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Mehrabian v. Norouzi, 1940-2021 (Md. App. Apr 03, 2023)

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KOUROSH MEHRABIAN

v.

ANAHITA NOROUZI

No. 1940-2021

Appellate Court of Maryland^[]**

April 3, 2023

Circuit Court for Montgomery County Case No. 140030FL

Berger, Friedman, Adkins, Sally D. (Senior Judge, Specially Assigned), JJ.

OPINION^[*]

FRIEDMAN, J.

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Dr. Kourosh Mehrabian (Father) and Dr. Anahita Norouzi (Mother) are dual citizens of Iran and the United States. In 2004, they married in two ceremonies: first in an Islamic ceremony in Tehran, Iran, and then in a civil ceremony in Rockville, Maryland. As part of the Iranian marriage, Father promised to Mother a *mehrieh*^[1] including 1363 Bahar Azadi gold coins, valued at approximately \$500,000, "payable on Wife's demand." Father has been a dentist for over twenty years. Mother completed a dental residency in 2021. They have two children; one born in 2008 and one born in 2012.

In 2016, Father filed for divorce in the Circuit Court for Montgomery County. The trial court directed the parties to engage in co-parenting skills enhancement and to participate in alternative dispute resolution. The trial court also appointed a best interest attorney for the minor children. After several hearings, the trial court issued a Consent Custody Order.

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The Consent Custody Order provided that Father and Mother would have joint legal custody, that Father would have primary residential custody of the children during the school year, that the parties should alternate access to children for summers and holidays, and that the parties should resolve remaining issues in consultation with a designated parent coordinator. The Consent Custody Order also ordered the parties to follow the recommendations of the children's healthcare providers, to allow the other parent to have video calls with the children during overnight stays, to restrict communications between parents to an email application, and to prohibit either party from entering the residence of the other without explicit consent.

Father and Mother negotiated the remaining issues through mediation in 2018 and reduced their tentative settlement terms into a "Term Sheet." Under the Term Sheet, Mother agreed to process paperwork, within sixty days of the entry of the judgment of absolute divorce, waiving her right to claim the *mehrieh*. Unable to agree on the full settlement agreement that they had envisioned, the Term Sheet was incorporated but not merged into a judgment of absolute divorce issued September 2018.

Father filed a petition for contempt shortly after, alleging Mother had violated the consent custody order and the Term Sheet. Father later amended the petition for contempt, requesting modification of legal custody to provide him with tie-breaking authority if the parties are unable to reach a joint decision. In his contempt petition, Father contended that Mother had taken their children to dental treatment without his knowledge or consent, possibly risking excess exposure to fluoride and x-ray radiation; that Mother interfered with his video calls with children; and that Mother failed to comply with her duty to waive

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the *mehrieh*. Over four days of hearings in December 2020, the trial court heard evidence on the issues of custody and contempt. The parties presented evidence on their assets, on schooling and healthcare decisions for the children, and on the provisions of the Term Sheet as it related to the *mehrieh*.

The trial court decided the issues of custody and contempt by order entered June 4, 2021. First, the trial court made findings and decisions on physical and legal custody. The trial court found the parties "feuded over almost everything: custody, access, child support, alimony, and health care decisions, to name a few." The trial court acknowledged Father's complaint that Mother interfered with his video calls with the children, and Mother's complaint that Father recorded her video calls with the children. Regarding medical decisions, "Father has performed dental cleanings and other procedures, without Mother's permission. Mother has taken the children to her dental school's clinic for dental cleanings, without Father's permission." The trial court ordered that Father and Mother share physical custody of the children on a "week on/week off" schedule. As to legal custody, the trial court granted tie-breaking authority to Mother.

Second, as to the Term Sheet, the trial court observed:



As part of the divorce proceedings, Mother agreed to waive the *mehr*[*ieh*] in exchange for an absolute divorce. Father alleges that Mother is in contempt because she has not waived the *mehr*[*ieh*]. Mother argues that she has not waived the *mehr*[*ieh*] because Father has not granted her an Iranian divorce. But it is clear that Section 16 of the Term Sheet requires Mother's waiver of the *mehr*[*ieh*].

However, under Iranian law, only the husband can grant the divorce. Until he does that, Mother cannot return to Iran without his permission.

Father argued that he has upheld his end of the bargain because the [Judgment of Absolute Divorce] did not specifically identify an Iranian

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divorce. This is true. But it does not preclude the Court's determination of the parties' rights under Section 16 of the Term Sheet.

Accordingly, the trial court ordered Father to process the necessary paperwork to grant Mother an Iranian divorce and ordered Mother to waive the *mehrieh* within 90 days of the finalization of the Iranian divorce. Finally, the trial court denied Father's contempt petition as moot.

Father filed a motion asking the trial court to reconsider its June 4 order. The trial court modified its order as to alimony, but denied all further relief requested. Father then noted his appeal to this Court.

DISCUSSION

In this appeal, Father first argues the trial court erred in awarding legal custody tie-breaking authority to Mother, and second, that the trial court erred in ordering Father to grant Mother an Iranian divorce.^[2] Neither argument is persuasive.

I. The Award of Legal Custody Tie-Breaking Authority to Mother

Father first argues that the trial court erred in awarding joint legal custody with tie-breaking authority to Mother. Father argues that the trial court erred by making its decision

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without undertaking an appropriate analysis of the best interest of the children. In support of this argument, Father contends that the trial court's findings were erroneous and unsupported by the evidence and that the trial court improperly based its decision on factors enumerated in Rule 9-204.1 rather than factors enumerated in *Montgomery Cnty. v. Sanders*, 38 Md.App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986).

We review a trial court's ultimate custody determination for abuse of discretion, a deferential standard that "accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Santo v. Santo*, 448 Md. 620, 625 (2016) (cleaned up).



Abuse of discretion may arise when no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles. ... Put simply, we will not reverse the trial court unless its decision is well removed from any center mark imagined by the reviewing court.

Id. at 625-26 (cleaned up).

"[T]he power of the [trial] court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Taylor*, 306 Md. at 301-02. For this purpose, the Supreme Court of Maryland (formerly the Court of Appeals of Maryland)^[3] has set forth a "non-exhaustive delineation of factors" for trial courts to consider. *See Azizova v. Suleymanov*, 243 Md.App. 340, 345-46 (2019).

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These factors, however, exist to assist a trial court's determination of what arrangement would be in the best interest of the child. Moreover, no single factor "has talismanic qualities, and no single list of criteria will satisfy the demands of every case." *Santo*, 448 Md. at 630 (cleaned up). Maryland appellate courts routinely affirm custody determinations "where the trial judge embarked upon a thorough, thoughtful[,] and well-reasoned analysis congruent with the various custody factors." *Azizova*, 243 Md.App. at 347.

Because the custody factors are tools for guiding the court's determination of what arrangement is in the best interest of the children, there is no requirement that the trial court's factors must match, verbatim, the factors named in *Taylor* or *Sanders*.^[4] The trial court discussed ten factors in support of its ultimate decision.^[5] In addressing each of the factors, the trial court described the evidence before it, repeatedly noting that both parents contributed to conflicts. The trial court singled out Father, noting that "Father has a habit of disagreeing with everyone around him." The trial court observed that "[e]ach parent

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believes that they should have tie-breaker authority," and noted that "[i]f they cannot agree, the Court will decide." The trial court applied its discretion to weigh these findings and engaged in a thorough, thoughtful, and well-reasoned analysis congruent with the relevant custody factors.^[6] *See Azizova*, 243 Md.App. at 347. The trial court's decision awarding legal custody tie-breaking authority to Mother was consistent with a careful analysis of the custody factors relevant to the best interest of the children. We conclude, therefore, that the trial court did not abuse its discretion in awarding tie-breaking authority to Mother.

