

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET No. SAG-16-100

DENISE K. LYNCH
APPELLANT

v.

DANIEL G. LYNCH
APPELLEE

ON APPEAL FROM THE DISTRICT COURT (WEST BATH)

BRIEF FOR THE APPELLANT

DENISE K. LYNCH

RECEIVED

APR 19 2016

Clerk's Office
Maine Supreme Judicial Court

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QUESTIONS PRESENTED FOR REVIEW

- I. DID THE DISTRICT COURT ERR IN ADOPTING THE SWEDISH DIVORCE DECREE UNDER PRINCIPLES OF COMITY, WHEN THE STOCKHOLM COURT WAS NOT A COMPETENT FORUM FOR DECISION OF THE PARTIES' CLAIMS?

- II. DID THE DISTRICT COURT ERR IN HOLDING THAT THE SWEDISH DECREE OF DISSOLUTION RENDERED DENISE'S ENTIRE DIVORCE PETITION MOOT, EVEN THOUGH THE SWEDISH DECREE DID NOT CONTAIN A FINAL JUDGMENT REGARDING DIVISION OF MARITAL PROPERTY AND SPOUSAL SUPPORT, AND THEREFORE DID NOT PRECLUDE DENISE'S PENDING CLAIMS FOR SPOUSAL SUPPORT AND EQUITABLE DIVISION OF PROPERTY?

- III. THE DISTRICT COURT ERR IN EXTENDING COMITY TO THE SWEDISH DECREE, WHEN THAT DECREE WAS OBTAINED THROUGH THE APPELLEE'S DELIBERATE USE OF PLEADINGS INTENDED TO PREVENT A SEASONABLE DETERMINATION OF THE APPELLANT'S MAINE ACTION ON THE MERITS, SO THAT A DECISION IN THE SWEDISH COURTS COULD OCCUR FIRST-IN-TIME?

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STATEMENT OF FACTS

This case concerns two concurrently filed divorce actions; the Appellee, Daniel Lynch, filed a divorce action in Stockholm, Sweden (the “Swedish Action”), and the Appellant, Denise Lynch, filed a divorce case in her home forum of the West Bath District Court (the “Maine Action”).

The parties were married in Virginia on May 24, 1991. (A. 37.) In the spring of 1992, they purchased their marital home in Brunswick, Maine. (Id.) Although the parties resided in numerous locations during their marriage due to Daniel’s U.S. Naval assignments, they spent the longest portion of their marriage - a total of eight years - at their Brunswick residence. (A. 37.) In the Fall of 2003, after experiencing marital difficulties, Daniel presented Denise with a document entitled “Stipulation and Property Settlement Agreement” (the “Property Agreement”) in contemplation of a divorce proceeding. (Id.) At that time Denise did not consult an attorney regarding the Property Agreement, which was not enforced then due the parties’ eventual reconciliation. (Id.) In August 2009, the parties relocated with their children, this time to Sweden, where they resided until their marital separation in October of 2013. (Id.)

In October 2013, the parties separated and Denise returned to the marital home in Brunswick, where she has resided ever since. (Id.) Daniel filed a petition for divorce (the Swedish Action) in the Stockholm District Court on January 27, 2014, and service of the petition was mailed to Denise at her residence in Brunswick; the Swedish Action was not

served on Denise in Sweden. (A. 38). Denise filed a limited response to the Swedish Action, via mail, which specifically denied her consent to the personal jurisdiction of the Stockholm Court and further denied that the Court had jurisdiction over any of her or the parties' property. (A. 54-55). Denise did not personally appear in the Swedish divorce proceedings and was not represented by counsel in the Swedish proceedings.

On May 28, 2014, after six months of good faith residency in Maine, the Appellant filed a Complaint for Divorce in her home forum against the Appellee. (A. 27.) In his pleadings in the Swedish Action, the Appellee sought to enforce the 2003 Property Agreement. The Appellee served in the U.S. Navy for over 30 years, and he receives a U.S. Naval pension and other Naval benefits. (A. 25, 37.) The Appellant is seeking division of the Appellee's naval pension and benefits as joint marital property in her Maine Action.

The Appellee filed a Motion to Dismiss the Appellant's Maine divorce action under the doctrine of *forum non conveniens* on July 8, 2014. (Id.) The West Bath District Court denied the Appellee's Motion to Dismiss the Maine Action on September 25, 2014; the District Court's Order reasoned that a dismissal of the Maine Action was unwarranted, because several elements of Maine and U.S. property and contract law were at issue in the divorce, including Maine real estate, the Appellee's divisible naval pension and benefits, and the Property Agreement. (A.13-14).

The Appellee filed an interlocutory appeal of the District Court's denial of his Motion to Dismiss the Maine Action in the Maine Law Court. (A.24). After the parties submitted briefs in the Law Court and the case was scheduled for oral arguments, the Appellee moved to dismiss his own appeal as moot. (A. 12). During the pendency of the Appellee's Law Court appeal, the Stockholm Court issued a divorce judgment, which he intended to enforce in Maine under the doctrine of comity, and to use as grounds to seek the dismissal, for mootness, of the Appellant's Maine Action in the District Court. In fact, the Appellee's Motion to Dismiss his own appeal acknowledges that his Law Court appeal was intended to delay the Appellant's Maine Action to secure a foreign decision first; the Appellee's motion to dismiss his own appeal stated: "[i]n this case, the [Appellee] appealed the denial of his motion to dismiss to allow the Swedish Court to proceed with the entry of the Divorce Judgment." On the Appellee's own request for dismissal, the Law Court dismissed his appeal and remanded the case to the District Court for further proceedings. (A. 38). This Court's Order of dismissal specifically refused to instruct the District Court to dismiss the Appellant's pending Maine Action for mootness. (A. 46).

Although the Swedish Divorce Judgment deemed the parties' marriage dissolved, it did not address the Appellant's pending claims for equitable division of property, including: (1) the parties' Maine real estate, (2) the Appellee's naval pension and benefits, (3) the parties' U.S. held investments, (4) attorney's fees and the costs of

maintaining the action, or (5) the Appellant's other claims for spousal support. In fact, the Stockholm Appeals Court annulled the lower Stockholm Court's findings regarding property division, and remanded the case back to the lower court pending a decision it stayed the property division phase of the Swedish Action pending a final resolution of the Maine Action by the U.S. courts. (Id.). At no time has the Stockholm Court had personal jurisdiction over the Appellant, nor subject matter jurisdiction over the parties' U.S. property law and contract law claims.

Upon the Law Court's dismissal of the Appellee's interlocutory appeal, the Appellant filed a Second Motion to Dismiss the Appellant's Maine Action in the District Court, this time on grounds of mootness, *res judicata*, and comity to the courts of Sweden. (A. 38). The Appellant opposed the Appellee's Second Motion to Dismiss, and both parties presented written argument to the Court. (A. 40). On March 2, 2016, the West Bath District Court (Dobson, J.) dismissed the Appellant's Maine Action, and held that the Swedish Divorce Judgment was valid and binding divorce decree in the Maine courts under the doctrine of comity. (A.10). Although the District Court held that the Swedish Divorce Judgment was a "final order," the District Court's findings acknowledged that "[w]hile the [Appellant's appeal of the Swedish Divorce Judgment] was denied as to other aspects of the Divorce Judgment, the issue of appointment of an administrator for division of marital property is currently under appeal in Sweden." (A. 11). The District Court further found that:

“[a]fter this order, it appears further litigation may be necessary either in Sweden or the US or both to fully divide the parties property or at a minimum, that a Swedish court will need to apply Maine law to any further division of property (through use of or consultation with a Maine family law attorney as a referee or otherwise?). It is unclear what route(s) would be available to accomplish this, Plaintiff may be able to challenge any unfavorable property distribution order coming out of Sweden by challenging that court’s jurisdiction over her and the Maine property or she may be able to bring an equitable action for partition of property in Maine. Thus litigation is not necessarily ended.” (A. 10).

The Appellant takes the current appeal from the West Bath District Court’s March 2, 2016, Order of Dismissal, and respectfully requests this honorable Court to vacate that Order and permit the Appellant to proceed with her Maine Action for divorce in her home forum.

SUMMARY OF THE ARGUMENT

U.S. courts employ a strong presumption against disturbing an American plaintiff's choice of a domestic forum for the adjudication of American law claims. The Stockholm Decree was not entitled to recognition under comity, because the Stockholm Court was not a competent jurisdiction for adjudication of the parties' divorce, which implicated numerous American property claims that could only properly have been decided by a U.S. court. The Stockholm Court lacked personal jurisdiction to enter property judgments affecting Denise; the Stockholm Court plainly lacked the requisite statutory authority to permit it to divide Denise's marital interest in Daniel's Navy pension and benefits; and the Swedish divorce code makes no provision for a reasonable award of alimony, which spouses may receive under Maine law.

Furthermore, the District Court's recognition of the Swedish Decree was erroneous because - as both the Stockholm and West Bath District Courts acknowledge in their respective decisions - that Decree failed to render a final judgment regarding division of the parties' marital property, and will necessarily require further litigation to settle the property claims. The Swedish Decree did not affirmatively divide the parties' marital property, but instead appointed a "property administrator" to oversee division of marital assets at some future time; even the appointment of the property administrator is currently under appeal in Sweden. Consequently, even if the Swedish Decree validly dissolved the parties' marriage, that Decree did not bar, as *res judicata*, Denise's claims for spousal

support and division of marital property that survive in her Maine Divorce Petition. Ultimately, The Swedish Decree deprived Denise of her equitable share of marital property, and failed to achieve the finality which is the desired end of domestic relations litigation.

Finally, even if this Court finds the Swedish Decree would normally be entitled to recognition under the doctrine of comity, equitable concerns strongly militate against its enforcement. The Swedish Decree was obtained first in time only because Daniel employed dilatory tactics to delay a seasonable decision of Denise's Maine Petition on its merits. Daniel should not be permitted to choose the forum of decision by employing such a dilatory strategy.

For all these reasons, the Appellant respectfully requests this Honorable Court to vacate the West Bath District Court's Order On Defendant's Motion To Dismiss dated March 2, 2016.

ARGUMENT

- I. THE DISTRICT COURT ERRED IN ADOPTING THE SWEDISH DIVORCE DECREE UNDER PRINCIPLES OF COMITY, WHEN THE STOCKHOLM COURT WAS NOT A COMPETENT FORUM FOR DECISION OF THE PARTIES' CLAIMS.

The Full Faith and Credit Clause of the United States Constitution does not apply to the judgments and decrees of foreign nations. *Roy v. Buckley*, 1997 ME 155, 689 A. 2d 497, n. 4. Therefore, American courts are not required to recognize foreign legal

judgments, although they may do so under the doctrine of comity, if the judgment satisfies certain legal standards. *Id.* Comity is not a rule of law obligating one nation to recognize the judicial decrees of another; it creates no legal imperative in favor of enforcement of foreign judgments. *Society of Lloyd's v. Baker*, 673 A. 2d 1336, 1338 (Me. 1996). Rather, comity is a pragmatic doctrine that balances a U.S. forum's respect for the legal decrees of foreign nations against the the rights of persons protected by the U.S. forum's own laws. *Id.* Principles of comity never obligate a domestic forum to ignore the rights of its own citizens or of other persons who are under the protection of its laws. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 944 (D.C. Cir. 1984).

Moreover, a foreign judgment will not be recognized under principles of comity unless the 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...” *Hilton v. Guyot*, 159 U.S. 113, 205-206 (1895)(emphasis added).

- A. The Swedish Decree Was Not Entitled To Recognition Under Comity, Because The Stockholm Court Did Not Have Personal Jurisdiction Over Denise, And Was Therefore Not Legally Competent To Equitably Divide The Parties Marital Property Or Award Spousal Support.

Due Process protects a litigant from being subjected to the judicial powers of a court unless that court actually exercises *in personam* jurisdiction over her. *Int'l Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945). The requirement of *in personam* jurisdiction may be satisfied by the defendant's consent to personal jurisdiction, by serving notice of a lawsuit on the defendant, or may be implied if the defendant has certain "minimum contacts" with the forum state, such that requiring her defense of a lawsuit there would not offend "traditional notions of fair play and substantial justice." *Id.* Even in the context of a striking exception to the requirement of personal jurisdiction - that of *ex parte* divorce, where a divorce may be granted to one spouse despite the total non-appearance of the other - courts may only issue an order of *dissolution* of the marriage; in absence of personal jurisdiction over the non-appearing spouse, a court may not issue a divorce decree affecting that spouse's rights to *property, alimony, or child custody*. *Von Schack v. Von Schack*, 2006 ME 30, ¶ 25, 893 A.2d 1004, 1010 (emphasis added).

