IN THE SUPREME COURT OF GUAM

CARLA GUTIERREZ STAHL,
Plaintiff-Appellee,

v.

CHRISTOPHER K. STAHL,
Defendant-Appellant.

Supreme Court Case No.: CVA12-032
Superior Court Case No.: DM0842-10

OPINION

Cite as: 2013 Guam 26

Appeal from the Superior Court of Guam
Argued and submitted May 20, 2013
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Presiding Justice;[1] KATHERINE A. MARAMAN, Associate Justice; and JOHN A. MANGLONA, Justice *Pro Tempore*.

TORRES, J.:

[1] Defendant-Appellant Christopher K. Stahl ("Christopher") brings this appeal from a divorce, child custody, and support action to challenge the trial court's award of $10,000.00 in suit money to Plaintiff-Appellee Carla Gutierrez Stahl ("Carla"). Christopher argues that Virginia granted a divorce decree on July 17, 2012, thereby removing Guam's jurisdiction over the action and requiring a dismissal of the case. For the reasons set forth below, we reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On December 28, 2010, Carla filed for divorce in Guam, citing irreconcilable differences. Four months later, Christopher filed for divorce in Virginia, and on July 17, 2012, the Circuit Court of Loudoun County ("Virginia court") granted a Final Order of Divorce ("Virginia Divorce Decree"). The Virginia court awarded a judgment for dissolution of the marriage, divided some marital assets, and ordered Carla to pay Christopher approximately $170,000.00. Thereafter, on August 27, 2012, Christopher filed a Motion to Dismiss Carla's divorce complaint in the court below. On September 12, 2012, at a hearing on a pendente motion for fees, the trial court denied Christopher's motion to dismiss, citing to the lack of certification from the Virginia court of the authenticity of the Virginia Divorce Decree.

[3] In the same hearing, the trial court also orally awarded Carla $10,000.00 in suit money. The trial court initially ordered "an immediate deposit from [Christopher] toward child support

[1] Associate Justice Robert J. Torres, as the senior member of the panel, was designated Presiding Justice.

arrears in the amount of $10,000.00 to the Court's accounts." Transcripts ("Tr.") at 27 (Scheduling Conf.; Mot. Contempt, Sept. 12, 2012). Christopher's counsel informed the court that Christopher made some child support payments and the arrears would not be "anywhere near $10,000.00." *Id.* at 27-29. Following the discussion, the trial court said, "I will order spousal support and suit money in the amount of $10,000.00 . . . ." *Id.* at 33. A few moments later the court reiterated that "the ten thousand that is being deposited . . . is the suit money. . . . Not child support." *Id.* at 34.

[4] Christopher's counsel received a certified copy of the Virginia Divorce Decree on September 24, 2012, and filed it with the trial court on the same day. Record on Appeal ("RA"), tab 75, Ex. A (Decl. Ron Moroni Supp. Submission for J., Sept. 24, 2012). Shortly thereafter, Christopher filed a Renewed Motion to Dismiss for lack of subject matter jurisdiction based on the decree. On March 22, 2013, the motion was heard, and the matter was taken under advisement. Trial was set for May 20, 2013.

[5] Meanwhile, Christopher appealed the award of $10,000.00 for suit money. In his original Statement of Issues, Christopher cited six issues he intended to raise on appeal, including challenges to personal and subject matter jurisdiction. Carla filed a Motion to Dismiss, and we ordered that Christopher could not appeal the award of child support, but could appeal the award of suit money. *Stahl v. Stahl*, CVA12-032 (Order at 9 (Nov. 28, 2012)). Christopher filed an Amended Statement of Jurisdiction, stating that "this appeal is now only from the Order requiring [Christopher] to Pay Support and Suit Money to [Carla] issued orally on September 12, 2012 . . . ." *Stahl v. Stahl*, CVA12-032 (Am. Statement of Jurisdiction at 1 (Nov. 30, 2012)).

II. JURISDICTION

[6] This court has jurisdiction over appeals from a final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-47 (2013)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[7] We review *de novo* whether the trial court lacked subject matter jurisdiction over a case. *See Agana Beach Condo. Homeowners' Ass'n v. Mafnas*, 2013 Guam 9 ¶ 11 (reviewing *de novo* trial court's dismissal for lack of subject matter jurisdiction).

