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FEB 26 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

No. 336964

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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PIROOZ MOHAMMADI

Appellant,

vs.

ATEFEH ABDOLAZIZ

Appellee

---

BRIEF OF APPELLANT PIROOZ MOHAMMADI

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## I. ASSIGNMENTS OF ERROR

### Assignments of Error

1. By way of entry of “Findings of Fact and Conclusions of Law on Petition for Dissolution of Marriage” dated May 8, 2015, in section 3.8 the Superior Court erred in concluding the “\$100,000 Mahr is valid.”
2. By way of entry of “Findings of Fact and Conclusions of Law on Petition for Dissolution of Marriage” dated May 8, 2015, in section 3.4 the Superior Court erred by finding that “The distribution of property and liabilities as set forth in the decree is fair and equitable.
3. By way of entry of “Decree of Dissolution” dated May 8, 2015, in section 3.15 the Superior Court of Spokane County, State of Washington (hereafter Superior Court) erred in stating that the “\$100,000 Mahr is valid.”
4. By way of the “Order on Reconsideration” dated July 16, 2015, the Superior Court erred in finding that “there is no reason for reconsideration.”
5. By way of the “Incorporated Letter” in the “Order on Reconsideration” dated July 16, 2015, the Superior Court erred in finding that “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.”

6. By way of the “Incorporated Letter” in the “Order on Reconsideration” dated July 16, 2015, the Superior Court erred in finding that “it cannot be said that \$100,000 is shocking to the conscience or harsh and calloused.
7. By way of the “Incorporated Letter” in the “Order on Reconsideration” dated July 16, 2015, the Superior Court erred in finding that “Mr. Mohammadi knew the Mahr amount and discussed it with his Imam prior to signing.
8. By way of the “Incorporated Letter” in the “Order on Reconsideration” dated July 16, 2015, the Superior Court erred in concluding “Under this set of facts it cannot be said that the Mahr agreement is unconscionable.”
9. By way of the “Incorporated Letter” in the “Order on Reconsideration” dated July 16, 2015, the Superior Court erred in finding that “The agreement simply contains the terms under which the Ms. Abdolaziz will be compensated in the event of death or divorce.”

#### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the \$100,000 Mahr is a valid contract under the laws of the State of Washington. [Assignments of Error 1 through 9]

2. Whether there was an equitable distribution of property. [Assignments of Error 1 through 9]

## **II. STATEMENT OF THE CASE**

Piروز Mohammadi was born in Kunduz, Afghanistan in 1988. [RP 45] Shortly thereafter, Mr. Mohammadi fled to Pakistan and lived with his two uncles. [RP 45] In 2001, Mr. Mohammadi left Pakistan and moved to Iran where he resided for 6 years. [RP 46] In 2007 Mr. Mohammadi was granted asylum in Turkey. [RP 46] Mr. Mohammadi met Ms. Abdolaziz, in 2008 in Turkey and the two married on January 9, 2008. [CP 25] Mr. Mohammadi spent \$3,000 on the wedding and invited 250 guests. [RP 49] On the day before the wedding, a Nikkah ceremony was performed. [RP 49] A Nikkah ceremony is a ceremony where the bride and groom sign the Mahr. A Mahr is an agreement based on Islamic law that provides both a long and short-term dowry to the wife, with the long-term portion due to the wife at the time of divorce.

Although Mr. Mohammadi has heard of a Mahr before his wedding ceremony, he was not familiar with the details, requirements or significance of a Mahr. He was not informed that a Mahr would be prepared during the ceremony. [RP 49]

During the ceremony, the Imam stated that the Mahr should be for 80 grams of gold because Mr. Mohammadi was not making very much

money. [CP 25] However, Ms. Abdolaziz disagreed with that amount and insisted on a \$100,000 Mahr. [CP 25] Mr. Mohammadi, the witnesses and the Imam were all shocked and pleaded with her to agree to the 80 grams of gold. Mr. Mohammadi begged Ms. Abdolaziz to agree to the terms presented by the Imam but she disagreed. [RP 49, 50, 80] It was apparent that Ms. Abdolaziz would not go through with the wedding if the Mahr were anything other than \$100,000.

To ensure the wedding would take place and avoid embarrassment, Mr. Mohammadi signed the Mahr under pressure by Ms. Abdolaziz. The Mahr was signed by both parties, two witnesses and stated that it was for \$100,000. [CP 25] It did not specify when or under what circumstances the money is to be paid. [CP 25]

The Imam declared that under the Muslim faith the \$1000,000 was not reasonable. The Mahr was written in Turkish and Pirooz did not have an attorney or translator present. [CP 25] Having lived in the country for less than one year, the Mr. Mohammadi only spoke some Turkish. [CP 25]

Ms. Abdolaziz moved to Spokane, WA in the winter of 2010 and Mr. Mohammadi arrived to Spokane on January 11, 2012. [CP 25] There was much discourse throughout the marriage. Ms. Abdolaziz was extremely jealous, did not trust Mr. Mohammadi, and consistently accused him of having extramarital relations. Mr. Mohammadi had been unhappy

in the marriage for some time and filed for dissolution of the marriage on March 14, 2014. [CP 1] The parties have since been living apart and have no children. [CP 1]

This matter was heard at trial on March 30, 2015. [CP 29] The Honorable Judge Moreno issued an oral ruling on April 10, 2015. [RP 121] Judge Moreno held that the \$100,000 Mahr was valid. [CP 36] A Motion for Reconsideration was filed on April 20, 2015. [CP 33] A Presentment was scheduled for May 8, 2015 where the Decree of Dissolution and Findings of Facts and Conclusions of law were signed. [CP 35-36] The Honorable Judge Moreno denied the Motion for reconsideration in a written ruling issued on July 16, 2015 and upheld the Mahr as valid. [CP 41]

#### **IV. STANDARD OF REVIEW**

The general standard of review is “abuse of discretion.” When the reviewing court applies the “abuse of discretion” standard, it must first differentiate questions of law and questions of fact. Bartlett v. Betlach, 136 Wn. App. 8, 19, 146 P.3d 1235 (2006), review denied, 144 Wn. 2d 1004 (2007). The Superior Court abuses its discretion when it has based its decision on untenable grounds or for untenable reasons or has otherwise failed to abide by the governing law. Deyoung v. Cenex Ltd, 100 Wn. App. 885, 894, 1 P. 3d 587 (2000), review denied, 146 Wn. 2d

1016 (2002). As stated in In re Parentage of Jannet, 110 Wn. App. 16, 22, 37 P. 3d 1265 (2003), aff'd in part, 149 Wn 2d 123, 65 P. 3d 664 (2002):

. . . The abuse of discretion standard is not, of course, unbridled discretion. Through case law, appellate courts set parameters for the exercise of the judge's discretion. At one end of the spectrum the trial judge abuses his . . . discretion if [her] decision is completely unsupported, factually. On the other end of the spectrum, the trial judge abuses [her] discretion if the discretionary decision is contrary to the applicable law. . .

The questions presented in this appeal are both questions of law and questions of fact. The validity of the Mahr is a question of law and the issue of equitable distribution is both a question of law and fact. Issues involving only questions of law are reviewed de novo. State v. Horrace, 144 Wn. 2d 386, 392, 28 P.3d 753 (2001). However, an issue that involves both a question of law and fact is treated as a question of law, to be viewed in the light of the facts and evidence presented. State v. Horrace, 144 Wn. 2d 386, 392, 28 P.3d 753 (2001).

This Court has the authority to evaluate the validity of a Mahr. A Mahr is an agreement based on Islamic law that provides both a long and short-term dowry to the wife, with the long-term portion due to the wife at

the time of divorce. In re Marriage of Obaidi and Qayoum, 226 Wn. App. P.3d 787 (2010). A civil court can only enforce the terms of an Islamic Mahr agreement if it can be done through the application of neutral principals of law. Odatalla v. Odatalla, NJ Super. 305 (2002). In Odatalla, the court concluded that neutral principals of law could be applied to a Mahr agreement. Therefore, a Mahr agreement will only be upheld if it is a valid contract.

## V. ARGUMENT

### 1. AS A MATTER OF LAW, THE FACTS PRESENTED DO NOT SUPPORT THE CREATION OF A VALID CONTRACT UNDER WASHINGTON STATE LAW BECAUSE THERE WAS NO ACCEPTANCE BY MR. MOHAMMADI. [Issue No. 1]

The Court should find that the Mahr does not constitute a valid contract because there was not a valid acceptance. In order for a valid contract to exist there must be an offer, acceptance and consideration. The question of whether the Mahr is a valid contract is a question of law, therefore de novo standard of review applies.

