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**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH**

Mohammed Zawahiri,

Case No. 07 DR-02-756

Plaintiff,

Judge Preise

v.

ON COMPUTER 5

Magistrate Bosques Milliken

Raghad Z. Alwattar,

Defendant.

JUDGMENT ENTRY/DECREE OF DIVORCE

This cause came on for trial on August 2 and 6, 2007 on the complaint for divorce filed by Plaintiff, Mohammed Zawahiri, and the answer and counterclaim filed by Defendant, Raghad Alwattar. Each party was represented by counsel: James Adair, III for Mohammed Zawahiri and Noure Alo for Raghad Alwattar. Both parties filed closing arguments on August 31, 2007.

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JURISDICTION

The court finds each party has been a resident of the State of Ohio for more than six months preceding the filing of the complaint and counterclaim. The court further finds each party has been a resident of Franklin County for more than ninety days preceding the filing of the complaint and counterclaim. Therefore, the court finds it has jurisdiction over the subject matter and the parties to the action.

GROUND

Incompatibility was alleged by both parties, and both parties testified they are incompatible. The court ORDERS that Mohammed and Raghad are each granted a divorce on the grounds of incompatibility. The bonds of matrimony are terminated and each party is released from the obligations thereof.

BACKGROUND

The parties met in late December 2005 or January 2006, after Raghad's mother received a phone call from Mohammed's mother, who informed her that Mohammed was interested in meeting and marrying Raghad. Following their meeting, Mohammed and his mother were very eager to know whether Raghad would agree to marry Mohammed. Approximately one month later, Raghad accepted the proposal. On January 27, 2006, Mohammed and Raghad obtained an Ohio Marriage License. On February 2, 2006, Mohammed and his brother went to Raghad's parents' house for the solemnization of the marriage and the signing of an Islamic marriage contract. Shortly before the ceremony was to begin, it was discovered that the dowry terms of the Islamic marriage contract were not completed. Raghad's father and Mohammed, with some input from other guests, reached an agreement as to the terms, and the contract was signed by both parties. According to the agreement, the mahr (or dowry) was to be paid "as agreed" or the advanced portion and \$25,000 as the postponed portion. See Plaintiff's Exhibit 2.

Shortly after the marriage ceremony, the relationship between Raghad and Mohammed began to deteriorate. Raghad felt that Mohammed was cold and stubborn. He would not compromise with her and often blamed her for things that did not go well, such as his failing the medical board exams and getting sick. While Raghad wanted to work to improve their relationship, Mohammed did not. One day before they were to attend an immigration interview, Mohammed called Raghad's father and told him he wanted a divorce. Subsequently, Raghad formed the opinion that Mohammed's motivation in marrying her was to obtain permanent residency, or a Greencard, in the United States. She attached affidavits to her answer and counterclaim as Exhibit D from members of the community who stated their belief that Mohammed was interested in gaining a Greencard through marriage to an American citizen.

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Raghad was twenty years old at the time of the hearing. She was born in Columbus, Ohio and has lived in Dublin, Ohio for her entire life. She is a senior at The Ohio State University and anticipates graduating in December 2007. Mohammed was twenty-nine years old at the time of the hearing. He immigrated to the United States from Syria on May 2, 2005. He is not an American citizen and was scheduled for a deportation hearing on September 13, 2007. Mohammed received a medical degree in Syria but was not able to practice medicine in the United States because he did not have a medical license.

Raghad and Mohammed never lived together and did not acquire any significant marital assets or debts during the marriage. In addition, no children were born as issue of the marriage. Neither party was employed at the time of the trial. The primary issue contested at trial concerned the enforceability of the Islamic marriage contract as an antenuptial agreement under Ohio law.

DURATION OF MARRIAGE

The parties were married on February 2, 2006. The complaint for divorce was filed on February 26, 2007. A request for a de facto termination date was not made. Therefore, the duration of the marriage is from the date of marriage through the date of the final hearing (August 2, 2007), approximately eighteen months.

DIVISION OF PROPERTY

In a divorce, the court is required to divide the marital and separate property equitably. R.C. 3105.171(B). The division of marital property must be equal, unless the court finds an equal division would be inequitable. R.C. 3105.171(C)(1). For the purpose of property division, each spouse is "considered to have contributed equally to the production and acquisition of marital property." R.C. 3105.171(C)(2).

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Marital Assets and Debts

The parties did not live together and did not acquire any marital assets or debts during the marriage. Both agreed that the financial affidavits filed on February 26, 2007 and April 2, 2007, are accurate representations of their assets and liabilities. See Plaintiff's Exhibit 1 and 3. Having considered the duration of the marriage and the failure of the parties to reside together during the marriage, as well as the other factors of R.C. 3105.171(F), this court finds an equal division would be inequitable. Each party shall retain the assets in his or her possession free and clear of any claim by the other party. Each party shall also pay and hold the other harmless on any debts or liabilities held in his or her name. The court finds this division equitable.