[8] We review a trial court's award of attorney's fees for an abuse of discretion. *Cruz v. Cruz*, 2005 Guam 3 ¶ 8 (citing *Fleming v. Quiglev*, 2003 Guam 4 ¶ 14). "'A trial court abuses its discretion when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision.'" *People v. Singeo*, 2012 Guam 27 ¶ 8 (quoting *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 27). "A decision by the trial court will not be reversed unless we are left with 'a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors.'" *Id.* (quoting *Duenas v. Brady*, 2008 Guam 27 ¶ 9).

IV. ANALYSIS

A. Subject Matter Jurisdiction

[9] Christopher argues the Virginia Divorce Decree divests the trial court of jurisdiction over the divorce proceeding. Appellant's Br. at 12 (Dec. 31, 2012). Additionally, he stresses that under the Full Faith and Credit Clause of the United States Constitution, res judicata attaches to a sister state judgment. *Id.* at 14 (quoting *In re Forchion*, 130 Cal. Rptr. 3d 690, 713 (Ct. App.

2011)). Therefore, he contends, Guam has to respect the Virginia Divorce Decree, which divests the trial court of subject matter jurisdiction. *See id.*

[10] Carla argues that her complaint was filed in Guam months before Christopher's complaint was filed in Virginia, and therefore her complaint should proceed to be heard on its merits. Appellee's Br. at 8 (Feb. 8, 2013). Carla cites to cases which have generally held that the pendency of an out-of-state divorce action does not deprive a trial court of jurisdiction over a case between the same parties for the same cause of action. *Id.* at 8-9 (quoting *Mulvey v. Mulvey*, 228 P.2d 452, 455-56 (Colo. 1951); *Carron v. Carron*, 631 S.W.2d 660, 661 (Mo. Ct. App. 1982); *Cotton v. Cotton*, 623 S.W.2d 540, 542 (Ark. Ct. App. 1981); *Markofsky v. Markofsky*, 384 So. 2d 38, 39 (Fla. Dist. Ct. App. 1980); *Haymond v. Haymond*, 377 N.E.2d 563, 568 (Ill. App. Ct. 1978)).

[11] Carla further relies on in *In re Marriage of Gray*, wherein the court stated, "The rule of jurisdictional priority is one of discretionary policy and does not necessarily control where countervailing policies apply." 251 Cal. Rptr. 846, 851 (Ct. App. 1988).

[12] The cases cited make clear that Carla's divorce action in Guam does not bar the Virginia court from having jurisdiction in Christopher's divorce action. The Guam and Virginia cases can proceed simultaneously because the pendency of the Guam action does not deprive Virginia of jurisdiction. *See, e.g., In re Marriage of Quay*, 647 P.2d 693, 694 (Colo. App. 1982) (citing *Mulvey*, 228 P.2d 452). Further, jurisdictional priority is discretionary, so courts may decide to proceed or stay an action based on their own preferences and the facts of the case. *In re Marriage of Gray*, 251 Cal. Rptr. at 851; *see also Speicher v. Speicher*, 2013 Guam 11 ¶¶ 21-23 (recognizing discretionary nature of "first to file" rule). Therefore, Carla's contention that Guam

has priority over Virginia simply because Carla's complaint for divorce was filed first is misplaced. We now turn to Christopher's arguments.

1. Jurisdiction Over the Divorce

[13] Christopher first reasons that a marriage is required in order for a court to grant a divorce. Appellant's Br. at 14. In *Borg v. Borg*, the California District Court of Appeal, relying on California Supreme Court precedent, held:

> An action for divorce under our system is a suit in equity. In so far as the action relates to the marriage relation and the termination of the marriage status, it is a proceeding *in rem*. Since the purpose of the action is to judicially declare a dissolution of the marital relation, . . . a prerequisite of the judgment of dissolution is a finding establishing the matrimonial relation; i.e., the existence of the *res*.

76 P.2d 218, 220 (Cal. Dist. Ct. App. 1938) (emphases added) (citations omitted). Thus, a valid marriage relationship is a jurisdictional prerequisite for divorce. *Perrenoud v. Perrenoud*, 480 P.2d 749, 757 (Kan. 1971) ("Without the existence of a valid marriage, there is no occasion for granting a divorce.").