II. The Construction of the Term Sheet



Father next argues that the trial court erred in ordering him to grant Mother an Iranian divorce pursuant to the Term Sheet. At issue are the parties' rights and responsibilities regarding their Iranian marriage and the accompanying *mehrieh*. As noted above, during divorce proceedings, Father and Mother could not agree on the full settlement agreement that they had envisioned and instead memorialized their settlement agreement in a Term Sheet that was incorporated but not merged into the judgment of absolute divorce. The parties disagreed over paragraph 16 of the Term Sheet, which reads:

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 [sic] to waive any and all claims to *Mehrieh* either in U.S., Iran, or any other country, and provide

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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 for *Mehrieh*.

Mother argues that her duty to waive the *mehrieh* is expressly conditioned on Father granting her an Iranian divorce, asserting that the term "Judgment of Absolute Divorce" includes within it an Iranian divorce.^[7] Father argues that neither the term Judgment of Absolute Divorce nor the Term Sheet specified an Iranian divorce. The trial court, construing the Term Sheet, ordered Father to complete the necessary paperwork to grant Mother an Iranian divorce, and ordered Mother to waive the *mehrieh* within 90 days of the finalization of the Iranian divorce.

The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law that we review without deference. *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019). Marital settlement agreements, like all other contracts, are interpreted under the objective theory of contracts. *Feick v. Thrutchley*, 322 Md. 111, 114 (1991). We determine the objective meaning of a contract "by considering the plain language of the disputed provisions in context, which includes not only the text of the entire contract but also the contract's character, purpose, and the facts and circumstances of the parties at the time of execution." *Ocean Petroleum Co., Inc. v. Yanek*,

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416 Md. 74, 88 (2010) (cleaned up). Accordingly, a court's task in interpreting a contract is to determine what a reasonable person in the position of the parties would have meant at the time the agreement was made. *Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 52 (2013). A contract term is only ambiguous if, viewed from this perspective, the language is susceptible to more than one meaning. *Ocean Petroleum*, 416 Md. at 87. Upon finding a contract term ambiguous, a trial court may consider extraneous evidence to interpret the ambiguity and discern the parties' intent, and, in doing so, a construction which makes the contract fair and reasonable will be



preferred to one which leads to either a harsh or unreasonable result. *Azat v. Farruggio*, 162 Md.App. 539, 550 (2005).

The key interpretive question here is the meaning of the phrase "Judgment of Absolute Divorce" as it is used in the parties' Term Sheet. Father's argument proceeds from the assumption that the term is a term of legal art meaning only that judgment entered by a Maryland court in connection with a Maryland civil proceeding for divorce. Under that reading, the word "Absolute" is intended to invoke Md. Code, Family Law (FL) § 7-103 and presumably to distinguish the judgment from one for limited divorce pursuant to FL § 7-102.^[8] Certainly, the capitalization of the terms and its common legal usage supports that reading.^[9]

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Mother's argument, however, proceeds from the contrary assumption, that the words of the phrase, "Judgment of Absolute Divorce," should be given their everyday lay meanings to include all things necessary for the parties to be completely, finally, permanently, and irrevocably divorced. Under this reading, the phrase would be understood to include both a civil and an Iranian divorce. Mother's reading is supported by the context in which the phrase, "Judgment of Absolute Divorce," appears in the Term Sheet. That is, in context, the phrase concerns both civil and Iranian concepts in that it conditions Mother's waiver of *mehrieh* on the parties' civil and Iranian divorce. Specifically, Mother's duty to waive the *mehrieh*, under the Term Sheet, presumes her otherwise enforceable right to claim the *mehrieh*-a right that springs from Iranian marriage.

We conclude that the phrase "Judgment of Absolute Divorce," as used in the parties' Term Sheet is susceptible of both meanings.^[10] As a result, it is ambiguous as a matter of law and the trial court did not err in considering extraneous evidence.

We review the trial court's factual findings on the extraneous evidence in discerning the parties' intent under a "clearly erroneous" standard. *Azat*, 162 Md. at 550. Thus, we

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will not set aside the judgment unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Md. R. 8-131(c). A finding is not clearly erroneous if there is any competent material evidence in the record to support the court's conclusion. *MAS Assoc., LLC v. Korotki*, 465 Md. 457, 473-74 (2019). Here, there is competent material evidence in the record to support the trial court's findings in construing the term "Judgment of Absolute Divorce" as used in the Term Sheet to include both a civil and an Iranian divorce. Mother testified that she discussed an Iranian divorce with Father in December 2016, shortly after Father filed for divorce in the circuit court. When she signed the Term Sheet, Mother testified, her understanding of the term "Judgment of Absolute Divorce" was that it meant "the whole divorce, American and Iranian. It was a complete divorce. That was my understanding when I read that." In the time between the signing of the Term Sheet and its incorporation into the judgment of absolute divorce, when the parties were still



trying to draft a formal settlement agreement, counsel for each exchanged drafts which included the term "Judgment of Absolute *Iranian* Divorce." During the same period, Mother sent emails to Father reflecting her understanding that "absolute divorce" would not occur until Father granted her an Iranian divorce. We hold that there was material evidence to support the trial court's finding that the term "Judgment of Absolute Divorce" was intended by the parties to include both an American and an Iranian divorce.

Moreover, we reiterate that when a provision in a contract is ambiguous, a construction that makes the contract fair and reasonable will be preferred to one which leads to either a harsh or unreasonable result. *Azat*, 162 Md.App. at 550. First, it would

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undoubtedly be harsh if Father could simply unilaterally withhold an Iranian divorce (as his proposed construction suggests). Second, Maryland public policy does not tolerate an arrangement by which the rights of a husband are superior to those of the wife. *Aleem v. Aleem*, 404 Md. 404, 421 (2008) (holding that Maryland will not recognize a divorce where it was obtained by a procedure that denies a party due process of law). In referencing a husband's superior right to unilaterally divorce under Pakistani law, the Supreme Court of Maryland stated:

the enforceability of a foreign *talaq* provision, such as that presented here ... where only the male, i.e., husband, has an independent right to utilize *talaq* and the wife may utilize it only with the husband's permission, is contrary to Maryland's constitutional provisions and thus is contrary to the "public policy" of Maryland.

Aleem, 404 Md. at 422-23. Here, the trial court noted that "[u]nder Iranian law, only the husband can grant the divorce. Until he does that, Mother cannot return to Iran without his permission." The fact that Father has not granted an Iranian divorce is not only inconsistent with his filing for divorce in Maryland, but violates Mother's due process rights. *Aleem*, 404 Md. at 425-26. In construing the ambiguous Term Sheet, the court determined that the parties agreed to absolutely divorce and ordered Father to act consistent with the agreement and with Maryland public policy.^[11] We hold, therefore, that the trial court did not err in construing the ambiguous Term Sheet.

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CONCLUSION

We hold that the trial court did not abuse its discretion in awarding legal custody tie-breaking authority to Mother. We also hold that the trial court correctly construed the parties' Term Sheet. We, therefore, affirm the judgment of the trial court.

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



Notes:

[*] 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. R. 1-104.

[**] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

[1] We explained *mehrieh* and its role in Iranian marriages in some detail in *Nouri v. Dadgar*, 245 Md.App. 324, 334-36 (2020). Iranian marriages are contracts consisting of offer, acceptance, and *mehrieh*. *Id.* at 334. A *mehrieh* is a personal obligation of the groom to the bride, consisting of anything that has economic value. *Id.* at 335. A wife is entitled to payment of the *mehrieh* upon demand at any time following the marriage. *Id.* The *mehrieh* functions (1) as a disincentive for a husband to exercise his disproportionate power to divorce his wife without cause under Islamic law and (2) as a measure of financial security for a wife in the event of divorce or husband's death, given that under traditional Islamic law, wives are not entitled to property disposition or alimony. *Id.* at 336.

Prior Maryland decisions have also referred to the *mehrieh* as the "*mahr*." *E.g.*, *Aleem v. Aleem*, 404 Md. 404, 410 n.5 (2008); *Nouri*, 245 Md.App. at 334. We shall refer to it here as the *mehrieh* to be consistent with the terminology used by the parties in the present case.

