

ANAHITA NOROUZI
v.
KOUROSH MEHRABIAN

No. 254

COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2020
April 16, 2021

Circuit Court for Montgomery County
Case No. 458009-V

UNREPORTED

Berger, Gould, Eyler, Deborah S. (Senior Judge, Specially Assigned), JJ.

Opinion by Eyler, Deborah S., J.

*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.

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The Circuit Court for Montgomery County dismissed with prejudice a declaratory judgment action brought by Anahita Norouzi (Wife), the appellant, against Kourosch Mehrabian (Husband), the appellee. Wife appeals from that judgment, asking three questions, which we have rephrased and combined:¹

1. Did the trial court err or abuse its discretion by dismissing the declaratory judgment action and therefore not addressing the contract interpretation question it raised?
2. Did the trial court err by ruling that resolution of the contract interpretation question presented in the declaratory judgment action would require prohibited judicial review of a religious question?

For the following reasons, we answer the first question in the negative and shall affirm the judgment of the circuit court. Given our disposition, it is not necessary to address the second question.

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FACTS AND PROCEEDINGS

Husband and Wife were born in Iran. They were married in Iran on February 10, 2004, and in Rockville, Maryland on October 5, 2004. Their marriage was arranged. At the time, Wife was 19 years old and Husband was 40 years old. Husband, a dentist, had been living in the United States for twenty years when the marriage took place. During the marriage, the parties lived in Montgomery County and had two children.

Both parties hold United States and Iranian citizenship. Wife has many relatives living in Iran, including her parents who live there part-time.

The parties' Iranian marriage was performed in accordance with Islamic law and customs, which are part of Iranian law. One aspect of marriage in Iran is that the husband gives the wife what is known as a "*mehr*" or "*mehrieh*." See *Nouri v. Dadgar*, 245 Md. App. 324, 334-36 (2020). A *mehr* is commonly a sum of money, negotiated between the husband and the wife's father, that the wife can demand the husband pay when she chooses.² See *id.* The *mehr* in this case was an amount of Iranian currency equal to about \$500,000.

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In the Fall of 2016, the parties' marriage deteriorated after Wife started traveling to Connecticut most of each week to attend dental school. Husband filed suit for divorce on October 21, 2016, in the Circuit Court for Montgomery County ("Divorce Case"), although the parties did not physically separate until December 28, 2016.

On July 24, 2018, the parties engaged in a day-long mediation in the Divorce Case that resulted in their reaching agreements set forth in a written Term Sheet. The last paragraph of the Term Sheet required the parties to execute a formal written agreement but provided that if no such agreement were signed, the Term Sheet would serve as the full and final agreement of the parties.

The parties' lawyers attempted to draft a formal written agreement, but their efforts failed due to a dispute over Section 16 of the Term Sheet (which, in the draft agreement

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that never was finished, became Section Nine). Section 16 of the Term Sheet reads as follows:

The parties agree that within sixty (60) days of the entry of the Judgment of Absolute Divorce, Wife shall process and execute all necessary documents at the Iranian Embassy (or other interest section of the Islamic Republic of Iran in the Embassy of Pakistan), and to waive any and all claims to Mehrieh either in the U.S., Iran, or any other country, and provide Husband with copies of said documents. Wife further agrees that she will provide a written guarantee that neither she nor anyone on her behalf would file against Husband for collection of or claim to Mehrieh in Iran and provide documents with full proof of satisfaction of payment of the Mehrieh.

The Term Sheet does not contain a provision in which the parties expressly agree to a divorce. In Section 16 and also in Section 7, which pertains to health insurance for the children, the phrase "the entry of the Judgment of Absolute Divorce" is used as the starting point to measure the time in which one of the parties is to take a specified action. These sections imply that the parties will be divorced.

Wife took the position that the use of the words "Judgment of Absolute Divorce" in Section 16 meant that the parties were agreeing to a civil divorce, under Maryland law, and to an Iranian divorce, under Iranian law, which is based on Islamic law. Accordingly, she had agreed to provide the documents by which to waive the *mehr* after Husband obtained an Iranian divorce, which under Iranian/Islamic law only can be obtained by a husband.

Husband's position was that the "Judgment of Absolute Divorce" language in Section 16 simply required that, within 60 days of the entry of the Judgment of Absolute Divorce in the Divorce Case, Wife would process and execute all necessary documents to waive the *mehr* at the "Iran Interest Section" of the Pakistan Embassy in Washington, D.C., and then would provide him a written guarantee that she would not attempt to collect the

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mehr in Iran. In his view, there was no agreement that the parties would divorce under Iranian/Islamic law.

On September 18, 2018, notwithstanding the parties' ongoing dispute over Section 16 of the Term Sheet, and with the parties' consent, the circuit court entered a Judgment of Absolute Divorce. On November 14, 2018, in the Circuit Court for Montgomery County, Wife filed this separate Declaratory Judgment action ("DJ Case"), asking the court to interpret the Term Sheet, and specifically Section 16, by ruling that it means she is entitled to an Iranian/Islamic divorce before she is required to waive the *mehr*.

A week later, in the Divorce Case, Husband filed a motion for contempt/enforcement, alleging that Wife was not complying with her obligations under Section 16 of the Term Sheet because she had not taken the necessary steps to waive the *mehr*, as he maintained that section requires.³ In this DJ Case, Husband also moved to dismiss Wife's complaint. The circuit court denied that motion. Thereafter Wife filed an amended complaint.

Trial in the DJ Case took place on April 18, 2019. Testimony was taken from Wife, her expert witness in Iranian/Islamic divorce, Husband's expert witness in Iranian/Islamic divorce, Wife's former lawyer (called by Husband), and Husband.

Wife explained that she understood that an absolute divorce, as used in Section 16 of the Term Sheet, meant both an American and an Iranian divorce because it would be

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unreasonable and of no benefit whatsoever for a wife in an Iranian marriage not to obtain an Iranian divorce if she were agreeing to waive her *mehr*. As only a husband can agree to and obtain an Iranian divorce, the sole right a wife has is to decide whether to waive the *mehr*. See *Nouri*, 245 Md. App. at 335-36. Ordinarily, when a marriage is breaking up, the wife will agree to waive her *mehr* in exchange for the husband's agreeing to obtain an Iranian divorce. See *id.* According to Wife, an American divorce is useless in Iran. Without an Iranian/Islamic divorce, upon returning to Iran to visit her family, she will be viewed as still married and could be subjected to draconian punishments. Also, she would not be free of the control Husband can wield over her if she is present in Iran. For instance, Husband could prevent her from leaving Iran.

Husband testified that an Iranian/Islamic divorce was not discussed at the mediation and is not part of what was agreed to in Section 16 or any other provision of the Term Sheet. He maintained that the parties agreed that they would obtain an absolute divorce in Maryland, that Wife would waive her right to the *mehr*, and that marital property would be distributed as addressed in other parts of the Term Sheet.

The expert witnesses opined on Iranian/Islamic law of marriage and divorce, the meaning of the *mehr*, and the process by which an Iranian divorce may be obtained. They also testified about a wife's right to *nalegheh*, which is alimony under Iranian law. It is minimal compared to alimony under Maryland law.

Counsel for the parties submitted written closing arguments. Husband's lawyer argued, *inter alia*, that Wife was not entitled to declaratory relief because section 3-409(d)

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of the Courts and Judicial Proceedings Article (CJP) does not "give" the court "subject matter jurisdiction."

Meanwhile, in the Divorce Case, there were numerous postponements of the hearing on Husband's motion for contempt/enforcement respecting Section 16 of the Term Sheet.

On March 9, 2020, the court in the DJ Case issued and entered its written opinion and judgment, which we shall discuss below. Wife noted this timely appeal.

More postponements of the hearing on Husband's motion in the Divorce Case followed as a result of the effect of the COVID-19 pandemic crisis on court operations. In late December 2020, the court in the Divorce Case was able to hold a several-day hearing covering many issues, including Husband's motion for contempt/enforcement. The transcript of the trial in the DJ Case was admitted into evidence at that hearing. There has not yet been a ruling on Husband's motion, likely due to the pendency of this appeal.

DISCUSSION

In its opinion in this DJ Case, the circuit court ruled that "[t]his case presents a circumstance when this Court should not entertain an action for declaratory relief." The court explained that the meaning of the Term Sheet, with respect to whether an Iranian/Islamic divorce was part of the consideration agreed upon to support Wife's waiver of her *mehr*, is the subject of Husband's motion for contempt/enforcement pending in the Divorce Case. The court pointed out that in defending Husband's motion, Wife would have an opportunity to argue her position on the meaning of the Term Sheet. In a footnote, the court also stated that it was "not addressing herein the merits of [Wife's] potential defense in the contempt proceeding in the divorce action."

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Without citing CJP section 3-409(d), which states that "[p]roceeding by declaratory judgment is not permitted in any case in which divorce . . . is sought[,]" the court ruled that the Divorce Case is the appropriate proceeding to resolve the parties' dispute over the meaning of Section 16 in the Term Sheet governing their rights upon divorce. Finding that that dispute "would be better decided in the context of the divorce action generally and the contempt/enforcement motion specifically[,]" the court concluded that "a declaratory judgment action will not serve a useful purpose."

We agree with the circuit court, although our reason is tied directly to CJP section 3-409(d), the statutory exclusion of divorce cases from the scope of declaratory judgment actions. As the circuit court recognized, the dispute presented by Wife in this DJ Case is the same dispute presented by Husband's motion in the Divorce Case. The language at issue in both comes from Section 16 of the incorporated Term Sheet, which provides that "within sixty (60) days of the entry of the Judgment of Absolute Divorce, Wife shall process and execute all necessary documents at the Iranian Embassy (or other interest section of the Islamic Republic of Iran in the Embassy of Pakistan), and to waive any and all claims to Mehrieh either in U.S., Iran, or any other country, and provide Husband with copies of said documents." The parties disagree about the meaning of "Judgment of Absolute Divorce" in Section 16. Specifically, as Wife maintains, does the language encompass a divorce under Maryland law and a divorce under Iranian/Islamic law, so Wife need not waive her financial right to *mehr* unless and until Husband exercises his sole power under Iranian/Islamic law to grant her an "irrevocable divorce" that would allow her to remarry and to travel to Iran without being subject to severer punishments and

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restraining measures. Or, as Husband maintains, does the language entitle the parties to a divorce under Maryland law only and require Wife to waive her financial right to *mehr*.

As Husband points out, CJP section 3-409(d) has not been construed in a reported opinion. In his view, there simply has not been a need to construe it, as it establishes a clear prohibition that is unambiguous and easy to apply. He asserts that the existence of this subsection explains why it is "common practice among family law practitioners to utilize

Rule 2-502 or 2-503(b)⁴ to request that issues of law concerning validity or interpretation of marital settlement agreements be determined primarily in the family law case, rather than initiating a separate declaratory judgment action."

Wife concedes that she brought this DJ action "defensively" just days before Husband filed his contempt motion in the Divorce Case, seeking to enforce Section 16 of the Term Sheet by requiring her to waive the *mehr*. In her view, "[t]he course of scheduling

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the contempt/enforcement gave priority and deference to completion of the declaratory judgment proceedings" because the DJ Case was "[t]he most appropriate place to determine the issue" in a manner consistent with "judicial economy and justice[.]"

In reviewing "the grant of a motion to dismiss, the appropriate standard of review 'is whether the [circuit] court was legally correct.'" *D.L. v. Sheppard Pratt Health System, Inc.*, 465 Md. 339, 350 (2019) (citation omitted). "Therefore, we review the grant of a motion to dismiss *de novo*. We will affirm the circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied[.]" *Id.* (citation and internal quotation marks omitted).

When, as in this case, we are called upon to construe a statute, we follow an established analytical framework that the Court of Appeals recently summarized as follows:

In engaging in statutory interpretation, "this Court's primary goal is to ascertain the purpose and intention of the General Assembly when they enacted the statutory provisions." In determining the General Assembly's intent, we must first look to the natural and ordinary meaning of the language. We read the "statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." "If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written." Lastly, "statutory construction is approached from a 'commonsensical' perspective. Thus, we seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense."

United Bank v. Buckingham, No. 1, Sept. Term, 2020, ___ Md. ___, 2021 WL 865246, at *8 (filed Mar. 9, 2021) (citations omitted).

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The "remedial" purpose of the declaratory judgment statute we are interpreting here "is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." CJP § 3-402. For that reason, the statute "shall be liberally construed and administered." CJP § 3-402.

Among those with a "right" to a "declaration" regarding "any question of construction or validity arising under the instrument" are persons who are "interested under a . . . written contract, or other writing constituting a contract[.]" CJP § 3-406. "A contract may be construed before or after a breach of the contract." CJP § 3-407.

Nevertheless, in CJP section 3-409(a), the General Assembly expressly foreclosed declaratory judgment actions in divorce cases, by exempting cases "as provided in subsection (d)[.]" CJP section 3-409(d) unambiguously directs that "[p]roceeding by declaratory judgment is not permitted in any case in which divorce or annulment of marriage is sought."

We agree with Husband that Wife cannot circumvent the clear prohibition of CJP section 3-409(d). As she concedes, Wife filed this DJ Case in anticipation of Husband's filing a contempt petition in the Divorce Case, seeking to resolve their dispute over the meaning of a central provision in the Term Sheet governing their divorce. We conclude that this dispute falls squarely within the exclusion of divorce cases under CJP section 3-409(d), because it is litigation over competing rights asserted by two spouses in the process of divorcing. The General Assembly unambiguously has carved out such disputes from the statute authorizing declaratory judgment relief, making clear that, instead, such matters can and should be resolved as part of the divorce proceedings.

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Applying CJP section 3-409(d) in this circumstance honors both the plain meaning of the General Assembly's language and the commonsense principle of judicial economy underlying it. Specifically, this subsection codifies the longstanding principle, recognized by the circuit court, that a court "should not entertain an action for declaratory relief. . . . when there is already a pending action 'involving the same parties and in which the identical issues that are involved in the declaratory action may be adjudicated.'" *See Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 17 (2017) (quoting *Sprenger v. Public Serv. Comm'n*, 400 Md. 1, 27-28 (2007), and citing Borchard, *Declaratory Judgments* (2d ed. 1941) 350 ("it is manifestly unwise and unnecessary to permit a new petition for a declaration to be initiated" when parties have already initiated an action in which the dispute could be resolved)). *Cf. Mansuetta v. Mansuetta*, 890 N.W.2d 485, 489-90 (Neb. 2017) (holding that, although declaratory judgment statute did not expressly exclude disputes arising during a pending divorce, trial court "abused its discretion when it stated . . . that a new and separate declaratory judgment action would be the 'more serviceable' mechanism by which to resolve and make appealable one of the issues in the pending dissolution action[.]" because "this approach . . . artificially creates piecemeal appeals" and undermines the "principle that 'a declaratory judgment action cannot be used to supersede pending proceedings in which the rights of the parties can be determined.'")

Although "'dismissal is rarely appropriate in a declaratory judgment action[.]'" *Hanover Invs.*, 455 Md. at 7 (citation omitted), when, as in this instance, "a declaratory judgment action is brought and the controversy is not appropriate for resolution by declaratory judgment, the trial court is neither compelled, nor expected, to enter a

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declaratory judgment." *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 477 (2004). For that reason, we hold that the circuit court did not err or abuse its discretion in dismissing this DJ Case.

In doing so, we note that Wife has been afforded a full opportunity in the Divorce Case to litigate her position on Section 16 of the Term Sheet. Counsel for both parties acknowledge that the record in this DJ Case, including the transcript and exhibits from the evidentiary hearing held in April 2020, were admitted in evidence in the Divorce Case. Counsel further represented during oral argument to this Court that at the December 20, 2020 hearing in the Divorce Case, on Husband's motion to enforce Section 16 of the Term Sheet, the circuit court indicated that it planned to await the outcome of this appeal, before issuing its decision.

