

Copyright 2011
NORTH CAROLINA
LAWYERS WEEKLY

December 26, 2011

Appeals Court Had The Chance To Do Right By A Wife And Children – But Declined It

By Abed Awad & Noura Michelle

The North Carolina Court of Appeal's recent decision in *Mussa v. Palmer-Mussa*, in which it refused to recognize an American-Islamic divorce, may have been consistent with North Carolina law, but it resulted in an unjust outcome. The dissent had a more nuanced approach protecting the financial rights of the defendant/wife arising out of a twelve-year marital relationship and at the same time affirming North Carolina's recognition of religious marriages without a marriage license.

In early 1997, Nikki Palmer-Mussa married Khalil Braswell in an Islamic ceremony held in Maryland. The couple failed to obtain a marriage license, which is required under Maryland law; however, Palmer-Mussa and Braswell also never consummated the marriage. Shortly thereafter, Palmer-Mussa obtained a religious divorce from Braswell.

After her divorce, Palmer-Mussa met Juma Mussa later that same year. They obtained a marriage license, and were married on November 27, 1997. The couple had three children together and remained married for twelve years.

On December 4, 2008, Palmer-Mussa filed for divorce from Mussa. The trial court granted Palmer-Mussa child support and spousal support. On December 3, 2009, Mussa filed for an annulment, alleging that Palmer-Mussa never secured a civil divorce from her first husband. The Wake County trial court found that the marriage to Braswell was not valid; therefore, Palmer-Mussa's marriage to Mussa was valid. Mussa appealed.

The N.C. Court of Appeals reversed, holding that Palmer-Mussa's marriage to her first husband without a marriage license was voidable. A voidable marriage is valid until legally dissolved. Because the parties did not legally dissolve it, the wife's marriage to Mussa was a void, bigamous marriage.

Strictly speaking, the majority's refusal not to recognize the parties' religious divorce was correct and consistent with settled law. State courts have exclusive, subject-matter jurisdiction over the dissolution of marriages solemnized in America. In other words, while religious tribunals are free to religiously dissolve marriages, these religious divorces are not a valid dissolution of a marriage under state law.

Unfortunately, the majority's opinion resulted in an unjust outcome for Nikki Palmer-Mussa, where she walks away with no equitable distribution or spousal support after twelve years of marriage and three children.

Had Judge Wanda G. Bryant's technical and nuanced dissent been adopted by the majority, it would have resulted in a just outcome without undermining the settled law of the land that religious divorces do not legally dissolve marriage under state law. Of course, recognizing a divorce from a religious tribunal in the United States would violate the U.S. Constitution. Judge Bryant explained that the second husband failed to attack the validity of his marriage at the trial level. Therefore, his marriage was presumed to be valid, a strong presumption in North Carolina and other states. Mussa can rebut this presumption by offering direct evidence challenging the validity of his marriage, which Judge Bryant pointed out he failed to do. Judge Bryant emphasized that the burden on Mussa was to prove that when he married his wife, her first marriage was still valid.

The majority's presumption of validity of the Maryland marriage was misplaced, as there was a question of whether a person authorized to solemnize marriages performed the Maryland wedding, a requirement under the North Carolina statute. This should have rendered the Maryland marriage void.

Some states, such as Maryland, North Carolina and New York, render a marriage without a license as voidable. In other words, marital rights arise out of the marriage until legally dissolved. Other states, like New Jersey, treat a marriage without a license as void, i.e., no marital rights arise out of the marriage.

The same facts in Mussa would have a different outcome depending on void/voidable jurisdiction. Had Palmer-Mussa and Braswell married without a license in New Jersey, instead of in Maryland, the North Carolina court would have held that marriage void and the second marriage valid. New York would have a similar outcome to North Carolina. The only open issue here is whether a marriage without a license and not solemnized by an authorized person would render it void.

In the end, the jurisdictions that treat marriage without a license as voidable offer more protections to couples and children. This is the law of North Carolina. But in the case of Mussa, the strict applicability of the law resulted in a travesty of justice. Judge Bryant's dissent gave the majority a way out; unfortunately, the majority applied the strict words of the law, not the spirit.

Abed Awad is a partner at Awad & Houry in Hasbrouck Heights, New Jersey, focusing on civil litigation, complex matrimonial litigation and international law. He is a nationally recognized Islamic law expert and is on the adjunct faculties of Rutgers Law School, Newark and Pace Law School, White Plains.

Noura Michelle is an associate at Awad & Houry in Hasbrouck Heights, New Jersey.