

NO. 336964
COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

PIROOZ MOHAMMADI

Appellant

v.

ATEFEH ABDOLAZIZ

Respondent

RESPONDENT's BRIEF

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I. INTRODUCTION

May a party knowingly enter into a contract in order to entice their amour to marry them and then claim ignorance to the terms of the agreement during the dissolution of marriage? This case involves a mahr, which is an agreement under Islamic law where the husband agrees to pay a dowry to his wife in exchange for her marrying him. The mahr provides the bride a short-term dowry as well as long-term provisions in the event of death or a divorce. Mr. Mohammadi claims that despite knowing he would have to sign a mahr before his marriage to Ms. Abdolaziz, understanding the terms of the mahr, and signing his name to the mahr that there was not a valid contract. Ms. Abdolaziz requests that the court affirm the trial court's finding that the mahr is a valid contract and her separate property.

II. STATEMENT OF THE CASE

A mahr is a marriage contract under Islamic law and particular to the Afghani culture. *In re Marriage of Obaidi and Qayoum*, , 154 Wn. App. 609, 612, 226 P.3d 787 (2010) *rev denied* 169 Wn.2d 1024 (2010). It provides both a short-term and long-term dowry to the wife and is entered into during the Nikkah

ceremony. *Id.* Although often referred to as an engagement ceremony, an Afghani couple considers themselves married after the Nikkah ceremony even though the actual wedding ceremony and legal marriage may occur at a later date. *Id.* at 613. The purpose of the Nikkah ceremony is to enter into the mahr and confirm the engagement of the couple. *Id.* at 612-613; *Odatalla v. Odatalla*, 355 N.J. Super 305, 308, 810 A.2d 93 (2002).

Mr. Mohammadi and his bride, Ms. Abdolaziz, both originally from Afghanistan, met while refugees in Turkey. CP 56. Mr. Mohammadi, who had been in Turkey longer than Ms. Abdolaziz, had left Afghanistan when he was young, and lived in Pakistan and Iran before he lived in Turkey. CP 56; RP 107. At the time they met, Ms. Abdolaziz had been granted a visa to the United States and was waiting for her departure date. RP 85.

They agreed to marry, and as is Afghani custom, about a month before the Nikkah ceremony, Ms. Abdolaziz sat down with her roommate and told Mr. Mohammad that she wanted the mahr to be set at \$100,000.00. RP 83-85. She intentionally set the mahr at a high amount because her friends were concerned that Mr. Mohammadi was using her to get to the United States faster than if he waited for his own visa application to be approved. RP 83-85.

Ms. Abdolaziz felt that if he really loved her and was not using her to get to the United States that he would agree to the high mahr because the amount would not matter if they never divorced. RP 86-87. Ms. Abdolaziz said to Mr. Mohammadi "do you accept this amount of money?" RP 83. Mr. Mohammadi responded, "[i]f it's going to be double of the amount, I will accept it." RP 83.

Mr. Mohammadi arranged to have an Imam (priest) familiar to him perform the Nikkah ceremony on June 25, 2008. RP 49; CP 70. The wedding ceremony was to occur two days later. RP 77, 86, 93. There were eight other guests at the Nikkah ceremony. RP 81. The mahr was again negotiated at \$100,000.00. CP 79. Despite the fact that both Mr. Mohammadi and Ms. Abdolaziz spoke Farsi, the mahr was written in Turkish. RP 6-7; CP 79. Both parties signed the mahr and it was witnessed by their guests. CP 79.

The wedding ceremony occurred as scheduled. RP 77, 86, 93. However, Mr. Mohammadi and Ms. Abdolaziz did not become legally married until September 1, 2008. CP 56. Mr. Mohammadi did not record the mahr with their legal wedding certificate. RP 66.

During the year before his wedding, Mr. Mohammadi maintained employment in Turkey. RP 46-48. He initially worked

at a bakery for \$6.00 per day. RP 46-47. He then obtained a position working with car tires and made \$10.00 per day. RP 47. Finally, he obtained a construction job where he made \$15.00 per day. RP 48. According to Mr. Mohammadi, the salary at the construction job was average, and allowed him and Ms. Abdolaziz to live. RP 48.

Ms. Abdolaziz moved to the United States on April 20, 2010, and immediately applied for a visa for Mr. Mohammadi. RP 87, 92. He arrived in the United States two years later in 2012. RP 92.

In March 2014, Mr. Mohammadi filed for dissolution. CP 1-9. Ms. Abdolaziz filed two responses. CP 21-23, 26-29. In her second response, she attached a copy of the mahr and asked the court to enforce it. CP 26-29.

