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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3379-14T4

MARIA I. ALVAREZ,

Plaintiff-Appellant,

v.

JOHN A. TORTORA,

Defendant-Respondent,

Argued March 23, 2017 – Decided July 17, 2017

Before Judges Lihotz, O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen
County, Docket No. FM-02-1561-12.

Louis J. Lamatina argued the cause for
appellant.

Jenny Berse argued the cause for respondent.

PER CURIAM

Following a hearing, a Family Part court found the parties
in this matrimonial matter were not married, and entered an
order on February 10, 2015, dismissing plaintiff Maria I.

Alvarez's complaint for divorce and defendant John A. Tortora's

counterclaim for a declaration the marriage was null and void. Plaintiff appeals from that order. We reverse the provision in the order dismissing the complaint, and remand for further proceedings.

I

In this action plaintiff has maintained the parties, both American citizens, were married on April 26, 2004, in Havana, Cuba.¹ They have one child, born before the marriage. Both parties were previously married and divorced. Before commencing trial on the action for divorce, the court held a hearing on the husband's claim the parties were not in fact married. The pivotal evidence adduced at that hearing, at which only plaintiff testified and introduced documentary evidence, was as follows.

Plaintiff asserted she and defendant decided to get married in the spring of 2004. They decided to get married in Cuba, where some of her relatives resided. Plaintiff called a cousin living in Cuba and ascertained what was needed to get married there. In accordance with that information, both parties brought the divorce judgments generated from their former marriages and their birth certificates. Plaintiff's cousin also

¹ The marriage certificate in fact states the marriage was on April 27, 2004.

made an appointment for the parties to appear before an officiant licensed to perform marriages.

After arriving in Cuba in April 2004, plaintiff and defendant went to a place in Havana "like [a] Town Hall," and submitted the aforementioned documents in order to get a marriage license. The documents were translated into Spanish by staff at the office where marriage licenses were issued, for which the parties paid a fee of \$250 or \$275.

A day or so later, the parties received their marriage license and returned to the same location, where they were married by an officiant in the presence of their daughter, two witnesses, and plaintiff's cousin. The ceremony, which was conducted in Spanish, was videotaped by one of the witnesses; that videotape was placed in evidence and played during the hearing.

Plaintiff testified to some of what the officiant stated during the ceremony. First, the officiant noted the documents the parties had submitted were complete. After the officiant commented about the need for the parties to respect each other and take care of their family, the parties are seen signing the marriage certificate on the videotape. The officiant then declared, "John and Maria having completed all the requirements to — for matrimony, I declare you man and wife." A copy of the

marriage certificate was placed in evidence.

Plaintiff admitted the parties did not live together during their marriage, although they did see each other multiple times during the week. She also acknowledged there were a number of times during the marriage when she held herself out as single. Specifically, she did so on domestic violence applications against defendant, a bankruptcy petition she filed, an application for welfare benefits, a case information statement for child support against a former spouse, and income tax returns.

Plaintiff claimed defendant insisted she not reveal they were married because he wanted her to obtain benefits from the government she could not get if married, such as food stamps. She testified she acceded to defendant's demands because he intimidated her.

Following the hearing, the court dismissed plaintiff's complaint and defendant's counterclaim. The court noted the parties failed to obtain a license from the United States government granting them permission to get married in Cuba. Although somewhat unclear, the court appears to have relied upon 31 C.F.R. § 515.201 and 31 C.F.R. § 515.560, which lists those activities in which an American can engage in Cuba if he or she obtains the appropriate license from the federal government. In

the trial court's opinion, the parties were required to obtain a license from the United States government to get married in Cuba. Without citing any authority in support, the court concluded the parties' failure to secure such license voided their marriage.

Because pertinent to one of the issues on appeal, we mention plaintiff engaged in discovery on the issue of alimony, child support, and equitable distribution. The court ordered defendant to provide plaintiff certain financial discovery, \$5000 toward the cost of retaining an expert accountant, and \$15,000 in counsel fees.

II

On appeal, plaintiff raises the following points for our consideration:

POINT I: THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF'S COMPLAINT ON THE GROUND THAT THE PARTIES WERE NEVER LEGALLY MARRIED.

- A. The Parties Were Validly Married in Accordance With Cuban Law.
- B. Even If The Parties Were Not Legally Married, Defendant Must Be Estopped From Disputing The Validity Of The Marriage To Plaintiff Based Upon The Doctrine Of Estoppel, Quasi-Estoppel And Unclean

Hands.

POINT II: THE TRIAL COURT ERRED IN IMPROPERLY APPLYING THE LAW OF THE CASE DOCTRINE REGARDING THE PRIOR ORDERS OF THE TRIAL COURT CONCLUDING THAT THE PARTIES' MARRIAGE WAS VALID.

POINT III: THE TRIAL COURT ERRED BY FAILING TO ENFORCE ITS FIVE ORDERS ADJUDICATING DEFENDANT IN VIOLATION OF LITIGANT'S RIGHTS.

POINT IV: THE TRIAL COURT ERRED IN AFFORDING DEFENDANT AFFIRMATIVE RELIEF WHILE HE REMAINED IN VIOLATION OF COURT ORDERS.

We initially address plaintiff's contention the court erred when it found the parties were never legally married. At the outset, we note our review of a Family Part court's factual findings is limited. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 278-79 (2007). We must defer to the findings of the Family Part if those findings are "supported by adequate, substantial, and credible evidence" in the record. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014).

However, we owe no special deference to the trial court's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). A reviewing court is

compelled to reverse if the trial court abused its discretion, failed to consider all the controlling legal principles, or reached a determination that "could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole." Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996).

"An action for divorce is predicated on a valid marriage" Wigder v. Wigder, 14 N.J. Misc. 880, 881 (Ch. 1936). However, "the law of this State does not require [a] plaintiff [in an action for divorce] to prove the validity of . . . the parties' marriage." Raspa v. Raspa, 207 N.J. Super. 371, 377 (Ch. Div. 1985). "[O]nce plaintiff shows the parties were in fact married, the burden of proving invalidity shifts to defendant, and it must be met by clear and convincing evidence." Ibid. A plaintiff can demonstrate there was a marriage by producing the marriage certificate or a public record of the marriage. Simmons v. Simmons, 35 N.J. Super. 575, 579 (App. Div. 1955).

Here, a copy of the marriage certificate was admitted into evidence. Although unnecessary to establish the parties were in fact married once the marriage certificate was admitted, plaintiff also produced corroborating evidence of the marriage, specifically, the videotape of the wedding ceremony, in which

the officiant made statements consistent with one conducting a marriage ceremony, such as declaring at the conclusion of the ceremony the parties were "man and wife."

At the point the marriage certificate was placed into evidence, the burden to show the marriage was invalid shifted to defendant. Moreover, defendant had the burden to show the marriage was invalid according to Cuban law. "It is a general principle of . . . interstate law, subject to but few exceptions, that the validity of a marriage, so far as it depends upon the preliminaries and the manner or mode of its performance or solemnization, is to be determined by reference to the law of the place where it was performed or solemnized." Sturm v. Sturm, 111 N.J. Eq. 579, 582 (Ch. 1932). Defendant did not introduce any evidence disputing the validity of the marriage, let alone under Cuban law.

Defendant asserts the trial court correctly found the parties violated 31 C.F.R. § 515.560 when they failed to obtain a license from the federal government authorizing them to get married in Cuba. He further argues the court correctly concluded this omission voided the marriage. However, defendant did not cite and we were unable to find any authority supporting the premise a failure to obtain the federal government's permission to get married in Cuba has the legal effect of

voiding a marriage properly entered in Cuba in accordance with Cuban law.

To be sure, if the parties violated this regulation and the federal government chooses to prosecute them, they would be subject to various civil and criminal penalties. See 31 C.F.R. § 515.701. However, none of the penalties provide a party's marriage shall be deemed void if a party is found in violation of 31 C.F.R. § 515.560 or any other regulation in 31 C.F.R. § 515. The prohibited acts in which the parties allegedly engaged have no bearing on the question of whether they were legally married under Cuban law.

Defendant asserts the court could not have considered or placed any weight upon the marriage certificate because it did not contain an apostille. In general, an apostille is a special seal applied by an authority to certify a document is a true copy of an original. Apostilles are available in countries which are signatories to the 1961 Hague Convention Treaty Abolishing the Requirement of Legalization of Foreign Public Documents. See Apostilles and Notary Certifications, State of New Jersey Department of Treasury (June 30, 2017), <http://www.state.nj.us/treasury/revenue/dcr/programs/apostilles.shtml>. However, at the time in question, Cuba was not a signatory to this treaty. See 12: Convention of 5 October 1961

Abolishing the Requirement of Legalisation for Foreign Public Documents, HCCH (June 30, 2017),
<https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>.

Moreover, the court admitted the certificate into evidence. In addition, N.J.R.E. 902(c) provides: "If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification" Here, defendant had ample time before the hearing to investigate the authenticity of the document, but did not introduce any evidence challenging the authenticity of the marriage certificate.

Defendant raises other arguments. He references other federal regulations he claims the parties violated and maintained such violations invalidated the parties' marriage. None of these arguments has sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). The balance of defendant's arguments were not raised before the trial court; accordingly, we decline to address them. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

In summary, plaintiff presented a marriage certificate

showing the parties wed in Cuba. Although unnecessary to shift the burden to defendant to prove the marriage was invalid, plaintiff also presented other evidence, specifically, the videotape, showing the parties participated in a marriage ceremony. After the marriage certificate was introduced, the burden shifted to defendant. However, he presented no evidence the marriage was invalid under Cuban law – or under any law, for that matter. In fact, he did not present any evidence during the hearing at all. His argument the parties' alleged violations of federal regulations invalidated their marriage was unsupported by legal authority.

Because the court erred when it determined the marriage was invalid, we reverse the February 10, 2015 order dismissing the complaint, and remand this matter for disposition of plaintiff's cause of action for divorce. While defendant's answer shall be revived, those affirmative defenses pertaining to the question of the validity of the parties' marriage and his counterclaim shall not be.


Our decision obviates the necessity we address plaintiff's remaining arguments. However, we make note of the fact plaintiff complains the trial court failed to address five orders compelling defendant to provide discovery, give plaintiff \$5000 toward the cost of retaining an expert accountant, and pay

her \$15,000 in attorney's fees. Presumably the court did not address the provisions in those orders directing defendant to provide discovery and to contribute toward the cost of plaintiff's expert accountant because the court dismissed plaintiff's cause of action for divorce. In any event, because the court did not address the issues plaintiff raises in connection with these orders, we decline to do so in the first instance. See Duddy v. Gov't Emps. Ins. Co., 421 N.J. Super. 214, 221 (App. Div. 2011). On remand, plaintiff may make the appropriate application to enforce these orders.

Finally, we further direct that, on remand, the case be assigned to a different judge. As the prior court may find it difficult to ignore its earlier findings, we believe it best the case be reconsidered by a new fact-finder.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION