

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

CHAMBERS OF:
DENISE A. HINDS ROACH, JUDGE



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776-8044

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
 DIVISION OF ST. CROIX: KINGSHILL

HODA FATHI YUSEF HAMED,)	CASE NO. SX-13-DI-42
)	
Plaintiff,)	ACTION FOR DIVORCE
)	
vs.)	
)	
HISHAM MOHAMMED HAMED,)	
)	
Defendant.)	
)	

ORDER

THIS MATTER comes before the Court on Defendant Hisham Mohammed Hamed's ("Mr. Hamed") Motion to Dismiss Divorce Complaint for the Family Court's lack of jurisdiction absent a valid marriage, and Plaintiff Hoda Fathi Yusef Hamed's ("Ms. Hamed") Cross Motion for Partial Summary Judgment declaring the parties' marriage valid. As both motions are premised on whether or not the parties' had a legal marriage, this Court shall consider both motions as effecting the same purpose, namely motions for Summary Judgment, and render a combined order on both. For the reasons that follow, Mr. Hamed's Motion to Dismiss the Divorce Complaint is **GRANTED** and Ms. Hamed's Cross Motion for Partial Summary Judgment is **DENIED**.

BACKGROUND

In this case, neither party contests that on May 7, 1999, both parties participated in an Islamic marriage ceremony at the Islamic

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Mosque on the island of St. Croix in the U.S. Virgin Islands.¹ Following the ceremony, the parties were issued a "Marriage Certificate" by the Virgin Islands International Islamic Society, and signed by the Imam of the mosque, certifying that a marriage had been entered.² Both parties also acknowledge that a valid Virgin Islands Marriage Certificate was not obtained either before or after the abovementioned religious ceremony during the period of the parties' cohabitation.³ It is also uncontested that in 2008 both parties applied to the Superior Court of the Virgin Islands for a marriage license. However, that license was never completed by a later solemnization, as required by Virgin Islands Law.⁴

Despite having never obtained a valid marriage license, both parties agree that they are considered married under Islamic law.⁵ To

¹ Defendant's Motion to Dismiss Divorce Complaint, at 2; Plaintiff's Opposition to Motion to Dismiss Divorce Complaint and Cross Motion for Partial Summary Judgment, at 2.

² Id.

³ Defendant's Motion to Dismiss Divorce Complaint, at 2; Plaintiff's Opposition to Motion to Dismiss Divorce Complaint and Cross Motion for Partial Summary Judgment, at 4-5.

⁴ 16 V.I.C. 38(a). Plaintiff's Opposition to Motion to Dismiss Divorce Complaint, at 5. Defendant's Motion to Dismiss Divorce Complaint, at 5.

⁵ Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss, p.6; Plaintiff's Opposition to Motion to Dismiss, p. 3

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that end, both parties admit to having cohabited as husband and wife,⁶ and had four children together.⁷ However, the clear issue of dispute before the court is if, at any time, a valid marriage existed before the Court, thus allowing the Court to exercise jurisdiction over its dissolution.

In his Motion to Dismiss, Mr. Hamed argues that the parties' 1999 marriage ceremony, as it did not include a valid marriage license, failed to create a valid marriage under Virgin Islands law, as elaborated by the District Court in In Re Khalil.⁸ Furthermore, despite the parties' application for a marriage license in 2008, Mr. Hamed argues that the lack of a subsequent solemnization again prevented a valid marriage from being formed.⁹ As such, this Court lacks subject matter jurisdiction over Ms. Hamed's divorce complaint, as only a husband and wife may maintain an action for divorce.¹⁰

In contrast, Ms. Hamed argues that the District Court erred in the Khalil decision, and, per the Internal Operating Procedures of

⁶ In her Opposition to Mr. Hamed's Motion to Dismiss the Divorce Complaint, Ms. Hamed submitted exhibits referencing her use of the surname Hamed on her passport, tax returns, bank card, and other documents. Plaintiff's Reply in Opposition, at 3-4. Additionally, Mr. Hamed, in his Opposition to Ms. Hamed's Cross Motion for Summary Judgment, admitted to being in an Islamic marriage contract. Defendant's Reply to Plaintiff's Opposition, at 6.

⁷ Defendant's Motion to Dismiss, at 8. Plaintiff's Reply in Opposition, at 3.

⁸ In re Khalil, 2001/183, 2003 WL 1873739 (D.V.I. Apr. 4, 2003).

⁹ Defendant's Motion to Dismiss, at 5.

¹⁰ *Id.* at 7, citing 16 V.I.C. 101.

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the Virgin Islands Supreme Court, Khalil is not binding.¹¹ Furthermore, Ms. Hamed argues that she relied upon the legitimacy of the 1999 marriage, to the extent that she stopped pursuing tertiary education¹² and changed her identity to reflect her married status.¹³ Having taken such steps in reliance on the parties' marriage, Ms. Hamed argues that under Islamic law, if this court fails to grant a divorce in this matter, she will be unable to obtain an Islamic divorce, and would be unable to remarry according to the tenets of her religion, and her child custody rights would be jeopardized.¹⁴ In addition, Ms. Hamed argues that failure to grant a divorce would potentially subject her to negative repercussions in some Islamic countries she may visit.¹⁵

DISCUSSION

In the Virgin Islands, "because summary judgment is a drastic remedy, it should be granted only when 'the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is

¹¹ Plaintiff's Reply in Opposition, at 13.

¹² Id., at 1.

¹³ Id., at 3-4.

¹⁴ Id., at 7-9.

¹⁵ Id., at 7-8. Specifically, Ms. Hamed argues that she must receive a civil divorce in order to obtain an Islamic divorce. Absent a civil divorce, Ms. Hamed would remain effectively married and her rights vis-à-vis property and custody would be diminished, and she could even be subject to execution in Islamic countries.

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entitled to judgment as a matter of law.¹⁶” “When reviewing the record, this Court must view the inferences to be drawn from the underlying facts in the light most favorable to the non-moving party, and we must take the non-moving party’s conflicting allegations as true if ‘supported by proper proofs.’” “[T]o survive summary judgment, the nonmoving party’s evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.¹⁶”

Furthermore, in the Virgin Islands, the Family Division of the Superior Court has jurisdiction over all actions for divorce.¹⁷ However, as Divorce is an action to dissolve the bonds of marriage between husband and wife, a marriage must exist for the Court to have jurisdiction. The District Court of the Virgin Islands, in In Re Khalil, considered the requirements for a marriage to exist under Virgin Islands law. In Khalil, a couple participated in an Islamic religious ceremony on the Island of St. Croix and failed to procure a Virgin Islands marriage license. The District Court held that a prior license is a mandatory predicate to a legal marriage under Virgin

¹⁶ Williams v. United Corp., 50 V.I. 191, 194 (V.I.2008) (citing Maduro v. Am. Airlines, Inc., S.Ct. Civ. No.2007-029, 2008 WL 901525, at *2 (V.I. Feb. 28, 2008) (unpublished) (quoting former wording of Fed.R.Civ.P. 56(c))).

¹⁷ Joseph v. Hess Oil V.I. Corp., S.Ct. Civ. No.2009-0054, 2011 WL 1304611, at *4 (V.I. Mar. 8, 2011) (quoting Williams, 50 V.I. at 194-95 (V.I. 2008)).

¹⁸ Id. (internal quotation marks omitted). United Corp. v. Tutu Park Ltd., 2011 WL 4017711 (V.I.), 2.

¹⁹ 4 V.I.C. 76.

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Islands law.²⁰ Absent such a license, a marriage does not exist under Virgin Islands law, and this Court may not dissolve a marriage that does not exist.

In this case, as has been elaborated *supra*, the parties agree that an Islamic marriage ceremony took place and at no point, either before or after that ceremony, was a Virgin Islands marriage license procured and finalized in accordance with Virgin Islands law. Even when considering the facts of this matter in a light most favorable to Ms. Hamed, there is no genuine factual dispute as to whether the Hamed's purported marriage complied with Virgin Islands law.²¹

Nonetheless, in her Opposition to Mr. Hamed's Motion to Dismiss, Ms. Hamed argues that the District Court's holding in Khalil is wrong, and this Court is not bound to Khalil as it is an unpublished opinion. Specifically, Ms. Hamed references the Supreme Court of the Virgin Islands' Internal Operating Procedures' Rule 5.7.1. Rule 5.7.1 instructs the Supreme Court to not cite to unpublished opinions as legal precedent. However, this Court is the Superior Court of the Virgin Islands, not the Supreme Court. As such, the Rules of the Superior Court, not those of the Supreme Court, apply in this Court's proceedings. Furthermore, decisions rendered by the Third Circuit and the Appellate Division of the District Court are binding upon the

²⁰ In re Khalil, 2001/183, 2003 WL 1873739 (D.V.I. Apr. 4, 2003)

²¹ Defendant's Motion to Dismiss Divorce Complaint, at 2; Plaintiff's Reply in Opposition, at 4-5.

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Superior Court even if they would only represent persuasive authority when the Supreme Court considers an issue.²² Thus this Court is bound to follow the District Court's holding in In Re Khalil.

Ms. Hamed, in her cross motion for summary judgment, also alleges that she detrimentally relied on her marriage to Mr. Hamed being valid. While not framed as such, this Court believes Ms. Hamed seeks to assert a claim in equitable estoppel, of which detrimental reliance is a component. This Court is uninclined to entertain an argument in equity with existing precedent directly on point. Nonetheless, even if it were, Ms. Hamed would have failed to meet the elements to prevail.

In the Virgin Islands, the first element of equitable estoppel is a representation of some kind made by the party to be estopped which "often consists of some verbal statement ... that something is true or not true contrary to the actual facts and the estopped party's later claim." Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp., 955 F. Supp. 441, 458 (D.V.I. 1997). The second element is an "intention or expectation that one's conduct shall be acted upon by, or influence, the party seeking estoppel." *Id.* The third element is full knowledge by the party sought to be estopped of the true facts at the time of the representation. *Id.* Finally, the party claiming estoppel "must have, as a result of the other party's

²² In re People of the V.I., 51 V.I. 374, 389 n.9 (V.I. 2009).

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conduct, acted or failed to act so that his position was changed in such a way that he will suffer injury if the other party is not estopped," and the party claiming estoppel must not have had knowledge of the misrepresented facts. *Id.*

In this case, Mr. Hamed did, through participating in the Islamic marriage ceremony, make a representation that he and Ms. Hamed were married.²³ By taking part in the marriage ceremony, as the facts indicate, the Court finds that Mr. Hamed intended Ms. Hamed to rely on the ceremony to conduct her affairs as a married woman, including cohabitation and bearing children.²⁴ However, on the third element Mr. Hamed's full knowledge of the true facts concerning the marriage's validity at the time of the Islamic ceremony, the Court finds that Ms. Hamed's claim fails. In this case, no evidence was presented that indicated that Mr. Hamed was aware that the Islamic marriage ceremony and subsequent "marriage certificate" would not constitute a valid marriage under Virgin Islands law. In fact, Mr. Hamed, like Ms. Hamed, appears, through his behavior²⁵, to have assumed that the ceremony was valid. As such, the Court finds that the facts do not indicate that Mr. Hamed had full knowledge of the

²³ Defendant's Motion to Dismiss Divorce Complaint, at 2; Plaintiff's Opposition to Motion to Dismiss Divorce Complaint and Cross Motion for Partial Summary Judgment, at 2.

²⁴ See notes 6 and 7 *supra*.

²⁵ The facts indicate that Mr. Hamed lived with Ms. Hamed as a husband would with a wife. The purported marriage produced children and Mr. Hamed appears to have treated Ms. Hamed as his wife.

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true facts concerning the validity of the parties' marriage. Thus, absent a showing of such knowledge on the part of Mr. Hamed, Ms. Hamed's claim in equitable estoppel must fail.

Finally, this Court notes Ms. Hamed's arguments that failure to obtain a civil divorce will prevent her from receiving an Islamic divorce, jeopardizing her custody rights under Islamic law.²⁶ As is the Court's position regarding Ms. Hamed's equitable estoppel argument, this Court is similarly uninclined to entertain what is essentially a fairness argument in the face of existing precedent directly on point. Additionally, the Court notes that, in regards to child custody, both parties agree that all of their children were born on St. Croix, and continue to reside there.²⁷ As such, under Virgin Islands law, this Court retains jurisdiction over custody of the parties' minor children regardless of whether a divorce takes place.²⁸

In sum, this Court finds that, per binding precedent, no valid marriage exists in this case under Virgin Islands Law. As such, this Court may not entertain an action for divorce in this matter. Absent

²⁶ Plaintiff's Reply in Opposition, at 7-8.

²⁷ Defendant's Motion to Dismiss, at 3. Plaintiff's Reply in Opposition, at 3.

²⁸ Per the parties' pleadings, St. Croix is the home state of the parties' minor children, and both parties have a significant connection with St. Croix beyond mere physical presence. As such, as of the time of this order, this Court would have original jurisdiction over any custody action. 16 V.I.C. 127.

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jurisdiction, this Court must, therefore, grant Mr. Hamed's motion to Dismiss.

Therefore the Court, having been advised in the premises, it is hereby

ORDERED that Defendant Hisham Mohammed Hamed's Motion to Dismiss Divorce Complaint is **GRANTED**; it is further

ORDERED that Plaintiff Hoda Fathi Yusef Hamed's Cross Motion for Partial Summary Judgment is **DENIED**; it is further

ORDERED that this Action for Divorce is **DISMISSED**; and it is further

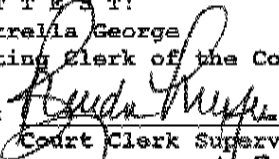
ORDERED that previous order setting this matter down for trial on **February 10, 2014**, is hereby **VACATED**. Parties are not required to appear; and any action for custody, visitation, etc. is to be filed as a separate action.

ORDERED that a copy of this Order be served on the parties.

DONE AND SO ORDERED this 31st day of January, 2014.


DENISE A. HINDS ROACH, JUDGE

A T T E S T:
Estrella George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

1/31/14