In The

Court of Special Appeals of Maryland

No. [redacted]
September Term, 2019

[redacted]

[redacted],

Appellant,

v.

[redacted],

Appellee.

Appeal from the Circuit Court for Montgomery County in Circuit Court No. [redacted]
(Hon. James A. Bonifant and Hon. Cynthia Callahan, Judges)

BRIEF FOR APPELLEE

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PRELIMINARY STATEMENT

This is a shockingly frivolous appeal. Appellant [redacted] litigation conduct below earned him the scathing treatment in the Circuit Court judgment now on appeal: "untruthful"; "obstructionist"; "dilatory tactics"; "made sport of the process"; "[redacted]. [redacted] did lie." *Infra* at 2-3. He now brings his circus of self-pity, hypocrisy, and lies to this Court, entirely unchagrined. Without even bothering to cite Maryland statutory and case law on jurisdiction and choice of law in divorce matters, he insists that Maryland courts have "no legal authority" to hear and apply Maryland family law in this matter, but must apply his self-serving interpretation of Lebanese religious canons to prevent a divorce otherwise available under Maryland law—a result he seeks in order to trap Appellee [redacted] in what she describes as a "nightmare" marriage for the rest of her days. [redacted] prides himself, as the Circuit Court observed, as someone who "do[es] not take 'no' for an answer." E192. At deposition, he described his response to [redacted] divorce complaint as follows:

> I will repeat it, I will say it now, and say it until I die: there will not be a divorce, [[redacted]] is married to me until I die. So, she has to kill me to get the divorce.

E130. Thankfully for [redacted]—and everyone else in this country—this is not how it works. While [redacted] does not believe that even Lebanese law would be helpless to respond to such an abuse of the marital institution, there is no need to consider Lebanese law because black letter law plainly permits the courts of Maryland and other states to exercise jurisdiction and apply forum law to grant divorce where even one (not to mention both) of the parties is a domicile of the state. While some states look for 6 months or a year

of residency before automatically according residents domiciliary status in a divorce context (Maryland now looks for only 6 months); in this case both parties had resided in Maryland for seven years at the time the divorce action was filed, and has lived in Maryland for over two decades. cites no divorce case where a Maryland court has neglected to exercise jurisdiction over domiciliaries or declined to apply Maryland law. This certainly should not be the first. *See infra*, Section I. s totally unsupported claims that his "fundamental right to contract" and right to religious exercise ought to trump the due application of Maryland law (and rights) are patently frivolous. *Infra*, Sections II, III. And comity, a prudential option—not an imperative or obligation—cannot be used in service of a result which is plainly at odds with policy preferences of the forum, as expressed in forum statutory and case law. *Infra*, Section IV.

QUESTIONS PRESENTED

I. Whether the Circuit Court lacked subject matter jurisdiction to issue a divorce decree between two long-time (seven-plus years) residents of Maryland because their marriage was celebrated in a Greek Orthodox church in Lebanon.

II. Whether the Circuit Court abused its discretion in denying that part of s Motion to Alter or Amend the Judgment of Absolute Divorce which made "almost exactly the same legal arguments" as those set out in in Appellant's Brief in this appeal. Br. at 1, 16.

STATEMENT OF THE FACTS

This appeal follows an extraordinarily burdensome proceeding below, largely driven, as described in the Circuit's Court's findings, by Appellant's refusal to provide complete discovery responses, frivolous motion practice, and other bad faith tactics. E188 ("Husband has generally been uncooperative with the court process."); E180 ("[redacted] obstructed the pretrial process, filing appeals when he was sanctioned for that behavior, and refusing to provide the experts long requested information until shortly before trial."); E193 ("[Appellant] has made sport of the processes of the court, and has said he plans to do what he chooses because 'he doesn't take no for an answer.'); E198 ("… much of the cost of the proceedings are attributable to [redacted] dilatory tactics"); E198-99 (describing Appellant's bad faith in stark terms). Appellant's conduct below was consistently duplicitous and nothing short of despicable. E189 ("Husband has refused to comply with Orders granting sanctions against him."); E191 (observing that Appellant's assets "ha[ve] been 'creatively' distributed" across various entities and jurisdictions); E194 (Appellant has "used his multiple real estate holdings in a shell game"); E191 (Appellant was "obstructionist vis-à-vis" Appellee's valuation expert and even Appellant's own expert analysis "was hampered by [Appellant's] failure to cooperate"); *id.* ("[redacted] was untruthful in court about his economic resources."); E192 ("[redacted]is untruthful"); E194 ([redacted] did lie.").