[14] Where a marriage has been dissolved by a valid final decree of divorce issued by another state court, a valid marriage no longer exists, thus depriving a sister court of jurisdiction over a divorce action involving the same parties and the same marriage. *See In re Marriage of Quay*, 647 P.2d at 694 ("[A] final decree of divorce in a foreign state constitutes a bar to a divorce action in [this state]." (citing *Mulvey*, 228 P.2d 452)). The validity of the foreign decree of divorce is presumed, and the burden is on the challenger to show that the decree is invalid. *Mumma v. Mumma*, 194 P.2d 24, 26 (Cal. Dist. Ct. App. 1948) ("[T]he foreign decree, regular on its face, is entitled to a presumption of validity, and the burden is upon the party attacking it."

(citing *Delanoy v. Delanoy*, 13 P.2d 719, 723 (Cal. 1932); *Plante v. Plante*, 128 P.2d 787, 791 (Cal. Dist. Ct. App. 1942))).

[15] A Final Order of Divorce was granted by the Virginia court in July 2012. This order dissolved the marital relationship—the *res*—and distributed some of the marital assets and assigned some of the debts. RA, tab 75, Ex. A (Decl. Ron Moroni Supp. Submission for J.). A marriage being a prerequisite for a divorce action, the court below no longer has jurisdiction to award a divorce in this case because no marital relationship exists between the parties, provided Guam has a duty to recognize the Virginia Divorce Decree as valid.

[16] It seems reasonably clear that if the Virginia Divorce Decree is valid, the trial court lacks subject matter jurisdiction, which requires the dismissal of the action for *dissolution of the marital relationship*. If the decree divested the trial court of jurisdiction over the dissolution of the marital relationship, it may have deprived the court of jurisdiction over the attorney's fees award as well. Prior to that determination, however, we will discuss the Full Faith and Credit Clause, the fundamental principle of U.S. law by which states are required to recognize judgments from other states.

2. Full Faith and Credit Clause

[17] The United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV, § 1. To that end, 28 U.S.C.A. § 1738, after providing the mode by which the Acts, records, and proceedings of each state shall be authenticated, declares:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C.A. § 1738 (Westlaw current through Pub. L. 113-47 (2013)); *see also* 6 GCA § 4214 (2005) ("The effect of a judicial record of a state, territory, commonwealth, possession or trust territory of the United States and the District of Columbia is the same in Guam as in the place where it was made . . . .").

[18] Accordingly, "the judgment of a state court should have the same[] credit, validity, and effect in every other court in the United States, which it had in the state where it was pronounced." *Brinker v. Superior Court*, 1 Cal. Rptr. 2d 358, 360 (Ct. App. 1991) (quoting *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 270 (1980)) (internal quotation marks omitted). "The judgment of a sister state must be given full faith and credit if that sister state had jurisdiction over the parties and the subject matter, and all interested parties were given reasonable notice and opportunity to be heard." *Id.*

[19] Relating to this broader principle of full faith and credit:

> [A] judgment will not be recognized or enforced in other states insofar as it is not a final determination under the local law of the state of rendition. Since a judgment will not have the force of res judicata as to issues that remain subject to final determination, a state is not required by the full faith and credit clause to recognize or enforce a judgment rendered in a sister state insofar as the judgment is not a final determination.

Thorley v. Superior Court, 144 Cal. Rptr. 557, 561 (Ct. App. 1978) (citations and internal quotation marks omitted).

[20] We must initially determine whether the Virginia Divorce Decree was a final judgment for the purpose of full faith and credit. Carla has filed at least one motion in Virginia to contest the decree, RA, tab 105, Ex. A (Pl.'s Decl. Opp'n to Def.'s Mot. Dismiss, Jan. 4, 2013)

(attaching Motion to Set Aside Final Order of Divorce filed in Virginia court), and has also filed a Notice of Intent to Appeal the decree.[2]

[21] "The local law of the state of rendition determines whether or not a judgment is final . . . . As between States of the United States, application of the local law of the State of rendition to determine whether a judgment is final is required by the Constitution." Restatement (Second) of Conflict of Laws § 107 cmt. c (1971). Therefore, in order to determine if a possible appeal prevents the trial court from recognizing the Virginia Divorce Decree, we turn to Virginia law.

