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Feb. 15, 1983

Avitzur v. Avitzur

New York Court of Appeals

Citations: 29 A.L.R. 4th 736, 446 N.E.2d 136, 58 N.Y.2d 108, 459 N.Y.S.2d 572, 1983 N.Y. LEXIS 2831
Docket Number: Unknown
Judges: Jones, Wachtler
Other Dates: Argued January 3, 1983;

Attorneys

POINTS OF COUNSEL, Richard A. Hanft for appellant., Louis-Jack Pozner for respondent., Nathan Lewin, Dennis Rapps, Daniel D. Chazin and Ivan L. Tillem for National Jewish Commission on Law and Public Affairs, amicus curiæ., Robert J. Jossen and Stanley J. Friedman for Jewish Theological Seminary of America, amicus curiæ.

Lead Opinion by Wachtler

OPINION OF THE COURT

Wachtler, J.
This appeal presents for our consideration the question of the proper role of the civil courts in deciding a matter touching upon religious concerns. At issue is the enforceability of the terms of a document, known as a Ketubah, which was entered into as part of the religious marriage ceremony in this case. The Appellate Division held this to be a religious covenant beyond the jurisdiction of the civil courts. However, we find nothing in law or public policy to prevent judicial recognition and enforcement of the secular terms of such an agreement. There should be a reversal.

Plaintiff and defendant were married on May 22,1966 in a ceremony conducted in accordance with Jewish tradition. Prior to the marriage ceremony, the parties signed both a Hebrew/Aramaic and an English version of the “Ketubah”. According to the English translation, the Ketubah evidences both the bridegroom’s intention to cherish and provide for his wife as required by religious law and tradition and the bride’s willingness to carry out her obligations to her husband in faithfulness and affection according to Jewish law and tradition. By signing the Ketu*112bah, the parties declared their “desire to * * * live in accordance with the Jewish law of marriage throughout [their] lifetime” and further agreed as follows: “[W]e, the bride and bridegroom * * * hereby agree to recognize the Beth Din of the Rabbinical Assembly and the Jewish Theological Seminary of America or its duly appointed representatives, as having authority to counsel us in the light of Jewish tradition which requires husband and wife to give each other complete love and devotion, and to summon either party at the request of the other, in order to enable the party so requesting to live in accordance with the standards of the Jewish law of marriage throughout his or her lifetime. We authorize the Beth Din to impose such terms of compensation as it may see fit for failure to respond to its summons or to carry out its decision.”

Defendant husband was granted a civil divorce upon the ground of cruel and inhuman treatment on May 16, 1978. Notwithstanding this civil divorce, plaintiff wife is not considered divorced and may not remarry pursuant to Jewish law, until such time as a Jewish divorce decree, known as a “Get”, is granted. In order that a Get may be obtained plaintiff and defendant must appear before a “Beth Din”, a rabbinical tribunal having authority to advise and pass upon matters of traditional Jewish law. Plaintiff sought to summon defendant before the Beth Din pursuant to the provision of the Ketubah recognizing that body as having authority to counsel the couple in the matters concerning their marriage.

Defendant has refused to appear before the Beth Din, thus preventing plaintiff from obtaining a religious divorce. Plaintiff brought this action, alleging that the Ketubah constitutes a marital contract, which defendant has breached by refusing to appear before the Beth Din, and she seeks relief both in the form of a declaration to that effect and an order compelling defendant’s specific performance of the Ketubah’s requirement that he appear before the Beth Din. Defendant moved to dismiss the complaint upon the grounds that the

court lacked subject matter jurisdiction and the complaint failed to state a cause of action, arguing that resolution of the dispute and any grant of relief to plaintiff would involve the civil court in *113impermissible consideration of a purely religious matter. Plaintiff, in addition to opposing the motion, cross-moved for summary judgment.

Special Term denied defendant's motion to dismiss, noting that plaintiff sought only to compel defendant to submit to the jurisdiction of the Beth Din, an act which plaintiff had alleged defendant bound himself to do. That being the only object of the lawsuit, Special Term was apparently of the view that the relief sought could be granted without impermissible judicial entanglement in any doctrinal issue. The court also denied plaintiff's motion for summary judgment, concluding that issues concerning the translation, meaning and effect of the Ketubah raised factual questions requiring a plenary trial.

