198 Md.App. 154

Julie LANG

v.

Zion LEVI.

No. 1425, Sept. Term, 2009.

Court of Special Appeals of Maryland.

April 1, 2011.

Background: Former wife petitioned to vacate decisions of rabbinical court and for breach of Jewish prenuptial agreement. The Circuit Court, Montgomery County, Nelson W. Rupp, Jr., J., entered summary judgment in favor of former husband. Former wife appealed.

Holdings: The Court of Special Appeals, Zarnoch, J., held that:

(1) decision of rabbinical court was not contrary to parties' Jewish prenuptial agreement;

(2) rabbinic judge had authority under parties' Jewish prenuptial agreement and rules of rabbinic court to reverse lower Jewish court's award to former wife; and

(3) rabbinic court's procedures complied with basic notions of fairness and due process.

Affirmed.

1. Alternative Dispute Resolution ⚷114

Maryland Uniform Arbitration Act (MUAA) severely restricts the role the courts play in the arbitration process in order to further the policy of favoring arbitration as an alternative method of dispute resolution, which conserves judicial resources. West's Ann.Md.Code, Courts and Judicial Proceedings, § 3–201 et seq.

2. Alternative Dispute Resolution ⚷362(2)

A court's power to vacate an arbitration award is narrowly confined to the circumstances listed in the Maryland Uniform Arbitration Act (MUAA). West's Ann.Md.Code, Courts and Judicial Proceedings, § 3–224(b).

3. Alternative Dispute Resolution ⚷363(6)

Circuit court operates under a tightly-restricted scope when reviewing an arbitrator's decision under the Maryland Uniform Arbitration Act (MUAA). West's Ann.Md.Code, Courts and Judicial Proceedings, § 3–201 et seq.

4. Husband and Wife ⚷31(2)

Intent of the parties in signing Jewish prenuptial agreement, which contained $100–a–day–penalty clause, was to prevent husband from withholding a "get," or Jewish divorce, from wife, and provision was not necessary because husband was willing to give wife a "get" and she was reluctant to accept it, and, thus, decision of Beth Din, a rabbinical court, that wife was not entitled to $100 per day calculated from day the parties no longer resided together to the moment wife was summoned to the Beth Din, was not contrary to the parties' agreement; rabbinic judge's interpretation of agreement was consistent with parties' intent which was to facilitate the timely and proper delivery of a "get" and to prevent wife from becoming a "chained wife," or a wife who was not able to legally marry under Jewish law.

5. Constitutional Law ⚷1331

Husband and Wife ⚷31(2)

Religious Societies ⚷12(2)

Segan Av Beth Din, or assistant to the most senior jurist who could join in the adjudication of cases or advise the presiding judges in rabbinic court, had authority under parties' Jewish prenuptial agreement and rules of rabbinic court to reverse award by lower Jewish court to former wife under clause in agreement which

awarded her $100 per day from date of separation to the moment wife was summoned to rabbinic court; rabbinic court's rules and procedures included the authority of the Av Beth Din to reverse a lower court's decision, and First Amendment prohibited state courts from determining whether reversal by the Segan Av Beth Din was appropriate under Jewish law and the principles of equity as determined by a religious tribunal. U.S.C.A. Const.Amend. 1.

6. Constitutional Law ⚷1331

Civil courts do not inquire whether the relevant hierarchical church governing body has power under religious law to decide disputes regarding religious questions; such determinations frequently necessitate the interpretation of ambiguous religious law and usage, and to permit civil courts to probe deeply enough into the allocation of power within a hierarchical church so as to decide religious law governing church policy would violate the First Amendment in much the same manner as civil determination of religious doctrine. U.S.C.A. Const.Amend. 1.

7. Alternative Dispute Resolution ⚷251

Procedural requirements of Maryland Uniform Arbitration Act (MUAA) did not apply to Beth Din, a rabbinical court, where parties knowingly and voluntarily agreed to arbitrate their disputes under Jewish substantive and procedural law, and expressly waived application of Maryland law and the procedural aspects of the MUAA. West's Ann.Md.Code, Courts and Judicial Proceedings, § 3–201 et seq.

8. Alternative Dispute Resolution ⚷354
Constitutional Law ⚷4476

If arbitration proceedings do not conform to notions of basic fairness or due process, courts are justified in refusing to confirm the arbitration award. U.S.C.A. Const.Amend. 14.

9. Alternative Dispute Resolution ⚷251

Constitutional Law ⚷3951

Religious Societies ⚷12(4)

Procedures of Beth Din, a rabbinical court, complied with basic notions of fairness and due process, where ex-wife's counsel was able to make an opening statement and question witnesses by presenting questions to the court, which in turn instructed the witnesses to answer, and counsel was also given an opportunity to respond to former husband's arguments and to instruct wife. U.S.C.A. Const. Amend. 14.

10. Alternative Dispute Resolution ⚷363(8)

Constitutional Law ⚷1331

Religious Societies ⚷14

Proof of Jewish law was not required in wife's action to vacate decisions of Beth Din, a rabbinical court, and for breach of Jewish prenuptial agreement, where court was prohibited under the First Amendment from interpreting any substantive or procedural Jewish law, and the only entity authorized to explain the substance of Jewish law was the Beth Din. U.S.C.A. Const. Amend. 1.

C. Allen Foster (David S. Panzer, Greenberg Traurig LLP, on the brief), Washington, DC, for Appellant.

Zion Levi, Pro Se, Chevy Chase, MD, for Appellee.

Panel: DEBORAH S. EYLER, ZARNOCH, LAWRENCE F. RODOWSKY, (Retired, Specially Assigned), JJ.

ZARNOCH, J.

This appeal challenges the correctness of the reduction of a claimed marital award by a Jewish arbitration panel, the Beth Din,[1] and the outright denial of an award on post-arbitration applications by a representative of the Av Beth Din.[2] Appellant Julie Lang and Appellee Zion Levi signed a prenuptial agreement, which stated in part that Levi had an obligation to pay Lang $100 a day from the time they no longer resided together until Levi granted Lang a *get,* a Jewish divorce. They also signed an arbitration agreement giving the Beth Din the authority to decide any disputes that arose regarding this prenuptial agreement.

When the marriage fell apart, Lang and Levi appeared before the Beth Din in 2008. The panel rejected Lang's claim that she was entitled to a cumulative amount of $108,000 in stipulated per diems, but granted her an award of $10,200. However, the award was later reduced to zero by a representative of the Av Beth Din who found, on the basis of Jewish law, that Levi was not obligated to pay any amount to Lang. In 2009, Lang petitioned the Circuit Court for Montgomery County to vacate the arbitration award, and Levi moved for summary judgment. The circuit court found no grounds to vacate the award, and granted Levi's motion. For the reasons set forth below, we affirm the decision of the circuit court.

FACTS AND LEGAL PROCEEDINGS

Appellant Julie Lang and Appellee Zion Levi were married on June 22, 2003, and entered into both a secular marriage under Maryland law and a Jewish marriage. That same day, the parties signed a prenuptial agreement and an arbitration agreement. The prenuptial agreement provided that if the parties did not continue to reside together, Levi would pay Lang $100 a day from the day they no longer resided together until the end of their Jewish marriage. The arbitration agreement provided that if the parties no longer lived together as husband and wife, they authorized an arbitration panel, the Beth Din, to decide all issues involving the Jewish divorce and premarital agreements, including monetary disputes. This agreement stated: "The decision of the Bet Din [3] shall be made in accordance with Jewish Law (Halakhah) and/or the general principles of arbitration and equity (Pesharah) customarily employed by rabbinical tribunals."

The parties had one child together, Victoria, who was born on September 21, 2004. By 2005, the marriage had deteriorated and on October 1, 2005, the parties separated. In 2006, Levi sued for a divorce and Lang counter-claimed, requesting sole custody, alimony, attorney's fees, determinations regarding property, and a

1. The Beth Din of America is a rabbinical court. One of the purposes of the Beth Din is to "provide a forum where adherents of Jewish law can seek to have their disputes resolved in a manner consistent with the rules of Jewish law." Rules and Procedures of the Beth Din of America, Preamble (a).

2. The Av Beth Din is "the most senior jurist who may join in the adjudication of cases or advise the presiding *dayanim* [judges]. The Av [B]eth [D]in is a highly respected *rabbi* and *posek* [decider] ..." *New World Encyclopedia,* Beth Din, *http://www.newworldencyclopedia.org/entry/Beth_Din* (last visited February 16, 2011). *See also Tal Tours (1996) Inc. v. Goldstein,* 9 Misc.3d 1117(A), 808 N.Y.S.2d 920 (Sup.Ct.2005) (The Av Beth Din is "the supervisor of the Beth Din.").

3. Both the prenuptial agreement and the arbitration agreement use the spelling "Bet Din," however the organization's title is spelled "Beth Din." For consistency, we will use the latter spelling throughout this opinion.

monetary award. The trial court entered a consent order resolving custody and visitation disputes. Around the same time, the parties agreed that Levi would pay *pendente lite* child support.

The circuit court entered a decree of absolute divorce on March 28, 2008. The court denied Lang's request for alimony, ordered the parties to evenly divide their child's school expenses, required Levi to provide health insurance for the child, and denied both parties' requests for attorney's fees. This Court affirmed the trial court's decision on June 19, 2009. *Levi v. Levi*, No. 526, September Term 2008 (June 19, 2009).

Levi also petitioned the Beth Din to arrange the *get*. The Beth Din notified Lang on July 3, 2008 and requested she contact the Beth Din if she wished to participate. When she agreed, the Beth Din scheduled an arbitration session for September 17, 2008 before a panel of three rabbis. At the session, the *Beth Din* heard arguments on both the prenuptial agreement and the *get*. At that time, Levi offered and Lang accepted the *get*. Six weeks later, the panel addressed the remaining issue and rejected as "unjust and improper" Lang's claim for a per diem obligation of $108,000, computed up to the moment she was summoned to the Beth Din.[4] Finding that the purpose of the prenuptial agreement was to ensure the timely offering of a *get* by the husband, the panel concluded that Lang was entitled to $100 a day from October 1, 2005, when the parties no longer resided together, to January 10, 2006, when Levi first offered her a *get*, a cumulative amount of $10,200.

In November 2008, Lang and Levi both applied for modification of the decision under the Rules and Procedures of the Beth Din. Rabbi Mordechai Willig, the Segan [Assistant] Av Beth Din, was designated to hear the post-arbitration applications. Although he was not present when evidence was taken before the panel, and he did not entertain argument or hear additional evidence, he rendered a decision. In a March 30, 2009 ruling, he rejected the panel's determination and eliminated the monetary award to Lang. Rabbi Willig held that he had authority to modify the decision under Section 1(b) of the Beth Din Rules and Procedures.[5] He reasoned that under Jewish law, even when language seems unambiguous, the intent of the parties is still relevant to the interpretation of a contract. The Segan Av Beth Din also noted that "a beth din is especially empowered to avert an unintended consequence that may result from a literal reading of a contractual provision when the beth din is authorized to decide a case based on the equities of the matter."[6] For these reasons, he concluded that the intent of the parties in the present case was not "to provide the wife with a mechanism to demand additional money beyond any negoti-

4. Under Section 28 of the Rules and Procedure of the Beth Din of America, the "Beth Din may grant any remedy or relief it deems just and equitable and within the scope of the agreement of the parties."

5. Section 1(b) states, "the obligations of the Av Beth Din or his designee shall be as prescribed in these Rules. Every obligation of the Av Beth Din may be delegated to a designee at the discretion of the Av Beth Din. In the absence of the Av Beth Din or his direction, the Segan (Assistant) Av Beth Din shall function as the Av Beth Din. In the absence of the Segan Av Beth Din, the Menahel (Director) of the Beth Din shall function as the Av Beth Din." Rules and Procedures of the Beth Din of America, Section 1(b). There are additional rules that bear on the authority of the Av Beth Din. *See* pp. 166–67, 16 A.3d at 987–88, *infra*.

6. Rabbi Willig also pointed to the language of the arbitration agreement providing for a decision based on general principles of equity. *See* pp. 157–58, 16 A.3d at 982, *supra*.

ated or court imposed settlement." Instead, the intent of the parties was to require Levi to pay economic costs if he failed to give a timely *get.* Because Levi was willing to give Lang a *get* soon after the parties stopped residing together and Lang refused, she was not entitled to any award.[7] Further, because Lang consistently failed to demand a monetary award that was supposed to be paid in weekly installments, it was "likely" that she "implicitly waived" her right to it. Finally, Lang already participated in a secular court proceeding on her financial divorce claims and Rabbi Willig found that "[g]enerally, a party that appears before a secular court may not later bring a claim in beth din."

On April 29, 2009, Lang brought an action in the Circuit Court for Montgomery County petitioning the court to vacate the decisions of the Beth Din and Av Beth Din, and alleging breach of contract under the Jewish prenuptial agreement. On July 28, 2009, the court granted Levi's motion for summary judgment, finding that the parties submitted to the jurisdiction of the Beth Din for arbitration in an arbitration agreement enforceable in Maryland, that the Beth Din had the authority to interpret Jewish law and to delegate to Rabbi Willig the rendering of a decision under the Rules and Procedures of the Beth Din, and that the Av Beth Din's decision was not "an irrational decision on a question of law that is so extraordinary that it is tantamount to the arbitrator's exceeding his powers to warrant the court's intervention." Lang timely noted this appeal.[8]

QUESTIONS PRESENTED

Appellant presents the following question for our review: [9]

> Did the circuit court err by denying appellant's petition to vacate the arbitration award?

For the reasons that follow, we shall affirm the decision of the circuit court.