In response, Mr. Mohammadi filed a motion for summary judgment asking the court to find that the mahr was invalid as a matter of law. CP 71-77. In support of his motion, Mr. Mohammadi submitted a declaration. CP 56-57. In it, Mr. Mohammadi stated that he and Ms. Abdolaziz were married on September 1, 2008, after he had lived in Turkey for about a year. CP 56. He stated that he had spent \$3,000.00 on the wedding and invited 250 guests. CP 57. Mr. Mohammadi also claimed that the mahr was

first mentioned to him at the Nikkah ceremony, and that although he had heard of a mahr before that he was not familiar with the details or the consequences of signing one. CP 57.

Mr. Mohammadi claimed that he, the Imam, and the witnesses were shocked at the amount Ms. Abdolaziz requested and they “pleaded with her” to agree to a lower amount. CP 57. According to Mr. Mohammadi, Ms. Abdolaziz refused, and he was forced to sign the mahr because in the Muslim culture, cancelling a wedding was shameful. CP 57. He stated “I already invited 250 guests and spent \$3,000.00. In order to avoid the shame and embarrassment, I had not [sic] choice but to sign the mahr because it was certain that Atefeh would not proceed with the wedding if I did not.” CP 57. Mr. Mohammadi also stated that he “did not speak Turkish very well and it was even more difficult for me to read cursive Turkish.” CP 57.

Mr. Mohammadi also submitted a certified translation of the mahr. CP 79. The mahr was entitled “Sacred Agreement of Canonical Marriage – June 25, 2008.” CP 79. In addition to the names of the bride, groom, witnesses, and fathers of the bride and groom, the mahr stated “[t]he satisfactory amount of the mahr (donation propter nuptias, dower) was been determined as

\$100,000.” CP 79. The un-translated mahr contained the signatures of Mr. Mohammadi, Ms. Abdolaziz, and the witnesses. RP 80. The motion for summary judgment was heard in conjunction with trial. RP 10.

At trial, Mr. Mohammadi was asked when he originally learned he would have to sign a mahr before he got married. RP 49. Mr. Mohammadi responded “I wasn’t remembering [sic] – I don’t remember exactly. But I was hearing it from here and there from other people about mehry and what it is, but I didn’t know exactly what it entails.” RP 49. On questioning by the court, he admitted that he heard about a mahr before the Nikkah ceremony but did not ask anyone about it. RP 73. He stated “when they were sitting together, two or three people, they were talking about mahr and I wasn’t really listening to it.” RP 73.

He further testified that he did not know the amount that Ms. Abdolaziz was requesting until the Nikkah ceremony. RP 50. Mr. Mohammadi stated that he was “shocked” at the amount, that he did not know about the mahr, and that he was “kind of forced to sign the mahr, because I spent a lot of money at the time. I’ve already spent a lot of money.” RP 50. Upon prompting from his attorney, Mr. Mohammadi also stated that he also had to sign the

mahr because he had already invited 250 guests to the wedding ceremony that would occur a couple of days later. RP 50. He also testified that "religious-wise we don't . . . usually we don't disturb the wedding night just because of mahr." RP 50.

Mr. Mohammadi stated that he believed the mahr to only be a religious document and that he did not believe he would actually have to pay it. RP 50. He reiterated that he could not read cursive Turkish and that he did not "exactly" understand the mahr when he signed it. RP 51. Mr. Mohammadi admitted that he did not seek counsel about the mahr from any of the eight witnesses who attended the Nikkah ceremony. RP 81.

The wedding ceremony occurred two days later, but Mr. Mohammadi and Ms. Abdolaziz did not get legally married until September 1, 2008. RP 77, 86, 93. Mr. Mohammadi testified that he considered his engagement period to occur from the day of the Nikkah ceremony until they were legally married on September 1, 2008. RP 78.

The mahr was not recorded with the legal marriage certificate. RP 66. On direct examination, Mr. Mohammadi testified that he did not record the mahr because it was a religious document and not a legal document. RP 66. However, on cross-

examination he stated that he did not record the mahr because the government did not ask for it. RP 71.

On cross-examination, Mr. Mohammadi testified that the \$3,000.00 he spent on the wedding included renting a place for the wedding, renting a wedding dress for Ms. Abdolaziz, and purchasing two gold rings. RP 78. He also testified that the \$3,000.00 also included renting a new home for the couple and purchasing household goods. RP 78.

Abdul Gafoor Badul Mohmmad testified on behalf of Mr. Mohammadi. RP 26-41. Mr. Badul Mohmmad testified that he believed that \$100,000.00 was too high for a mahr. RP 31-32. He also testified that a mahr typically does not have any specific provision of when the long-term portion would be paid. RP 36. However, Mr. Badul Mohmmad admitted that while he was familiar with the mahr that other people knew more about it than him. RP 37.

Ms. Abdolaziz testified that on the evening of the Nikkah ceremony that she again asked Mr. Mohammadi if he would accept the mahr. RP 86. She told him “. . . if you love me, accept it. If not, because it's possible that we go to United States and you decide to divorce me, if that's the case, say it now.” RP 86.

Despite this plea, Mr. Mohammadi accepted the mahr and signed the contract. RP 86.

Ms. Abdolaziz testified that after Mr. Mohammadi arrived in 2012, he did not treat Ms. Abdolaziz as a wife, but more as a roommate. RP 87-88. He made Ms. Abdolaziz pay for all of the household expenses and even separated their grocery shopping. RP 87-88. Mr. Mohammadi flirted with other women, assaulted Ms. Abdolaziz and threatened to kill her. RP 88. Mr. Mohammadi was arrested on two occasions for domestic violence. RP 88, 110. On one occasion, Mr. Mohammadi was yelling and putting his fist through the wall. RP 88, 110. He was so loud that the neighbors called the police, and over Ms. Abdolaziz's objections, Mr. Mohammadi was arrested. RP 110-111. After his release, Mr. Mohammadi accused Ms. Abdolaziz of calling the police. RP 88, 110.

When Mr. Mohammadi left the marriage in March 2014, he not only took all of his possessions, but took the \$365.00 cash that she had put in a book for the rent. RP 89; CP 4. He testified that he left because he did not want to go to jail again. RP 109. Mr. Mohammadi claimed that he went to jail on two occasions because Ms. Abdolaziz was "bothering me." RP 108. Despite her continued

fear of Mr. Mohammadi, she testified that “although I was fearful of him, but I came to defend myself today.” RP 90.

Mr. Mohammadi stated that he currently works for Panda Express where he has been employed for two and one-half years and also works at the Davenport Hotel. RP 53. He said he makes approximately \$1,200.00 per month at Panda Express and another \$500.00 per month at the Davenport. RP 53-54. Mr. Mohammadi testified that Ms. Abdolaziz makes \$1,400.00 per month. RP 56-57.

Mr. Mohammadi testified that Ms. Abdolaziz should keep all of the household goods, valued at \$1,880.00, her jewelry, valued at \$300.00, and her car. RP 58. He asked that the court award him his vehicle valued at \$3,000.00 and his bank account valued at \$700.00. RP 59. Mr. Mohammadi’s proposed division of assets at trial was consistent with the asset and liability distribution proposal he submitted to the court in December 2014.

On rebuttal, Mr. Mohammadi admitted that he had been in Turkey longer than Ms. Abdolaziz. RP 107. He also, for the first time and under direct questioning from his attorney, mentioned that he loved Ms. Abdolaziz at the time of their engagement. RP 108.

The court ruled that the mahr was valid. RP 129. In making its decision, the court found that the mahr was discussed months

prior to the Nikkah ceremony, that although Mr. Mohammadi claims to have been unable to read the mahr that “he doesn’t dispute that he didn’t know what he was signing or that the imam didn’t explain to him that ‘you’re going to have to pay this.’” RP 126-127. The court also found that Mr. Mohammadi did not sign the mahr under duress since duress requires a showing of something more than financial embarrassment. RP 128. The court found that although the mahr was high that it was not “unconscionable.” RP 129. Finally, the court adopted Mr. Mohammadi’s proposed division of assets with the exception that Mr. Mohammadi was to pay Ms. Abdolaziz the \$365.00 he took from her when he left the marital home. RP 131.

Mr. Mohammadi filed a motion for reconsideration and submitted a new declaration, a new version of the translated mahr, and exhibits about the Turkish alphabet. CP 94-133. The court denied the motion for reconsideration stating “[t]he court already opined on the validity of the mahr agreement and ruled at trial that it was valid. Mr. Mohammadi understood the nature of the mahr and its terms. Clearly he didn’t like the terms of the agreement but understood it, negotiated it and ultimately affixed his signature to it.” CP 153. The court also found that a \$100,000.00 mahr in the

context of marriage and family was not shocking to the conscious, harsh, or calloused. CP 153. The court declined to consider the new evidence submitted. CP 153. Mr. Mohammadi timely appealed. CP 156.

III. ARGUMENT

The standard of review for challenging decisions made during a dissolution of marriage is abuse of discretion. *Obaidi*, 154 Wn. App. at 614. A court abuses its discretion where “its decision is manifestly unreasonable or exercised on untenable grounds for untenable reasons.” *Id.* In addition, an appellate court defers to the trier of fact to resolve conflicting testimony, determine the credibility of witnesses, and determine the persuasiveness of the evidence. *Thompson v. Hanson*, 142 Wn. App. 53, 60, 174 P.3d 120 (2007).

A mahr is a marriage contract based on Islamic law that provides an immediate and long-term dowry to the wife. *Obaidi*, 154 Wn. App. at 611. The long-term dowry is paid to the wife in the event of death or dissolution. *Id.*

A mahr can be enforced in the court of law by applying neutral principals of contract law. *Obaidi*, 154 Wn. App. at 611. In

other words, if the mahr was formed with mutual assent, an offer, acceptance, and consideration, it is enforceable. *Id.* at 616.

A. THE MAHR IS A VALID CONTRACT WHERE THERE WAS MUTUAL ASSENT TO THE ESSENTIAL TERMS.

For a contract to be valid, the parties must “objectively manifest their mutual assent to all material terms of the agreement.” *PE Systems, LLC v. CPI Corp.*, 176 Wn.2d 198, 209, 289 P.3d 638 (2012). “Generally, manifestation of mutual assent will be expressed by an offer and acceptance.” *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 178, 94 P.3d 945 (2004). Whether there was mutual assent to the essential terms is a question of fact for the fact finder, although it may be determined as a matter of law where reasonable minds could not differ. *PE Systems*, 176 Wn.2d at 207.

Ms. Abdolaziz informed Mr. Mohammadi a month before the Nikkah ceremony that the mahr would be \$100,000.00. RP 83-85. She set the amount high to ensure that he loved her and was not just marrying her in order to get a visa to the United States. RP 83-85. At the time, she asked him if he would accept that amount. RP 83-85. Mr. Mohammadi told her that he would pay twice as much if that is what it took to marry her. RP 83.

At the Nikkah ceremony, Ms. Abdolaziz again reiterated the amount of the mahr. RP 87. She told Mr. Mohammadi “. . . if you love me, accept it. If not, because it’s possible that we go to United States and you decide to divorce me, if that’s the case, say it now.” RP 87. Despite wanting a lower amount on the mahr, Mr. Mohammadi accepted the amount and signed his name to the mahr. CP 79-80. The mahr states “[t]he satisfactory amount of mahr (donation propter nuptias, dower) has been determined at \$100,000.” CP 79.

Mr. Mohammadi’s agreement to the amount of mahr, his signature on the document, and his subsequent marriage to Ms. Abdolaziz demonstrates his mutual assent to the contract. The trial court did not abuse its discretion in finding that the mahr is valid.

1. There Was Mutual Assent Where Evidence Establishes That Mr. Mohammadi’s Testimony Regarding His Ability to Read and Write Turkish Conflicted and Where Evidence Establishes That He Chose Not to Consult With a Translator or Attorney Regarding the Terms of the Mahr.

Mr. Mohammadi’s claims that there was not mutual assent because he did not read, write, or speak Turkish to any “appreciable” degree and because he had nobody to translate the

document or time to consult with an attorney. However, the evidence before the court contradicts these claims.

It is undisputed that Turkish was not Mr. Mohammadi's first or second language. RP 51. However, Mr. Mohammadi had been in Turkey for a year at the time of the Nikkah ceremony. RP 46. While he testified in trial that he did not read cursive Turkish at all, in his declaration, Mr. Mohammadi stated that it was "difficult for me to read cursive Turkish." RP 57. This second statement indicates that he had some ability to read cursive Turkish.

Further, despite his claim not to speak Turkish at any appreciable level, he maintained steady employment in Turkey for the year prior to the Nikkah ceremony. RP 46-48. Not only did he maintain steady employment, but he advanced from working at a bakery, to working with tires, to working in construction and making over twice the amount of money at the time of the marriage than he did a year earlier. RP 46-48. By the time he married Ms. Abdolaziz, he was making an average salary that allowed them to pay their expenses. RP 48.

Mr. Mohammadi failed to provide any evidence to establish that there was nobody to translate the mahr at the Nikkah ceremony. In fact, Mr. Mohammadi admitted to not asking or

seeking advice from any of the eight men who attended the Nikkah ceremony. RP 81.

In addition, Mr. Mohammadi despite knowing that he would have to sign a mahr prior to marrying Ms. Abdolaziz, intentionally chose not to ask any questions or seek counsel about the mahr prior to the Nikkah ceremony. CP 57; RP 49, 73. He also did not seek counsel about the mahr in the month between the time Ms. Abdolaziz told him about the mahr and the Nikkah ceremony or at the ceremony. RP 81. Further, Mr. Mohammadi does not consider his wedding date to be the date of the Nikkah ceremony, June 25, 2008. CP 56. Instead, he considers his wedding date to be the date he and Ms. Abdolaziz were legally married, September 1, 2008. CP 56; RP 78. Mr. Mohammadi did not seek any counsel about the mahr in the two months between the Nikkah ceremony and what he considered the legal marriage.

