SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Mohammadpoor v. Merati*, 2020 NSSC 218

Date: 20200811
Docket: *Halifax* No. 1201-71447
Registry: Halifax

Between:

Maryam Mohammadpoor

Petitioner

v.

Siavash Merati

Respondent

LIBRARY HEADING

Judge: The Honourable Justice C. LouAnn Chiasson

Heard: June 21 and November 26, 2019 in Halifax, Nova Scotia

Summary: The parties were married in Iran and separated approximately 17 months thereafter. At the time of the marriage, the parties signed a "marriage settlement" or Mahr. The husband sponsored the wife to enable her to move to Canada. Both parties reside in Canada with the exception of some time spent in Iran. The wife commenced proceedings while Iran seeking spousal support, a division of property and a divorce. There was no evidence that the divorce was finalized in Iran. The divorce is granted. No spousal support was plead. Property is divided in accordance with the wife's request for relief to the Iranian courts and not in accordance with the Mahr. The debts are not matrimonial debts and remain the sole responsibility of the husband.

Key words: Corollary Relief Judgment, Family- separation agreement, Family- property division, Family- debt division, jurisdiction, transfer of proceedings

Legislation: Divorce Act, Matrimonial Property Act, Court Jurisdiction and Proceedings Transfer Act

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Judge:	The Honourable Justice C. LouAnn Chiasson
Heard:	June 21 and November 26, 2019, in Halifax, Nova Scotia
Final Written Submissions:	February 24 and March 20, 2020
Counsel:	Peter Duke for the Petitioner Meaghan C. Johnston for the Respondent

By the Court:

[1] Ms. Mohammadpoor and Mr. Merati both want to be divorced. They have retained counsel who have assisted the parties greatly in these proceedings. Both parties are of limited means - Mr. Merati is a mechanic and Ms. Mohammadpoor is working in the field of cosmetology.

[2] Although the documentation of each party reveals little in the way of property or income, the challenges posed by this matter are significant. There are issues of jurisdiction, validity of foreign court "orders", validity of a marriage contract, and appropriate division of matrimonial property. Spousal support was not plead.

[3] The parties were married in Iran. Attached to the Petition for Divorce is a translation of the "Marriage Certificate" which indicates the marriage was solemnized/ registered on March 13, 2014. The parties did not agree on the date of separation. Ms. Mohammadpoor indicates the date of separation is October 8, 2016. Mr. Merati states the parties separated on October 14, 2016. The parties did not have any children.

ISSUES:

1) Does the Supreme Court of Nova Scotia have jurisdiction to grant a divorce? If the answer is no, the matter is concluded and the relief sought by Ms. Mohammadpoor is dismissed.

2) If the Supreme Court of Nova Scotia has jurisdiction to grant a divorce, should this court decline to hear the divorce matter and refer the matter to the Iranian Court based on the principles of *forum conveniens*?

3) If the Supreme Court of Nova Scotia retains jurisdiction to grant a divorce, should the court grant corollary relief? If so, what is the appropriate corollary relief?

    a. Is the marriage settlement signed by the parties' prior to their wedding enforceable?

b. What effect, if any, does the documentation issued from the Iranian court have on the matters of corollary relief?

c. If the agreement is enforceable, are there further corollary relief issues to be addressed?

d. If the agreement is unenforceable, what is the appropriate division of matrimonial property?

    i. Does Mr. Merati have personal property of Ms. Mohammadpoor that he must provide compensation to Ms. Mohammadpoor or return the personal property?

    ii. Is Mr. Merati's student loan and RBC Visa debt to be considered as part of the division of matrimonial property or are they solely his responsibility?

BACKGROUND

[4] The parties met in Iran in 2013 and were married there on March 13, 2014. At the time of the marriage, the parties had a wedding booklet. Both parties referred to the translated wedding booklet in their materials. Ms. Mohammadpoor had a second translation of the booklet prepared.

[5] Both parties acknowledged that the marriage booklet contained a provision related to "marriage settlement". Ms. Mohammadpoor is requesting the court uphold the terms of the "marriage settlement" as a marriage contract. Mr. Merati disputes the validity of the "marriage settlement".