[2] Father also asserts that the trial court erred in denying his contempt petition as moot. A civil contempt order is a sanction imposed by the trial court to coerce the contemnor into a specific action. *Breona C. v. Rodney D.*, 253 Md.App. 67, 74 (2021). If a court finds a party in civil contempt, we review for clear error or abuse of discretion, *Gertz v. Md. Dep't of Env't*, 199 Md.App. 413, 424-25 (2011), but if the trial court denies a party's petition for constructive civil contempt, that party has no right to appeal that denial. Md. Code, Cts. & Jud. Proc. (CJ) § 12-304(a); *Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 246 (2002). Because there is no right to appeal from the denial of a petition for civil contempt, we do not address Father's third issue.

[3] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. R. 1-101.1(a).

[4] Father has not identified a single substantive distinction between the formulation of the factors in *Taylor* and *Sanders* and those used by the trial court.

[5] The trial court enumerated its factors supporting its decision as follows: (1) stability for the children; (2) foreseeable health and welfare of the children; (3) frequent, regular, and continuing contact with the children and those that act in their best interests; (4) the ability of the parents to share the rights and responsibilities of raising the children; (5) the children's physical and emotional security and developmental needs; (6) how you plan to meet the day-to-day needs of the children, including education, socialization, culture, religion, food, shelter, clothing and mental and physical health; (7) how well you (a) place the children's needs above your own, (b) protect the children from negative effects of any conflict and (c) maintain the children's relationship with individuals who may have a significant relationship with the children; (8) ages of the children; (9) success or failure of prior court orders or agreements; and (10) protection from conflict and violence. These factors are derived from Rule 9-204.1(c), which is just another formulation of the factors enumerated in *Sanders* and *Taylor* with no substantive differences.

[6] Moreover, we are not convinced that the trial court abused its discretion in awarding tie-breaking authority to Mother simply because Father insists that he is better-suited to have tie-breaking authority in matters of medical and dental treatment. It is clear from the record that the trial court was aware of Father's expertise as a dentist and medical provider. Nonetheless, it is not an abuse of discretion that the trial court was not persuaded by the evidence Father presented.



[7] In November 2018, Mother filed a declaratory judgment action seeking a declaration that she is not required to waive the *mehrieh* until an absolute Iranian divorce is entered. The trial court dismissed the case because family law actions are not allowed under the declaratory judgment statute. CJ § 3-409(d). We affirmed that decision in an unreported opinion. *Norouzi v. Mehrabian*, No. 254, Sept. Term, 2020 (unreported opinion) (filed April 16, 2021).

[8] Of course, these haven't always been the legal terms to describe the two types of divorce in Maryland. *See Schwab v. Schwab*, 93 Md. 382, 385-87 (1901) (describing divorces *a vinculo* and *a mensa et thoro*).

[9] Father also argues that paragraph 7 of the Term Sheet supports his argument because it obligated him to obtain health insurance for the children "commencing thirty days after the entry of the Judgment of Absolute Divorce," if it is less expensive than keeping the children on Mother's policy. Father asserts that the parties meant, and he in fact obtained insurance thirty days after, the civil divorce.

[10] Although paragraph 7, quoted above in footnote 9, when read in isolation may appear to use the term "Judgment of Absolute Divorce" to refer to the civil divorce, we are not convinced that it requires that the term refer only to the civil divorce. After all, it only becomes effective if putting the children on Father's policy is less expensive. Moreover, even if the phrase is limited in paragraph 7, it does not make it less ambiguous as it appears in paragraph 16.

[11] Father also argues that the trial court violated his religious freedoms by compelling him to grant a religious divorce. We disagree. The rescission of a *mehrieh* can be enforced by a Maryland court if it can be interpreted under neutral principles of contract law and constitutes an enforceable agreement when scrutinized under purely secular terms. *Nouri*, 245 Md.App. at 347. Here, the trial court construed the Term Sheet in purely secular terms as an enforceable agreement consistent with the intent of the parties and with Maryland public policy.

— POWERED BY —