The Appellate Division modified, granting defendant's motion to dismiss. Inasmuch as the Ketubah was entered into as part of a religious ceremony and was executed, by its own terms, in accordance with Jewish law, the court concluded that the document constitutes a liturgical agreement. The Appellate Division held such agreements to be unenforceable where the State, having granted a civil divorce to the parties, has no further interest in their marital status.

Accepting plaintiff's allegations as true, as we must in the context of this motion to dismiss, it appears that plaintiff and defendant, in signing the Ketubah, entered into a contract which formed the basis for their marriage. Plaintiff has alleged that, pursuant to the terms of this marital contract, defendant promised that he would, at plaintiff's request, appear before the Beth Din for the purpose of allowing that tribunal to advise and counsel the parties in matters concerning their marriage, including the granting of a Get. It should be noted that plaintiff is not attempting to compel defendant to obtain a Get or to enforce a religious practice arising solely out of principles of religious law. She merely seeks to enforce an agreement made by defendant to appear before and accept the decision of a designated tribunal.

Viewed in this manner, the provisions of the Ketubah relied upon by plaintiff constitute nothing more than an agreement to refer the matter of a religious divorce to a *114nonjudicial forum. Thus, the contractual obligation plaintiff seeks to enforce is closely analogous to an antenuptial agreement to arbitrate a dispute in accordance with the law and tradition chosen by the parties. There can be little doubt that a duly executed antenuptial agreement, by which the parties agree in advance of the marriage to the resolution of disputes that may arise after its termination, is valid and enforceable (e.g., *Matter of Sunshine,* 40 NY2d 875 (/opinion/5682360/in-re-the-estate-of-sunshine/), affg 51 AD2d 326 (/opinion/5944427/in-re-the-estate-of-sunshine/); *Matter of Davis,* 20 NY2d 70 (/opinion/5676067/in-re-the-estate-of-davis/)). Similarly, an agreement to refer a matter concerning marriage to arbitration suffers no inherent invalidity *(Hirsch v Hirsch,* 37 NY2d 312 (/opinion/5681488/hirsch-v-hirsch/); see *Bovomer v Bowmer,* 50 NY2d 288, 293 (/opinion/5684282/bowmer-v-bowmer/#293)). This agreement — the Ketubah — should ordinarily be entitled to no less dignity than any other civil contract to submit a dispute to a nonjudicial forum, so long as its enforcement violates neither the law nor the public policy of this State *(Hirsch v Hirsch, supra,* at p 315 (/opinion/5681488/hirsch-v-hirsch/#315)).

Defendant argues, in this connection, that enforcement of the terms of the Ketubah by a civil court would violate the constitutional prohibition against excessive entanglement between church and State, because the court must necessarily intrude upon matters of religious doctrine and practice. It is urged that the obligations imposed by the Ketubah arise solely from Jewish religious law and can be interpreted only with reference to religious dogma. Granting the religious character of the Ketubah, it does not necessarily follow that any recognition of its obligations is foreclosed to the courts.

It is clear that judicial involvement in matters touching upon religious concerns has been constitutionally limited in analogous situations, and courts should not resolve such controversies in a manner requiring consideration of religious doctrine *(Presbyterian Church v Hull Church,* 393 US 440, 449 (/opinion/107832/presbyterian-church-in-us-v-mary-elizabeth-blue-hull-memorial-presbyterian/#449); *Serbian Orthodox Diocese v Milivojevich,* 426 US 696, 709 (/opinion/109495/serbian-eastern-orthodox-diocese-for-united-states-and-canada-v/#709); *Jones v Wolf,* 443 US 595, 603 (/opinion/110144/jones-v-wolf/#603); see, e.g., *Reardon v* Lemoyne, _ NH _ [Dec. 23, 1982]). In its most recent pronouncement on this issue, however, the Supreme Court, in holding that a State may adopt any approach to resolving religious disputes which does not entail consideration of doctrinal matters, specifically approved the use of the "neutral principles of law" approach as consistent with *115constitutional limitations *(Jones v Wolf, supra,* at p 602 (/opinion/110144/jones-v-wolf/#602)). This approach contemplates the application of objective, well-established principles of secular law to the dispute *(id.,* at p 603), thus permitting judicial involvement to the extent that it can be accomplished in purely secular terms.

