

FILED

FBT-FA-23-6122178-S

MAY 06 2024

SUPERIOR COURT

ANNA KORSHUNOVA

SUPERIOR COURT
BRIDGEPORT

JUDICIAL DISTRICT
OF BRIDGEPORT

v.

DMYTRO PERSHYN

MAY 6, 2024

MEMORANDUM OF DECISION RE: PLAINTIFF'S MOTION TO DISMISS (DOCKET ENTRY NO. 138.00) AND DEFENDANT'S MOTION TO STRIKE (DOCKET ENTRY NO. 130.00)

I. BACKGROUND

On March 7, 2023, the plaintiff, Anna Korshunova, filed a complaint for dissolution of her marriage to the defendant, Dmytro Pershyn. She alleged that she had resided in Connecticut continuously for one year preceding the date of the complaint and that the marriage had broken down irretrievably. As relief, she sought a dissolution of the marriage, alimony, and an equitable division of the assets and debts.

On December 22, 2023, almost ten months after the plaintiff filed her complaint, the defendant filed an answer and cross complaint (defendant's complaint), admitting the allegations in the plaintiff's complaint and asserting that he has lived in Connecticut for at least twelve months prior to the filing of the complaint. Docket Entry No. 120. As relief, the defendant sought a dissolution of the marriage and a fair division of property and debts. Id.

On December 22, 2023, after obtaining new counsel, the plaintiff withdrew her complaint, and on December 26, 2023, she filed a seventy-three-page answer and cross complaint (plaintiff's cross complaint). Docket Entry No. 122. In the answer, the plaintiff asserted special defenses based on the claim that the marriage between the parties was void or voidable "as a result of bigamy and fraud committed by the defendant." Id. In the plaintiff's cross complaint, she seeks an annulment based on the allegation that, at the time they married on October 28, 2016, the defendant was still married because his prior divorce was invalid, rendering the parties' marriage void. Id. She also alleges that the defendant entered the marriage

*revised to all counsel
and self represented parties
of record 5/16/24 JLR*

solely to obtain permanent residency and immigration status in the United States, which was a deceitful intent to defraud the plaintiff and rendered the marriage voidable. Id.

On January 9, 2024, the defendant filed a motion to strike the plaintiff's cross complaint, claiming that the pleading is legally insufficient. Docket Entry No. 130. In the supporting memorandum, the defendant argues that the filing of a cross complaint by the plaintiff is not permitted by Practice Book § 25-11, and therefore, it is legally insufficient. Docket Entry No. 131. On January 22, 2024, the plaintiff filed an objection arguing that the motion to strike should be denied because it challenges the order of pleadings, not the legal sufficiency of the annulment claim in the cross complaint. Docket Entry No. 137.

On February 8, 2023, the plaintiff filed a motion to dismiss the defendant's complaint arguing that the court lacks subject matter jurisdiction to "address and decide the divorce action as the Parties' marriage was invalid ab initio and is legally non-existent." Docket Entry No. 138. She claims that the defendant was not permitted to marry her. He remained married to his prior wife because the United States does not recognize the divorce decree that was signed by Russian authorities in the Crimea region of Ukraine. Id. In support of the motion, the plaintiff submitted a declaration from Attorney Karina Duvall (Ex. 1), and several documents that appear to be printouts from the internet, including a purported official statement from the United States government regarding the Ukraine (Ex. 2), purported guidelines of the United States Embassy and Consulates in Russia (Ex. 3), and purported guidelines of the United States Department of State – Bureau of Consular Affairs (Ex. 4).

On March 1, 2024, the defendant filed a memorandum in opposition to the motion to dismiss. Docket Entry No. 143. In the memorandum, the defendant argues that the motion should be denied because the plaintiff does not have standing to challenge the validity of the defendant's

prior divorce, which has never been invalidated. *Id.* He also argues that the plaintiff has not accurately cited the authority that she relies on to support the motion.¹ *Id.*

On March 1, 2024, the parties appeared with counsel to argue the plaintiff's motion to dismiss and the defendant's motion to strike.

II. DISCUSSION

A. Plaintiff's Motion to Dismiss

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff *cannot* as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Gurliacci v. Mayer*, 218 Conn. 531, 544, 590 A.2d 914 (1991). "Jurisdiction of the subject-matter is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong. . . . A court has subject matter jurisdiction if it has the authority to adjudicate a particular type of legal controversy. . . . [O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case." (Internal quotation marks omitted.) *Liberty Mutual Ins. Co. v. Lone Star Industries, Inc.*, 290 Conn. 767, 812, 967 A.2d 1 (2009). "[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised."² (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003).

¹ The defendant claimed that the documents submitted by the plaintiff relate to unrelated policies and procedures, including policies relating to visas, passports, immigration, and citizenship, and do not relate to the validity of a foreign divorce decree.

² Based on the procedural posture of this case, the defendant is technically the plaintiff because the plaintiff withdrew her complaint.

Jurisdiction gives the court the ability to hear and rule upon the matters presented. *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 490 A.2d 509 (1985). “[I]n determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged. . . . [The Appellate Court] recognize[d] a distinction between a court’s jurisdiction and its statutory authority to act. . . . Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action.” (Citations omitted; internal quotation marks omitted.) *Roos v. Roos*, 84 Conn. App. 415, 419, 853 A.2d 642 (2004).

The Superior Court has exclusive jurisdiction of all complaints seeking a decree of annulment or the dissolution of a marriage. General Statutes § 46b-42. There is a residency requirement, the “satisfaction of which is essential to confer on the court subject matter jurisdiction over a dissolution action.” *Charles v. Charles*, 243 Conn. 255, 257, 701 A.2d 650 (1997). “A complaint for dissolution of marriage . . . may be filed at any time after either party has established residence in this state.” General Statutes § 46b-44 (a). This case involves the defendant’s complaint to dissolve his marriage to the plaintiff, and the plaintiff’s cross complaint to annul the marriage. Both parties have acknowledged that they have resided in Connecticut for at least twelve months prior to the filing of the complaint and commencement of the action. The court has subject matter jurisdiction over the claims for dissolution and annulment, and the parties satisfy the residency requirement to bring these claims in Connecticut.

Notwithstanding the above, the plaintiff argues that the court lacks subject matter jurisdiction because the United States does not recognize a divorce decree³ executed by Russian authorities in Crimea, and therefore, because the defendant was not eligible to remarry, there is no marriage to dissolve.⁴ “Recognition is a ‘formal acknowledgement’ that a particular ‘entity possesses the qualifications for statehood’ or ‘that a particular regime is the effective government of a state.’” *Zivotofsky v. Kerry*, 576 U.S. 1, 11, 135 S. Ct. 2076, 192 L. Ed. 2d 83 (2015). “The weight of historical evidence indicates Congress has accepted that the power to recognize foreign states and governments and their territorial bounds is exclusive to the Presidency.” *Id.*, 28.

In support of her claim that the United States does not recognize a divorce decree issued by Russian authorities in Crimea, the plaintiff submitted various documents. These documents include: (1) a printout from the U.S. Embassy in Ukraine of a “Press Statement” from Ned Price, a Department Spokesperson, dated February 26, 2023 (“Nine years ago, Russia invaded and seized Crimea – a clear violation of international law and of Ukraine’s sovereignty and territorial integrity. The United States welcomes the efforts of Ukraine’s Crimea Platform to focus global

³ “Courts of the United States are not required by federal law to give full force and effect to a judgment granted in a foreign nation. . . . On the other hand, judgments of courts of foreign countries are recognized in the United States because of the comity due to the courts and judgments of one nation from another. . . . This principle is frequently applied in divorce cases; a decree of divorce granted in one country by a court having jurisdiction to do so will be given full force and effect in another country by comity, not only as a decree determining status, but also with respect to an award of alimony and child support. The principle of comity, however, has several important exceptions and qualifications. A decree of divorce will not be recognized by comity where it was obtained by a procedure which denies due process of law in the real sense of the term, or was obtained by fraud, or where the divorce offends the public policy of the state in which recognition is sought, or where the foreign court lacked jurisdiction.” (Citations omitted.) *Litvaitis v. Litvaitis*, 162 Conn. 540, 544–45, 295 A.2d 519 (1972). The plaintiff does not claim that the divorce was obtained by a procedure which denied due process of law, that the divorce was obtained by fraud, or that the tribunal issuing the divorce decree lacked jurisdiction.

⁴ General Statutes § 46b-20a (1) provides in relevant part: “A person is eligible to marry if such person is: Not a party to another marriage” Under the plaintiff’s theory, the court likewise would not have subject matter jurisdiction over her cross-complaint for annulment because, if the parties’ marriage was invalid as claimed by the plaintiff, there would be nothing to annul.

attention on Russia's continued occupation. The United States does not and never will recognize Russia's purported annexation of the peninsula. Crimea is Ukraine."); Docket Entry No. 138, Ex. 2, p.1; (2) purported copy of a Fact Sheet from the U.S. Security Cooperation with Ukraine dated December 12, 2023 ("We have not forgotten Russia's earlier aggression in eastern Ukraine and occupation following its unlawful seizure of Crimea in 2014. The United States reaffirms its unwavering support for Ukraine's sovereignty and territorial integrity within its internationally recognized borders extending to its territorial waters."); Id., Ex. 2 at p.2; (3) a "Reciprocity Schedule" relating to visas ("Marriages and divorces in occupied Crimea or in the non-government controlled areas of Donetsk and Luhansk oblasts [the 'Donetsk People's Republic' [DPR] and the 'Luhansk People's Republic' [LPR]] are not legally recognized in Ukraine and therefore do not establish a valid relationship for U.S. immigration purposes. Only marriages and divorces performed by Ukrainian authorities and evidenced by official documents issued by the Ukrainian authorities are valid."); Id., Ex. 3, p. 3; and (4) a printout from the U.S. Embassy & Consulates in Russia relating to citizenship policies and procedures ("Applications for consular birth abroad and U.S. passports for children born in Crimea must be accompanied by the appropriate civil documents. We do not accept or recognize the validity of Russian civil documents issued in Crimea."); Id., Ex. 4, p.2. These documents submitted by the plaintiff appear to be documents printed from the internet and they are not certified.⁵

⁵ The plaintiff's claim that the United States does not recognize Russian documents executed in Crimea appears to be supported by the recent enactment of 22 U.S.C. § 8902 (2024). The statute provides, in part: that "[i]t is the policy of the United States (1) to condemn the unjustified military intervention of the Russian Federation in the Crimea region of Ukraine and its concurrent occupation of that region, as well as any other form of political, economic, or military aggression against Ukraine; (2) to reaffirm the commitment of the United States to, and to remind Russia of its ongoing commitment to, the 1994 Budapest Memorandum on Security Assurances, which was executed jointly with the Russian Federation and the United Kingdom and explicitly secures the independence, sovereignty, and territorial integrity and borders of Ukraine, and to demand the immediate return of Russian forces to their barracks; (3) to work with United States partners in the European Union, the North Atlantic Treaty Organization, and at the

Even if the United States does not recognize certain legal documents signed by Russian authorities in Crimea due to Russia's occupation of that region, courts are reluctant to invalidate a divorce when "holding the divorce invalid will unset relationships or expectations formed in reliance upon the divorce" *Bruneau v. Bruneau*, 3 Conn. App. 453, 457, 489 A.2d 1049 (1985). "[P]ractical recognition may be accorded such decrees by estoppel, laches, unclean hands, or similar equitable doctrine under which the party attacking the decree may be effectively barred from securing a judgment of invalidity. Thus, a party may be precluded from attacking a foreign divorce decree if such an attack would be inequitable under the circumstances." (Citation omitted; internal quotation marks omitted.) *Id.* "[I]f the person attacking the divorce is, in doing so, taking a position inconsistent with [her] past conduct, or if the parties to the action have relied upon the divorce, and if, in addition, holding the divorce invalid will unset relationships or expectations formed in reliance upon the divorce, then estoppel will preclude calling the divorce in question. . . . Thus, if one party has accepted benefits under the original decree . . . an invalid decree will be held immune from attack" (Citation omitted; internal quotation marks omitted.) *Id.*, 457–58. "Consequently, even if a divorce decree rendered in a foreign country is jurisdictionally invalid under the general rule set forth in *Litvaitis*, [*supra*, 162 Conn. 540,] the judgment may be permitted practical recognition." *Id.*, 458.