In order for an acceptance to be valid, there must be a meeting of the minds on the essential terms of a contract. In In re Marriage of Obaidi, the Court held that there was no meeting of the minds as to the essential terms of the Mahr and therefore no valid contract was created. In Obaidi, the defendant and plaintiff traveled to Afghanistan to have a traditional

Afghan wedding. The defendant resided in the United States for most of his life and never heard of a Mahr, nor did he speak, read, or understand Farsi. The defendant first heard of the Mahr during his marriage ceremony in Afghanistan. The Mahr was written in Farsi. Since the Defendant did not speak, read or understand Farsi, he selected an uncle to act as his representative during the discussions that took place during the ceremony. The agreement was signed by defendant's uncle and plaintiff's father and contained signatures of witnesses. Additionally, it stated that one hundred Canadian dollars would be paid as a short-term dowry and twenty thousand dollars will be paid as the long-term marriage portion. The Court concluded that a valid contract did not exist because there was no meeting of the minds on the essential terms of the agreement and the terms were vague.

Additionally, an acceptance cannot be considered valid if a party did not have time to review the document. In Zawahiri v. Altwattar, 2008-Ohio-3473 the court held that:

“a presumption of overreaching or coercion will arise if the prenuptial agreement is presented a very short time before the wedding ceremony and postponement of the ceremony would cause significant hardship, embarrassment, or emotional stress.”

There, a bride and groom were married in Ohio and decided to have an Islamic ceremony thereafter. The groom arrived for the marriage ceremony and was presented with a Mahr. The groom did not have an opportunity to discuss the Mahr before the wedding ceremony. The court ruled that a valid contract was not formed because the Mahr was presented to the groom two hours before the wedding ceremony, he was pressured to sign it in order to avoid the embarrassment of having to cancel the wedding and he did not have an opportunity to consult an attorney.

The case at hand is analogous to In re Marriage Obaidi and Zawahiri v. Altwattar. First, like the defendant in Obaidi, Mr. Mohammadi did not speak, read, or understand the language the agreement was written in to any appreciable degree. [RP 50-51] At the time of the marriage Mr. Mohammadi only lived in Turkey for less than one year. [CP 25] The Mahr was written in Turkish. Mr. Mohammadi did not have anyone available to translate the document for him nor did he have an opportunity to consult with an attorney. [CP 25]

Second, due to the fact that different schools of Islam view a Mahr agreement differently, having a general understating of what a Mahr is not any indication that an individual knew the significance of the document or the consequences of signing it. [RP 48; 50] Here, although Mr. Mohammadi has heard of a Mahr before, he was not familiar with the

details of the document or its significance. Mr. Mohammadi did not even file the Mahr when he filed his marriage certificate. [RP 71] This confirmed Mr. Mohammadi's belief that a Mahr was only for religious purposes and not an enforceable contract. [RP 50] Mr. Mohammadi was presented with the agreement after the Nikkah ceremony began. In order to avoid embarrassment and ensure the wedding proceeded, Mr. Mohammadi signed the Mahr. [RP 50] Again, he did not have time to consult with an attorney or hire a translator. If the court in Obaidi found that there was no meeting of the minds when the defendant had an uncle to translate the agreement, there can be no meeting of the minds here where no translation took place.

Furthermore, the court in Zawahiri reiterated this rule by holding that an agreement that was presented to the groom two hours before the wedding and cancellation of the wedding would cause embarrassment and emotional stress could not be upheld. Here, Mr. Mohammadi worked various jobs to earn a living. [RP 46] The jobs he worked paid very little and he was responsible for paying for the wedding. [RP 47] He spent \$3,000 and invited over 200 guests. [RP 49] Cancellation of the wedding was not a viable option. Not only would Mr. Mohammadi lose \$3,000 that he worked extremely hard for but he would be embarrassed and ashamed. [RP 50] Mr. Mohammadi testified that he was in love with Ms.

Abdolaziz and felt forced to sign the Mahr. [RP 107] If he didn't, there would be no wedding. In the Islamic culture, the cancellation of a wedding is considered extremely shameful and amounts to duress and that is exactly what happened here. Mr. Mohammadi did not have an option but to sign the Mahr.

Third, like the Mahr in Obaidi, the Mahr in this case is vague. The agreement does not state under what circumstances the money is to be paid to the wife. [Ex P6, P7] The court in Obaidi held that since the Mahr did not specify when the dowry is to be paid, there could not have been a meeting of the minds as to the essential terms. Similar to the Mahr in Obaidi, the Mahr Mr. Mohammadi signed is very vague and does not contain any specifics of when money is to be paid. [Ex P6, P7] The Mahr signed by the parties in this case contains the signature of the parties, two witnesses and states only that the Mahr is for \$100,000. [Ex P6, P7] It does not even specify what currency the \$100,000 is to be paid in. [Ex P6, P7] The court in Obaidi did not uphold the Mahr even though it did specify the currency that it was to be paid in. Therefore, here there cannot be meeting of the minds as to the essential terms because Mr. Mohammadi did not understand the document and it was vague.

During the trial, both parties testified that they did not expect the \$100,000 to ever be paid. [RP 50] There cannot be a meeting of the minds

if neither party actually believed that they would be required to pay the money or entitled to receive it. If there is any meeting of the minds it is that the money will not be paid. This is the one thing both parties testified to during trial. Based on the facts presented to the court, there was no meeting of the minds. Therefore, no valid contract can exist.

2. AS A MATTER OF LAW, THE MAHR DOES NOT CONSTITUTE A VALID CONTRACT UNDER WASHINGTON LAW BECAUSE IT IS AGAINST PUBLIC POLICY. [Issue No. 1]

Washington State is a no fault divorce state. This allows parties to obtain a divorce without specifying a specific fault by one of the parties. Permitting no fault divorces gives parties the freedom to divorce from a spouse. It is a deeply rooted public policy in this State and should not be denied.

Here, the Mahr is against public policy. Based on Ms. Abdolaziz's own testimony, the Mahr was used as a way of preventing Mr. Mohammadi from divorcing her. [RP 95, 96] If Mr. Mohammadi wanted to divorce Ms. Abdolaziz he would have to pay her \$100,000. [RP 95, 96] This is not permissible. A party may not bind his or her spouse to a marriage and then punish them with a monetary penalty when they choose to obtain a divorce.

Essentially, the Ms. Abdolaziz's intent was to force Mr. Mohammadi to stay in the marriage and prevent him from divorcing her.

The way she did this was by the \$100,000 Mahr agreement. Based on the trial testimony, both parties are immigrants and neither is making a lot of money. [RP 53,91] Ms. Abdolaziz knew that Mr. Mohammadi was not wealthy and the \$100,000 Mahr would enslave him to the marriage.

This Mahr violates the public policy of the State of Washington. Considering Ms. Abdolaziz's clear intent, it would be against public policy to uphold this Mahr. Washington State is a no fault divorce state. Allowing one party to severely punish the other financially for choosing to divorce them goes against belief of free will. For this reason the Mahr should not be upheld.

3. AS A MATTER OF LAW, EVEN IF THE MAHR IS FOUND TO BE A VALID CONTRACT, IT CANNOT BE UPHELD BECAUSE IT IS UNCONSCIONABLE. [Issue No. 1]

Cases interpreting the doctrine of unconscionability generally fall within two classifications: substantive unconscionability and procedural unconscionability. Schroeder v. Fageol Motors, Inc., 86 Wn.2d 256, 259-60, 544 P.2d 20 (1975). Substantive unconscionability involves cases where a clause or term in the contract is alleged to be one-sided or too harsh, while procedural unconscionability relates to impropriety during the process of forming the contract. Schroeder, 86 Wn.2d at 260, 544 P.2d 20). The terms used to define substantive Unconscionability include "Shocking to the conscience," "monstrously harsh," and "exceedingly

calloused.” Nelson v. McGoldrick, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995). Procedural unconscionability involves the lack of a meaningful choice.

In determining whether there was procedural unconscionability courts consider all the circumstances surrounding the transaction including “[t]he manner in which the contract was entered,’ whether each party had ‘a reasonable opportunity to understand the terms of the contract,’ and whether ‘the important terms [were] hidden in a maze of fine print....’” Schroeder, 86 Wn.2d at 260, 544 P.2d 20). quoting Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 449, 18 A.L.R.3d 1297 (D.C.Cir. 1965). In examining an unconscionability claim, the courts considers the circumstances at the time the contract was made. Jeffery v. Weintraub, 32 Wn. App. 536, 544, 648 P.2d 914 (1982).

Here, both substantive and procedural unconscionability exists. First, the Mahr agreement is substantively unconscionable because the amount of the agreement is “shocking to the conscience.” The Mahr states that the wife is to receive \$100,000. During the trial on March 30, 2015, Abdul Ghafoor Badul Mohamadi testified that a customary amount for a Mahr is a much smaller amount of money. In fact, he testified that a Mahr could be a flower or a book. [RP 31] The \$100,000 Mahr in this case is extreme, outrageous, and shocking to the conscious. No reasonable

prudent person would expect to be required to pay this amount, especially if the ability to pay does not exist at the time or is not expected to be present in the future.