It should be remembered that there is no evidence in the record to indicate that negotiation of the mahr occurred in Turkish. There is no evidence that Ms. Abdolaziz, who had arrived in Turkey after Mr. Mohammadi, spoke Turkish. RP 127. In fact, there is no evidence at all that despite the fact that the mahr was written in Turkish that Mr. Mohammadi did not understand the terms of the

mahr before he signed it, or that the written document said something other than what he understood it to say. Mr. Mohammadi understood the essential terms of the mahr and agreed to them. As such, there was mutual assent and the court did not abuse its discretion in finding that the mahr was valid.

2. The Terms of the Mahr Were Sufficiently Definite to Create Mutual Assent.

For mutual assent to be present, material terms must be sufficiently definite. *PE Systems*, 176 Wn.2d at 209. Mr. Mohammadi argues that there was no mutual assent because the terms of the mahr, particularly when it was to be paid and what currency the mahr was to be paid was not sufficiently detailed.

The long-term portion of the mahr is to be paid to the wife in the event of the death of the husband or a divorce. *Obaidi*, 154 Wn. App. at 612. Although the mahr at issue here did not specifically state that the payment would be upon divorce, that is, in fact, the purpose of the mahr. *Id.*; CP 123. Even Mr. Mohammadi's witness, Mr. Badul Mohmmad, stated that a mahr does not specifically state when the long-term provision will be paid. RP 36.

The court specifically found that the translated agreement included the term "dower" which the court defined as a "provision

for the support of the wife should there be a death or divorce.” RP 123. Mr. Mohammadi did not challenge this translation at trial. RP 35. The condition of payment of the mahr was sufficiently understood by the existence of the mahr.

On appeal, Mr. Mohammadi, for the first time argues that the terms are not sufficiently detailed because the mahr did not state what currency the mahr was to be paid. Generally a party’s failure to raise an issue at trial waives the issue on appeal. RAP 2.5(a); *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 84 (2011). Mr. Mohammadi failed to raise this issue at trial, and therefore waives this argument on appeal.

Interestingly, however, Mr. Mohammadi and counsel always referred to the mahr as \$100,000.00. RP 15-16; CP 56. In addition, the mahr uses the symbol \$ with an additional line through it. CP 79. Despite the difference, given that the couple was living in Turkey and planning a move to the United States, it can be assumed that the symbol denoted the currency as the American dollar.

3. There Was Mutual Assent Because Evidence Established That Mr. Mohammadi's Testimony Regarding His Knowledge of the Mahr Was Contradictory and Self-Serving.

Unless there is fraud, misrepresentation, or another wrongful act by a party, a person who accepts a written contract and signs their name to it is assumed to know its contents and to have assented to the terms. *Tjart v. Smith Barney, Inc.* 107 Wn. App. 885, 897, 28 P.3d 823 (2001), *rev. denied*, 145 Wn.2d 1027 (2002), *cert. denied*, 537 U.S. 954 (2002). Further, resolving issues of conflicting testimony, determining the persuasiveness of evidence, and making credibility determinations is the province of the trial court and will not be disturbed on appeal. *Thompson*, 142 Wn. App. at 60. "Whether self-serving testimony should be discounted is a credibility issue for the trier of fact" and will not be reviewed on appeal. *Ramos v. Dep't of Labor & Indus.*, 191 Wn. App. 36, 40, 361 P.3d 165 (2015), *citing*, *Watson v. Dep't of Labor & Indus.*, 133 Wn. App. 903, 138 P.3d 177 (2006).

Mr. Mohammadi's claim that he believed the mahr was only a religious document and therefore would not have to be paid is self-serving, particularly in light of his own conflicting testimony about his knowledge of the mahr. In his declaration, Mr.

Mohammadi admits that he had knowledge about the mahr but that he was not very familiar with details or consequences of signing it. CP 57. Absent from this declaration is any statement that he believed the mahr to only be a religious unenforceable document. CP 57. It was not until trial that Mr. Mohammadi stated that, despite his ignorance about the mahr, he believed it to only be a religious document that was not enforceable. RP 50, 66. When asked when he first knew he would have to sign a mahr before his was married, Mr. Mohammadi balked and stated “. . . I don't know exactly. But I was hearing it from here and there from other people mehery and what it is, but I didn't know exactly what it entails.” RP 48.

Then despite testifying that he believed that the mahr was a religious document with no monetary impact, Mr. Mohammadi testified both in his declaration and at trial that the witnesses, Imam, and himself were “shocked” at the amount Ms. Abdolaziz was asking for her mahr. CP 57; RP 49. That they “pleaded with her” to lower the amount” CP 57. If, as Mr. Mohammadi testified, he believed that the mahr was only a religious document and no payment would be made, then there would have been no need to plead with Ms. Abdolaziz to lower the amount. Ms. Abdolaziz could have asked for \$1,000,000.00, and Mr.