Fortunately, none of this mess is before the Court on this appeal, which has been strictly limited (per written agreement of the parties) to the jurisdictional challenge

referenced in ████ Questions Presented for Review. *See* Br. 1. The facts relevant to the sole claim at issue in this appeal are as follows.

The parties met in Beirut, Lebanon, where ████ lived and worked as a leading opera singer and Appellant attended periodically for vacation and family visitation. They married on June 21, 2009, in Tripoli, Lebanon. E177. ████, a U.S. citizen by birth, was almost twice the age of his new bride, and had known her for less than a year. E177, E907. While they married at the St. George Greek Orthodox Church, ████ was *not* of the Greek Orthodox faith, but had been raised Catholic. E133. Her mother was Greek Orthodox; ████ view was that "[a]ctually there is no big difference between both of them." E134. To this day, ████ attends Catholic, Orthodox, and Maronite church services "depend[ing] on [her] schedule," "depend [ing] on what I have, if I am busy, if I am not." *Id.* At the time of her marriage, ████ was aware that marriage in Lebanon was conferred by the various religious traditions, E133, but perceived—without any pretense of specific knowledge—that the Orthodox church permitted divorce "when you can't live with each other anymore, and somebody is taking a big pull on the other person." E134. ████ recalled that the couple never talked specifically about the religious implications of their marriage. *Id.*

████ who as already noted the Circuit Court found to be "untruthful" across the board, E192, insisted at deposition that "I am against divorce from every single fiber in my body," E130, indeed that "I'm allergic to the word 'divorce.'" E131. ████ acknowledged, however, that he had chosen to marry and divorce ***twice*** before marrying ████ *See, e.g.*, E903; Apx. 6 ("Q. This is your third marriage; is that correct? A.

Yes.”). Nonetheless, claimed that he and had “an oral agreement the day that we got married that we would never, never hear the word ‘divorce.’” E903. Regarding this alleged agreement, he acknowledged: “there is no paperwork, if you are looking for paperwork, unless you have something that I don't know of.” E131. As quoted above—with dimensions that are highly revealing of mentality and the true nature of his claims in this appeal— further testified at deposition that the divorce prayed for by “will not happen as long as I’m alive,” Apx. 6, and that:

> When you have someone disappear on you, this is totally unacceptable. I will repeat it, I will say it now, and say it until I die: there will not be a divorce, [ ] is married to me until I die. So, she has to kill me to get the divorce.

E130.

Perhaps not surprisingly, quickly demonstrated “a pattern of controlling behavior,” as the Circuit Court put it. E192. In the first month of their marriage, sent the striking email highlighted by the Circuit Court. E177, E192 (Pl. Ex. 47, see Apx. 7-8). Writing to the producer of an opera company that had cast in a lead role and claiming that had given him “permission” to “discuss the details of the trip,” demanded that the opera rehearsal and performances be accommodated to his own schedule, Apx. 8 (“IT IS BEST FOR MY SCHEDULE IF IT IS AROUND THE FIRST 2 WEEKENDS OF NOVEMBER. (FOR EXAMPLE: THUR, FRID, SAT AND SUND// OR FRID SAT SUN AND MOND.) AS I CAN NOT MISS MUCH FROM MY PRACTICE. ALREADY I HAVE LEFT FOR ALMOST 3 WEEKS FOR THE WEDDING ARRANGEMENTS”), demanding double the fee had already

agreed to, and demanding flight and accommodation for himself as well as [redacted] going so far as to insist on "*BUSINESS CLASS* TRAVEL . . . SO I CAN RESUME MY SURGICAL SCHEDULE ASAP, WITHOUT JET LAG." *Id.* Other examples of [redacted] domineering behavior cited by the Circuit Court include "his decision to baptize the parties' youngest child in Lebanon against [[redacted]] wishes" and "his control of all of the financial resources, and his actions alienating [[redacted]] from her contacts in the classical music industry." E192 The Circuit Court was particularly struck by testimony in which [redacted] proudly "inform[ed] the Court that 'I do not take no for an answer.'" *Id.*; E193. While this phrase can reference a healthy sense of persistence in some contexts, [redacted] particular use of it on the witness stand under the watchful eye of the Court clearly revealed something different and more disturbing. As [redacted] described it,

> Well, things were really ugly between us. It was, it started very early in the marriage and, and it was like deteriorating with time. . . . It wasn't a relation of, you know . . . a husband and a wife. [H]e was very controlling. He's very stubborn and, and nobody knows anything. He knows everything and he dictate[d] how I live, what I'm going to wear, what I'm going to eat. It was a nightmare.

E673. The substance of the marriage and its deterioration took place entirely in Maryland. There was never any question but that the couple would live and raise their children in the United States. When asked whether he and [redacted] "ha[d] a discussion prior to your marriage as to where the two of you were going to live," [redacted] responded: "I, she knows I'm a physician here. I have a practice." E907. Indeed, [redacted] returned to the United States immediately after the religious ceremony, returning to Lebanon briefly to collect [redacted] after her visa came through. E911. (At that time they also had another

social or family wedding celebration in Lebanon. *Id.*) At trial, ███████ sought to characterize the decision to live in Maryland—where ███████ worked and had lived continuously for years—as "coming to the States and living few years." E907. But he couldn't stick with his story, at other times testifying that his goal was merely "to retire and live in Lebanon," E905, or to live there "the last, you know, 20, 30 years of my life." E906. ███████ consistently testified that the idea of one day moving to Lebanon was just that—an idea—that was never followed upon with any specific action and was ultimately lost to the shuffle of raising children, managing ███████ rapidly growing practice, and the deterioration of the marriage.

For purposes of the black letter law that disposes of the single jurisdictional (or "legal authority") challenge at issue in this appeal, only one fact matters: the parties did not move to Maryland solely to obtain a divorce and resided in Maryland for at least 6 months (in fact, seven years) prior to the filing of the divorce complaint.

On August 4, 2016, ███████ moved herself and the children out of the Maryland home and filed for divorce. E177. On October 30, 2018, ███████ and ███████ entered a consent custody order awarding primary physical custody of the children to ███████, along with joint legal custody and a detailed visitation schedule. ███████ never contested jurisdiction for purposes of custody. Trial on alimony, child support, and equitable distribution was conducted from Oct. 29 to Nov. 1, 2018, and the Circuit Court entered judgment on March 26, 2019, granting a divorce on the ground of 12-month separation as provided in § 7-103(a)(4) of the Family Law Article, granting ███████ use and

possession of the family home for a period of three years, entering awards for alimony and child support, and entering other awards distributing marital property. E175, E201, E204.

STANDARD OF REVIEW

[REDACTED] argues that the "clearly erroneous" standard should apply to this Court's review of the Circuit Court judgment in light of his challenge to the "legal authority" of the Circuit Court to grant the divorce. Br. at 2. Certainly that standard applies to the few factual findings necessary to resolve this appeal, *e.g.,* that the parties were and are long-time domiciliaries of the state and any factual findings the Court may find useful for context and background (such as "[REDACTED] is untruthful"). E192. To the extent [REDACTED] challenges the Circuit Court's exercise of jurisdiction, the decision to apply Maryland law, or the actual application of Maryland statutory and case law, the Court will "determine whether the lower court's conclusions are legally correct under a *de novo* standard of review." *Clancy v. King*, 405 Md. 541, 554 (2008). The Circuit Court's denial of [REDACTED]. [REDACTED] motion to alter/amend—which he concedes made "almost exactly the same legal arguments" as set out in his brief, *see* Br. at 16—will be reviewed for abuse of discretion. Br. at 2-3.

ARGUMENT

I. Maryland Courts Plainly Have Subject Marriage Jurisdiction Over the Marriage *Res* of Two Long-Time Maryland Residents

The Circuit Court plainly had subject matter jurisdiction to hear and decide this divorce case [REDACTED] never disputed the obvious fact that he is a resident and domiciliary

of Maryland, having lived here for over 20 years. E157, E163 (¶ 2). He never contested the "jurisdiction" of the Circuit Court in any respect in over two years of litigation. [redacted] now pretends that his August 29, 2018 motion for summary judgment "argu[ed] that Maryland lacks subject matter jurisdiction," but the motion and memorandum don't even use the term "subject matter jurisdiction." E115-125.[1] [redacted] argues that he could not have forfeited the argument, Br. at 5, but his own conduct reveals the obvious bad faith of the argument.

"Subject matter jurisdiction" in divorce matters is conferred by statutory law—which [redacted], sanctionably, just ignores—and turns on domicile, which [redacted] cannot and does not dispute. "The essential element of the judicial power to grant a divorce, or jurisdiction, is domicile. A court must have jurisdiction of the res, or the marriage status, in order that it may grant a divorce. The res or status follows the domicils of the spouses; and therefore, in order that the res may be found within the state so that the courts of the state may have jurisdiction of it, one of the spouses must have a domicil within the state." *Fletcher v. Fletcher*, 95 Md. App. 114, 123 (1993) (quoting 24 AM.JUR.2D, DIVORCE AND SEPARATION, § 238); *see also* Md. Code Ann., Cts. & Jud. Proc. Art. § 6-102(a) ("A court may exercise personal jurisdiction as to any cause of action over a person domiciled in . . . in the State."); Fam. Law Art. § 1-201(b)(4) (equity jurisdiction over divorce actions); Fam.

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[1] In fact, the motion *conceded* that the Maryland court had subject matter jurisdiction when it argued, in the only section that addressed "jurisdiction at all," that the court "should, *as a matter of comity*, abstain from any determination regarding dissolution of the marriage herein and *defer* to the jurisdiction of Lebanon." E124 (emphasis added).

Law Art. § 1-203(a) ("In an action for alimony, annulment, or divorce, an equity court: (1) has all the powers of a court of equity"); *Hernandez v. Hernandez*, 169 Md. App. 679 (2006) (subject matter jurisdiction where husband did not contest that wife had been living in jurisdiction in which wife filed her complaint for the requisite time period before filing her complaint). The parties—who lived together in Maryland for seven years prior to commencement of the divorce action, continue to reside in Maryland, have raised their three children in Maryland, and are registered to vote and licensed to drive in Maryland—are plainly Maryland domiciliaries.[2]

███████ "subject matter jurisdiction" challenge, if it is anything, appears more like a choice of law argument that a Maryland court with proper jurisdiction cannot or should not apply Maryland law to divorce a marriage celebrated in Lebanon. Now, there was a indeed a time in this country when the law of the place of celebration—*lex loci celebrationis*—at times could prevail over the law of the forum; when Justice Jackson, for example, bemoaned that allowing a forum with more lax divorce rules to apply its law to a marriage celebrated elsewhere would "repeal the divorce laws of all the states and substitutes [no-fault divorce] law as to all marriages, one of the parties to which can afford a short trip there." But the *celebrationis* era ended in 1942 with *Williams v. North Carolina*,

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[2] ███████ claims that "it was always the intention of the parties to return to Lebanon with their children." Br. at 6. The Circuit Court did not so find, but the point is meaningless. A state does not lose jurisdiction over its residents because they plan, whether tentatively or firmly, to one day move elsewhere. The question is "where a person actually lives." *Fletcher*, 619 A.2d at 566.

317 U.S. 287 (1942) (*Williams I*), which held that states must give full faith and credit to *ex parte* divorce decrees rendered by another state, even as to marriages originally celebrated in the home state.[3] Justice Jackson wrote passionately, but in dissent. And while Justice Jackson's concern about divorces occasioned merely upon "a short trip" by only one of the parties was addressed by later cases articulating the constitutional requirements of *bona fide* domicile,[4] it has been uncontroverted black-letter law since *Williams* both that

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[3] *See also Williams v. North Carolina*, 325 U.S. 226 (1945) (*Williams II*) (holding that *celebrationis* states are allowed to collaterally attack the jurisdiction—*i.e.*, bona fide domicile—of the decree-granting state); *Sherrer v. Sherrer*, 334 U.S. 343, 351 (1948) (prohibiting collateral attack in cases "where there has been participation by the defendant in the divorce proceedings").

[4] Some states have allowed collateral attack on divorce decrees on the ground of lack of *bona fide* domicile—in the traditional example, a couple who moved to the jurisdiction solely for the purpose of obtaining a divorce. Maryland does not appear to entertain such attacks. In *Fletcher*, for example, a wife challenged a husband's claim to domicile by noting that he had moved to Maryland only shortly after she won the lottery, and that he would share in the lottery proceeds in a Maryland divorce but not in a divorce in Virginia, the wife's domicile and the parties' long-time prior joint domicile. This Court made clear that it was not concerned "*why* [husband] moved here, only *whether* he moved here." *Fletcher*, 619 A.2d at 125 (emphasis original). *See also Epstein v. Epstein*, 193 Md. 164, 173, 66 A.2d 381, 384 (1949) (even where "defendant left Maryland for the sole purpose of securing a divorce in Florida," defendant 'left Maryland for the sole purpose of securing a divorce in Florida, the defendant nonetheless "'is living' and 'residing' in Florida and 'had established residence' in Florida" thus indicating Florida domicile sufficient to bar collateral attack on Florida divorce decree). Moreover, the residency periods used by states reflect a sufficient "safeguard against successful collateral attack." *Sosna v. Iowa*, 419 U.S. 393, 408 (1975). The Maryland residency period is 6 months, and even then is only required where "the grounds for the divorce occurred outside" Maryland. Fam. Law Art. § 7-101. The divorce ground in this case (one-year separation) occurred within the state, as both parties continued to reside in Maryland.

domicile confers constitutionally sufficient subject matter jurisdiction over the *res* of the marriage ***and*** that "the law of the domiciliary state in which the action is brought will be applied to determine the right to divorce." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 285 (1971).