Additionally, the Mahr agreement is procedurally unconscionable because Mr. Mohammadi had no choice but to agree to its terms. Mr. Mohammadi's income was low, he had spent a great deal of money on the wedding, invited 250 guests and did not have time to review the Mahr or consult anyone about it. [RP 50, 53, 73, 74, 75]

During trial, Mr. Mohammadi's English teacher, Bonnie Gray, testified that he is unable to increase his income with the level of English he knows now. [RP 21] The Mr. Mohammadi in this case did not have a reasonable opportunity to understand the terms of the contract. He was under the impression that a Mahr is a religious ceremonial tradition and not a contract. He never expected to pay that amount and per Ms. Abdolaziz's testimony at trial, she never expected to receive it. [RP 95] While the Mr. Mohammadi did know the Imam who was present during the signing of the Mahr agreement, they were not friends. [CP 33] Mr. Mohammadi attended the mosque in which the Imam worked. [CP 33] The Imam was not a representative for Mr. Mohammadi. [CP 33] He was a neutral third party there to marry the couple. [CP 33]

Also, Mr. Mohammadi did not speak much Turkish nor could he

read Turkish cursive. [RP 50-51] Turkish is Mr. Mohammadi's third language and Farsi is his second language. [RP 51] At the time the Mahr agreement was signed, he was fluent in Farsi. There is no such thing as Turkish Farsi. The Farsi language uses the Persian alphabet that consists of 32 letters that are exclusively in abjad and derives from the Arabic alphabet. [CP 33] However, the Turkish language uses a Turkish alphabet that consists of 29 letters and derives from the Latin alphabet. [CP 33] The Mahr was written in cursive Turkish and Mr. Mohammadi is unable to read cursive Turkish. [RP 50-51] Therefore he did not have a reasonable opportunity to understand the terms of the Mahr agreement. Based on the foregoing, the Mahr agreement is unconscionable.

4. ALTERNATIVELY IF THE MAHR IS DETERMINED VALID, THE COURT FAILED TO MAKE AN EQUITABLE DISTRIBUTION UNDER RCW 26.09.080. [Issue No. 2]

Pursuant to RCW 26.09.080, in a dissolution action, a court shall equitably dispose of both assets and liabilities after taking certain factors into consideration. RCW 26.09.080. Those factors include the nature and extent of the community property; the nature and extents of the separate property; the duration of the marriage or domestic partnership; and the economic circumstances of each spouse at the time of the disposition. RCW 26.09.080. This issue presents a mixed question of law and fact. Therefore it is reviewed as a question of law, with de novo standard of

review, in light of the facts and evidence presented.

In this case, in light of the facts and evidence presented both parties were similarly situated in regards to work and financial status. In fact, Ms. Abdolaziz has a more stable job where she is employed full time. [RP 91] The parties did have many assets or liabilities. [CP 35] In this case the Mahr should have been considered Community Property. The parties were only married for six (6) years; this does not qualify as a long term marriage. The parties were in a similar financial state, were only been married for six (6) years and did not have significant assets. Yet the court awarded all of the \$100,000 to be paid by Mr. Mohammadi. This obligation is not only impossible for Mr. Mohammadi to fulfill but it is inequitable.

This does not qualify as an equitable distribution of property. Putting all of the responsibility on Mr. Mohammadi is extremely unfair especially considering that Ms. Abdolaziz is actually better off financially than Mr. Mohammadi. During the trial, one of the witnesses testified that in the Islamic culture the Mahr is generally paid to the wife if she is unemployed. In this case, there is no expectation of receiving the money. Ms. Abdolaziz is employed full time and makes more money than Mr. Mohammadi.

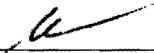
Allowing one spouse to take advantage of another is not equitable.

The court requires an equitable distribution of assets and liabilities. Public Policy dictates that each spouse should pay his or her own share of the couple's liabilities, it does not allow for the court to dump all of the couple's financial liabilities on the Husband. In this case that is what the court did. The distribution of assets in this Dissolution was inequitable and therefore violates RCW 26.09.080.

#### **VI. CONCLUSION**

Mr. Mohammadi respectfully requests that the decision of the Superior Court upholding the Mahr be reversed.

Respectfully submitted this 16<sup>th</sup> day of February 1, 2016

  
\_\_\_\_\_  
Anna M.I. Cutler  
WSBA # 32234  
Attorney for Pirooz Mohammadi

Declaration of Service

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington, that on this date declarant personally filed the original and one copy of the document entitled BRIEF OF APPELLANT PIROOZ MOHAMMADI at:

Court of Appeals of the State of Washington, Division III  
Clerk of the Court  
500 North Cedar Street  
Spokane, WA 99201

AND

That on this date I caused a true and correct copy of: BRIEF OF APPELLANT PIROOZ MOHAMAMDI and Report of Proceedings to be served on the following by U.S. Mail:

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