IN THE SUPREME COURT OF GUAM

HARRY R. SPEICHER,
Plaintiff-Appellant,

v.

VICTORIA L. SPEICHER,
Defendant-Appellee.

Supreme Court Case No. CVA12-033
Superior Court Case No. DM0360-12

OPINION

Cite as: 2013 Guam 11

Appeal from the Superior Court of Guam
Argued and submitted February 21, 2013
Hagåtña, Guam

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Appearing for Defendant-Appellee:
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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Plaintiff-Appellant Harry Ray Speicher brings this appeal to challenge the dismissal of his complaint for divorce to Defendant-Appellee Victoria Lin Speicher. The trial court dismissed Harry's case under the doctrine of forum non conveniens because the court deemed Hawai'i, where Victoria had filed for divorce three months prior, a more appropriate forum. We vacate and remand because the trial court can order the dissolution of the marriage relationship separately from deciding marital property matters.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Harry and Victoria married in Oregon on February 16, 1985. The Speichers separated in January 2011 and have no children together. Since that time, Harry has been living in Guam and working as a contractor in Guam and the surrounding islands. He obtained a Guam driver's license and paid income tax to the Government of Guam in 2011 and 2012.

[3] On February 24, 2012, Victoria filed for divorce in Hawai'i where she and Harry own a home. Harry claims he never received notice that Victoria had filed the divorce action in Hawai'i.

[4] On May 24, 2012, Harry filed for divorce in Guam citing irreconcilable differences. Victoria was personally served in Hawai'i on June 12, 2012. Three weeks later, Victoria filed a declaration claiming, *inter alia*, she does not have minimum contacts with Guam so the court does not have personal jurisdiction; she filed first in Hawai'i therefore Hawai'i should have jurisdiction; Guam is an inconvenient forum; and real and personal marriage property is located in Hawai'i.

[5] Victoria thereafter filed a motion to dismiss, citing lack of personal jurisdiction and the trial court's previous history of dismissing similar cases. The trial court issued an order of dismissal holding Guam was not a convenient forum. Harry timely appealed.[1]

II. JURISDICTION

[6] This court has jurisdiction over an appeal from a final judgment pursuant to 48 U.S.C.A. 1424-(a)(2) (Westlaw current through Pub. L. 113-13 (2013)); 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[7] The forum non conveniens determination is committed to the sound discretion of the trial court, and the trial court's decision deserves substantial deference. *PCI Commc'ns, Inc. v. GST Pacwest Telecom Haw., Inc.*, 1999 Guam 17 ¶ 40 (citing *Creative Tech., Ltd. v. Aztech Sys. Pte, Ltd.*, 61 F.3d 696, 699 (9th Cir. 1995)). "[W]here the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, the decision may only be reversed where there has been a clear abuse of discretion." *Id.* (quoting *Creative Tech.*, 61 F.3d at 699).

IV. ANALYSIS

[8] Harry's chief argument on appeal is the trial court failed to "apply or consider" the factors for dismissal under the doctrine of forum non conveniens and therefore abused its discretion. Appellant's Br. at 9 (Dec. 14, 2012). Victoria argues Guam's courts do not have personal jurisdiction over her because she has no ties to the forum, and Hawai'i's courts offer a more appropriate forum because she filed there first and the marital property is located in Hawai'i. RA, tab 8 at 2-3 (Decl. of Def., July 5, 2012). While forum non conveniens is an

[1] Victoria represented herself on appeal. She did not file a brief, but she did submit a letter on the eve of oral argument that the court considered upon notice to and consent of Harry's counsel.

acceptable argument despite the trial court's lack of personal jurisdiction over Victoria, the trial court can still dissolve the marital relationship while Hawai'i maintains jurisdiction over the property disputes.