[redacted] attempt to argue in the face of the black-letter law of divorce jurisdiction without even citing—much less formulating a cogent position in opposition to—that authority, is inexcusable and sanctionable. Maryland courts will apply Maryland law to determine the right to divorce of Maryland domiciliaries.[5] No analysis is necessary regarding any allegedly competing interest of the *celebrationis* state: a state has an "absolute right" to determine the conditions of divorce as regards domiciliaries.[6] One example of the continued vitality of this law can be seen in decisions by courts asked to divorce "covenant" marriages, offered by a small handful of states, pursuant to which a couple effectively exempts itself from the no-fault grounds otherwise available in the state

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[5] While a state's authority to decree the divorce of marriages domiciled in the state as established by *Williams I* is also consistent with the broader constitutional authority of states to apply their own laws to disputes before their courts, as long as the state has *some* connection with the parties or the dispute. *See Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981).

[6] *Penoyer v. Neff*, 95 U.S. 714, 734-35 (1878). *See also Williams I*, 317 U.S. at 299 ("It is difficult to perceive how North Carolina could be said to have an interest in Nevada's domiciliaries superior to the interest of Nevada. Nor is there any authority which lends support to the view that the full faith and credit clause compels the courts of one state to subordinate the local policy of that state, as respects its domiciliaries, to the statutes of any other state."). *See generally* Brian H. Bix, *State of the Union: The States' Interest in the Marital Status of Their Citizens*, 55 U. MIAMI L. REV. 1 (2000).

and covenants that divorce will only be available upon certain fault-based grounds. In *Blackburn v. Blackburn*, the Court of Civil Appeals of Alabama upheld an Alabama court's decree of divorce of a Louisiana covenant marriage on no-fault grounds ("incompatibility of temperament and an irretrievable breakdown of the marriage"), refusing to apply Louisiana law and finding "no basis, statutory or otherwise, for a court of this state to grant a divorce based upon the laws of a state other than Alabama." *Blackburn v. Blackburn*, 180 So.3d 16, 19 (Ala. Civ. App. 2015). Especially where neither party remains domiciled in the marital jurisdiction, that state "ceases to be an 'interested state.'" *Id.* Indeed, the court noted that Louisiana made clear that its *own* courts would "grant a divorce or separation *only* for grounds provided by the law of [Louisiana]." *Id.*

To the extent any analysis of the competing interests of Maryland and Lebanon were necessary (which it was not), the matter is resoundingly decided against ████████ as a matter of statutory law and public policy. In another sanctionable failure to cite authority, ████████ brief nowhere mentions Section § 8-102 ("Deed or agreement not bar to divorce") of the Family Law Article, which clearly states that any "deed or agreement between spouses is not a bar to an action for absolute or limited divorce, regardless of whether the deed or agreement was executed: (1) when the parties were living together or apart; or (2) before, after, or while there was a ground for divorce." Fam. Law Art. § 8-102. This is as clear a statement of law and policy on the central "policy" issue of this appeal as could be imagined. Maryland has no obligation in a divorce case to apply the law of a foreign jurisdiction in place of its own, and it most certainly should not do so where the effect would be to permanently trap ████████ in a "nightmare" marriage with a man

the Circuit Court expressly found to be “controlling,” “untruthful,” and proudly unwilling “to take ‘no’ for an answer.” *Supra*.

II. The Divorce Decree Does Not Implicate Any “Fundamental Right to Contract”

[redacted] throwaway argument that “the Circuit Court’s Grant of an Absolute Divorce [was] an Impermissible Interference with the Parties’ Marriage Contract,” made in a single page of his brief, is even more risible—and sanctionable—than his choice of law argument. Br. at 8-9. The only authority cited is the basic proposition that there exists “a fundamental right to contract” and that “Article I, § 10 of the U.S. Constitution provides that no State shall pass any law impairing the obligation of contracts.” Such generic propositions are fine but completely inapposite. [redacted] cites no authority suggesting that a Maryland court may assess a marriage under commercial contract law as opposed to the specialized statutory law and related jurisprudence of the Maryland Family Law Article. And in any event, the “fundamental right to contract” does not mean an unfettered right to contract in a law-free zone. Parties may not contract for slavery—an extreme example, but one not actually very distant from the facts here. The claim that the right to contract “precludes modification [of a contract] by a Court,” *id.*, is wildly overstated and irrelevant. Courts modify contracts all the time; and more to the point, contracts must conform to applicable law—in a Maryland divorce case, Maryland law. Finally, no law was passed interfering with Dr. Melki’s marriage: rather, he brought the *res* of his marriage to Maryland, which may decree its dissolution upon petition of one of the parties in accordance with established Maryland law.

While [redacted] utter misconception of the "right to contract" in this context is sufficient to dispose of his argument, it is worth observing that what [redacted] appears to really want is for this Court to enforce an alleged implicit term of the Lebanese marriage, or an alleged oral promise incidental to the marriage, namely that the parties agreed never to divorce. E906, E910. Maryland courts would not enforce such a term even under a commercial contract analysis, for numerous reasons in addition to the basic inapplicability of any such approach. [redacted] acknowledges that there is no writing of the "marriage contract" beyond the marriage deed itself—no antenuptial agreement, for example. E131. Thus [redacted] is essentially arguing for the existence and enforceability of an additional, oral term outside of the express terms of the marriage deed—an approach foreclosed by the parol evidence rule. *See, e.g.*, *Foreman v. Melrod*, 257 Md. 435, 441 (1970). [redacted] asserted "contract" is also unenforceable because the marriage deed by itself is not "sufficiently definite to clearly inform the parties to it of what they may be called upon by its terms to do" (with respect to an alleged oral "never divorce" term), nor "sufficiently clear and definite in order that the courts, which may be required to enforce it, may be able to know the purpose and intention of the parties." *Robinson v. Gardiner*, 196 Md. 213, 217 (1950). And of course, [redacted] alleged "never divorce" term, even if its existence were credited (which it was not by the Circuit Court, which, again, found [redacted] consistently "untruthful"), would be unenforceable as directly contrary to Section 8-102 of the Family Law Article, providing that "[a] deed or agreement between spouses is not a bar to an action for absolute or limited divorce, regardless of [when] the deed or agreement was executed." Even [redacted] acknowledges that "Maryland courts 'have recognized an exception to the

application of *lex loci contractus* when application of a foreign jurisdiction's law would be contrary to a strong public policy of this State.'" Br. at 8 (citing *Bethlehem Steel v. G.C. Zarnas & Co.*, 304 Md. 183 (1985). As argued throughout this opposition, Maryland indeed has a strong policy interest in preventing the application of its law to trap a person in a marriage (especially a "nightmare" marriage) indefinitely and against her will, with all the basic rights violations that would entail.

III. The Divorce Decree Does Not Implicate the Freedom of Religion

████ invokes his right to free exercise of religion to justify an ugly attempt to force his spouse to remain married to him for life, despite the "nightmare" he created for her in that marriage. He acts oblivious to the obvious and intolerable impact this would have on ████ own to liberty, personal autonomy, and right to equal protection of the laws. He offers zero authority that would support his frivolous and abusive claim, instead citing to generic Establishment Clause discussions entirely unrelated to divorce.

As it happens, ████ is not the first doesn't-take-no-for-an-answer kind of spouse to try this particular gambit. A decision by the Superior Court of Pennsylvania in *Wikoski v. Wikoski*, where a husband claimed that application of the Pennsylvania Divorce Code provision allowing no-fault divorce would violate his freedom of religion, is particular useful for its survey and analysis. 513 A.2d 986 (Pa. Super. 1985). The *Wikoski* court naturally emphasized that the constitutional framework for Establishment Clause claims is one of balancing: whether "any incidental burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a

subject within the State's constitutional power to regulate.'" *Id.* at 987 (quoting *Sherbert v. Verner*, 374 U.S. 398, 403 (1963) and *NAACP v. Button*, 371 U.S. 415 (1963)). The court cited *Reynolds v. United States*, concerning a Mormon challenge to prosecution for bigamy, and the concern articulated in that case that to permit "a man [to] excuse his practices to the contrary [of legitimate regulation] because of his religious belief . . . would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." 98 U.S. 145 (1878). Finally, the court cited the particularly relevant Kansas case of *Sharma v. Sharma*, which framed the issue from the perspective of the divorce-seeking party impacted by the divorce-resisting religious liberty claim:

> [T]he husband apparently does not share his wife's religious beliefs about divorce, since he sought the decree. Under these circumstances, to compel him to remain married because of the wife's religious beliefs would be to prefer her beliefs over his. Any such preference is prohibited by the Establishment Clause of the First Amendment. The government may not "aid one religion, aid all religions, or prefer one religion over another."