Mohammadi would have signed it, if, as he states, he believed it was only a religious document.

In addition, despite claiming ignorance of the mahr and its impact, Mr. Mohammadi testified that “religious-wise, usually we don't disturb the wedding night just because of the mahr. RP 50. Based on this statement, Mr. Mohammadi knew exactly what a mahr is and its impact on a marriage.

Finally, Mr. Mohammadi's reliance on the fact that he did not file the mahr with the marriage certificate as proof the he did not know its significance and believed it was only a religious document is without support. Mr. Mohammadi failed to present any evidence that the mahr is typically filed with a marriage certificate.

There is no evidence to support Mr. Mohammadi's self-serving statement that he did not understand the mahr or the consequences of signing it. It was the trial court's province to weigh the evidence and determine whether self-serving statements should be considered. The court's dismissal of Mr. Mohammadi's claims of ignorance to the mahr or the consequences of signing it was within its authority and it is not an abuse of discretion to discount self-serving and contradictory testimony.

4. This Case is Distinguishable from *Obaidi*.

Mr. Mohammadi argues that the trial court erred in finding that the mahr was valid because his case is similar to *Obaidi*. However, as outlined by the trial court, this case is distinguishable.

In *Obaidi*, the groom, who was 26 at the time of the marriage, was an American citizen who had lived in the United States since he was three years old. *Obaidi*, 154 Wn. App. at 611. He considered himself “American first,” did not speak, read, or write Farsi, and only engaged in the “Afghan marriage ceremony because his mother was concerned that he would lose even the small amount of cultural knowledge he had about Afghanistan.” *Id.* at 612. Mr. Obaidi had never heard of a mahr before the Nikkah ceremony, and only learned that the Nikkah ceremony would occur 10 or 15 minutes before it happened. *Id.* The mahr was not explained to Mr. Obaidi until after it was signed and the ceremony was completed. *Id.* at 611. The entire Nikkah ceremony was performed in Farsi, except when Mr. Obaidi was asked if he took the bride for his wife. *Id.* at 612. The court ruled that there was no mutual assent because there was no meeting of the minds on the essential terms due to the language barrier and surprise of the mahr. *Id.* at 616.

Unlike *Obaidi*, here, Mr. Mohammadi arranged the Nikkah ceremony and had an Imam familiar to him conduct the ceremony. RP 49; CP 79. Mr. Mohammadi admitted that he knew at some point before the Nikkah ceremony that he would be required to sign a mahr before he was married. RP 48. Despite knowing this, according to him, he chose not to ask any questions about the mahr or seek counsel about it either before or at the ceremony. RP 48, 81. This testimony was in contrast to Ms. Abdolaziz's testimony that the mahr was communicated and negotiated a month before the Nikkah ceremony. RP 83. The trial court, having had the opportunity to observe Mr. Mohammadi's and Ms. Abdolaziz's testimony found that the mahr was negotiated a month prior to the Nikkah ceremony. R 127-128.

Further, unlike Mr. Obaidi who did not understand the mahr until after it was signed and he was married, Mr. Mohammadi understood the terms of the mahr before he signed it and before the Nikkah ceremony occurred. Even though the mahr was written in Turkish, Mr. Mohammadi understood the terms of the mahr, the amount, and the impact prior to signing it and marrying Ms. Abdolaziz.

B. MR. MOHAMMADI CANNOT CLAIM DURESS BECAUSE MS. ABDOLAZIZ DID NOT ACT IN A WRONGFUL OR OPPRESSIVE MANNER.

Mr. Mohammadi cannot prove duress where there is no evidence that Ms. Abdolaziz acted in a wrongful or oppressive manner nor can he show that he was without free will when he signed the mahr. When a party has voluntarily signed a contract, he cannot, "in the absence of fraud, deceit, or coercion be heard to repudiate" his own signature. *Retail Clerk's Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944, 640 P.2d 1051 (1982). Rather, the claim of duress must be shown by evidence "that the duress resulted from the other's wrongful or oppressive conduct." *Id.* Generally this requires the "victim" to prove that he was denied his free will and "the fact that the contract is entered into under stress or pecuniary necessity is insufficient" to prove duress. *Id.* The party seeking to avoid the contract has the burden to prove duress. *Id.*

Mr. Mohammadi argues three issues that resulted in distress: (1) the shame and embarrassment of canceling a wedding; (2) he had already spent a lot of money on the wedding; and (3) his love for Ms. Abdolaziz caused him to sign the mahr under duress. First, while canceling a wedding can cause

embarrassment and shame, it does not necessarily amount to a loss of free will. Mr. Mohammadi claims that in the Muslim culture canceling a wedding is very shameful. CP 57; RP 50-51. While this may be true, Mr. Mohammadi failed to provide any evidence that the shame and embarrassment would be so extreme as to take his free will away.