The present case can be decided solely upon the application of neutral principles of contract law, without reference to any religious principle. Consequently, defendant's objections to enforcement of his promise to appear before the Beth Din, based as they are upon the religious origin of the agreement, pose no constitutional barrier to the relief sought by plaintiff. The fact that the agreement was entered into as part of a religious ceremony does not render it unenforceable. Solemnization of the marital relationship often takes place in accordance with the religious beliefs of the participants, and this State has long recognized this religious aspect by permitting

duly authorized pastors, rectors, priests, rabbis and other religious officials to perform the ceremony (Domestic Relations Law, § 11, subds 1, 7). Similarly, that the obligations undertaken by the parties to the Ketubah are grounded in religious belief and practice does not preclude enforcement of its secular terms. Nor does the fact that all of the Ketubah's provisions may not be judicially recognized prevent the court from enforcing that portion of the agreement by which the parties promised to refer their disputes to a nonjudicial forum (see *Ferro v Bologna,* 31 NY2d 30, 36 (/opinion/5679477/ferro-v-bologna/#36)). The courts may properly enforce so much of this agreement as is not in contravention of law or public policy.

In short, the relief sought by plaintiff in this action is simply to compel defendant to perform a secular obligation to which he contractually bound himself. In this regard, no doctrinal issue need be passed upon, no implementation of a religious duty is contemplated, and no interference with religious authority will result. Certainly nothing the Beth Din can do would in any way affect the civil divorce. To the extent that an enforceable promise can be found by the application of neutral principles of contract law, plaintiff will have demonstrated entitlement to the relief sought. Consideration of other substantive issues beaming upon plaintiff's entitlement to a religious divorce, however, is *116appropriately left to the forum the parties chose for resolving the matter.

Accordingly, the order of the Appellate Division should be reversed, with costs, and defendant's motion to dismiss the complaint denied.

Dissent by Jones

Jones, J.
(dissenting). We are of the opinion that to grant the relief plaintiff seeks in this action, even to the limited extent contemplated by the majority, would necessarily violate the constitutional prohibition against entanglement of our secular courts in matters of religious and ecclesiastical content. Accordingly, we would affirm the order of the Appellate Division.

We start on common ground. Judicial intervention in disputes with respect to religious and ecclesiastical obligation is constitutionally proscribed, save with respect to a narrow class of issues, as to which, under "neutral principles of law", the secular component of the religious and ecclesiastical rights and obligations may be resolved without impermissible trespass on or even reference to religious dogma and doctrine (pp 114-115). We depart from the conclusion of the majority that in this case the courts may discern one or more discretely secular obligations which may be fractured out of the "Ketubah", indisputably in its essence a document prepared and executed under Jewish law and tradition.

We are constrained, as is the majority, by the allegations of the complaint. Plaintiff therein alleges: that the parties were married on May 22, 1966 in a religious ceremony in accordance with Jewish law and tradition; that pursuant to the terms and conditions of the religious ceremony they entered into a contract known as a "Ketubah"; that under the Ketubah the husband declared and contracted with the wife to be her husband according to the law of Moses and Israel and to honor and support her, faithfully cherishing her and providing for her needs as Jewish husbands are required to do pursuant to Jewish religious law and tradition; that pursuant to the Ketubah the parties agreed to recognize the Beth Din of the Rabbinical Assembly and the Jewish Theological Seminary of America as having authority to summon either party at the request of the other *117and further agreed that in the event of any civil divorce decree the husband would grant and the wife accept a Jewish divorce ("get") in accordance with the authority vested in the Beth Din; that under the law of Moses should the husband arbitrarily refuse to give a "get" the wife, such as plaintiff in this case, is known and referred to as an "Aguna" which is a state of limbo wherein the wife is considered neither married nor divorced; that a judgment of civil divorce of the parties was entered on May 16, 1978 in the Albany county clerk's office; that the wife has requested and summoned the husband to appear before the Beth Din of the Rabbinical Assembly pursuant to the terms of the Ketubah but that he has willfully and intentionally refused to appear before the assembly in violation of his contractual obligations; that in consequence the wife is consigned to the status of "Aguna" and is barred from remarrying within the context of a Jewish religious ceremony. The wife demands judgment against the husband: declaring "the rights and other legal relation of the plaintiff and defendant in the marriage contract (Ketubah), created by reason of the written instrument"; declaring that the husband specifically perform pursuant to the terms and conditions of the Ketubah in that he appear before the Beth Din of the Rabbinical Assembly and the Jewish Theological Seminary of America or its duly appointed representatives pursuant to the wife's request; declaring that failure of the husband so to appear constitutes a breach of contract; and for other incidental relief.

