in which they agree to forgo no-fault grounds for a divorce. Yet, if one or both of those spouses should become a domiciliary of a state that permits no-fault divorces, that state will apply its own substantive law and will permit a no-fault divorce. *Blackburn v. Blackburn*, 180 So.3d 16, 19 (Ala. Civ. App. 2015). Where

B. Impairment of the Marriage Contract

Husband contends that the grant of an absolute divorce on "no-fault" grounds impaired the obligations of the parties' marriage contract, in violation of the Contracts Clause of Article I, Section 10, of the United States Constitution. Husband claims that the parties' marriage contract does not permit no-fault divorces and that the court impermissibly expanded the terms of the parties' marriage contract by granting the divorce on the grounds of twelve-month separation.[6]

Husband's contention ignores a well-established legal principle and deserves scant discussion. Although marriage is a civil contract for some purposes (*see* Section C, below), the Supreme Court has said that "marriage is not a contract within the meaning of the [Contracts Clause's] prohibition" and that the clause "never has been understood to restrict the general right of the legislature to legislate on the subject of divorces." *Maynard v. Hill*, 125 U.S. 190, 210 (1888). Courts have regularly held that marriage is not a contract that is constitutionally protected from interference, and thus that it may be modified by laws respecting divorces. *See In re Marriage of Walton*, 28 Cal. App. 3d

neither party is a domiciliary of the state where the marriage was celebrated, that state is no longer "interested" in the couple's status. *Id.*

[6] Husband does not contend that the parties entered into a written contract to forgo a no-fault divorce. To the contrary, he appears to rely on some kind of implied or oral promise, perhaps incidental to the religious marriage itself, to the effect that neither spouse would pursue a divorce except on grounds permitted by the Orthodox Church. Because we shall conclude that the Contracts Clause does not apply to marriage contracts, we need not consider Wife's contention that the alleged contract is too vague to be enforced and that the parol evidence rule would bar the enforcement of the alleged contract.

108, 112 (1972); *In re Marriage of Franks*, 542 P.2d 845, 850 (Colo. 1975); *McCree v. McCree*, 464 A.2d 922, 931 (D.C. 1983); *In re Marriage of Semmler*, 481 N.E.2d 716, 7181 (Ill. 1985); *Richter v. Richter*, 625 N.W.2d 490, 494-95 (Minn. Ct. App. 2001); *Gleason v. Gleason*, 26 N.Y.2d 28, 42 (1970). We shall follow the conclusions of these courts and decline to vacate the divorce under the Contracts Clause.

C. Freedom of Religion and No-Fault Divorce

Husband again invokes the United States Constitution to argue that the grant of the divorce infringed on his First Amendment right to free exercise of religion. Because the Orthodox faith does not permit divorces absent fault, Husband claims that the dissolution of the marriage on the grounds of a twelve-month separation would unconstitutionally force him to commit a mortal sin according to his religion.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. AMEND. I. This right, however, "does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990).

"[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993). The Free Exercise Clause of the First Amendment ordinarily does "not grant to an individual or a religious organization 'a constitutional right to ignore

neutral laws of general applicability' even when such laws have an incidental effect of burdening a particular religious activity." *Montrose Christian Sch. Corp. v. Walsh*, 363 Md. 565, 585 (2001) (quoting *City of Boerne v. Flores*, 521 U.S. 507, 513 (1997)). Conversely, laws that "target[] particular religious practices, or selectively impos[e] burdens on conduct motivated by religious belief are subject to strict scrutiny and 'must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.'" *Id.* at 586 (quoting *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. at 531-32).

The Supreme Court has long held that legislatures may enact general laws that regulate marriage, even if the application of the law interferes with some religious practices. *See Reynolds v. United States*, 98 U.S. 145, 164-67 (1878) (upholding federal criminal law prohibiting polygamy, because Congress was "free to reach actions which were in violation of social duties or subversive of good order"). Marriage, which the Supreme Court acknowledges is a "sacred obligation, is nevertheless, . . . a civil contract." *Id.* at 165. Because a trial court granting a divorce merely dissolves a civil contract between the spouses, courts universally hold that no-fault divorce statutes do not infringe on the right to the free exercise of religion, even if a spouse's religious beliefs prohibit no-fault divorces. *See Williams v. Williams*, 543 P.2d 1401, 1403 (Okla. 1975), *cert. denied*, 426 U.S. 901 (1976); *accord Grimm v. Grimm*, 844 A.2d 855, 859 (Conn. App. Ct. 2004), *aff'd in part, rev'd in part on other grounds*, 886 A.2d 391 (Conn. 2005); *Sharma v. Sharma*, 667 P.2d 395, 396 (Kan. Ct. App. 1983); *Martian v. Martian*, 328 N.W.2d 844, 846 (N.D. 1983); *Pankoe v. Pankoe*, 222 A.3d 443, 449-50 (Pa. Super. Ct.

2019) (citing *Wikoski v. Wikoski*, 513 A.2d 986 (Pa. Super. 1986)); *Waite v. Waite*, 150 S.W.3d 797, 801-02 (Tex. App. 2004).

Section 7-103(a)(4) of the Family Law Article, which permits divorces based on a twelve-month separation of the spouses, is a neutral law of generally applicability. The statute does not infringe Husband's religious rights merely because it allows Wife, who does not share his beliefs, to obtain a divorce. Husband "still has [his] constitutional prerogative to believe that in the eyes of God, [he] and [his] estranged [wife] are ecclesiastically wedded as one, and may continue to exercise that freedom of religion according to [his] belief and conscience." *Williams v. Williams*, 543 P.2d at 1403; *accord Sharma v. Sharma*, 667 P.2d at 396. In fact, it might well violate the Establishment Clause of the First Amendment to compel Wife to remain married to Husband because of Husband's religious beliefs, for the court would then be preferring one spouse's beliefs over the other spouse's. *See Sharma v. Sharma*, 667 P.2d at 396.

We therefore discern no infringement on Husband's First Amendment rights through the circuit court's dissolution of the marriage on the grounds of twelve-month separation.

D. <u>The Doctrine of Comity</u>

The common-law doctrine of comity provides that the courts of one state or jurisdiction may give effect to the laws and judicial decisions of another state or jurisdiction as a matter of deference or respect. *See*, *e.g.*, *Washington Suburban Sanitary Comm'n v. CAE-Link Corp.*, 330 Md. 115, 140 (1993). Husband argues that the principles of comity require this Court to vacate the judgment of absolute divorce

because Lebanese law, rather than Maryland law, should apply to the parties' marriage. Husband seemingly argues that Maryland courts cannot grant a divorce on no-fault grounds because Lebanese law does not permit such divorces. Husband's argument is directly contrary to prevailing principles regarding conflicts of law: "The local law of the forum determines the right to a divorce . . . because of the peculiar interest which a state has in the marriage status of its domiciliaries." Restatement (Second) of Conflict of Laws, *supra*, § 285, cmt. a.

In any event, the doctrine of comity applies in two different scenarios, neither of which pertains here. In the first, comity refers to "the recognition and enforcement by one jurisdiction of the fully and finally litigated judgments of another jurisdiction." *Apenyo v. Apenyo*, 202 Md. App. 401, 410 (2011); *see also Aleem v. Aleem*, 404 Md. 404, 413 (2008) (concerning whether a divorce action already pending in Maryland should be dismissed because of an intervening decree of divorce obtained in Pakistan). In the second, comity, as a matter of "jurisdictional courtesy," concerns whether "the court of one state may stay or dismiss a proceeding pending before it on the ground that a case involving the same subject matter and the same parties is pending in a court of another state or foreign country." *Apenyo v. Apenyo*, 202 Md. App. at 410 (concerning whether a pending divorce action in Ghana took precedence over a later filed divorce action in Maryland). A court's decision whether to defer to a foreign jurisdiction is within its sound discretion. *Id.* at 413.

Neither of these scenarios relate to this matter. A Lebanese court has not entered a judgment dissolving the parties' marriage, nor have Husband or Wife filed a divorce

action in Lebanon that is currently pending. The action filed by Wife in the Circuit Court for Montgomery County is the only proceeding concerning the parties' marriage, meaning that the circuit court had no other judgment or proceeding to which to defer. We therefore will not vacate the circuit court's judgment under the doctrine of comity.

E. Motion to Alter or Amend Judgment

Husband filed a post-judgment motion in which he asked the circuit court to alter or amend its conclusions concerning its power to grant a divorce. The motion largely reiterated the arguments that the court had previously considered and rejected. The court denied the motion.

"'In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.'" *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015) (quoting *RRC Northeast, LLC v. BAA Maryland*, *Inc*., 413 Md. 638, 673 (2010)), *aff'd*, 449 Md. 217 (2016). When a party requests that a court reconsider a ruling on the basis of arguments that the party raised or could have raised before the court made its ruling, the court has almost limitless discretion to deny the motion. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). In this case, the circuit court did not abuse its discretion in denying a motion to alter or amend that largely reiterated the arguments that the court already rejected.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

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