667 P.2d 395, 396 (1983) (quoting *Everson v. Board of Education*, 330 U.S. 1, 15 (1947)).[7]

Ultimately, the *Wikoski* court concluded that:

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[7] *See also* Brian H. Bix, Law, *Religion and the Family Unit After Hobby Lobby: A Tribute to Professor Harry Krause*, 2016 U. Ill. L. Rev. 1665 (2016) ("[I]t is important to recall that the question is not whether parties should be able to order their lives on these matters through express agreement. Spouses and other partners are free, within the quite broad boundaries of the criminal law and social welfare legislation, to live according to religious principles, to raise their children according to those same principles, and to agree to do these things in the future. And, of course, spouses are free to continue to

> [even under the most] stringent [constitutional] analysis, appellant's claim fails. The state's interests in regulating marriage and divorce are clearly paramount. That regulation is inconsistent with the recognition of a unilateral right of a party to remove himself from its purview as a matter of conscience. The state has the power, properly exercised within constitutional limits guaranteeing freedom of religion, to grant divorces. Thus, whether granting appellee her divorce is viewed as [] infringing upon appellant's freedom of religion [or not], . . . the result reached here would be the same. To whatever extent the issuance of a divorce decree interferes with the practice of appellant's religion, it does not violate an individual's right to freedom of conscience.

513 A.2d at 414-15.

Lacking any legal support, resorts to histrionics and self-pity. He argues that "the Circuit Court's grant of a no-fault divorce would [have more than] a mere 'incidental' effect on [his] religious beliefs" because "it would force him to commit a mortal sin according to his religion." Putting aside the fact that had already been divorced twice when he first met [8] the notion of a "sin" that requires no voluntary act of will but rather could result merely by being subject to exterior forces such as the law is less compelling than would like. In any event, the extent of the purported religious freedom impact need not concern the Court because

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abide by those agreements and understandings even after their marriage has ended. Legal issues generally only arise when one party no longer wishes to abide by an agreement, and the other party seeks government (court) help in enforcing the agreement.").

[8] justification that his first two marriages "were not church marriages, *so they don't count, in my opinion*," Apx. at 6 (emphasis added), hardly improves his credibility in this area.

argument relies on the absurd claim that Maryland has "no compelling governmental interest in allowing to obtain a no-fault divorce from ." Br. at 13. Once again, Maryland has a plain and strong interest in not forcing into a "nightmare" marriage—or any marriage contrary to her wishes—for the rest of her days.

IV. The Divorce Decree Does Not Raise Comity Concerns

It is an admirable fact that Maryland courts will, where consistent with due process and public policy, defer to legitimate judgments of foreign courts and seek to respect the substance and underlying policy of foreign law in appropriate circumstances, even as regards to law from vastly different legal systems. A good example of this is *Hosain v. Malik*, where a Maryland court carefully considered Pakistani law as to custody, determined that, in its own way, Pakistani law was in substantial conformity with the best interests of the child standard at the heart of Maryland custody law, and thereupon declined to exercise jurisdiction as a matter of comity. 108 Md. App. 284 (1996). The sensitivity and good faith required in such cases makes attempt to abuse the comity principle in this case all the more offensive. Even if the context of this divorce case allowed for the application of Lebanese law, which it does not, *supra* at Section I, a Maryland court would not be justified in granting the privilege of comity to achieve the unconscionable result urged by

"'Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation." *Telnikoff v. Matusevitch*, 347 Md. 561, 574 (1997). Comity is a "voluntary act of the nation by which it is offered"; it is "inadmissible

when contrary to [that nation's] policy, or prejudicial to its interests." *Bank of Augusta v. Earle*, 38 U.S. 519 (1839); *see also Malik v. Malik*, 99 Md. App. 521, 534 (1994) ("where [a foreign] judgment is ... against public policy ... it will not be given any effect by our courts"). Even in the context of applications for recognition of final and dispositive foreign judgments, where the incentive for comity is at its highest, Maryland courts "will nonetheless deny recognition and enforcement to those foreign judgments which are inconsistent with the public policies of the forum state." *Telnikoff*, 347 Md. at 574. While the "inconsistency" surely must be material, it need not be particularly profound; there is no suggestion in the comity context that the foreign law must be found to be "repugnant" to forum policy, for example. *See, e.g., Overseas Inns S.A.P.A. v. United States*, 911 F.2d 1146 (5th Cir. 1990) (foreign judgment treated United States Government as a general creditor rather than a priority creditor); *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 715 (2d Cir. 1987) (foreign judgment did not defer to foreign bankruptcy proceedings, as a U.S. judgment would have); *Ackermann v. Levine*, 788 F.2d 830 (2nd Cir. 1986) (different understanding in foreign law regarding attorneys' fees); *Stein v. Siegel*, 50 A.D.2d 916, 917, 377 N.Y.S.2d 580 (1975) (different treatment by foreign judgment regarding effect of dismissal).

[redacted] asserts without analysis that "the marriage [in this case] is not repugnant to Maryland public policy." Br. at 14. Apart from the fact that "repugnant" is not the standard, the proper focus is not the marriage but the alleged bar to divorce, which is contrary to Maryland law and policy as expressed in Section 8-102 of the Family Law Article. Enforcement of an alleged bar which is nowhere stated in writing is further

contrary to principles of Maryland law as described *supra* at Section II, and would lead to severe violations of [redacted] rights to liberty and religious freedom in her own right. Such effects are easily sufficient to dispense with any claim of the privileges of comity. *See, e.g., Leese v. Baltimore County*, 64 Md. App. 442, 468, *cert. denied*, 305 Md. 106, 501 A.2d 845 (1985) ("We can conceive of no clearer 'mandate of public policy' than the rights spelled out in the United States constitution"); *Aleem v. Aleem*, 175 Md. App. 663, 675-76 (2007), *aff'd*, 404 Md. 404 (2008) ("the Circuit Court for Montgomery County did not err in declining to apply, under principles of comity, the law of Pakistan in determining Wife's rights in marital property titled in Husband's name").

V. Denial of Motion to Alter or Amend

[redacted] breaks apart two questions presented for review: (1) a direct challenge to the Circuit Court's "legal authority" to decree the divorce and (2) the Circuit Court's denial of a motion to alter or amend that made "almost exactly the same legal arguments" as the direct challenge set out in Appellant's Brief. *See* Br. at 1, 16. [redacted] also concedes that an equivalently strict standard (abuse of discretion) should be applied to the Court's review of the denial of the motion to alter or amend. Br. at 3. Because the Circuit Court was absolutely correct to exercise jurisdiction and apply Maryland law in the case below, it correctly denied [redacted] motion that made "almost exactly the same" frivolous and unsupported arguments than have been fully addressed and rebutted herein.

VI. Points Unrelated to Issue on Appeal

also argued that (1) "the parties purchased property in Lebanon which they had planned to live in" and (2) that " had sent money to a charity organization, Combat Blindness, in order to open a free clinic" in Lebanon. Br. 6. However, at trial and throughout many rounds of discovery, did not disclose a property in Lebanon purchased by "the parties" and no Lebanese property was found to be Marital Property. did not disclose, at any point during discovery, that he was starting a hospital in Lebanon and even at trial he claimed that the hundreds of thousands of dollars being sent to a "charity" did not create any type of asset. E178 ("[Appellant] has an ophthalmological office in Lebanon. He claims it is empty."); but E183 ("[Appellant] regularly "donates" money to Combat Blindness, … and [p]art of the funds "donated" by go toward purchasing equipment at the Eye Center in Lebanon.") However, now, at appeal, he takes the completely opposite position, and while it is utterly irrelevant, it is a completely audacious thumb on nose to our Court system that he can make completely opposite factual arguments at trial and appeal for his own convenience. Had taken this position at trial, would have been entitled to a larger award. may not know any better, but his very experienced counsel surely does.

CONCLUSION

This appeal is shockingly frivolous—and sadly consistent with the pattern of inexcusable litigation conduct so well documented by the Circuit Court in the opinion below. The conduct that will continue without a strong message from this Court that in this

State, and in this Country, there are consequences for using wealth to torture someone through frivolous litigation. That there are consequences for being dishonest to our Courts. The arguments and conduct of [redacted] and his counsel meet every factor and element for bad faith frivolous litigation. Sanctions are called for. With that, [redacted] asks the Court to dismiss this appeal on submission without argument, affirm the judgment of the Circuit Court in all respects, and sanction [redacted] and his lawyers.

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Respectfully submitted,

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