Determination whether judicial relief may be granted the wife without constitutionally impermissible interjection of the court into matters of religious and ecclesiastical content requires examination of the English translation of the Ketubah in the context of the wife's allegation that this document was made and entered into as part of the religious ceremony in accordance with Jewish law and tradition:

“On the First Day of the Week, the 3rd Day of the Month Sivan, 5726, corresponding to the 22nd Day of May, 1966, Boaz Avitzur, the bridegroom, and Susan Rose Wieder, the bride, were united in marriage in Old Westbury, N.Y. The bridegroom made the following declaration to his bride: ‘Be *118thou my wife according to the law of Moses and Israel. I shall honor and support thee, faithfully I shall cherish thee and provide for thy needs, even as Jewish husbands are required to do by our religious law and tradition.’

“In turn, the bride took upon herself the duties of a Jewish wife, to honor and cherish her husband, and to carry out all her obligations to him in faithfulness and affection as Jewish law and tradition prescribe.

“And in solemn assent to their mutual responsibilities and love, the bridegroom and bride have declared: As evidence of our desire to enable each other to live in accordance with the Jewish law of marriage throughout our lifetime, we, the bride and bridegroom, attach our signatures to this Ketubah, and hereby agree to recognize the Beth Din of the Rabbinical Assembly and the Jewish Theological Seminary of America, or its duly appointed representatives, as having authority to counsel us in the light of Jewish tradition which requires husband and wife to give each other complete love and devotion, and to summon either party at the request of the other, in order to enable the party so requesting to live in accordance with the standards of the Jewish law of marriage throughout his or her lifetime. We authorize the Beth Din to impose such terms of compensation as it may see fit for failure to respond to its summons or to carry out its decision.

“This Ketubah was executed and witnessed this day in accordance with Jewish law and tradition.

“Boaz Avitzur bridegroom Susan Wieder bride Melvin Kieffer rabbi Abraham Weisman witness Melvin Kieffer witness.”

At the outset we observe that the complaint contains no allegation that the parties intended that the Ketubah should manifest secular promises or have any civil or secular status or any legal significance independent of the religious ceremony between them of which it was an integral part. Nor is any such assertion advanced in the papers submitted by the wife in support of her cross motion for summary judgment.

Moreover, it appears evident to us that any determination of the content and particulars of the rights of the wife *119or the obligations of the husband under this document cannot be made without inquiry into and resolution of questions of Jewish religious law and tradition. We think it inaccurate to identify the relief sought by plaintiff, as does the majority, as “simply to compel defendant to perform a secular obligation to which he contractually bound himself.” (At p 115.)

The complaint’s first request for relief paints with a broad brush, asking that the court “declare the rights and other legal relation of the plaintiff and defendant in the marriage contract” created by reason of the Ketubah. That such an all-encompassing declaration of rights exceeds the authority of the civil court seems to be implicitly conceded by the majority’s attempt to limit its consideration to enforcement of an obligation characterized as “secular” — the alleged obligation of the husband to appear before the Beth Din.