DISCUSSION

I. Standards of Review

A. Summary Judgment

Lang argues that, for various reasons, the circuit court should have vacated the Beth Din's decision instead of granting summary judgment in favor of Levi. A circuit court should grant summary judgment only when "there is no genuine dispute as to any material fact" and the moving "party is entitled to judgment as a matter of law." Md. Rule 2–501(a). On appeal, this Court reviews a trial court's grant of summary judgment *de novo.*

7. Rabbi Willig indicated that the husband's financial obligation "was governed at times" by her "implied forgiveness" when she "sought to restore marital harmony" by not accepting the *get.*

8. The only issue Lang raises on appeal is the circuit court's grant of summary judgment with regard to her petition to vacate the *Beth Din's* award, not her breach of contract claim.

9. We have reworded and consolidated Lang's questions presented. The questions as phrased in her brief are:

> I. Was the *Beth Din* panel's award and Rabbi Willig's reversal of that award "rationally inferable" from the contract's plain terms?
>
> II. Did Rabbi Willig's reversal of the original award draw authority from the underlying contract?
>
> III. Were material facts in dispute concerning Rabbi Willig's sole authority to modify the original decision of the *Beth Din* under Jewish Law, which governs the Arbitration Agreement, pursuant to the Uniform Judicial Notice of Foreign Law Act, Md.Code Ann., Cts. & Jud. Proc. § 10–501 *et seq.?*

Mandl v. Bailey, 159 Md.App. 64, 82, 858 A.2d 508 (2004).

B. Vacating an Arbitration Award

[1–3] Because the Beth Din is an arbitration panel, we must also consider the standard for vacating an arbitration panel's decision. The Maryland Uniform Arbitration Act ("MUAA"), Md.Code (1974, 2006 Repl.Vol.) Courts and Judicial Proceedings Article (CJP), §§ 3–201 *et seq.* governs the enforceability of arbitration agreements. *Mandl,* 159 Md.App. at 85, 858 A.2d 508. The MUAA "severely restrict[s] the role the courts play in the arbitration process" in order to further the "policy [of] favoring arbitration as an alternative method of dispute resolution," which conserves judicial resources. *Id.* Under the MUAA, a court may only vacate an arbitration award where:

(1) An award was procured by corruption, fraud, or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing . . . as to prejudice substantially the rights of any party;

(5) There was no arbitration agreement . . . the issue was not adversely determined in proceedings . . . and the party did not participate in the arbitration hearing without raising the objection.

CJP § 3–224(b). It is important to emphasize that a court's power to vacate an arbitration award is "narrowly confined" to the above circumstances. *Mandl,* 159 Md. App. at 85, 858 A.2d 508. The circuit court operates under a "tightly restricted scope" when reviewing an arbitrator's decision under the MUAA. *Id.* at 92, 858 A.2d 508. This Court has articulated the standard for circuit court review:

> [F]actual findings by an arbitrator are virtually immune from challenge and decisions on issues of law are reviewed using a deferential standard on the far side of the spectrum away from a usual expansive de novo standard. An arbitrator's mere error of law or failure to understand or apply the law is not a basis for a court to disturb an arbitral award. Only a completely irrational decision by an arbitrator on a question of law, so extraordinary that it is tantamount to the arbitrator's exceeding his powers, will warrant the court's intervention.

Id. at 92–93, 858 A.2d 508. Here, Lang alleges only that the Beth Din exceeded its powers, and that its decision was irrational. She has the burden to prove these assertions. *Id.* at 86, 858 A.2d 508.

II. The Beth Din's Authority

A. The Parties' Intent & the Plain Language of the Prenuptial Agreement

To begin, Lang argues that we must vacate Rabbi Willig's decision reversing the Beth Din's award because it is "irrational" based on the plain language of the parties' contract. She relies primarily on two Maryland cases—*O-S Corp. v. Samuel A. Kroll, Inc.,* 29 Md.App. 406, 348 A.2d 870 (1975), and *Snyder v. Berliner Constr. Co.,* 79 Md.App. 29, 555 A.2d 523 (1989)—for the proposition that if an arbitrator does not follow the plain language of the parties' contract, the arbitrator has ex-

ceeded his authority and the decision was irrational, requiring it to be vacated. *O–S Corp.,* 29 Md.App. at 410, 348 A.2d 870; *Snyder,* 79 Md.App. at 37, 555 A.2d 523. Lang argues that the prenuptial agreement plainly states that from the time the parties no longer reside together until the delivery of the *get,* Levi must pay her $100 per day under any circumstances. Because the Beth Din's award ignored this plain language, she asserts, it was thus irrational and must be reversed.

[4] In our opinion, the Beth Din appropriately exercised its authority within the confines of its own rules and procedures, which both Lang and Levi agreed to be subject to under the arbitration agreement. Under that agreement, the parties conferred upon the Beth Din the authority to settle any marital disputes, including monetary disputes, between the parties "in accordance with Jewish law (Halakhah) and/or general principles of arbitration and equity (Pesharah) customarily employed by rabbinical tribunals." [10] Under Jewish law, the provision in the contract that is the basis for Lang's claim for $108,000 was intended to facilitate the timely delivery of a *get,* preventing what is referred to as *agunah* or "chained wives." This is an issue in the Orthodox Jewish community that arises because:

> [U]nder traditional Jewish law, a civil divorce does not dissolve the marriage. Only a religious divorce, provided by a signed writ of divorce called a "*get,*" completely dissolves the marriage for a person who wishes to remarry within the Orthodox Jewish religion. By tradition, only the husband has the power to grant or withhold the *get.* The rabbinic authorities may not compel the husband to grant the *get* if he does not wish to do so. Until a woman receives a *get* she may not remarry within her religion. If she does remarry without the *get,* the new marriage is not considered valid. The woman is considered an adulterer, and any children from the new marriage are considered illegitimate.

Fiscal and Policy Note on House Bill 324 (2007).[11] Thus, the intent of the parties in signing the $100–a–day–penalty was to prevent Levi from withholding a *get* from Lang. The provision was not necessary here because Levi was willing to give Lang a *get* and Lang was reluctant to accept it. Requiring Levi to pay Lang any monetary award under the provision, Rabbi Willig found, would be an "unintended consequence" of a "literal reading of a contractual provision when the beth din is authorized to decide a case based on the equities of the matter." As Segan Av Beth Din, he determined that it would be inequitable under Jewish law to require any payment because Levi "was willing to give a *Get* early in the process." The parties agreed to arbitrate in the Beth Din and granted that body authority to interpret as well as determine matters of Jewish law, including a consideration of the equities. Since this Court cannot interpret Jewish law or

10. The parties' agreement with its "and/or" language conferred broader authority on the Beth Din than the rules of the tribunal, which authorized relief if permitted by equity *and* the agreement. *See* n. 4, *supra.*

11. At least one state has required parties to an action for absolute divorce or annulment to affirm to a court that steps have been taken to obtain a *get,* thereby removing any religious barriers to remarriage. *See* N.Y. Dom. Rel. Law § 253 (2010). In Maryland, similar legislation was introduced during the 1997, 1998, 1999, 2000, and 2007 sessions, but did not pass. *See* House Bill 324 (2007); House Bill 1099 (2000); House Bill 430 (1999); House Bill 415 (1998); House Bill 1134 (1997), all sponsored by Delegate Samuel I. Rosenberg.

gauge equities as determined by rabbinical tribunals, we decline to vacate the decision of the Beth Din as contrary to the parties' agreement.