[6] The provision entitled "marriage settlement" (referenced by both parties) stated:

> "One volume of Holy Quran, a mirror and a pair of candlesticks which were received by the wife according to her acknowledgement, plus 700 Bahar Azadi Gold Coins which are payable to the wife by the husband on her demand." (reference Tab 1, O of the Respondent's Exhibit Book, and tab 6 of the Petitioner's Exhibit Book).

[7] Following their marriage, Ms. Mohammadpoor remained in Iran and Mr. Merati returned to Canada. Mr. Merati has Iranian citizenship and received his Canadian citizenship in 2010. Upon returning to Canada, Mr. Merati applied to sponsor Ms. Mohammadpoor as a permanent resident so that they could reside together in Canada. It took over a year to have the sponsorship granted.

[8] Ms. Mohammadpoor came to Canada on September 12, 2015. In September 2016, the parties returned to Iran so that Mr. Merati could visit his father who was seriously ill. During the visit, Mr. Merati was with his family and Ms. Mohammadpoor stayed with hers.

[9] The parties disagree on the departure of Mr. Merati from Iran in October 2016. Mr. Merati stated that Ms. Mohammadpoor contacted him at the airport to advise him that she was not returning to Canada with him. Ms. Mohammadpoor stated that Mr. Merati contacted her while she was staying with her parents to advise her that he had changed his return ticket to leave earlier, and that he was at the airport on his way back to Canada without her.

[10] She testified that when she was scheduled to return to Canada some time later, she could not find any of her travel documentation, including her passport. Mr. Merati denied any knowledge of Ms. Mohammadpoor's documentation. Ms. Mohammadpoor contacted the Iranian authorities to advise them that her passport and travelling documents were missing.

[11] Ms. Mohammadpoor further testified that when she contacted Mr. Merati from Iran, he advised her to stay in Iran as he was planning on returning in two or three months. The parties did not meet in Iran again. After a few months, Ms. Mohammadpoor was able to secure an exit permit from Iranian authorities to enable her to leave Iran and travel back to Canada. She returned to Canada on April 7, 2017.

[12] While in Iran, Ms. Mohammadpoor applied to the Iranian court for spousal support. A translated document was provided by Mr. Merati. It is entitled "The (Iranian) Judiciary, Justice Department of Khuzestan Province, Branch No. 3 of Public-Civil Court of Izeh County". The document is dated February 27, 2019, and requests Mr. Merati attend the branch on November 22, 2019 at 13:00 hours. The document states:

> "You are kindly requested to attend this branch for investigation of petition of Ms. Maryam Mohammadpour lodged against you with relief of divorce based on her application and hearing statements of witnesses."

[13] Mr. Merati submitted another translated document entitled "Judgment". This document indicates that Ms. Mohammadpoor made an application for spousal support and was awarded monthly support payable by Mr. Merati. The document indicates he was ordered to pay 3,500,000 rials per month for the period October 14, 2016 to March 20, 2017 and a further payment of 3,700,00 rials per month for the period March 21, 2017 to August, 2017. He was also ordered to pay costs of the proceeding and costs related to "expert's and the attorney's fees". The "Judgment" refers only to the issue of spousal support. It does not reference the divorce.

[14] Ms. Mohammadpoor applied to another Iranian Court to have Mr. Merati pay her 100 gold coins A translated document was provided by Mr. Merati from "The Judiciary, Deeds and Real Estate Registration Organization of Iran, Notary Public Office No. 295 Tehran". This document is dated February 25, 2018. The document states:

> "You are hereby advised that your wife, Mrs. Maryam Mohammadpour, has lodged a petition demanding 100 gold coins (Bahar-e Azadi, One) from her bride-wealth (marriage portion); therefore, you are kindly requested to attend Fifth Department of execution of formal documents of Tehran, located at "No. 34, Jahan Koudak Crossroads, Tehran".

[15] Mr. Merati testified that he has been ordered by that court to pay Ms. Mohammadpoor 100 gold coins. He further testified that if he returns to Iran without satisfying this obligation he will be arrested. Mr. Merati indicated that he intends to return to Iran and must therefore comply with this "order". No formal "order" was admitted into evidence.

[16] In February 2018 Ms. Mohammadpoor commenced a Petition for Divorce in the Supreme Court of Nova Scotia against Mr. Merati. This Petition was discontinued in October 2018. She commenced a new Petition filed with this Court October 19, 2018. She sought a divorce and division of property.

[17] Mr. Merati was served by substituted service. His Answer to the Petition was filed on May 14, 2019. He disputed the cause of the marriage breakdown and requested a divorce and division of property.

[18] The trial took place over two days with subsequent written submissions from the parties. During the trial, there was no expert testimony related to the court proceedings in Iran. There was no appropriate evidence of the value of the property to be divided. The second translation of the Marriage Certificate was disputed by Mr. Merati, however, neither translators were called to testify.

[19] I do not fault the parties or their counsel. To the contrary, counsel were of great assistance to the court. I merely point out the inadequacies of the evidence to highlight the practical reality for most parties- there is insufficient financial resources to address all evidentiary issues with impeccable technicality and precision.

LAW & ANALYSIS

ISSUE 1- Does the Supreme Court of Nova Scotia have jurisdiction to grant a divorce?

[20] Yes. Although the documentation provided indicates that Ms. Mohammadpoor commenced an application for a divorce in Iran, there is no indication that the divorce has been finalized by the Iranian courts. Even if the Iranian Court had finalized the divorce, the authority to recognize a foreign divorce is contained in section 22(1) of the *Divorce Act*, R.S.C., C3, 1985, (2nd Suppl.)(as amended) which states:

> "A divorce granted, on or after the coming into force of this Act, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision **for at least one year** immediately preceding the commencement of proceedings for the divorce." (emphasis added)

[21] Ms. Mohammadpoor resided in Tehran between September 2016 and April 2017. She does not fulfill the jurisdictional requirements to have our Court recognize a divorce issued by the courts in Iran. Ms. Mohammadpoor filed her second Petition for Divorce in October 2018 in Nova Scotia. She has fulfilled the jurisdictional requirements pursuant to section 3(1) of the *Divorce Act, supra*, to have the divorce proceed here.

ISSUE 2- If the Supreme Court of Nova Scotia has jurisdiction to grant a divorce, should this court decline to hear the divorce matter and refer the matter to the Iranian Court based on the principles of *forum conveniens*?

[22] No. The court should not refer the matter to the Iranian Court for determination. As noted in the *Armoyan* decision, [2013] NSJ 438, Mr. Merati bears the burden of proving that Iran is the more convenient forum. He has not discharged that burden.

[23] The parties have resided in Canada since their marriage with the exception of a seven month period when Ms. Mohammadpoor remained in Iran. She indicated that she remained in Iran for that length of time as a result of missing travel documentation. Other than that period, both parties have resided and continue to reside in Canada. They are employed here. There is no indication that they have any property or income in Iran.

[24] As noted in the *Armoyan* decision, *supra*, the *forum non conveniens* principles are codified in the *Court Jurisdiction and Proceedings Transfer Act*, S.N.S., c. 2, as amended ("CJPTA"). Pursuant to s. 12 (2)(d) of the CJPTA, a judge must address the potential to avoid conflicting decisions in different courts. Although Mr. Merati has indicated that there is an Iranian judgement requiring him to pay 100 gold coins, I do not have any such judgment or court order. I have reviewed documentation indicating that Ms. Mohammadpoor was seeking 100 gold coins from him, but not the final decision or order of any Iranian court on that point.

[25] There does appear to be a determination in an Iranian court related to spousal support for a fixed term. Spousal support has not been plead and, as such, is not properly before the court in Nova Scotia. There can be no conflicting decision as it relates to spousal support from this court.

[26] The Answer filed by Mr. Merati did not seek to have the divorce proceed in the Iranian courts. To the contrary, his Answer contains a request to have a divorce granted based on one year separation and requests this court grant relief related to matrimonial property. His documentation discloses the substantive relief sought by Mr. Merati, including consideration given to his student loan and alleged matrimonial debt. It was not until post trial submissions that Mr. Merati asserted that Nova Scotia should decline to hear the matter related to corollary relief.

[27] Pursuant to section 4(1)(a) of the *Divorce Act, supra*, this court has jurisdiction to address the matters of corollary relief as well as the divorce. Counsel on behalf of Mr. Merati requested the court address the issue of the divorce but to bifurcate the proceeding and to allow the matters of corollary relief to be addressed in Iran. Such jurisdictional divisions will only lead to further uncertainty for the parties. This court retains jurisdiction to address the issues of corollary relief.

ISSUE 3(a)- Is the "Marriage Settlement" contained in the Marriage Certificate enforceable?

[28] Ms. Mohammadpoor is seeking to uphold the "marriage settlement" as a binding marriage contract pursuant to s. 23 of the *Matrimonial Property Act*, R.S.N.S. 1989, c.275 (as amended). Mr. Merati objects to the "marriage settlement" being considered a marriage contract on a number of grounds:

1) He never owned and does not now own the "700 Bahar Azadi Gold Coins" referenced in the "marriage settlement".

2) He was unsure if the parties and/ or the Notary Public signed the document.

3) He testified that the "Arabic" words used were "hard to understand", but did recall the reference to 700 Gold coins to be provided by him to Ms. Mohammadpoor.

4) Although he understood the document to be a contract, he did not understand that he would be bound by it.

[29] There were two separate translations of the Marriage Certificate. Mr. Merati referenced the first translated document in his affidavit filed on May 22, 2019.

That translation is also found attached to the Petition for Divorce filed by Ms. Mohammadpoor on October 19, 2018. The first translation was not disputed by Mr. Merati as being inaccurate.

[30] At the divorce trial, none of the translators provided testimony even though the second translation of the Marriage Certificate was disputed. By referencing the first translation of the Marriage Certificate in his own affidavit, Mr. Merati cannot now dispute the validity of that translation. He provided the translation and did not seek to cross examine the translator. He did not provide an alternative translation.

[31] The first translation of the Marriage Certificate included the following provisions:

> "All conditions inserted in marriage book were explained to the spouses.
>
> The spouses signed the marriage certificate in full health.
>
> This marriage was solemnized by Notary Public, who was empowered by the spouses, in presence of witnesses and references.
>
> Notary Public 473/ Tehran: Signed and Sealed"

[32] I will deal with the objections of Mr. Merati to the terms of the "marriage settlement":

1) Mr. Merati indicates that he does not and has not ever owned 700 Bahar Azadi Gold Coins. Mr. Merati may not seek to set aside an agreement on the basis of his own misrepresentation. He testified that he was aware of the reference to his payment of 700 gold coins in the marriage settlement. The fact that he does not own them does not invalidate the agreement, rather it makes his misrepresentation his own misfortune to bear.

2) He was unsure if the Notary Public and the parties signed the agreement. The translation specifically refers to the parties and the Notary Public signing the document.

3) Mr. Merati indicated that he did not understand all of the "Arabic words" used. The document is written in Farsi. Mr. Merati did not provide evidence in relation to his knowledge of the Farsi language but did indicate that Ms. Mohammadpoor communicated with him in Farsi (including via text). He does, however, specifically recall language in the document

referring to his providing 700 gold coins to Ms. Mohammadpoor on demand by her.

On this point, credibility of the parties becomes an issue. I have considered the principles enunciated in the decision of Baker-Warren v. Denault, 2009 NSSC 59. I find as a fact that Mr. Merati was fully aware of the terms of the Marriage Certificate and Marriage Settlement contained therein.

He holds an Iranian passport and visits his family there. He met Ms. Mohammadpoor in Iran. At the time of their marriage, she did not speak English and he was able to communicate with her. I do not find it credible that Mr. Merati did not understand the words of the Marriage Certificate.

4) Mr. Merati also testified on cross examination that he did not understand that he would be bound by such an agreement. It is difficult to rationalize why Mr. Merati would not feel bound by the terms noted in the Marriage Certificate. He complied with his promise to provide the Holy Quaran, the mirror and the candlesticks. He has indicated he did not feel bound to provide the gold coins. To indicate that he did not feel bound to his agreement related to the gold coins is disingenuous.

[33] I must then turn to the request of Ms. Mohammadpoor to uphold the terms of the Marriage Settlement as a marriage contract pursuant to s.23 of the *Matrimonial Property Act, supra*. Section 23 provides as follows:

> "A man and a woman may enter into an agreement, to be known as a marriage contract, before their marriage or during their marriage while they are cohabiting, in which they agree on their respective rights and obligations
>
> (a) under the marriage;
>
> (b) upon separation;
>
> (c) upon the annulment or dissolution of the marriage;
>
> (d) upon the death of either spouse. R.S., c. 275, s. 23."

[34] In order to be a valid marriage contract, the contract must be in writing, signed by the parties and witnessed pursuant to s.24 of the *Matrimonial Property Act, supra*. The translation contained in both parties' documentation confirms the contract was in writing, signed by the parties and witnessed. There are, however,

other considerations prior to determining whether the contract is valid and enforceable.

[35] The "marriage settlement" was also referred to by the parties as the Mahr. A Mahr was defined by the Ontario Court of Justice in the case of *Kaddoura v. Hammond*, [1998] O.J. No. 5054, 44 R.F.L. (4th) 228(Ont. Gen. Div.) at paragraphs 13-14:

> "13 "Mahr" is a gift or contribution made by the husband-to-be to his wife-to-be, for her exclusive property. It is not, however, a gift in the sense that a gift is given the grace of the giver, but in fact "Mahr" is obligatory and the wife-to-be receives it as of right. Mahr has its roots in the Holy Qur'an and it is essential to Muslim marriage. Without it, there is no Muslim marriage. Dr. Jamal Mannaa Alisolaiman, Imam of the Moxque in Ottawa and a scholar in Islamic studies testified that the Mahr was an obligatory gift, which was a mark of the husband-to-be's commitment to the marriage. He described how in many marriages, a portion of the Mahr is paid promptly, that is, before the marriage is consummated, and a portion, often the larger portion is deferred to be paid on demand by the wife, or upon divorce or upon the death of the husband. In the case of such deferred payment, the portion deferred had the effect of helping look after a wife after divorce or after her husband's death. He also advised that although a wife could forbear or waive payment of the Mahr, she was entitled to it as a matter of Islamic religious principle.
>
> 14 As well, Mufti Abdul Majitkhan, the Director of the Institute of Islamic Learning in Ajax, Ontario, also an Imam and scholar of Islam, expounded in his testimony on the nature of the Mahr. Both experts said that while Mahr was in the nature of a right held by a Muslim wife, she could, by certain conduct or in certain circumstances, disentitle herself to it. While Dr. Gamal was less emphatic on the point than was Mufti Khan, the latter advised that any dispute over the obligation of the Mahr was a matter to be determined by religious authorities. In any event, both agreed that any such dispute was to be resolved according to Islamic religious principles. Mufti Khan said he has dealt with such disputes in many Muslim communities in North America."

[36] Justice Dellapinna of this court addressed the issue of a Mahr in the case of *B.A.J. v S.D.*, 2015 NSSC 205 (NSSC). He accepted that a Mahr may be enforceable despite the fact that it was a religious marriage contract. He referenced the decision of *Marcovitz v. Bruker*, 2007 SCC 54 (SCC) wherein the Supreme Court of Canada stated that an obligation may be subject to judicial scrutiny even if the obligation may have religious elements.

[37] An interesting review of the implications of an Iranian marriage contract can also be found in the recent decision of *MF v MSY*, 2020 ABQB 383 (Alta Q.B.).

[38] It is clear that Ms. Mohammadpoor applied in the Iranian courts to enforce a portion of the "marriage settlement" or Mahr. The documentation filed indicates that she was seeking to have Mr. Merati pay 100 gold coins (Bahar-e Azadi) to her. It is unclear as to whether the Iranian court has issued judgment directing Mr. Merati to provide the 100 gold coins to her. Mr. Merati has indicated that they have rendered judgment and he is obligated to provide Ms. Mohammadpoor with 100 gold coins.

[39] The application to the Iranian courts, calls into question why Ms. Mohammadpoor is only seeking to have 100 gold coins paid to her through the Iranian courts but has requested the entire 700 gold coins from Mr. Merati in enforcing the marriage settlement in Canada.

[40] Further complicating this issue is the lack of clarity on the value of the property sought to be provided by Mr. Merati. In the absence of admissible evidence, how is the court to determine the financial burden on Mr. Merati? Counsel for Ms. Mohammadpoor indicated that the value of the 700 gold coins was in excess of $300,000. The evidence presented, however, was inadmissible.

[41] Without appropriate valuation of the gold coins, how is the court to determine whether or not this is not unduly harsh pursuant to s.29 of the *Matrimonial Property Act*? This was a marriage of short duration. The situation is distinguishable from agreements entered into with legal advice or with acknowledgement by the parties of the sufficiency of financial disclosure. Here, there is a promise to pay 700 gold coins "on demand"- regardless of whether Ms. Mohammadpoor made the demand one week after the ceremony and the parties were still residing together, or alternatively if she made the demand after 30 years of marriage when the parties separated.

[42] I am not prepared to find there is a binding agreement capable of enforcement. Ms. Mohammadpoor, by her own actions through the Iranian courts, was not seeking to have 700 gold coins paid to her. She sought 100 gold coins. There is an implicit recognition by her that the request for 700 gold coins was not reasonable.

ISSUE 3(b): What effect, if any, does the documentation issued from the Iranian court have on the matters of corollary relief?

[43] Ms. Mohammadpoor filed a court application in Iran seeking 100 gold coins from Mr. Merati. I have no evidence that there is a court order obligating Mr. Merati to provide her with 100 gold coins. In the absence of an enforceable court order from Iran related to the division of property, I need not consider the potential effect of such an order.

[44] I may, however, take into consideration the fact that Ms. Mohammadpoor has requested 100 gold coins from the court in Iran. Furthermore, I accept that Mr. Merati has confirmed that he intends to fulfill that obligation. It will form part of the Corollary Relief. Although not binding, the request of Ms. Mohammadpoor to have 100 gold coins paid to her through the Iranian Courts will be followed by this Court.

ISSUE 3(c): If the Agreement is unenforceable, what is the appropriate corollary relief:

[45] As noted herein, Mr. Merati will pay to Ms. Mohammadpoor 100 gold coins. Additional corollary relief was sought by Mr. Merati in that he wished to have two debts equally divided with Ms. Mohammadpoor - his student loan debt and his RBC line of credit. I find that neither of these debts are shareable with Ms. Mohammadpoor.

[46] Mr. Merati has requested that his student loan be divided equally with Ms. Mohammadpoor as a matrimonial debt. The issue of matrimonial debts was canvassed in the oft cited decision of *Grant v Grant*, 2001 NSSF 13. Justice Williams stated:

> "Matrimonial debt" is not a term defined by the ***Matrimonial Property Act.*** The term is commonly used by our Courts (see for example, *Ellis v. Ellis*, 1999 Carswell N. S. 124 (N. S. C. A.)) per Bateman, J. A. at p. 15:
>
> > Our courts have developed a policy of classifying debts as 'matrimonial' or otherwise as an aid to deciding which party should bear responsibility, or receive credit in the division of assets. In *Bailey v. Bailey* (1990) 1990 CanLII 4116 (NS SC), 98 N. S. R. (2d) 9 (N. S. T. D.), Roscoe, J., as she then was, wrote at p. 14:

> In determining which of all the debts listed by the parties of the action should be allowed as matrimonial debts, I must consider whether they were incurred for the benefit of the family unit, whether they are ordinary household debts and if they were incurred after the separation, whether they were necessary to meet the basic living expenses or preserve matrimonial assets and the overall consideration is whether the debts were reasonably incurred.