Second, Mr. Mohammadi claims that he was forced to sign the mahr under duress because he had spent a lot of money on the wedding. However, financial stress does is not a basis for a finding of duress.

Third, Mr. Mohammadi claims that his love for Ms. Abdolaziz forced him, against his free will, to sign the mahr. However, this claim is disingenuous. Mr. Mohammadi does not mention his love for Ms. Abdolaziz and his duress at losing it if he did not sign the mahr as the basis for his duress until he testifies on rebuttal, and then only at his attorney's prompting. RP 108. His prior declaration and his direct examination testimony make no mention, at all, that he was forced to sign the mahr for fear of losing Ms. Abdolaziz. CP 56-58; RP 44-47.

Finally, Mr. Mohammadi failed to provide any evidence that Ms. Abdolaziz acted in a wrongful or oppressive manner in order to

get him to sign the mahr. Rather, she told him about the amount of the mahr a month before the Nikkah ceremony and gave him at least two opportunities to back out of the agreement prior to signing the mahr. RP 83-85.

There is no evidence that Mr. Mohammadi was under so much duress that he lost his free will at the time he signed the mahr. There is also no evidence that Ms. Abdolaziz did anything wrongful or oppressive to force Mr. Mohammadi to sign the mahr. As such, the trial court did not err in finding that the mahr was not signed under duress.

C. A MAHR IS NOT AGAINST PUBLIC POLICY.

A contract is void where it “seriously offends law or public policy.” *Keystone Masonry, Inc. v. Garco Const., Inc.* 135 Wn. App. 927, 933, 147 P.3d 610 (2002). A contract between two consenting adults is not against public police. *Obaidi*, 154 Wn. App. at 615, citing *Odatalla*, 355 N.J. Super at 311.

As argued above, Mr. Mohammadi entered into the mahr freely and intelligently. The mahr does not prohibit him from divorcing Ms. Abdolaziz nor does it punish him for choosing to end the marriage. Rather, he is being asked to fulfill his end of the contract. Ms. Abdolaziz performed her part of the contract by

marrying Mr. Mohammadi and remaining in that marriage despite the domestic violence and threats to her life. Mr. Mohammadi, who was the one to initiate the dissolution, cannot now avoid his agreement to pay Ms. Abdolaziz \$100,000.00 upon divorce. Because the mahr was between two consenting adults and does not prevent Mr. Mohammadi from seeking a dissolution, it is not against public policy.

D. THE MAHR IS NOT PROCEDURALLY OR SUBSTANTIVELY UNCONSCIONABLE.

Typically the court will not void a contract between parties except in cases of unconscionability. *Tjart*, 107 Wn. App. at 898. The party seeking to avoid a contract has the burden to prove unconscionability. *Id.* There are two types of unconscionable contracts: substantive and procedural. *Id.*

1. The Amount of the Mahr Does Not Shock the Conscious.

Mr. Mohammadi claims that the contract was substantively unconscionable because the amount of the mahr was shocking to the conscious, particularly when he was poor at the time he signed the mahr. A contract is substantively unconscionable where it is so one-sided as to shock the conscious or is “overly harsh.” *Tjart*, 107 Wn. App. at 898.

Mr. Mohammadi relies on his own testimony and the testimony of his own witness as the basis for what shocks the conscious. However, Mr. Badul Mohamad was not qualified as an expert on what constitutes a reasonable mahr amount. RP 26-41. Mr. Abdul Mohmmad testified that while he had some knowledge of the mahr that other people knew more about it than him. RP 37. Whether or not \$100,000.00 is an amount that so unreasonable that it shocks the conscious was not established at trial.

In addition, Ms. Abdolaziz testified that she set the amount of the mahr at \$100,000.00 because she had significant concerns that Mr. Mohammadi was using her to get to the United States. RP 83-85. She believed that if she set the mahr at a high amount and he accepted it, it would mean that he loved her and was not only interested in her in order to get the United States faster. RP 83-85. Ms. Abdolaziz gave Mr. Mohammadi multiple opportunities to back out of the agreement. RP 83, 86. Mr. Mohammadi agreed to the mahr and signed the contract. CP 80.

Mr. Mohammadi mischaracterizes Ms. Abdolaziz's testimony about whether she believed the mahr would be paid. Ms. Abdolaziz testified that she never expected the mahr to be paid because she never expected to be divorced. RP 96.