A. Personal Jurisdiction

[9] Personal jurisdiction analysis of a non-resident defendant begins with Guam's long-arm statute. It allows for the exercise of jurisdiction "on any basis not inconsistent with the Organic Act or the Constitution of the United States." 7 GCA § 14109 (2005). A defendant is required to have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'" so as not to offend due process. *PCI Commc'ns*, 1999 Guam 17 ¶ 17 (alteration in original) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). "Due to this broad-reaching statutory language, the effect is that the jurisdictional analysis merges into a single step. That is, a court analyzing personal jurisdiction under Guam's long-arm statute, simultaneously analyzes the issue of constitutional due process." *Banes v. Superior Court (Banes)*, 2012 Guam 11 ¶ 27. Victoria clearly has no contacts with the forum as she has never resided, worked in, or visited Guam; therefore, the trial court did not have personal jurisdiction over her.

B. Forum Non Conveniens

[10] Appellate review of forum non conveniens analysis, as discussed above, is quite deferential. Whether to grant or deny a motion to dismiss on grounds of forum non conveniens involves "weighing of a mix of private and public interests, keeping in mind that the plaintiff's choice of forum is usually to be respected." *PCI Commc'ns*, 1999 Guam 17 ¶ 41 (quoting *Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines*, 965 F.2d 1375, 1389 (5th Cir. 1992)).

[11] In *PCI Commc'ns*, this court listed several factors to consider when determining the appropriateness of a specific forum:

> Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Id. ¶ 42. Included in the public interests are "the extent to which congestion will slow trial of the case; the interest in having controversies resolved in a local forum; the familiarity of the court with the governing law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Walter Fuller Aircraft*, 965 F.2d at 1389.

[12] The trial court's order of dismissal noted the pending case in Hawai'i was filed first and held that "[i]n order to avoid unnecessary duplication of judicial actions, the [c]ourt finds that Guam is not a convenient forum for a divorce case" between these parties. RA, tab 17 at 1-2 (Order of Dismissal, Sept. 13, 2012) (emphasis omitted).[2] None of the factors described in *PCI Commc'ns* were analyzed. *See id.*

[13] Prior to its forum non conveniens discussion in *Gulf Oil Corp. v. Gilbert*, the U.S. Supreme Court stated in dicta, without explanation or analysis, that "the doctrine of forum non conveniens can never apply if there is absence of jurisdiction or mistake of venue." 330 U.S. 501, 504 (1947) (superseded by statute on other grounds). One possible interpretation is that a court needs to determine subject matter or personal jurisdiction prior to engaging in a forum non conveniens analysis. Further, the comment begs the question of whether the court needs jurisdiction over both parties in order to proceed with the analysis. Sixty years after *Gulf Oil Corp.*, the U.S. Supreme Court clarified its remarks.

[2] Appellant's brief notes that Victoria's counsel prepared the order. Appellant's Br. at 8.

[14] In *Sinochem International Co. Ltd. v. Malaysia International Shipping Corp.*, the U.S. Supreme Court answered the question of "whether a federal court can dismiss under the *forum non conveniens* doctrine before definitively ascertaining its own jurisdiction." 549 U.S. 422, 434 (2007). It held that when forum non conveniens analysis "weigh[s] heavily in favor of dismissal," it can be conducted prior to subject matter or personal jurisdiction analysis when jurisdictional issues are "difficult to determine." *Id.* at 436. Because *Sinochem* instructed that a potentially straightforward forum non conveniens analysis may occur prior to a more rigorous jurisdictional determination, a court may proceed with that analysis if it has jurisdiction over only one of the parties. *See id.* at 435 ("Discovery concerning personal jurisdiction would have burdened Sinochem with expense and delay.").

[15] The trial court did not determine whether it had personal jurisdiction over Victoria, but the record suggests that it likely did not have personal jurisdiction over her. However, the trial court clearly had personal jurisdiction over Harry under 19 GCA § 8318,[3] so it can still conduct a forum non conveniens analysis prior to a more detailed personal jurisdiction inquiry for Victoria under *Sinochem*'s holding. *See* 549 U.S. at 434. The reliance on forum non conveniens by the trial court was, nevertheless, misplaced because of the concept of divisible divorce.