The wife’s pleading itself, however, not to mention the affidavits submitted by her, makes it clear that even a definition of the purported “secular obligation” requires an examination into the principles and practice of the Jewish religion. Although the English translation of the Ketubah attached to the complaint recites that the parties “recognize the Beth Din * * * as having authority * * * to summon either party at the request of the other”, the complaint seeks a declaration that the husband specifically perform “in that he appear before the Beth Din * * * pursuant to the request of the plaintiff”. Thus, the wife tenders her construction of the document, which in turn presumably is predicated on what she contends is tradition in the faith, i.e., that there is an obligation imposed by the agreement to appear before the Beth Din at the summons alone of the other party to the marriage despite the facial reference to a summons by the Beth Din. The husband, tendering his own construction of the document, denies that he is under any obligation to appear before the Beth Din because an earlier request by him for convocation of such a body was refused. Thus, it appears evident that any judicial determination whether the husband is obligated to appear before the Beth Din, or what nature of summons is required to call such *120obligation into play, necessarily involves reference to substantive religious and ecclesiastical law.[*]

The unsoundness of the position espoused by the majority to justify judicial action to compel the husband to appear before the Beth Din, is revealed by projection of the course the continuing litigation will take in this case. The motion to dismiss and the cross motion for summary judgment having both been denied, the case will be set down for trial. The evidence which the wife may be expected to introduce is revealed by examination of the affidavits she submitted in opposition to the motion to dismiss and in support of her cross motion for summary judgment. Her affidavit conveys information furnished her by Rabbi Mordecai Kieffer who in his accompanying affidavit describes himself as “qualified to render an expert opinion concerning matters of Jewish laws and custom”. She relies on his affidavit to support her claim that there was “good and legal consideration” for the Ketubah and that the Beth Din presently has no authority to compel the husband to submit to its jurisdiction. The rabbi, predicated on what he offers as a more accurate translation of the Ketubah into English, expresses the opinion that “good and legal consideration” is to be found in the document itself. Then,

describing in detail the procedures incident to the issuance of a “get”, the rabbi concludes that the husband was obligated to submit to the jurisdiction of the Beth Din without the issuance of any summons by it. Accordingly, it is evident that the wife and her counsel are themselves of the view that substantiation of her position will depend on expert opinion with respect to Jewish law and tradition.

The majority’s reference to the fact that marriage relationships solemnized within a religious context are recognized by the civil law is not determinative of the question here presented where what is sought to be enforced is an aspect of the relationship peculiar to the religion within which the ceremony creating it took place. No authority is cited in which a civil court has enforced a concomitant undertaking required by the ecclesiastical authority under which the marriage ceremony was solemnized. That no *121such civil enforcement of the obligation to appear before the Beth Din was contemplated either by the drafter of the Ketubah or by the parties as its signatories is evident from the inclusion of explicit authorization to the Beth Din “to impose such terms of compensation as it may see fit for failure to respond to its summons or to carry out its decision”. Nothing in the record suggests that it was the intention of the parties when they signed this religious document that the civil courts of the State of New York were to have jurisdiction to determine the substantive rights created thereby or to invoke civil procedures and remedies for the enforcement of such rights. Indeed, any conclusion on the part of our courts that this express provision was not intended by the parties as the exclusive remedy available to them for any breach of their obligations under the Ketubah would itself necessarily entail examination of Jewish law and tradition.

Finally, the evident objective of the present action — as recognized by the majority and irrefutably demonstrated by the complaint — even if procedural jurisdiction were to be assumed, is to obtain a religious divorce, a matter well beyond the authority of any civil court. (Again supplying her own interpretation of the Ketubah, the wife alleges: “That pursuant to the terms of the Ketubah, the plaintiff and defendant agreed that in the event of any civil divorce decree that the husband grant and the wife accept a Jewish divorce decree in accordance with the authority vested in the Beth Din of the Rabbinical Assembly”.) As was noted at the Appellate Division, the interest of the civil authorities of the State of New York in the status of the marriage between these parties was concluded when the final judgment of divorce was entered in 1978.

Chief Judge Cooke and Judges Fuchsberg and Meyer concur with Judge Wachtler; Judge Jones dissents and votes to affirm in a separate opinion in which Judges Jasen and Simons concur.

Order reversed, etc.

The recital in the testimonium clause itself is indicative — “this Ketubah was executed and witnessed this day in accordance with Jewish law and tradition.”

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