Even if the mahr amount was high, it certainly does not shock the conscious. Mr. Mohammadi had the ability to object to the amount as well as the ability to refuse the mahr. The trial court did not abuse its discretion in finding the amount of the mahr to be reasonable.

2. The Mahr Is Not Procedurally Unconscionable.

The mahr was not procedurally unconscionable because Mr. Mohammadi had at least a month to contemplate the amount, understood the terms of the contract, and the essential terms were not hidden a maze of fine print. A contract is procedurally unconscionable where there was a “lack of meaningful choice, considering all the circumstances surrounding the transaction.” *Id.* The court looks to “the manner in which the contract was entered, whether each party had a reasonable opportunity understand the terms of the contract, and whether the important terms were hidden in a maze of fine print” *Id. citing Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 544 P.2d 20 (1975).

Again, Mr. Mohammadi's self-serving testimony that he did not discover the mahr amount until the Nikkah ceremony is in direct conflict with Ms. Abdolaziz's testimony that they discussed the amount a month before the Nikkah ceremony. RP 83-86. The

court after observing both Mr. Mohammadi's and Ms. Abdolaziz's testimony and weighing the conflicting testimony found that the mahr was negotiated and discussed months before the Nikkah ceremony. RP 127-128.

It is clear from the record that, despite the fact that the mahr is written in Turkish, Mr. Mohammadi understood the terms of the mahr, agreed to them, and signed the mahr. RP 127-128. It is also clear that the essential terms mahr were not in a maze of fine print. In fact, the mahr was a simple contract with only one term on it, that "[t]he satisfactory amount of mahr (donation propter nuptias, dower) has been determined as \$100,000.00." CP 79. This does not constitute procedural unconscionability.

E. THE DISTRIBUTION OF ASSETS WAS FAIR AND EQUITABLE WHERE THE MAHR WAS MS. ABDOLAZIZ'S SEPARATE PROPERTY.

In a dissolution proceeding, the court shall make a fair and equitable division of property taking into consideration the nature and extent of the separate and community property, the duration the marriage, and the economic circumstance of each party at the time of dissolution. RCW 26.09.080. Separate property is defined, in part as, "[p]roperty and pecuniary rights owned by a spouse before marriage." RCW 26.16.010.

Mr. Mohammadi, on appeal, argues that the court did not make a fair and equitable distribution of assets because placing the entire burden of the mahr on Mr. Mohammadi is not fair. He argues that the mahr is a community liability that should be shared between the parties.

The mahr is a contract made for the benefit of the wife prior to marriage. *Obaidi*, 154 Wn. App. at 612. "The long-term portion [of the mahr] is the amount that the wife is entitled to take with her in the event of a divorce." *Id.* Since the mahr was for the benefit of Ms. Abdolaziz upon divorce and obtained by her before marriage, it is her separate property. It makes no sense to now characterize the mahr as a community property asset.

Despite Ms. Abdolaziz's large separate property award, the division of assets by the trial court was fair and equitable. The parties incomes were very similar with Mr. Mohammadi making about \$1,700.00 per month and Ms. Abdolaziz making approximately \$1,500.00 per month. RP 58-59. Ms. Abdolaziz was awarded her household goods valued at \$1,880.00, her jewelry valued at \$300.00 and her car. RP 130. Mr. Mohammadi was awarded his vehicle valued at \$3,000.00 and his bank account. RP 130. This distribution of assets complied with Mr. Mohammadi's

requests before and after trial. CP 36-37; RP 58-59. The only equity payment ordered by the court was that Mr. Mohammadi was to pay Ms. Abdolaziz was the \$365.00 for the rent money that he took from her when he moved out of the house. RP 131.

The division of assets and liabilities was fair and equitable where the court awarded Mr. Mohammadi his requested distribution and where the mahr is Ms. Abdolaziz's separate property. The court did not abuse its discretion in making this distribution.

IV. CONCLUSION

Ms. Abdolaziz respectfully requests this court to affirm the trial court's finding that the mahr is valid.

Respectfully submitted this 23rd day of May, 2016.

NORTHWEST JUSTICE PROJECT


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FILED

MAY 23 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

PIROOZ MOHAMMADI,

Appellant,

v.

ATEFEH ABDOLAZIZ,

Appellee.

NO. 336964

PROOF OF SERVICE

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I declare under penalty of perjury under the laws of the state of Washington that on the 23rd of May, 2016, I served the Appellant, Pirooz Mohammadi, with a true and correct copy of Appellee's Response Brief by personally delivering said document to the office of his attorney, Anna Cutler, located at:

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Signed this 23th day of May, 2016, within the county of Spokane,
state of Washington.


ALICE CROWDER
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