Enforceability of Islamic Marriage Contract

Raghad argues that the Islamic marriage contract should be enforced as an antenuptial agreement. Mohammed counters that the Islamic marriage contract cannot be enforced because to do so would be a violation of the First Amendment of the United States Constitution and the Ohio Constitution. Mohammed relies upon *Steinberg v. Steinberg* (June 24, 1982), 8th Dist. No. 44125 for support. In that case, the Eighth District Court of Appeals affirmed the trial court's decision to vacate as void an entry attempting to coerce compliance with a separation agreement provision which required the former spouses to cooperate in the process of getting a Get ("a ritual signif[ying] a divorce according to the tenets of Orthodox Jewish law."). *Id.* Relying on Article I, §7 of the Ohio Constitution, the Court held that provisions requiring compliance with a religious practice are unenforceable either as a contractual obligation or as a court-imposed obligation of a decree. *Steinberg v. Steinberg* (June 24, 1982), 8th Dist. No. 44125.

At an initial glance, the mahr provision in the parties' Islamic marriage contract requiring the payment of a sum of money seems less like a religious act than the participation in a religious

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divorce ceremony; however, because the obligation to pay \$25,000 is rooted in a religious practice, it is similarly a religious act. Both Raghad and Dr. Tarazi, the Imam who performed the wedding ceremony, testified that the mahr is a necessary element of a valid Islamic marriage. While courts in other states have enforced mahr or dowry provisions in Islamic marriage contracts, no case in Ohio holding similarly can be found. See *Odatalla v. Odatalla* (2002), 355 N.J. Super. 305, 313-314, 810 A.2d 93; *Aziz v. Aziz* (1985), 127 Misc.2d 1013, 1013-1014, 488 N.Y.S.2d 123; *Akileh v. Elchahal* (1996), 666 So.2d 246, 249; *Chaudry v. Chaudry* (1978), 159 N.J. Super. 566, 577-578, 388 A.2d 1000.

Furthermore, even if enforcement was not prohibited on constitutional grounds, the Islamic marriage contract fails to meet the requirements of a valid antenuptial agreement. In *Gross v. Gross*, the Ohio Supreme Court established the following requirements for a valid antenuptial agreement: (1) the agreement was “entered into freely without fraud, duress, coercion, or overreaching;” (2) prior to signing the agreement, “there was full disclosure or knowledge and understanding of the nature, value and extent of the prospective spouse’s property;” and (3) the agreement’s terms “do not promote or encourage divorce or postponing by divorce.” *Gross v. Gross* (1984), 11 Ohio St.3d 99, 464 N.E.2d 500, at paragraph 2 of syllabus. With respect to the first element, a presumption of coercion or overreaching is created when the agreement is presented close in time to the ceremony and postponing the ceremony would cause significant hardship, embarrassment or emotional distress. *Azarova v. Schmitt*, 1st Dist. No. C-060090, 2007-Ohio-653, at ¶24; *Fletcher v. Fletcher* (1994), 68 Ohio St.3d 464, 469, 628 N.E.2d 1343. Furthermore, having a meaningful opportunity for the nonproponent spouse to consult with an attorney prior to signing can be a necessary predicate to a fully informed decision to sign. *Fletcher*, 68 Ohio St.3d at 469. In the case at bar, the mahr provision was not discussed

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prior to the day of the ceremony and, in fact, was discussed within only a few minutes of the start of the ceremony. Although Mohammed was given an opportunity to consult with his mother, it is difficult to conclude that he had a meaningful opportunity to consult with an attorney prior to signing. Moreover, because the guests were already assembled when the mahr amount was first discussed, it is reasonable to conclude that postponing the ceremony at that time would cause significant embarrassment or emotional distress.

With respect to the second element of *Gross*, the disclosure of the nature and value of the spouse's assets can be provided by the attachment of a list in written form or a showing that there was full disclosure by some other means. *Gross*, 11 Ohio St.3d at 105. The disclosure should be such that the "prospective spouse [is] fully and accurately apprised of the nature, value, and extent of the property affected by the agreement." *Zimmie v. Zimmie* (1984), 11 Ohio St.3d 94, 98, 464 N.E.2d 142. Even if Raghad and Mohammed had a general understanding of each other's financial situation, the court cannot conclude that there was a full disclosure of the nature and value of the assets and the affect the agreement had on those assets. Having failed two of the elements of *Gross*, the mahr provision cannot be enforced as an antenuptial agreement.

There are clear distinctions between mahr in an Islamic marriage contract and antenuptial agreements. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women* (2002), 76 S.Cal.L.Rev. 189, 203. At the most basic level, the distinction can be seen in terms of what the two documents are designed to protect or provide. *Id.* An antenuptial agreement is entered to preserve a spouse's separate assets. *Id.* Mahr, on the other hand, is intended to ease the effects of unilateral divorce or to compensate or provide monetary support for a wife in the event a marriage is terminated due to divorce or the death of the husband. *Id.* at 200-204. Under Islamic law, each spouse is

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entitled to whatever assets they have and accumulate. *Id.* at 204. In effect, there is no “marital” estate to equitably divide in an Islamic divorce, and each spouse is in effect already entitled to his or her separate property. *Id.* Furthermore, Raghad testified that she believed upon divorce, she would receive \$25,000 as mahr in addition to any other property settlement she was entitled to under Ohio domestic relations law. This is another distinction from an antenuptial agreement, which provides the only property settlement to which a spouse is entitled.

Based on the holding in *Steinberg* and the consideration of other policy concerns, this court finds the mahr provision in the Islamic marriage contract is unenforceable in an Ohio court. Nonetheless, the court stresses that Mohammed’s testimony that he did not believe the mahr provision was anything more than ink on paper was not credible. While during his case-in-chief he maintained his claim that he did not understand the provision required him to actually pay the sum, after hearing from numerous witnesses called by Raghad, he admitted during rebuttal that he wanted to pay the sum, but simply did not have the means. In addition to his contradictory testimony, the court strains to understand why so much discussion of the amount would occur the night of the signing of the Islamic marriage contract, if the provision was nothing more than a symbolic gesture or simply “ink on paper.” The practice of paying a postponed dowry is well-established in Islamic culture, and Mohammed has a sister who married in his home country of Syria who had a mahr. It is ludicrous to believe he is not aware of the traditional customs surrounding Islamic marriage, considering he lived in Syria until three years ago. Mohammed clearly agreed to undertake the duty to pay the mahr when he signed the Islamic marriage contract. Although not enforceable by this court, the court is hopeful Raghad will be able to enforce the provision and obtain relief through other religious means. For example, according to the testimony, the husband could be jailed in Syria if he has not paid the dowry.

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Loan from Raghad's Father and Immigration Fees

Raghad argued that she should be reimbursed for immigration fees she paid on Mohammed's behalf and for a loan her father made to him. Mohammed denied that Raghad's father gave him a loan and that the immigration fees were to be repaid. Other than the testimony of the parties, no evidence substantiating the sums paid and their characterization as loans was presented. In addition, Raghad's father did not testify. The court finds the loan and the immigration fees were expenses paid during the marriage and declines to make any orders concerning them.

SPOUSAL SUPPORT

After completing the division of property, a court may award reasonable spousal support to either party. R.C. 3105.18(B). In determining the type, duration and amount of a reasonable spousal support award, the court must consider several factors. R.C. 3105.18(C)(1). In addition, each party is considered to have equally contributed to the production of marital income. R.C. 3105.18(C)(2).

In consideration of the applicable factors of R.C. 3105.18(C), this court finds an award of spousal support would not be appropriate. The parties were not married for a significant amount of time. Neither party currently earns income, and neither party has any retirement assets. However, both are young, physically able to be employed and have the potential to earn significant incomes in the future. Raghad anticipates graduating in December 2007 with a bachelor's degree in pharmaceutical science. Mohammed has completed his medical education and will be able to practice medicine, if he passes the medical board exams. Since the parties did not live together during the marriage, they did not share in expenses and did not establish a marital standard of living. Finally, although Raghad asked for spousal support in her

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counterclaim, neither party presented any evidence specifically related to a spousal support award.

Therefore, neither party shall pay spousal support to the other. The court shall not retain jurisdiction to modify the spousal support provision of this decree.

ATTORNEY'S FEES AND COSTS

Section 3105.73 of the Ohio Revised Code allows the court to award reasonable attorney's fees and litigation expenses if the award is equitable. R.C. 3105.73(A). In determining what is equitable, the court may consider the parties' marital assets, income, their conduct, any temporary spousal support awarded and any other factor the court finds relevant. R.C. 3105.73(A). Although Raghad asked for an award of attorney's fees as spousal support and an award of costs in her Answer and Counterclaim filed on April 2, 2007, evidence of the fees and costs incurred was not presented. In addition, based on the parties' lack of marital assets and lack of income, the court finds an award of attorney's fees and litigation costs would be inequitable. Any unpaid court costs, including court-reporting costs, are to be divided and paid equally by the parties.

CONCLUSION

The court is not required to make factual findings regarding each piece of evidence, and the omission of a fact from this decree does not suggest that the court did not consider that fact. The division of assets and liabilities, while not precisely equal, is equitable.

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IT IS SO ORDERED

YOU ARE HEREBY NOTIFIED THAT THIS ENTRY WHICH MAY BE A FINAL APPEALABLE ORDER HAS BEEN FILED WITH THE CLERK OF THE COMMON PLEAS COURT ON THE DATE INDICATED ON THE TIME SLIP.
FRANKLIN COUNTY CLERK OF COURTS

Dana S. Preisse
JUDGE DANA S. PREISSE

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PRAECIPE: TO THE CLERK OF COURTS

Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal in the manner prescribed by the attached instructions for service.

cc:

James W. Adair, III (0033172)
Attorney for Plaintiff, Mohammed Zawahiri

Noure Alo (0078288)
Attorney for Defendant, Raghad Alwattar

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