

STATE OF MICHIGAN
COURT OF APPEALS

SAM M. ELLEHAF, aka HUSSEIN M.
ELLEHAF,

UNPUBLISHED
March 23, 2006

Plaintiff-Appellee,

v

FAYE HASSAN TARRAF,

No. 257222
Wayne Circuit Court
LC No. 03-321421-DC

Defendant-Appellant.

Before: Owens, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's final order for child support, custody, parenting time, and other relief, in this child custody and divorce proceeding. We affirm.

Defendant challenges the trial court's order granting plaintiff's motion for declaratory judgment that the parties were never legally married. This Court's review of a declaratory judgment is conducted de novo. *Taylor v Blue Cross/Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). However, we will not reverse a trial court's factual findings unless they are clearly erroneous. *Id.* We review questions of law in declaratory judgment actions de novo. *Green Oak Twp v Munzel*, 255 Mich App 235, 238; 661 NW2d 243 (2003).

"A relationship that does not meet the statutory requirements for a legal marriage does not give rise to property rights, personal rights, or rights to support." *Ford v Wagner*, 153 Mich App 466, 471; 395 NW2d 72 (1986). Michigan law provides:

So far as its validity in law is concerned, marriage is a civil contract between a man and a woman, to which the consent of parties capable in law of contracting is essential. Consent alone is not enough to effectuate a legal marriage on and after January 1, 1957. Consent shall be followed by obtaining a license as required by section 1 of Act No. 128 of the Public Acts of 1887, being section 551.101 of the Michigan Compiled Laws, or as provided for by section 1 of Act No. 180 of the Public Acts of 1897, being section 551.201 of the Michigan Compiled Laws, and solemnization as authorized by sections 7 to 18 of this chapter. [MCL 551.2.]

To obtain a valid marriage under Michigan law,

[I]t shall be necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in which either the man or woman resides and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the state it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed. [MCL 551.101.]

It undisputed that the parties never obtained a marriage license from the Wayne County clerk, the county in which both parties reside. Defendant, however, argues that her registration of the marriage in Lebanon makes the marriage valid there, so this Court should recognize it as valid in Michigan. However, there is no evidence that the parties ever traveled together to Lebanon to solemnize the marriage. In fact, the only evidence presented to support defendant's claim that her marriage to plaintiff was valid in Lebanon is a registration that she unilaterally applied for four years after the marriage ceremony, after plaintiff had been granted two religious divorces from defendant, and either shortly before or shortly after plaintiff legally married another woman in Michigan.¹

In addition, plaintiff presented substantial evidence that defendant did not regard herself as married to plaintiff during the period when defendant alleged she was living with plaintiff as husband and wife. Defendant applied for Social Security benefits, which required her to verify that she did not live with anyone other than her sons. Defendant represented to police officers in a police report, unrelated to this matter, that she was plaintiff's girlfriend, not his wife. Defendant filed her federal income tax returns as the head of her household and not a married person. Finally, defendant stated on the affidavits of parentage for her two children with plaintiff that she was not married. Defendant is mistaken in her claim that the affidavits of parentage were not part of the lower court record, as they were attached to plaintiff's original complaint for custody.

Defendant had previously been validly married and validly divorced in Michigan. There is no genuine question that she knew the difference between her previous, legal marriage, for which she obtained a marriage license from the Wayne County clerk, and her religious, ceremonial marriage to plaintiff, for which she did not. In Michigan, the statutory requirements must be complied with to create a valid, legally recognized marriage. MCL 551.2. Defendant failed to do this. The trial court, therefore, did not err in determining that there had been no legal marriage between plaintiff and defendant.

There is no merit to defendant's argument that she substantially complied with the statutory requirements because the Secretary of State certified the Lebanese marriage certificate.

¹ According to a valid Wayne County marriage license and certificate of marriage, plaintiff married his current wife on June 9, 2003. Defendant attempted to register her marriage in Lebanon some time in 2003, but the lower court record is not clear regarding the precise date.

Our review of the record indicates that defendant had translations of the marriage certificate and a letter by the Imam notarized, but there is no certification of these documents by the Secretary of State. The only certification attached to the lower court record is a form letter from the Secretary of State acknowledging the qualifications of the Notary Public who notarized the documents. The plain language of MCL 551.2 says that the statutory requirements must be met to form a legal marriage in the State of Michigan, and it does not include an exception for substantial compliance. The trial court did not err in granting plaintiff's motion for declaratory judgment.

Defendant next argues that the trial court abused its discretion in denying her motions to set aside the declaratory judgment, for a new trial, for reconsideration, and for an evidentiary hearing. We disagree.

This Court reviews the trial court's denial of a motion to set aside a judgment for an abuse of discretion, *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996), as well as the trial court's denial of reconsideration, *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000), the denial of a motion for a new trial, *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 498; 668 NW2d 402 (2003), and the trial court's denial of a motion for an evidentiary hearing, *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 172; 702 NW2d 588 (2005).

It is undisputed that the marriage in this case did not comply with the statutory requirements of Michigan law and no evidence was presented that the parties ever traveled together to Lebanon to remarry or solemnize their marriage there. Defendant's claim that there is still a genuine issue of material fact regarding "[w]hether defendant understood that registration of the marriage in Lebanon was inadequate" is disingenuous, given that she had previously been legally married and divorced in Michigan.

Defendant also takes issue with the evidence presented at trial that supports the trial court's determination that she "failed to show that she in any way considered Plaintiff to be her legal husband." However, we find that this evidence is unnecessary to sustain the trial court's ruling. Defendant's representations to police, the Social Security Administration, the IRS, and the state of Michigan that she was not married are merely evidence of defendant's state of mind. Because Michigan no longer recognizes common-law marriage, defendant's state of mind is irrelevant. The trial court did not abuse its discretion in refusing to set aside its order granting plaintiff's motion for declaratory judgment or in denying defendant's other post judgment motions.

Lastly, defendant argues that the trial court lacked subject-matter jurisdiction to decide plaintiff's motion for declaratory judgment that the parties were never legally married. We disagree. "Whether a court has subject-matter jurisdiction is a question of law subject to review de novo." *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Property Taxes*, 265 Mich App 285, 290; 698 NW2d 879 (2005) (internal quotation marks and citation omitted). "[C]ircuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute." *Id.* at 291.

Plaintiff filed his complaint for custody in the Wayne Circuit Court using the case classification code DC (for custody matters). See MCR 8.117(A)(6)(a). Subsequently, defendant filed a counter-complaint for divorce. Defendant argues that plaintiff is required to file a separate complaint for divorce, using the case classification code DM (for divorces involving minor children). See MCR 8.117(A)(6)(b). Defendant has cited no law that would prohibit the circuit court from hearing either a custody or divorce action. A party may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims nor may she give issues cursory treatment with little or no citation of supporting authority. *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). “An appellant’s failure to properly address the merits of h[er] assertion of error constitutes abandonment of the issue.” *Id.* at 339-340. Defendant’s position is without merit because the trial court had subject-matter jurisdiction to determine divorce and custody issues. See, MCL 552.6 and MCL722.1 *et seq.*

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood