UNPUBLISHED OPINIONS

Editor's Note: Pursuant to Va. Code § 17.1-413, these opinions are not designated for publication.

Domestic Relations

No Civil Divorce Meant Bigamy

Wife cannot overturn annulment for bigamy by denying Virginia residency, the Court of Appeals says; the parties' pleadings and documentary evidence show their Virginia residence; the trial court properly credited husband's expert that wife's Pakistani religious divorce was not legally effective when she remarried in 2003.

Wife married first husband in Pakistan in 2000. In 2001, first husband told wife he divorced her three times, effecting the religious component of a divorce under Islamic law. Neither first husband nor wife sought a legal divorce through the Union Council until 2010, when wife filed a Suit for Declaration in Pakistan. Wife assumed the religious component was sufficient. Wife married second husband in ceremonies in Pakistan in 2003 and Virginia in 2004. She did not disclose her first marriage to second husband or on their marriage certificate. In 2009, second husband discovered wife's first marriage certificate and had Pakistani authorities issue an arrest warrant for bigamy. The Pakistani court finalized wife's divorce from first husband in 2011. Second husband sued for annulment for bigamy in

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Va. Court of Appeals

Cont'd

Virginia. Husband's expert, a Pakistani attorney, testified that Pakistani law requires filing with the Union Council for a divorce to be legally effective. The trial court granted the annulment.

On appeal, wife challenges subject matter jurisdiction on the basis that neither she nor second husband are Virginia residents. She also challenges the sufficiency of evidence of bigamy. We summarily affirm. While subject matter jurisdiction may be challenged initially on appeal, the pleadings and documentary evidence in this case establish the parties' Virginia residence since 2004, more than the six months required for annulment in Va. Code §20-97. Wife's reliance on §20-99(1) is misplaced: the pleadings and exhibits corroborate the parties' Virginia residence, only slight corroboration is required with no evidence of collusion. Wife's objection to husband's expert opinion is procedurally defaulted under Rule 5A:18: wife did not object until she filed written objections 21 days after the final order. Contrary to wife's argument, the trial court within its discretion credited the testimony of husband's expert as better qualified based on his background and experience as a Pakistani lawyer. Wife's good faith belief cannot validate her void marriage under *Toler v. Oakwood Smokeless Coal Corp.*, 173 Va. 425 (1939). The 2011 Pakistani divorce decree was not retroactive to 2001 according to husband and his expert. Wife hid her first marriage. Second husband presented clear and convincing evidence wife was not legally divorced before remarrying. Annulment affirmed.

Naseer v. Moghal (per curiam) No. 0301-12-4, Aug. 14, 2012; Fairfax County Cir. Ct. (Smith) Fred M. Rejali for appellant; Thomas P. Silis for appellee. VLW 012-7-241(UP), 9 pp.