[22] According to the Supreme Court of Virginia, "Generally, a party appealing an ordinary judgment is entitled to have the execution of the judgment suspended pending an appeal upon the filing of a sufficient appeal bond or irrevocable letter of credit." *Reid v. Reid*, 429 S.E.2d 208, 211 (Va. 1993) (citing Va. Code Ann. § 8.01-676.1(C)). The Virginia Code provides, in relevant part:

> Security for suspension of execution.--An appellant who wishes execution of the judgment or award from which an appeal is sought to be suspended during the appeal shall . . . file an appeal bond or irrevocable letter of credit conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension, and . . . execution shall be suspended upon the filing of such security and the timely prosecution of such appeal.

Va. Code Ann. § 8.01-676.1(C) (Westlaw current through end of 2013 Reg. Sess. and end of 2013 Sp. Sess. I.).

[23] In the matter before us, no evidence was presented to either the trial court or to this court to show that enforcement of the Virginia Divorce Decree was stayed by the filing of a

[2] Counsel for Christopher represented at oral argument that on October 19, 2012, Carla filed a Motion to Set Aside Final Order of Divorce. Digital Recording at 15:15 (Oral Argument, May 20, 2013). He also stated that the motion was denied by the Virginia court on December 20, 2012. *Id.* Finally, he said that on April 2, 2013, Carla filed a Notice of Intent to Appeal. *Id.* Apart from the information provided at oral argument, no further information or evidence regarding any motions or appeal by Carla has been filed with this court.

satisfactory appeal bond or irrevocable letter of credit pursuant to section 8.01-676.1(C). Moreover, save for the statements made by Christopher's counsel during oral argument that Carla filed a Notice of Intent to Appeal in the Virginia court, we do not know whether an appeal is actually pending in that state. Presumably, absent a pending appeal and the filing of a bond or irrevocable letter of credit to stay execution, the divorce decree was subject to immediate enforcement under Virginia law. Because the Virginia Divorce Decree was final for purposes of execution in the state of rendition, it could be regarded no less than final in Guam.

[24] Carla also challenges the validity of the Virginia Divorce Decree, arguing that the decree is not entitled to full faith and credit because it was obtained in proceedings which deprived her of due process. At the September 12 hearing before the trial court, Carla's counsel represented that the decree is in error because Carla never appeared. Tr. at 8 (Scheduling Conf.; Mot. Contempt, Sept. 12, 2012). Counsel also stated that Carla admitted to submitting a motion to dismiss, but that she did so under the impression that she was not "appearing" for jurisdictional purposes.[3] *Id.* Moreover, Carla alleged that she "was not present, or even notified, of the hearing and trial" in the Virginia proceedings, RA, tab 105 at 2 (Pl.'s Decl. Opp'n to Def.'s Mot. Dismiss), and only learned of the final divorce through her Guam attorney, RA, tab 105, Ex. A at 3-4 (Pl.'s Decl. Opp'n to Def.'s Mot. Dismiss).

[25] In *Thorley*, the court indicated:

> Upon a claim that a foreign judgment is not entitled to full faith and credit, inquiry into the legality of proceedings in a court of a sister state is narrowly circumscribed by case law. The permissible scope of inquiry upon such a party is limited to whether the court of rendition has "fundamental" jurisdiction. In other words, a judgment entered by one state must be recognized by another state if the

[3] Counsel further stated, "[Carla] was never given any notice of the further proceedings in the Virginia court after her motion to dismiss was denied." Tr. at 8 (Scheduling Conf.; Mot. for Contempt, Sept. 12, 2012).

> state of rendition had jurisdiction over the parties and the subject matter and all interested parties were given reasonable notice and an opportunity to be heard.

144 Cal. Rptr. at 562 (citations omitted).

[26] Similarly, in *Durfee v. Duke*, the U.S. Supreme Court stated:

> [W]hile it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

375 U.S. 106, 111 (1963).

[27] As we explained earlier, the validity of the Virginia Divorce Decree is presumed, and the burden is on the challenger—Carla—to show the decree is invalid. *Delanoy*, 13 P.2d at 723. Carla's due process arguments, while troubling, if true, cannot provide her the relief she seeks. Christopher points out that the Virginia Divorce Decree declares that Carla filed a Demurrer and a Motion to Dismiss. Indeed, the Virginia Divorce Decree states:

> THIS CAUSE came on this day to be heard upon the Complaint for Divorce filed herein; upon proper service of process on [Carla]; upon a Demurrer to Complaint having been filed; upon said Demurrer having been overruled; upon a Motion to Dismiss being filed which was likewise overruled; upon no subsequent pleadings having been filed; upon hearing *ore* tenus testimony of [Christopher] and his witness before this Court on July 17, 2012 . . . .