The plaintiff is seeking to invalidate a prior divorce so that she can attempt to invalidate her marriage to the defendant as a matter of law. She seeks to do this even though she apparently relied on the divorce to enter a marriage with the defendant. She believed that she was married to the defendant. In fact, she filed a complaint for the dissolution of the marriage on March 7, 2023,

United Nations to ensure that all nations recognize and not undermine, nor seek to undermine, the independence, sovereignty, or territorial or economic integrity of Ukraine. . . ."

acknowledging her marriage to the defendant, and seeking alimony and an equitable division of the assets and debts of the parties. After the defendant filed an answer and cross complaint (Docket Entry No. 120), she withdrew her complaint (Docket Entry No. 121) and filed an answer and a cross complaint for annulment based on allegations that the marriage is void and/or voidable based on bigamy and fraud. Docket Entry No. 122.

“The policy of the law is strongly opposed to regarding an attempted marriage . . . entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void.” *Hames v. Hames*, 163 Conn. 588, 599, 316 A.2d 379 (1972).⁶ The parties believed that they had entered a legal marriage on October 28, 2016. The plaintiff appears to have accepted the benefits of the divorce and her marriage to the defendant. Allowing her to challenge a divorce of which she was not a party, after she relied on the divorce to marry the defendant, may be inequitable under the circumstances of this case. Her position in the motion is inconsistent with the position that she took when she filed a complaint for a dissolution of marriage. Holding the divorce invalid may unset relationships and expectations formed in reliance upon the divorce, including the defendant’s expectation that he was single and free to marry. Thus, even if the divorce decree in Crimea issued by a Russian authority is not recognized by the United States, the divorce decree may have practical recognition in this case for purposes of the defendant’s complaint for dissolution and the plaintiff’s cross complaint for annulment.

⁶ The plaintiff’s reliance on *Zitkene v. Zitkene*, 140 Conn. App. 856, 870, 60 A.3d 322 (2103) is misplaced. She cites that case for the proposition that “the court granted defendant’s motion to dismiss plaintiff’s divorce complaint, as it properly granted comity to the judgment of dissolution rendered by the Lithuanian court in light of the undisputed facts set forth in the defendant’s affidavit”, and therefore, “the court concluded that subject matter jurisdiction was lacking as there was no valid Connecticut marriage to address, given that the parties were properly divorced in Lithuania.” Docket Entry No. 138, p. 4. That case is distinguishable and does not apply to the facts of this case. In *Zitkene*, the court found that the parties’ marriage already was dissolved by a foreign divorce decree and, therefore, there was no marriage to dissolve. Here, the parties were married on October 28, 2016, and a court has never dissolved their marriage, which is why the plaintiff, and then the defendant, filed complaints for dissolution.

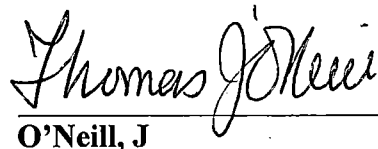
There are factual issues to be resolved to determine whether, as a matter of equity, the divorce should be recognized for purposes of the claims in this case. This court will not resolve those issues on a motion to dismiss.⁷ The motion is denied.

B. Defendant's Motion to Strike

The defendant claims that the plaintiff's cross claim for annulment should be stricken because there is no authority for a plaintiff to file a cross claim to a cross claim. The defendant overlooks the fact that the plaintiff withdrew her complaint, making the operative complaint the complaint filed by the defendant. In response to this complaint, the plaintiff filed an answer and a cross complaint for annulment. Although unorthodox, the court will not strike the plaintiff's cross claim based on the procedural posture of the case. The result may have been different if the plaintiff had not withdrawn her complaint.

III. ORDERS

For the reasons set forth above, the motion to dismiss is denied and the motion to strike is denied.



O'Neill, J

⁷ Because the court is denying the motion to dismiss based on the doctrine of practical recognition and the related factual issues, the court need not rule on the defendant's claim that the plaintiff lacks standing or the claim that the plaintiff has not accurately cited the authority that she claims support her motion.