We further point out, as Levi notes, that Rabbi Willig's interpretation of the $100–a–day penalty is consistent with the prenuptial agreement. The very first line in the instructions for the agreement states: "This Agreement is intended to facilitate the timely and proper delivery of a *get.*" Thus, the agreement was not designed to confer a windfall on a wife, who refuses to receive the *get,* but rather it was intended only to prevent Lang from becoming a "chained wife."

B. Authority of the Segan Av Beth Din to Modify Panel's Award

[5] Lang argues that Rabbi Willig's decision reversing the Beth Din's award was beyond his authority under the arbitration agreement. We disagree for two reasons. First, the parties agreed to submit any marital disputes to the Beth Din and abide by its rules and procedures, which include the authority of the Av Beth Din to reverse the panel's decision. *See Elmora Hebrew Center, Inc. v. Fishman,* 125 N.J. 404, 593 A.2d 725, 729–32 (1991) (finding parties are bound by Beth Din's decision because they agreed to submit their disputes to the Beth Din). Second, because of the religious nature of the Beth Din, the First Amendment prohibits us from determining whether reversal by the Av Beth Din is appropriate under Jewish law and the principles of equity as determined by a religious tribunal. *See id.* (finding that the First Amendment does not permit civil courts to decide religious doctrine). Thus, we do not find that Rabbi Willig was without authority to reverse the panel's decision.

1. Beth Din's Rules and Procedures Allow for Reversal

From our review of the record, Rabbi Willig as the Segan Av Beth Din had authority to reverse the panel's decision under the Beth Din's rules, to which Lang agreed to be bound. Rabbi Willig was delegated the task of reviewing the applications for modification as part of the appellate arbitration process within the Beth Din. He reversed the decision of the three-rabbi panel awarding Lang $10,200 and instead, eliminated the award entirely. Section 31(a)(e) of the rules gave him the authority to modify the award. The Rule states:

> On written application of a party to the Beth Din within twenty (20) days after delivery of the award to the applicant, the Beth Din may modify the award if . . . the Av Beth Din determines that a provision of the Award is contrary to Jewish Law.

This authority is supplemented, if not strengthened, by other provisions of the Rules. Under Section 1(a), the Av Beth Din serves "as the supervisor of the Beth Din and *all of its functions*" (emphasis added) and requires the parties to "appoint the Av Beth Din or his designee as the administrator in a Beth Din proceeding or hearing." *See also* n. 2, *supra.* Section 39 provides: "The Av Beth Din shall interpret and apply these Rules insofar as they relate to the powers of the Beth Din or any individual arbitrators (dayan)." Lang contends that the Av Beth Din was not empowered to reverse the decision of the panel. However, the Rules of the Beth Din clearly indicate otherwise.

The thrust of Lang's challenge to the Av Beth Din's reversal is that Rabbi Willig: 1) made several impermissible "factual determinations" regarding the intent of the parties, the implied waiver of the $100 per day penalty and, the impact of Lang's secular proceedings and 2) nullified the agree-

ment of the parties.[12] Because Rabbi Willig's determinations were framed in the alternative, any one of the asserted grounds, if it is not an irrational decision on a question of law, would defeat Lang's claim. His primary conclusion, which balanced the intentions of the parties with principles of equity, was not an irrational legal decision.

At the outset, we disagree that the Segan Av Beth Din made impermissible factual determinations. Giving a fair reading to Rabbi Willig's decision, we discover no new factual findings.[13] His decision was based on the record already created. To be sure, legal conclusions different from those of the panel were reached, but that is within the province of the Av Beth Din.

Rabbi Willig cited Jewish legal precedent for his principal conclusions. But citations aside, the rationality of his determinations regarding the intent of the parties reflect basic common law principles. *See e.g., Gibbs v. Meredith,* 187 Md. 566, 570, 51 A.2d 77 (1947) ("If the words of a contract are susceptible of two constructions, one of which would produce an absurd result, and the other would carry out the purpose of the contract, the latter construction should be adopted."); *Highley v. Phillips,* 176 Md. 463, 471, 5 A.2d 824 (1939) (Words in a contract will be given their ordinary meaning unless an unreasonable or absurd consequence would result from so doing.)[14] The same is true of the Segan Av Beth Din's reliance on the impact of equitable principles, particularly as to Lang's failure to respond to Levi's offer of the *get.* *See* Catherine McCauliff, 8 *Corbin on Contracts* at § 32.3 (1999) (discussing the nonperformance of a condition as an "equitable defense" to breach of a contract.) In short, we reject Lang's contention that Rabbi Willig's conclusions regarding the intent of the parties and the balance of equities are a basis for vacating the Beth Din decision.

2. First Amendment Concerns

Were we less convinced of the rationale of Rabbi Willig's determination, we would

12. The last contention is addressed at pp. 163–66, 16 A.3d at 985–87, *supra.*

13. If the Av Beth Din had altered a factual finding of the panel, it is unclear whether this would authorize a secular court to set aside the arbitration decision. In *Kovacs v. Kovacs,* 98 Md.App. 289, 304–05, 633 A.2d 425 (1993), we said that if arbitration proceedings of the Beth Din "do not conform to notions of basic fairness or due process, the court would be justified in refusing to confirm an award." In addition, it has been said of one civil judge's alteration of facts found by another:

> Allowing a successor judge to vacate and annul a finding of fact made by the trial judge is generally considered improper, because it would permit the successor to grant a new trial. In cases tried without a jury, a party litigant is entitled to a decision on the facts by a judge who heard and saw the witnesses, and a deprivation of that right constitutes a denial of due process.

46 Am.Jur.2d, *Judges* at § 33 (2006). On the other hand, in *Kovacs,* the wife contended "that the Beth Din relied on evidence not introduced during the proceedings," 98 Md. App. 289, 633 A.2d 425, and this Court said "her complaints do not mount up to a denial of basic fairness that would mandate refusal of the court to confirm the award." *Id.* at 305–06, 633 A.2d 425. In addition, in a *Layman's Guide to Dinei Torah. (Beth Din Arbitration Proceedings), www.bethdin.org/forms-publications.asp* at 5, the Beth Din notes that when requests for modification are made, "[d]ecisions are only overturned if the appellate judge reviewing the case finds a clear mistake in the original decision, but not merely if the judge would have decided differently himself."