C. Divisible Divorce

[16] In *Estin v. Estin*, a wife brought an action for separation in New York against her husband whom had abandoned her. 334 U.S. 541, 542 (1948). She obtained an award of alimony. *Id.* Shortly thereafter, the husband moved to Nevada, filed for divorce, received it, and

[3] The statute states a divorce or dissolution of marriage may be granted if one of the parties has been a resident of Guam for at least 90 days prior to filing. 19 GCA § 8318 (as amended by Guam Pub. L. 28-093:2 (Dec. 12, 2005)). Title 19 GCA § 8319 states that residency must be pled and proved in all divorce actions. 19 GCA § 8319 (as amended by P.L. 28-093:1 (Dec. 12, 2005)). Harry likely provided enough documentation at the trial court level to satisfy both sections. *See* RA, tab 13 at Exs. A-D (Opp'n to Def.'s Mot. Dismiss, Aug. 17, 2012).

stopped paying alimony. *Id.* at 542-43. The U.S. Supreme Court held that under the Full Faith and Credit Clause of the U.S. Constitution, New York had to respect Nevada's dissolution of the marriage relationship, but Nevada could not remove the wife's intangible property interest – the judgment for alimony – without in personam jurisdiction. *Id.* at 549 ("A judgment of a court having no jurisdiction to render it is not entitled to the full faith and credit which the Constitution . . . demand[s]."); *see also Vanderbilt v. Vanderbilt*, 354 U.S 416, 418 (1957) ("Since the wife was not subject to its jurisdiction, the Nevada divorce court had no power to extinguish any right which she had under the law of New York to financial support from her husband.").

[17] Divisible divorce is based on the principle under which "financial responsibility and marital status may be separately litigated at different times and in different forums." *In re Marriage of Gray*, 251 Cal. Rptr. 846, 850 (Ct. App. 1988) (citation and internal quotation marks omitted). The Full Faith and Credit Clause compels recognition of the divorce decree as an adjudication of marital status only, without affecting or prejudicing any property rights that may be incident to that status. *Id.*

[18] Furthermore, divisible divorce "is more than a jurisdictional concept." *Hull v. Superior Court*, 352 P.2d 161, 165 (Cal. 1960). The dissolution of a marriage, which the law has found to be unworkable and injurious to the public, "is not dependent upon final settlement of property disputes." *Id.* Without this form of action, marital property disputes, real or baseless, "could continue for years, effectively preventing the legal establishment of any other relationship by either party." *Id.* As such, one spouse is prevented from postponing indefinitely the dissolution of a marriage by prolonging proceedings that primarily involve financial responsibility and division of marital property. *Gray*, 251 Cal. Rptr. at 850 (citation omitted).

[19] States have a strong public policy interest in the marital status of persons domiciled in their jurisdiction. *See, e.g., id.* at 852; *Spruyt v. Spruyt*, 851 P.2d 1072, 1073 (N.M. 1993). In addition, "[t]he public interest is not enhanced by refusing people the right to legally terminate a relationship which has already been irrevocably severed in fact." *Hull*, 352 P.2d at 163. The power to prevent a final dissolution should be used only when necessary to preserve the authority of the court. *Id.*

[20] Harry collaterally argues for a divisible divorce in the midst of his contention that the trial court "did not apply or consider" the forum non conveniens factors. Appellant's Br. at 9. He states that he is only seeking a termination of his marital status.[4] *Id.* at 11. Harry's verified complaint cited "irreconcilable differences," RA, tab 2 at 3 (Compl.), and the trial court may not need to take further evidence to sever the relationship based on irreconcilable differences.[5] The Speicher marriage may be dissolved in Guam, and the property and support issues can be resolved in Victoria's suit in Hawai'i.[6] The Full Faith and Credit Clause requires Hawai'i to recognize any divorce decree that may issue from Guam's courts. *Gray*, 251 Cal. Rptr. at 850. The public policy arguments also strongly favor dissolution because the marriage has already been severed in fact by the parties' two-year separation. *See Hull*, 352 P.2d at 163. If the statutory requirements for granting dissolution of the marriage are satisfied, the trial court does not have discretion on whether or not to grant the dissolution of the marital relationship given that the trial court had jurisdiction over Harry.