In this case, the Stockholm Court was not a competent court for decision of the parties' divorce action, because it did not have "jurisdiction of the cause *and of the parties*" to the action in the form of personal jurisdiction over Denise. Denise never assented to the personal jurisdiction of the Stockholm Court, she was never served in Sweden, her only answer to the Stockholm litigation was to specifically deny that the Court had personal jurisdiction over her, and she never personally appeared in the

Stockholm proceedings. Moreover, due to Denise's lack of contacts with Sweden, it would be unfair to expect her to defend the lawsuit there. Because the Stockholm Court lacked personal jurisdiction over Denise, and was therefore unable to equitably divide the parties' property or award spousal support, it was not a Court of competent jurisdiction under the requirements of comity prescribed in *Hilton*; the District Court abused its discretion by recognizing the Decree.

B. The District Court Erred In Recognizing The Swedish Decree Under Notions Of Comity. Because The Stockholm Court Is Not Legally Competent To Divide An Equitable Share Of Daniel's Navy Benefits Under 10 U.S.C. §1408(a)(1)(A), Which Only Permits U.S. Courts To Order Division Of Military Benefits.

Pursuant to the *Hilton* requirements, a foreign judgment may only be recognized under comity if it appears to have been rendered by a legally competent court. *Hilton v. Guyot*, 159 U.S. 113, 205-206 (1895). A complete adjudication of the parties' property claims will necessarily need to consider Denise's request for the equitable division of Daniel's substantial U.S. Navy pension and other Navy benefits which are divisible marital property. However, under 10 U.S.C. §1408(a)(1)(A), only U.S. legal orders decreeing division of military pensions and benefits are enforceable by the U.S. Defense Accounting and Finance Service ("DFAS"), which is the only agency authorized to divide and distribute military retirement pay pursuant to divorce decrees. As a matter of law, DFAS would refuse to honor any Swedish court order decreeing the division of Daniel's Navy benefits. Because the Stockholm Court lacks the legal authority to equitably divide

substantial marital property, it is not a “competent court” under *Hilton’s* comity standards, and the District Court erred in recognizing the Swedish Decree.

Moreover, although Maine has adopted the “Uniform Foreign-Money Judgments Recognition Act” (the “Recognition Act”), which creates an expedited procedure under which Maine courts can enforce the money judgments of foreign countries, that Act *specifically excludes* from its presumptive enforcement provisions “any judgement of a foreign state granting or denying recovery of a sum of money...for support in matrimonial or family matters.” 14 M.R.S. § 8502(2). Accordingly, if the Stockholm Court eventually divides the parties marital property, any Swedish orders affecting Maine property or spousal support pursuant to the divorce would necessarily be subject to re-litigation in the Maine courts to determine their validity. Determining the enforceability of Swedish judgments would be an expensive, time consuming, redundant, and burdensome process. The risk of secondary litigation regarding the enforceability of Swedish judgments clearly militates against relegating Denise’s claims for support and property division to the foreign jurisdiction of the Stockholm Court.

II. THE DISTRICT COURT ERRED IN HOLDING THAT THE SWEDISH DECREE OF DISSOLUTION RENDERED DENISE’S ENTIRE DIVORCE PETITION MOOT, EVEN THOUGH THE SWEDISH DECREE DID NOT CONTAIN A FINAL JUDGMENT REGARDING DIVISION OF MARITAL PROPERTY AND SPOUSAL SUPPORT, AND THEREFORE DID NOT PRECLUDE DENISE’S PENDING CLAIMS FOR SPOUSAL SUPPORT AND EQUITABLE DIVISION OF PROPERTY.

The doctrine of *res judicata* prevents relitigation of matters already decided.

Portland Water Dist. v. Town of Standish, 2008 ME 23, ¶ 7, 940 A.2d 1097. *Res Judicata* consists of two components: issue preclusion and claim preclusion. *Id.* Claim preclusion prevents relitigation if: (1) the same parties are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been litigated in the first action. *Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 22, 834 A.2d 131, 138-39.

In this case, the Stockholm Court's Divorce Decree essentially entered a single judgment - it declared the parties legally divorced. Although the Swedish Decree directs the appointment of a "property administrator," to oversee the division of marital property, the Decree did not affirmatively enter any judgment regarding equitable division of property or a determination of whether reasonable spousal support might be awarded. Even the appointment of the property administrator is currently the subject of appeal in the Stockholm Court. Therefore, although the Swedish Decree may be viewed as a final judgment regarding the dissolution of the parties marriage, that Decree is not a valid final judgment regarding the claims Denise makes in her Maine Petition for division of property and a reasonable award of spousal support. Consequently, Denise's claims for spousal support and division of property were not rendered moot by the Swedish Decree's dissolution of the parties' marriage.