14. Because we believe it cannot be said that Rabbi Willig acted irrationally on this question of law, we do not reach the issue of whether his determinations regarding implied waiver and Lang's secular proceedings are a sufficient basis to overturn the panel award.

still find it exceedingly difficult to scrutinize the Beth Din decision in the manner Lang urges. As noted earlier, the standard for vacating an arbitrator's decision is a narrow standard to begin with. The addition of the religious context further narrows the standard to make our intervention nearly impossible. As has been clear since secular courts were first faced with intrachurch property disputes, courts have jurisdiction over these cases, but are prohibited from interpreting the underlying religious dogma. Michael C. Grossman, Note, *Is This Arbitration?: Religious Tribunals, Judicial Review, and Due Process,* 107 Colum. L.Rev. 169, 170 (2007). This is known as the religious question doctrine. *Watson v. Jones,* 80 U.S. 679, 727, 13 Wall. 679, 20 L.Ed. 666 (1871) (finding religious questions should be decided by religious authority). While the parties do not raise the doctrine on appeal, we cannot ignore it when considering the extent of our reach into the Beth Din's final decision.

[6] The Supreme Court has held that both the Free Exercise and Establishment Clauses of the First Amendment prohibit judicial review of religious questions. *See* Grossman, *supra,* at 183. As the Court articulated in *Serbian Eastern Orthodox Diocese v. Milivojevich:*

> [C]ivil courts do not inquire whether the relevant (hierarchical) church governing body has power under religious law (to decide such disputes).... Such a determination ... frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a (hierarchical) church so as to decide ... religious law (governing church policy) ... would violate the First Amendment in much the same manner as civil determination of religious doctrine.

426 U.S. 696, 708–09, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) (citing *Md. & Va. Churches v. Sharpsburg,* 396 U.S. 367, 369, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (internal quotations omitted)). *See also Downs v. Roman Catholic Archbishop of Baltimore,* 111 Md.App. 616, 621, 683 A.2d 808 (1996) ("[C]ivil courts have no authority to second-guess ecclesiastical decisions made by hierarchical church bodies.") One scholar notes that when a court is asked to decide whether an arbitrator exceeded his authority, and the arbitrator relied on religious principles, the court is precluded from making that determination:

> Only a religious authority may be able to decide the scope of an orthodox Rabbi.... While a court can review whether parties actually agreed to a certain strand of law by reading a contract's terms, it would not be able to review whether the arbitrator exceeded his authority without delving into religious doctrine.

Grossman, *supra* at 197–97.

Therefore, we cannot delve into whether under Jewish law there is legal support for Rabbi Willig's reversal of the panel's decision. *See Meshel v. Ohev Sholom Talmud Torah,* 869 A.2d 343, 353 (D.C.2005) ("[T]he Establishment Clause precludes civil courts from resolving disputes involving religious organizations whenever such disputes affect religious doctrine or church polity or administration"); *Neiman Ginsburg & Mairanz, P.C. v. Goldburd,* 179 Misc.2d 125, 684 N.Y.S.2d 405, 407 (N.Y. 1998) (finding civil court had no power to review Beth Din's decision that it was appropriate to issue a *seruv* under Jewish law). As far as the rigor of our review is concerned, this is an area where treading lightly is not enough. Here, we cannot tread at all.

III. Protections of the Maryland Uniform Arbitration Act

[7] Lang also contends that the Beth Din denied her "basic procedural protections" afforded to her by the MUAA. Specifically, she asserts that "the arbitrators did not allow [her] counsel to cross-examine witnesses at any time during the hearing," but rather "required counsel to submit its questions for the witnesses to the panel," and the panel decided which questions to ask. She also argues that "the arbitrators did not allow [her] to be questioned by her own attorney on direct examination," and that the panel "supplied answers" for her. We disagree because the MUAA's procedural requirements do not apply to these proceedings.

[8] Maryland courts have consistently held that an arbitration proceeding in a Beth Din is valid, even if it does not comply with the requirements of the MUAA, as "long as the litigants voluntarily and knowingly agree to the arbitration procedures." *Kovacs,* 98 Md.App. at 304, 633 A.2d 425 (1993). *See also Blitz v. Beth Isaac Adas Israel Congregation,* 352 Md. 31, 33 n. 1, 720 A.2d 912 (1998) ("Maryland courts recognize the validity of arbitration proceedings at a Beth Din, even when the proceedings are not in strict compliance with the Act, so long as the parties knowingly and voluntarily agree to the arbitration procedures."). Of course, "if arbitration proceedings do not conform to notions of basic fairness or due process, the court would be justified in refusing to confirm an award." *Kovacs,* 98 Md.App. at 305, 633 A.2d 425. *See also Mandl,* 159 Md.App. at 87, 858 A.2d 508.

In the parties' Arbitration Agreement, Lang agreed that "should a dispute arise between the parties after they are married," she and Levi would "refer their marital dispute" to the Beth Din. There is no evidence that Lang did not voluntarily or knowingly agree to be subject to the Beth Din's procedures, nor does Lang argue that it was not voluntary or knowing. Both the prenuptial and arbitration agreements recite that the parties had been given the opportunity to consult with their own legal advisors. Because the parties knowingly and voluntarily agreed to arbitrate their disputes under "Jewish substantive and procedural law" they "expressly waived application of Maryland law and the procedural aspects of the [MUAA]." *See Kovacs,* 98 Md.App. at 305, 633 A.2d 425.

[9] The Beth Din's procedures also complied with basic notions of fairness and due process. The arbitration panel's handling of witnesses was also at issue in *Kovacs,* where the appellant argued that "counsel was not permitted to . . . cross-examine witnesses . . . or otherwise represent her effectively." 98 Md.App. at 302–03, 633 A.2d 425. In *Kovacs,* we held that the appellant's "allegations of procedural defects . . . do not mount up to a denial of basic fairness that would mandate refusal of the court to confirm the award." *Id.* at 305–06, 633 A.2d 425.

Our review of the record shows that Lang had a fair hearing before the Beth Din, where her counsel was able to make an opening statement and question witnesses by presenting questions to the panel, which in turn instructed the witnesses to answer. Counsel was also given an opportunity to respond to Levi's arguments and to instruct Lang. The record shows that the panel was not "supplying answers" for Lang or precluding her own attorney from questioning her, as she contends. Rather, the panel was merely repeating an answer Lang had given earlier in the proceedings. Because the arbitration complied with basic notions of fairness and due process, and Lang voluntarily and knowingly agreed to be subject to them,

we do not see this contention as a reason to vacate the arbitration award.

IV. Evidence of Applicable Jewish Law

[10] Lastly, Lang asserts that the circuit court erred by granting summary judgment because "material facts were in dispute regarding the authority of [an] appellate arbitrator under the applicable Jewish law." Specifically, she argues that Levi provided insufficient evidence of Jewish law under the Uniform Judicial Notice of Foreign Law Act, CJP § 10–501, *et seq.*, which was required because he "contend[ed] that Jewish [l]aw controls the terms of the Arbitration Agreement" and so "proper evidence of Jewish law must be submitted."

We do not think that any material facts remained in dispute, nor do we find that Levi was required to submit proper evidence of Jewish law. Proof of Jewish law is not required because, as we discussed above, we are prohibited under the First Amendment from interpreting any substantive or procedural Jewish law. As Levi correctly argues in response, "the only person authorized to explain the substance of Jewish law in the case here was the Beth Din." Thus, the trial court did not err in granting summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

198 Md.App. 173

DAVID N.

v.

ST. MARY'S COUNTY DEPARTMENT OF SOCIAL SERVICES.

No. 1450, Sept. Term, 2009.

Court of Special Appeals of Maryland.

April 1, 2011.

Background: County department of social services appealed ALJ's decision that department did not have statutory authority to investigate a report of suspected child abuse or neglect alleged to have happened in Maryland when the victim was not a resident of Maryland. The Circuit Court, Frederick County, G. Edward Dwyer, J., reversed. Alleged perpetrator appealed.

Holding: The Court of Special Appeals, Deborah S. Eyler, J., held that department was required to investigate.

Affirmed.

1. Administrative Law and Procedure ⚷683

In an appeal from an administrative agency's final decision, Court of Special Appeals reviews the agency's decision, not the circuit court's decision.

2. Infants ⚷133

Decision that county department of social services did not have authority to investigate report of suspected child abuse by alleged perpetrator because the alleged abuse happened in Maryland, but the alleged victim was not living in Maryland, being a matter of statutory interpretation, was a purely legal issue and, thus, Court of Special Appeals reviewed the decision de novo. West's Ann.Md.Code, Family Law, § 5–706(a).

NNHFA124051863S
Superior Court of Connecticut

Light v. Light

Decided Dec 6, 2012

NNHFA124051863S.

12-06-2012

Rachel LIGHT v. Eben LIGHT.

GOULD, J.

UNPUBLISHED OPINION

GOULD, J.

I

FACTS

The plaintiff, Rachel Light, and the defendant, Eben Light, signed a prenuptial agreement on June 18, 2001. The parties were married on June 21, 2001. As part of the prenuptial agreement, the defendant agreed to pay the plaintiff $100 per day in the event of their separation until such time as the defendant granted the plaintiff a Jewish religious divorce, known as a " get." [1] In her motion to enforce the prenuptial agreement, dated July 23, 2012, the plaintiff alleges that the parties have been separated for several years, the plaintiff has demanded that the defendant honor the agreement and grant the religious divorce, and the defendant has failed and refused to honor the prenuptial agreement. The plaintiff requests that the court find that the prenuptial agreement is valid and order the defendant to comply with the prenuptial agreement.[2] The plaintiff filed a memorandum of law in support of the motion to enforce the prenuptial agreement, dated October 11, 2012. Attached to the memorandum of law is a copy of the prenuptial agreement as well as an affidavit from the plaintiff. The defendant filed a memorandum of law in support of his objection to the enforcement of the prenuptial agreement, dated October 11, 2012. This objection is based on the court's lack of subject matter jurisdiction.[3]

1 A get is " [a] bill of divorce among the Jews ... and after proper ceremonies and questionings by the rabbi ... the husband hands [the get] to the wife in the presence of ten witnesses." Black's Law Dictionary 619 (5th Ed.1979).

2 Although the language of the motion for enforcement is general, it does not appear that the plaintiff is requesting that the court compel the defendant to appear before the Bet Din for purposes of obtaining a get, but rather the plaintiff is asking the court to enforce the $100 per day support provision contained in the prenuptial agreement. The content of both parties' memoranda of law support this interpretation as neither party provides a relevant analysis on whether this court could order the defendant to provide the plaintiff with a get.

3 In her memorandum of law in support of enforcement of the prenuptial agreement, the plaintiff references a revised objection filed by the defendant. A search of the court's file, however, indicates that no such revised objection was filed with the court.

II

DISCUSSION

A

Parties' Arguments

The prenuptial agreement provides in relevant part that the defendant, as the husband-to-be, obligates himself to support his wife-to-be " in the manner of Jewish husbands who feed and support their wives loyally. If, God forbid, we do not continue domestic residence together for whatever reason, then I [the husband-to-be] ... obligate myself to pay her $100 per day, indexed annually to the Consumer Price Index for all Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics, beginning as of December 31st following the date of our marriage, for food and support ... from the day we no longer continue domestic residence together, and for the duration of our Jewish marriage, which is payable each week during the time due, under any circumstances, even if she has another source of income or earnings."

The plaintiff asserts that Connecticut's Premarital Agreement Act, General Statutes § 46b-36a et seq., provides this court with jurisdiction to enforce the prenuptial agreement, and the fact that the parties are Jewish does not deprive this court of subject matter jurisdiction. According to the plaintiff, the United States Supreme Court determined that courts have the power to resolve disputes between religious persons so long as the court can do so based on neutral principles of law. The plaintiff asserts that the fact that a prenuptial agreement is authored by religious persons has never been found to remove the agreement from the power of Connecticut's courts, citing *Lashgari v. Lashgari,* 197 Conn. 189, 496 A.2d 491 (1985). The plaintiff also contends that New York courts have enforced the secular portions of premarital agreements between orthodox Jews, citing *Avitzur v. Avitzur,* 58 N.Y.2d 108, 446 N.E.2d 136, cert. denied, 464 U.S. 817, 104 S.Ct. 76, 78 L.Ed.2d 88 (1983).

The defendant, on the other hand, argues that the court lacks subject matter jurisdiction because the prenuptial agreement is a religious document not subject to the secular court, but rather subject only to the Rabbinical Court (Bet Din).[4] Thus, the defendant argues, for this court to provide the relief sought by the plaintiff, the court would be required to impermissibly and excessively invade religious doctrine. According to the defendant, the prenuptial agreement obligates the defendant, by means of a Kinyan (a formal Jewish transaction), to support the plaintiff should they no longer reside together and further calls for proceedings before the Bet Din regarding outstanding disputes between the parties. The prenuptial agreement provides for support of a wife until the Jewish marriage is terminated by way of a get, which requires proper ceremonies and questionings by the rabbi, followed by the husband handing the get to the wife in the presence of ten witnesses. According to the defendant, this act cannot be accomplished by a secular court, but rather solely through ecclesiastical means as a religious right and ceremony of the Jewish faith. Thus, the defendant contends, the prenuptial agreement refers to and reflects religious doctrine, protocols and ceremonies, and any action taken by this court relative to the prenuptial agreement would violate the free exercise and establishment clauses of the First Amendment to the United States Constitution, Articles One and Seven of the Connecticut constitution and General Statutes § 52-571b.[5]

[4] The plaintiff contends that the defendant's argument that the premarital agreement can only be enforced by a Bet Din should be rejected due to the defendant's refusal to appear before the Bet Din when summoned by it.

[5] General Statutes § 52-571b provides in relevant part: " (a) The state or any political subdivision of the state shall not burden a person's exercise of religion under section 3 of article first of the constitution of the state even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section. (b) The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that

> application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest."

The defendant further asserts that this court cannot perform any inquiry into the prenuptial agreement under " neutral principles of law" because, by its very nature, the document requires consideration of religious doctrines and ceremonies. Rather, this court must apply the strict scrutiny test to determine if it may interfere in the religious rights of the parties. According to the defendant, enforcement of the prenuptial agreement fails all prongs of the strict scrutiny test and, in particular, the first prong because there exists no secular purpose for the court to interfere in the religious rights of the parties. The defendant asserts that the only potential secular purpose would be the divorce of the parties and the support and maintenance thereof. The court, however, does not need to reach into the prenuptial agreement to advance that purpose because the court has jurisdiction to dissolve the secular marriage and provide for appropriate support, regardless of the prenuptial agreement.

B

Analysis

" The first amendment to the United States constitution, applicable to the states through the fourteenth amendment to the United States constitution ... provides in pertinent part: ‘ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...’ U.S. Const., amend. I ... The first amendment to the United States constitution protects religious institutions from governmental interference with their free exercise of religion ... [T]he first amendment has been interpreted broadly to severely [circumscribe] the role that civil courts may play in resolving ... disputes concerning issues of religious doctrine and practice ... Under both the free exercise clause and the establishment clause, the first amendment prohibits civil courts from resolving disputed issues of religious doctrine and practice ... By contrast, exercise of governmental authority is permissible if it (1) has a secular purpose, (2) neither inhibits nor advances religion as its primary effect and (3) does not create excessive entanglement between church and state ...

" In the nineteenth century, the United States Supreme Court enunciated principles limiting the role of civil courts in resolving religious controversies. In 1871, prior to judicial recognition of the coercive power of the [f]ourteenth [a]mendment to protect the limitations of the [f]irst [a]mendment against state action ... the Supreme Court in *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 727, 20 L.Ed. 666 (1871), held that ‘ the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.’ At least since then, the Supreme Court consistently has held that civil courts are prohibited by the first amendment from adjudicating disputes turning on church policy and administration or on religious doctrine and practice ... In short, [as a] general rule ... religious controversies are not the proper subject of civil court inquiry, and ... a civil court must accept the ecclesiastical decisions of church tribunals as it finds them ..."

However, " [n]ot every civil court decision ... jeopardizes values protected by the [f]irst [a]mendment ... If a court can resolve the dispute by applying only neutral principles of law ... judicial review may be permissible ... Courts have considered it constitutionally appropriate to

resolve cases using neutral principles of law so long as they do not implicate or are not informed by religious doctrine or practice ... But the exception in cases where neutral principles of law may apply ought not swallow the first amendment rule: where conduct is prima facie protected by the first amendment, a party seeking secular court jurisdiction bears a burden to show that the controversy in issue is outside the constitutional bar." (Citations omitted; internal quotation marks omitted.) *Thibodeau v. American Baptist Churches of Connecticut,* 120 Conn.App. 666, 670-75, 994 A.2d 212, cert. denied, 298 Conn. 901, 3 A.3d 74 (2010).

In the present case, the central question presented is whether enforcement of the prenuptial agreement requires the court to interpret and to apply religious doctrine and practices or whether neutral principles of secular law can be applied without need to inquire into religious matters. " Neutral principles are secular legal rules whose application to religious parties or disputes do not entail theological or religious evaluations." (Internal quotation marks omitted.) *Encore Productions, Inc. v. Promise Keepers,* 53 F.Supp.2d 1101, 1112 (D.Colo.1999).

The issue presented to this court appears to be one of first impression in Connecticut. The plaintiff cites to *Lashgari v. Lashgari, supra,* 197 Conn. at 189, for the proposition that Connecticut courts have enforced prenuptial agreements authored by religious persons. *Lashgari* involved a marriage contract entered into by two Iranians at the time of the marriage in Iran. *Id.,* at 191. Under the terms of the contract, the husband agreed to pay the wife a " mahr, " which is an obligation assumed pursuant to an Iranian marriage contract, in the amount of $18, 000 dollars.[6] *Id.* The husband did not pay the mahr at the time of the marriage or any time before the parties moved to the United States. *Id.* After moving to the United States, the husband sought a divorce and the wife counterclaimed for breach of the marriage contract. *Id.* The trial court recognized the contractual obligation created under the mahr and awarded the wife $15, 789.47. *Id.,* at 192. There is no indication, however, that the constitutional questions at issue in the present case were introduced or argued in *Lashgari* at either the trial or appellate court levels. Rather, the issues presented to the court dealt with satisfaction of the judgment. *Id.,* at 194-95.

[6] The mahr called for payment in the amount of 1, 200, 000 rials, which was valued, at the time, at about $18, 000. *Id.*

However, courts in other jurisdictions have addressed issues similar to that presented here and those decisions are instructive to this court. In *Odatalla v. Odatalla,* 355 N.J.Super. 305, 309, 810 A.2d 93 (2002), the New Jersey Superior Court determined that it had jurisdiction to enforce an Islamic mahr agreement, finding that the agreement could be enforced " based upon neutral principles of law and not on religious policy or theories." (Internal quotation marks omitted.) There, prior to the religious marriage ceremony, the parties entered into a mahr agreement which obligated the husband to pay " one golden pound coin" to the wife during the religious ceremony and, thereafter, a " postponed ten thousand U.S. dollars." *Id.,* at 308. The husband complied with the prompt payment of the one golden pound coin, and, upon seeking a divorce, the wife sought enforcement of the postponed ten thousand dollar payment. *Id.* In holding that it could enforce the mahr agreement, the court explained that " no doctrinal issue [was] involved-hence, no constitutional infringement." *Id.,* at 310. The court further explained that " the Mahr Agreement [was] not void simply because it was entered into during an Islamic ceremony of marriage. Rather, enforcement of the secular parts of a written agreement is consistent with the constitutional mandate for a ‘ free exercise’ of religious beliefs, no matter how diverse they may be. If this Court can apply neutral principles of law to the enforcement of a Mahr Agreement, though religious in appearance, then the Mahr Agreement survives any constitutional implications.

Enforcement of this Agreement will not violate the First Amendment proscriptions on the establishment of a church or the free exercise of religion in this country. The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity." (Internal quotation marks omitted.) *Id.,* at 311. As the court determined that the controversy could be resolved by recourse to neutral principles of law, it then applied those neutral principles, namely the principles of contract law, to the mahr agreement, finding that all essential elements of a contract were present and that the husband owed the wife ten thousand dollars. *Id.,* at 312-13.

In reaching its decision that neutral principles of law could be applied to the mahr agreement, the *Odatalla* court relied on *Hurwitz v. Hurwitz,* 215 N.Y.S. 184, 216 A.D. 362 (1926), noting that " the court specifically enforced a Ketubah, a marriage contract in the Jewish faith." The *Odatalla* court also relied on *Minkin v. Minkin,* 180 N.J.Super. 260, 434 A.2d 665 (1981), noting that the court ruled that it " had the power to specifically enforce a Ketubah, as it related to the husband securing a Jewish ' Get' as provided for in the Ketubah." Finally, the *Odatalla* court relied on *Avitzur v. Avitzur, supra,* at 58 N.Y.2d 108. In *Avitzur,* the court held that there was " nothing in law or public policy to prevent judicial recognition and enforcement of the secular terms of [a Ketubah]." *Id.,* at 111. There, prior to their Jewish marriage ceremony, the parties entered into a Ketubah, in which they both agreed to recognize the Bet Din, a rabbinical tribunal, as having authority to counsel the couple in matters concerning their marriage. *Id.,* at 111-12. Although the husband was eventually granted a civil divorce, the wife was not considered divorced, and could not remarry pursuant to Jewish law, until a Get, a Jewish divorce decree, was granted. *Id.,* at 112. In order to obtain a Get, both parties must appear before the Bet Din. *Id.* Pursuant to the Ketubah, the wife sought to summon the husband before the Bet Din but the husband refused to appear. *Id.* The wife then brought an action in civil court, alleging that the Ketubah constituted a marital contract which the husband breached by failing to appear before the Bet Din. *Id.* The wife sought specific performance of the Ketubah requirement that the husband appear before the Bet Din. *Id.* The husband moved to dismiss the complaint on the ground that the court lacked subject matter jurisdiction. *Id.,* at 112-13.

The *Avitzur* court determined that the case could be " decided solely upon the application of neutral principles of contract law, without reference to any religious principle." *Id.,* at 115. The court explained that " the relief sought by [the] plaintiff in this action is simply to compel [the] 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." *Id.* The court further explained that " the provisions of the Ketubah relied on by the plaintiff constitute nothing more than an agreement to refer the matter of a religious divorce to a nonjudicial forum. Thus, the contractual obligation [the] 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 ... Similarly, an agreement to refer a matter concerning marriage to arbitration suffers no inherent invalidity ... 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." (Citations omitted.) *Id.,* at 113-14.

Similarly, in *In re Marriage of Goldman,* 196 Ill.App.3d 785, 554 N.E.2d 1016, cert. denied, 132 Ill.2d 544, 555 N.E.2d 376 (1990), the Illinois Appellate Court agreed with the trial court's finding that the Ketubah was a contract and affirmed the trial court's order requiring specific performance of the Ketubah. The Appellate Court held that the trial court's order did not violate the free exercise or establishment clauses of the First Amendment or the state constitution. *Id.* In reaching its decision on the constitutional issues, the Appellate Court relied on the United States Supreme Court's analysis in *Lynch v. Donnelly,* 465 U.S. 668, 679, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984), [7] in which the Court stated that it " often found it useful to inquire whether the challenged law or conduct has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive entanglement of government with religion." Using this analysis, the Illinois Appellate Court determined that the trial court's order had " the secular purpose of enforcing a contract between the parties ... Also, the court order furthers two secular purposes set forth in the Illinois Marriage and Dissolution of Marriage Act: ‘ [To] promote the amicable settlement of disputes that have arisen between parties to a marriage; [and to] mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage ... Second ... the primary effect of the court order was to further the secular purposes stated above and not to advance or inhibit religion ... To comply with the court order, [the husband] need not engage in any act of worship or profess any religious belief ... To the extent that the court order advances Orthodox Judaism by requiring an Orthodox get, it is an incidental effect of the enforcement of the parties' contract that Orthodox Jewish law govern the status of their marriage. Third ... the court order avoids an excessive entanglement with religion. In resolving disputes involving religion, a court may apply objective, well-established principles of secular law, or neutral principles of law, which do not entail a consideration of doctrinal matters ... Here, the trial court merely applied well-established principles of contract law to enforce the agreement made by the parties." (Citations omitted; internal quotation marks omitted.) *In re Marriage of Goldman, supra,* at 196 Ill.App.3d 794-95.

[7] *Lynch v. Donnelly, supra,* at 465 U.S. 668, was a case involving the issue of whether a city's inclusion of a Nativity scene in its annual Christmas display violated the establishment clause.

In the present case, the outcome is the same regardless of whether this court adopts the truncated procedure articulated by the *Odatalla* court that " [a]greements, though arrived at as part of a religious ceremony of any particular faith, are capable of being enforced if they meet the two prong test of (1) being capable of specific performance under neutral principles of law and (2) once those neutral principles of law are applied, the agreement in question meets the state's standards for those neutral principles of law" (internal quotation marks omitted); *Odatalla v. Odatalla, supra,* at 355 N.J.Super. 313; or follows that more elaborate analysis set forth in *In re Marriage of Goldman, supra,* at 196 Ill.App.3d 785. In the present case, a determination as to whether the prenuptial agreement is enforceable would not require the court to delve into religious issues. Determining whether the defendant owes the plaintiff the specified sum of money does not require the court to evaluate the proprieties of religious teachings. Rather, the relief sought by the plaintiff is simply to compel the defendant to perform a secular obligation, i.e., spousal support payments, to which he contractually bound himself.

Enforcement of the prenuptial agreement has the secular purpose of enforcing a contract between the parties and furthers the secular purpose set forth in Connecticut's Premarital Agreement Act " to recognize the legitimacy of premarital contracts in Connecticut ... Connecticut [has] recognized the

efficacy and usefulness of contracts between persons proposing to marry." *Dornemann v. Dornemann,* 48 Conn.Supp. 502, 519-20, 850 A.2d 273 *74 (2004); see General Statutes § 46b-36a et seq. Next, the primary effect of enforcing the prenuptial agreement is to further the secular purposes stated above and not to advance or inhibit religion. Enforcement of the prenuptial agreement does not require either the plaintiff or the defendant to engage in any act of worship or profess any religious belief. To the extent that enforcement of the prenuptial agreement advances Judaism by requiring support for the wife until the husband gives her a get, it is an incidental effect of the enforcement of the parties' contract that Jewish law govern the status of their marriage. See *In re Marriage of Goldman, supra,* at 196 Ill.App.3d 785. Finally, enforcement of the prenuptial agreement does not result in an excessive entanglement with religion. " In resolving disputes involving religion, a court may apply objective, well-established principles of secular law, or neutral principles of law, which do not entail a consideration of doctrinal matters." *Id.* In the present case, the trial court may apply well-established principles of contract law and Connecticut's Premarital Agreement Act to enforce the agreement made by the parties. See *Peterson v. Sykes-Peterson,* 133 Conn.App. 660, 664, 37 A.3d 173, cert. denied, 304 Conn. 928, 42 A.3d 390 (2012) (" prenuptial agreements are contracts and ‘ are to be construed according to the principles of construction applicable to contracts generally’ ").

Accordingly, as neutral principles of secular law may be applied to the prenuptial agreement, it is submitted that this court has subject matter jurisdiction to enforce the prenuptial agreement and the defendant's objection should be overruled.

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