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[4] Harry, in his complaint, also noted that the "court may assert personal jurisdiction over [Victoria] for the purposes of terminating the marital status." RA, tab 2 at 2 (Compl., May 24, 2012) (citing *Estin*, 334 U.S. at 541).

[5] Title 19 GCA § 8320 permits the court to enter a decree of dissolution upon a verified complaint if the defendant defaults or consents. 19 GCA § 8320 (2005).

[6] Harry recognizes that Victoria "can continue her pending, but inactive case in Hawai'i, to address the property and support issues arising from the marriage." Appellant's Supplemental Auth. at 4 (Jan. 18, 2013).

[21] Lastly, Victoria argues Hawai'i should maintain jurisdiction because she filed in that jurisdiction first. RA, tab 14 at 2 (Resp. to Opp'n, Aug. 21, 2012). She cites to the Ninth Circuit, which "emphasize[d] that the 'first to file' rule normally serves the purpose of promoting efficiency well and should not be disregarded lightly." *Church of Scientology of Cal. v. U.S. Dep't of the Army*, 611 F.2d 738, 750 (9th Cir. 1979) (citation omitted). In *Church of Scientology*, however, the court decided not to follow the rule, determining that under the facts of their case, "the goal of judicial efficiency will be best met if we overlook the 'first to file' rule, and defer to the litigation in progress in the D.C. Circuit." *Id.* Furthermore, courts should use their discretion when determining whether to observe the rule or allow another jurisdiction to proceed. *See, e.g.*, *Simmons v. Superior Court*, 214 P.2d 844, 848 (Cal. Dist. Ct. App. 1950) ("[T]he court in which the second action is brought *may in its discretion* stay or suspend that suit, awaiting decision in the first one, or, influenced by a spirit of comity, may refuse to entertain it, if the same relief can be awarded in the prior suit." (emphasis added) (citation and internal quotation marks omitted)).

[22] While the determining factors to aid a court in concluding whether to stay or dismiss a case under the comity doctrine are not as standardized for those in forum non conveniens, they are similar in that the reviewing court should consider the situation as a whole before making a decision. *Leadford v. Leadford* noted:

> In many cases, considerations of comity and the prevention of multiple and vexatious litigation will most often militate in favor of stay. However, other factors weigh in the balance, and where judicial economy, the interests of the forum, and the convenience of the parties weigh in favor of allowing the action to proceed, the trial court has discretion to deny the stay.

8 Cal. Rptr. 2d 9, 12 (Ct. App. 1992) (citation omitted). The trial court could exercise its discretion and grant Victoria a stay or a dismissal, or it could proceed with the case granting only the dissolution of marriage.

[23] We believe the trial court is in a better position than our court to make a determination on whether to defer to the Hawai'i court. In the first instance, the trial court should consider the factors stated above and any others that it deems relevant to resolve the comity issue. However, as discussed previously, if the trial court decides Victoria's first to file argument is not persuasive under the factors given and forego the comity doctrine, then it does not have discretion in granting the dissolution of the marriage, assuming the statutory requirements for a dissolution of marriage based on irreconcilable differences are met.

V. CONCLUSION

[24] Despite the trial court's lack of personal jurisdiction over Victoria, it still can grant a dissolution of the marital relationship after determining whether it should stay or dismiss the case on comity grounds. The trial court's dismissal under forum non conveniens, while permissible without jurisdiction, constituted an abuse of discretion. Therefore, we **VACATE** and **REMAND** for further proceedings not inconsistent with this opinion.

Original Signed By: Robert J. Torres

ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice

I do certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of Supreme Court of Guam

JUL 03 2013

By: JOANNA S. MCDONALD
SP Deputy Clerk Supreme Court of Guam