Moreover, although the Swedish Action may have presented a forum for the adjudication of some of Denise's claims for spousal support and division of property, the Stockholm court was legally prohibited from dividing Daniel's Navy pension and other benefits under 10 U.S.C. §1408(a)(1)(A). Additionally, the Swedish Divorce code does not ordinarily provide for the consideration and award of reasonable spousal support, except in cases of substantial hardship. This substantive difference in how the Swedish courts view awards of spousal support, to which Denise would almost certainly have been entitled to under Maine law, also undermines the contention that Denise's rights to seek reasonable spousal support could have been vindicated in the Swedish Action.

Furthermore, claim preclusion does not apply when a court reserves a party's right to maintain a second action, as happens when a court dismisses a claim without prejudice. *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 217 F. Supp. 2d 206, 213 (D.R.I. 2001). In this case, both the Stockholm and Maine District Courts effectively acknowledged that further litigation would be necessary to adjudicate the parties' property and spousal support claims. The District Court's Order Dismissing the Appellant's Complaint for Divorce ends its analysis by acknowledging "[a]fter this order, it appears further litigation may be necessary either in Sweden or the US or both to fully divide the parties property..."

For all these reasons Denise's claims for reasonable spousal support and equitable division of property were not rendered moot by the Stockholm Court's dissolution of the

parties' marriage. Because there was not final judgment regarding division of property, the District Court erred in recognizing the Stockholm Decree under the doctrine of comity. Denise should be permitted to continue adjudication of her claims for property division and spousal support in the Maine courts.

III. THE DISTRICT COURT ERRED IN EXTENDING COMITY TO THE SWEDISH DECREE, WHEN THAT DECREE WAS OBTAINED THROUGH THE APPELLEE'S DELIBERATE USE OF PLEADINGS INTENDED TO PREVENT A REASONABLE DETERMINATION OF DENISE'S MAINE ACTION ON THE MERITS, SO THAT A DECISION IN THE SWEDISH COURTS COULD OCCUR FIRST-IN-TIME.

Even a foreign judgment satisfying the legal prerequisites prescribed in *Hilton* may not be entitled to recognition if there exist special grounds for impeaching it, as by showing that the judgement was affected by fraud or prejudice. *Hilton v. Guyot*, 159 U.S. 113, 205-206 (1895). In this case the Swedish Decree was obtained through the Appellee's deliberate choice to delay a reasonable decision on the Appellant's Maine Action, so that a Swedish decree could be obtained first-in-time. The Appellee's Motion to Dismiss his own Motion to Dismiss for Forum Non-Conveniens stated "[i]n this case, the [Appellee] appealed the denial of his motion to dismiss to allow the Swedish Court to proceed with the entry of the Divorce Judgment."

But for the Appellee's decision to delay the Appellant's Maine Action on the merits, it is highly likely that the Appellant would have been permitted to receive a judgment from her home forum. The Appellee should not be permitted to benefit from

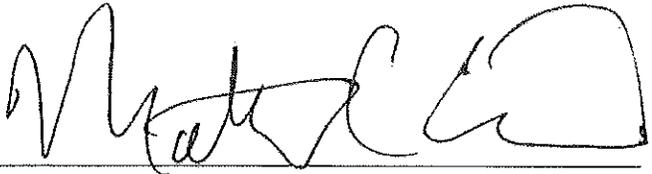
pleadings instituted solely to delay the Appellant from receiving a seasonable decision on the merits of her diligently prosecuted claim. Because the Swedish Decree was obtained through dilatory tactics, the District Court erred in extending its recognition through comity.

REQUEST FOR RELIEF

For the reasons set forth herein, the Appellant respectfully requests this Honorable Court to vacate the West Bath District Court's Order On Defendant's Motion To Dismiss Complaint For Divorce, dated March 2, 2016, and to remand the matter to the West Bath District Court to permit the Appellant to proceed on her Complaint for Divorce.

Respectfully submitted.

DATED: 4 / 15 / 2016



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CERTIFICATE OF SERVICE

I, Matthew C. Garascia, esq., Attorney for the the Appellant, Denise K. Lynch, hereby certify that I have caused two copies of this Brief of the Appellee to be served upon the following attorney of record for the Appellant via United States Mail, postage prepaid, addressed to the following:

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Dated at Auburn, Maine this 15th day of ~~APRIL~~, 2016



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