C

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.
Rachel LIGHT
v.
Eben LIGHT.

No. NNHFA124051863S.
Dec. 6, 2012.

GOULD, J.

I
FACTS

***1** 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." FN1 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. FN2 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. FN3

FN1. 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).

FN2. 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.

FN3. 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 Con-

sumer 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).

***2** 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).[FN4] 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.[FN5]

FN4. 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.

FN5. 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 ...

***3** "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.Sup.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.[FN6] *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.

FN6. The mahr called for payment in the amount of 1,200,000 rials, which was valued, at the time, at about $18,000. *Id.*

***4** 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.

***5** 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),[FN7] 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.

FN7. *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.

***6** 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.Sup. 502, 519–20, 850 A.2d 273 [37 Conn. L. Rptr. 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 Mar-*

riage 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' ").

***7** 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.

Conn.Super.,2012.
Light v. Light
Not Reported in A.3d, 2012 WL 6743605 (Conn.Super.), 55 Conn. L. Rptr. 145

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