RA, tab 75, Ex. A at 1 (Decl. Ron Moroni Supp. Submission for J.). Section 8.01-277.1 of the Virginia Code provides that "a person waives any objection to personal jurisdiction . . . if he engages in conduct related to adjudicating the merits of the case, including, but not limited to: 1. Filing a demurrer . . . ." Va. Code Ann. § 8.01-277.1(A)(1) (Westlaw current through end of 2013 Reg. Sess. and end of 2013 Sp. Sess. I.). While arguably a demurrer for want of

jurisdiction would not be related to adjudicating the merits of the case, we are unable to determine on the record before us whether want of jurisdiction was indeed the basis of Carla's demurrer or motion to dismiss.[4] As such, we presume the Virginia court determined that her demurrer did not meet any exceptions to section 8.01-277.1 and that the court was satisfied that it had jurisdiction over her person. Thus, we will not deny recognition of the Virginia Divorce Decree on the basis of lack of personal jurisdiction.

[28] While it is unclear whether the Virginia court's finding of proper service on Carla pertained to service of Christopher's Complaint for Divorce, service of notice of the July 17, 2012 hearing, or both, we presume the Virginia court was satisfied that Carla was properly notified of the July hearing. Even if Carla's contentions about lack of notice of the July hearing are true, the record before us does not provide a sufficient basis for overcoming the presumption of validity of the Virginia Divorce Decree. The documents Carla filed with this court do not provide compelling enough evidence of a due process violation; thus, we are not in a position to deny giving full faith and credit to the Virginia Divorce Decree on that basis.[5]

[29] Giving full faith and credit to the Virginia Divorce Decree, we find the Virginia Divorce Decree divested the trial court of subject matter jurisdiction over the dissolution of the marital relationship on July 17, 2012. We now turn to the issue of the effect of this divestiture of jurisdiction on the trial court's actions subsequent to July 17, 2012.

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[4] We are unable to find a copy of Carla's demurrer or motion to dismiss in the record on appeal, and Carla does not point to where in the record they may be found.

[5] Moreover, as we have recently recognized, a marriage can be dissolved even without the participation of one of the spouses, *see Speicher*, 2013 Guam 11 ¶ 16 (citing *Estin v. Estin*, 334 U.S. 541, 542-43, 549 (1948)), thus undercutting Carla's argument that the Virginia divorce should not be recognized as valid because she was purportedly denied due process of law.

B. Effect of Virginia Divorce Decree on Proceedings Below

1. When the Judgment is Recognized

[30] We must first determine when the Virginia Divorce Decree should be recognized by Guam courts: when the judgment is issued by Virginia or when the judgment is proved in Guam. If the judgment is not given effect until after it is sufficiently proven to the trial court, then the court would still have had jurisdiction on September 12, 2012, when it granted Carla an award for suit money.[6] However, if the decree should be given effect at the time it was issued in July 2012, then the trial court no longer had jurisdiction over the dissolution action in September 2012.

[31] Title 28 U.S.C.A. § 1738 outlines the method by which records and judicial proceedings of state courts are authenticated for purposes of full faith and credit:

> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States

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[6] At that time, the trial court denied Christopher's motion to dismiss (on the grounds of the Virginia divorce), expressing concerns over the decree's authenticity. Addressing Christopher's counsel, the court stated,

> You've not presented me any . . . true certified copies that a divorce [in Virginia] has been entered.
>
> . . . .
>
> I've tried to give this as much caution that I can in trying to be deferential to the Virginia court. On its face, the Virginia documents do not appear to be fully processed or even appropriately processed [by] the Court's understanding of how the courts normally work. I do not have a certified copy attached. I do not have a stamp filing of the actual documents before the Court so the Court is going to, for purposes today, deny the motion to dismiss that has been filed without further argument because I do not have sufficient information in front of me based on that motion or even the attachments thereto to support the argument.

See Tr. at 31-33 (Scheduling Conf.; Mot. Contempt, Sept. 12, 2012).

> and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C.A. § 1738.

[32] On September 24, 2012, Christopher's counsel filed with the trial court a copy of a Certification of an Official Record ("Certification") from the Virginia court. RA, tab 75, Ex. A (Decl. Ron Moroni Supp. Submission for J.). The Certification was dated September 18, 2012, and included the clerk's attestation and judge's certification of the July 17, 2012 Virginia Divorce Decree, as well as a copy of the decree itself.[7] *Id.* Along with this Certification, counsel filed a declaration in which he informed the trial court that the document he was filing was a true and correct photocopy of the actual Certification; that he was keeping the original document "so that it may be introduced properly in the trial of this matter, or any prior hearing"; that, in the Certification in his possession, raised seals accompanied both the clerk's signature and the judge's signature; and that the Certification in his possession "appears to contain the original ink signatures of both the clerk and the judge." RA, tab 75 at 1-2 (Decl. Ron Moroni Supp. Submission for J.).

[33] We are satisfied that the Certification filed by Christopher satisfies the authentication requirements of section 1738, thereby entitling the Virginia Divorce Decree to full faith and credit in Guam's courts. The question which remains is the effect of the decree on the proceedings below. We determine the answer to be that the authenticated decree required the trial court to recognize the parties as having been divorced as of July 17, 2012.

[7] In addition to the clerk's attestation and judge's certification, the following language appears at the bottom of the document: "**Clerk of Other Courts:** The above attestation, the affixing of the Court's seal, and the certificate meet the requirements of 28 U.S.C. § 1738, entitling the record so attested and certified to full faith and credit." RA, tab 75, Ex. A (Decl. Ron Moroni Supp. Submission for J.).

[34] Both section 1738 and Guam law require that the Virginia Divorce Decree be given the same credit and effect it would have in Virginia. *See* 28 U.S.C.A. § 1738 ("Such Acts, records and judicial proceedings or copies thereof, so authenticated, *shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts . . . from which they are taken.*" (emphasis added)); 6 GCA § 4214 ("The effect of a judicial record of a state . . . *is the same in Guam as in the place where it was made* . . . ." (emphasis added)).

[35] Under a plain reading of these statutes, the Virginia Divorce Decree effectively rendered the parties as divorced in Guam on July 17, 2012. This is so even though the decree was not authenticated until September 2012. Clearly, on July 17, 2012, and thereafter, the courts of Virginia would consider the parties' marriage to be dissolved. Thus, affording full faith and credit to the decree and giving it the same effect in Guam as it would have in Virginia, the courts of Guam must recognize the parties' marriage as dissolved on July 17, 2012. Consequently, the trial court was deprived of subject matter jurisdiction over the dissolution of the marriage as of that date. We now turn to the issue of whether the divestment of the trial court's jurisdiction over the dissolution precluded the court from entering its September 12, 2012 order for suit money.

2. Order for Suit Money

[36] Guam law permits one spouse to receive alimony or support from the other in order to provide support for himself or herself and his or her children, or to fund the litigation of the divorce action. Title 19 GCA § 8402 provides:

> *When an action for dissolution of marriage is pending*, the court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony

> any money necessary to enable the wife, or husband, to support herself and her children, or to support himself and his children, or prosecute or defend the action.

19 GCA § 8402 (2005). "Section 8402 is based on former California Civil Code [section] 137, and thus California cases interpreting section 137 are persuasive." *Cruz*, 2005 Guam 3 ¶ 9.

[37] On September 12, 2012, the trial court ordered Christopher to pay to Carla "spousal support and suit money in the amount of $10,000.00." Tr. at 33 (Scheduling Conf.; Mot. Contempt, Sept. 12, 2012). A few moments later, the court stated that "the ten thousand that is being deposited . . . is the suit money . . . ." *Id.* at 34.

[38] Christopher argues the trial court lacked jurisdiction to make this award because at the time of the award, the parties were already divorced under the Virginia Divorce Decree. Appellant's Br. at 12, 15. He cites to numerous cases from other jurisdictions for the proposition that a valid marriage is necessary for the trial court to make such an award. *Id.* at 16-17 (citing *Pickren v. Pickren*, 10 S.E.2d 40 (Ga. 1940); *Ceyte v. Ceyte*, 278 S.E.2d 791, 792 (Va. 1981); *Holmes v. Holmes*, 204 N.Y.S.2d 456 (Sup. Ct. 1960); *Wilson v. Wilson*, 590 A.2d 579 (Md. Ct. Spec. App. 1991); *Harrison v. Harrison*, 133 A.2d 870 (Pa. Super. Ct. 1957); *Bouchard v. Bouchard*, 382 A.2d 810, 814 (R.I. 1978); *Ex parte Threet*, 333 S.W.2d 361 (Tex. 1960); *Colbert v. Colbert*, 169 P.2d 633, 635 (Cal. 1946) (en banc); *Dietrich v. Dietrich*, 261 P.2d 269, 271-73 (Cal. 1953) (en banc)).

[39] California case law reinforces Christopher's position. "The existence of the marriage is a jurisdictional prerequisite for the right of the court to order support, costs, and counsel fees pendente lite in an action for divorce or separate maintenance." *Colbert*, 169 P.2d at 635. "[T]he invalidity of the marriage, as is true of any jurisdictional prerequisite, may be shown at any time." *Id.*

[40] In *Carter v. Carter*, the defendant appealed from an order for payment to plaintiff's attorney of attorney's fees and costs. 13 Cal. Rptr. 922, 923 (Dist. Ct. App. 1961). In *Dietrich*, wife brought an action for separate maintenance against her alleged husband. 261 P.2d at 270. In his answer, the husband admitted a "purported marriage ceremony," but claimed that there was no valid marriage because at the time of the ceremony the wife was married to another man. *Id.* In *Colbert*, wife asserted that the decree of divorce was obtained with the understanding that the parties would continue as husband and wife. 169 P.2d at 635.

[41] In each of these cases, the court found the existence of the marriage is a prerequisite for the court to have the ability to order support. The facts of each case determined whether or not support was awarded. In *Carter*, no support or attorney's fees were granted because the court found no real marriage. 13 Cal. Rptr. at 924-27. In *Colbert*, the wife was granted support, fees, and costs because even after the divorce, both parties held themselves out to the public as being married. 169 P.2d at 635. The divorce was merely a formality in order to keep their jobs, so the court found sufficient proof of marriage to support an award. *Id.*

[42] The California cases are clear that the existence of a marriage is necessary for the court to award suit money. Therefore, the lack of a marital relationship from a divestiture of jurisdiction prevented the trial court from properly granting the award in this case. That being said, the trial court's order is unclear as to whether the suit money award was for past expenses incurred by Carla in prosecuting the action or for future litigation expenses, both of which, as we discuss below, are generally allowed under 19 GCA § 8402.

[43] In *Cruz*, husband and wife were divorced in March 2003. 2005 Guam 3 ¶ 3. In November 2003, the trial entered an order requiring husband to pay wife's reasonable attorney's

fees in bringing the divorce action. *Id.* ¶¶ 3-6. On appeal, this court recognized the attorney's fee award as being made pursuant to 19 GCA § 8402. *Id.* ¶ 9.

[44] Although husband in *Cruz* did not appeal the attorney's fee award on the basis of it being granted post-divorce, this court, in addressing wife's cross-appeal request for attorney's fees incurred on appeal, held that even appellate fees were allowable under section 8402. *Id.* ¶¶ 17-20. Referring to the language in section 8402 permitting an award of fees "[w]hen an action for dissolution of marriage is *pending*," *id.* ¶ 17 (quoting 19 GCA § 8402 (2001)), the court determined that the period in which a divorce action is "pending" includes the time the case is on appeal, *id.* ¶¶ 17-20. This holding was based on the court's reading of 7 GCA § 26707, which continues to provide: "An action is deemed pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed . . . ." 7 GCA § 26707 (2005). Relying on California case law interpreting former California Civil Code section 137 and California Civil Procedure Code section 1049, from which 19 GCA § 8402 and 7 GCA § 26707 are respectively derived, this court held that the fees allowable under section 8402 included those incurred on appeal. *Cruz*, 2003 Guam 3 ¶¶ 18-20.

[45] In light of our analysis in *Cruz*, we determine that the trial court here could award to Carla the fees and expenses she incurred in prosecuting the dissolution action during its pendency, i.e., prior to the parties' divorce on July 17, 2012. Because the trial court's September 12, 2012 order is unclear as to whether the suit money award was for past expenses incurred by Carla or for future litigation expenses, we reverse the award insofar as it may have been intended for future litigation of the dissolution matter, as the dissolution issue was no longer pending as of

July 17, 2012.[8] However, we allow the trial court on remand to clarify whether any part of its award of suit money was intended to cover Carla's litigation expenses prior to July 17, 2012, and, if so, to make any necessary recalculations to its award given our holding that suit money for the dissolution action is limited to the period prior to the parties' divorce on July 17, 2012.

[46] As for Christopher's arguments that the trial court abused its discretion in making the suit money award without first holding an evidentiary hearing to determine Carla's living expenses and Christopher's ability to pay her any suit money, Appellant's Br. at 9-11, in the trial court's written order regarding the suit money, the court specifically found "that an award of temporary fees to prosecute this action is appropriate in this case based on (1) the circumstances of the parties, (2) the necessities of the parties, (3) [Christopher]'s financial ability[,] and (4) the lack of resources currently available to [Carla]." RA, tab 88 at 1 (Finds. & Order Re: Mot. Fees & Supp., Oct. 11, 2012) (citing *Cruz*, 2005 Guam 3).

[47] A trial court abuses its discretion where the record contains no evidence on which the court could have rationally based its decision. *Singeo*, 2012 Guam 27 ¶ 8 (quoting *Town House*, 2003 Guam 6 ¶ 27). Such is not the case here. The trial court had before it evidence regarding the parties' income and expenses, including a sworn declaration from Carla detailing her living expenses as well as the costs she incurred for prosecuting her divorce action. RA, tab 57 (Pl.'s Decl. Supp. Mot. Supp. & Fees; Mot. Contempt Order for Failure to Pay Child Supp.). Given this evidence, we are not left with a definite and firm conviction that the trial court committed a

[8] In Carla's declaration in support of her motion for support and fees, she alleges the litigation expenses she incurred from the time of her complaint in 2010 to the time of her declaration, claiming "attorney's fees due and owing to my counsel in excess of $13,000.00 . . . ." RA, tab 57 at 3 (Pl.'s Decl. Supp. Mot. Supp. & Fees; Mot. Contempt Order for Failure to Pay Child Supp., May 25, 2012). In addition to this amount for past expenses, she asked the court to award her a monthly amount of $1,000.00 "for the continued prosecution of my Complaint." *Id.* at 3-4.

clear error of judgment. However, as the matter is being remanded to the trial court, should the court clarify that any part of its order for suit money was intended to cover litigation expenses prior to July 17, 2012, the court should also make clear the evidence on which it based this award.[9]

V. CONCLUSION

[48] We hold the Virginia Divorce Decree divested the trial court of subject matter jurisdiction over the dissolution of the marital relationship on July 17, 2012. As such, we **REVERSE** the trial court's September 12, 2012 order for Christopher to pay suit money to Carla, as it may have awarded fees for a period after the marriage was dissolved by the Virginia Divorce Decree. We **REMAND** for the trial court to clarify whether any part of its suit money award was intended for expenses incurred prior to July 17, 2012, and, if so, to recalculate its award if necessary.

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[9] The Virginia Divorce Decree claims jurisdiction over child custody matters, although the Virginia court determined that those issues were not presently before it for adjudication. It appears that Guam may have jurisdiction over the child custody dispute if Guam is the home state of the children, under the Uniform Child-Custody Jurisdiction and Enforcement Act ("UCCJEA"), which has been adopted in both Virginia and Guam. *Compare* Va. Code Ann. § 20-146.1 (West 2013) ("'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding."), *with* 7 GCA § 39102(g) (2005) ("*'Home State'* means the State or Territory in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child-custody proceeding.").

If Guam is the home state for child custody matters and has exclusive and continuing jurisdiction over child custody matters, the trial court may have other avenues in which to provide child support or fees. Title 19 GCA § 8402 permits payment of money only when an action for dissolution of marriage is pending, but if the UCCJEA provides Guam with jurisdiction, costs, fees, and expenses may be awarded to the prevailing party under 7 GCA § 39312, and support may be awarded under 5 GCA § 35101 *et seq.*

[49] The trial court shall also dismiss the claim seeking dissolution of the marital relationship, because the parties are already divorced. The trial court may proceed with determining its ongoing jurisdiction in the child custody and support issues in light of the Virginia Divorce Decree. Finally, each side will bear his or her own fees and costs for this appeal.

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: John A. Manglona
JOHN A. MANGLONA
Justice *Pro Tempore*

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Presiding Justice