As a result of our decision, there no longer is a possibility of inconsistent decisions or piecemeal appeals on the question whether Section 16 of the Term Sheet requires Wife to waive the *mehr* regardless of whether or when Husband obtains an Iranian/Islamic divorce. In affirming dismissal of the DJ Case, we do not express any opinion about the meaning of Section 16. Nor do we view the circuit court's dismissal of Wife's declaratory judgment action, or its remarks regarding other reasons not to grant declaratory relief, as a decision on that question.

Because CJP section 3-409(d) forecloses a declaration of the rights of the parties under a contested term of an agreement governing their divorce while that Divorce Case remains pending, we affirm the circuit court's judgment of dismissal of this DJ Case. As a result of our decision and excepting any developments in the Divorce Case of which we

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are unaware, the dispute over the parties' rights under Section 16 of the Term Sheet appears ripe for resolution in that case.

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

Footnotes:

¹ In her brief, Wife frames the issues as follows:

1. Did the trial court clearly err or abuse its discretion by dismissing the Declaratory Judgment Action sixteen months after it was filed and eleven months after trial on the basis of deference to another pending matter that commenced after the Declaratory Judgment Action?

2. Did the Trial Court clearly err in its determination that resolution of the contract interpretation issue presented would require constitutionally prohibited judicial review of a religious question?

3. Did the lower court err in not issuing a declaration of rights and in failing to issue its declaratory judgment that Ms. Norouzi's obligation to take steps to waiver Mehrieh are conditioned on her receiving an Iranian divorce under paragraph 16 of the term sheet?

² In Islam, marriage "is a contractual undertaking, the basic elements of which are offer, acceptance, and [*mehr*]." *Nouri v. Dadgar*, 245 Md. App. 324, 334 (2020). A *mehr*, alternatively spelled *mahr*, "is a religious obligation, prescribed by the Quran[.]" *Id.* at 335. The *mehr* is "a sum of money or some other economically valuable asset that a husband must give to a wife." *Id.* at 334-35 (quoting Nathan B. Orman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 302 (2011)). The amount of the *mehr* varies in each contract. *Id.* at 335. In *Nouri*, we explained:

In principle - or sometimes, under explicit terms of the contract - the wife is entitled to the deferred *mahr* upon demand at any time following the marriage, and "any delay is a matter of contractual forbearance on her part." *Id.* at 302. In practice, though, "[s]uch delays are standard," and the deferred *mahr* typically becomes "due upon divorce or the husband's death." *Id.*; [Jeanette] Wakin, [*Family Law in Islam*, in 9 *Encyclopaedia Iranica* 184-96 (2012), <http://www.iranicaonline.org/articles/family-law> (accessed Feb. 12, 2020)].

Nouri, 245 Md. App. at 335-36.

In *Nouri*, "[t]he parties' experts offered at least two explanations for the historical development of [*mehr*] in Islamic marriage contracts[.]" each of which was "grounded in features of Islamic law that differ from the law of Maryland." *Id.* at 336. The first reason is that a *mehr* "can operate as a disincentive for a husband to exercise his disproportionate power to divorce his wife without cause under Islamic law." *Id.* The second is that, "because Islamic law does not recognize marital property, a [*mehr*] can provide a wife with some financial security in the event of divorce or the husband's death." *Id.*

³ Husband filed the motion for contempt/enforcement at the earliest time he could, under his interpretation of the Term Sheet, as Wife had 60 days after the date of entry of the Judgment of Absolute Divorce to take the necessary action with respect to waiving the *mehr*.

⁴ Under Md. Rule 2-502,

If at any stage of an action a question arises that is within the sole province of the court to decide, whether or not the action is triable by a jury, and if it would be convenient to have the question decided before proceeding further, the court, on motion or on its own initiative, may order that the question be presented for

decision in the manner the court deems expedient. In resolving the question, the court may accept facts stipulated by the parties, may find facts after receiving evidence, and may draw inferences from these facts.

Alternatively, under Rule 2-503(b),

[i]n furtherance of convenience or to avoid prejudice, the court, on motion or on its own initiative, may order a separate trial of any claim, counterclaim, cross-claim, or third-party claim, or of any separate issue, or of any number of claims, counterclaims, cross-claims, third-party claims, or issues.