[47] As noted in the case of *Vanderlinden v Vanderlinden*, 2007 NSSC 80, at paragraph 51:

> "There is no definition of "matrimonial debts" in the *Matrimonial Property Act*. However, as I have stated in previous cases, it is my opinion that the reference in the *Matrimonial Property Act* to "matrimonial assets" must be interpreted as being the matrimonial assets as valued net of their debts. A debt would qualify as being matrimonial if it was spent toward a purpose that is family related."

[48] As noted by Justice Dellapinna in *Jovcic v. Jovcic*, 2005 NSSC 183, at paragraph 49:

> "Although assets are presumed to be matrimonial until proven otherwise, the opposite is the case with debts. The party who seeks to have a debt classified as "matrimonial" carries the burden of proof (see *Abbott v. Abbott*, [2002] N.S.J. No. 420)."

[49] Some cases have included student loans as matrimonial debts if the debts were used substantially for the benefit of the family (such as paying family expenses): *Schaller*, 1993 CanLII 3189 (NS CA), *Lubin*, 2012 NSSC 31, *Crane*, 2008 NSSC 33, and *Crowe v. Crowe*, 2012 NSSC 180 (CanLII).

[50] Other cases have excluded student loans from consideration as matrimonial debts including: *Kalkman v. Beveridge*, 2018 NSSC 122, and *CS v DS*, 2005 CanLII 16565 (NL SC).

[51] Evidence provided by Mr. Merati confirmed that, during the parties' cohabitation he received $8,190 in student loans. Of that sum, $3,697 was used for tuition leaving $4,493 for other expenses. He received a further $3,274 in January

2016. Although he received student loan monies at the end of August, the parties left for Iran in September and separated shortly thereafter. The vast majority of those funds would have been spent post separation.

[52] At the same time as receiving the loan monies, Mr. Merati was employed as a taxi driver. Ms. Mohammadpoor testified that his income as a taxi driver was used to pay for their living expenses and not the student loan monies. Ms. Mohammadpoor testified that Mr. Merati purchased tools of the trade for his work as a mechanic from his student loan monies. Mr. Merati disagreed and stated that the funds were used for the parties' living expenses.

[53] I decline to find that the student loan is a shareable matrimonial debt. This was a very short marriage. The vast majority of the benefit from Mr. Merati's educational pursuits will not be shared with Ms. Mohammadpoor. On the evidence presented, Mr. Merati has not discharged the burden of showing that the student loan is a matrimonial debt. It will not be divisible with Ms. Mohammadpoor. It is solely his responsibility.

[54] Even if I were to consider the student loan a matrimonial debt, which I do not, I would have no hesitation in determining that the portion of student loan monies potentially used for living expenses should be offset as against the property retained by Mr. Merati. I accept the evidence of Ms. Mohammadpoor that Mr. Merati retained various personal possessions owned by her (including jewelry and her personal documentation). As a result, Ms. Mohammadpoor would have been put to the expense of replacing the documentation and without the value of her jewelry retained by Mr. Merati.

[55] Ms. Mohammadpoor is seeking the return of her personal possessions. The list of possessions includes jewelry and travel documentation. Mr. Merati indicates that he does not have these items. There is no admissible evidence in relation to the cost of the jewelry or the cost to replace the documentation of Ms. Mohammadpoor. I find as a fact that Mr. Merati retained the personal possessions of Ms. Mohammadpoor. If there are any items belonging to Ms. Mohammadpoor in Mr. Merati's possession he is to provide these to her immediately.

[56] There will, however, be no equalization payment owing to Ms. Mohammadpoor as a result of this retention of possessions not turned over to her. I have no admissible evidence of value. To establish the appropriate equalization would be guesswork at best.

[57] Mr. Merati also sought to divide his RBC line of credit with Ms. Mohammadpoor. The line of credit will not be divided equally between the parties. Ms. Mohammadpoor is significantly financially disadvantaged as a result of the marriage breakdown. This was a very short marriage. Mr. Merati brought Ms. Mohammadpoor from Iran knowing that she could not speak the language and may have difficulty securing employment. He sponsored her and indicated to the Canadian authorities that he would provide financial support to her. Unfortunately, the marriage did not last.

[58] There are a number of reasons I decline to order a division of this debt:

1) Mr. Merati has not discharged the burden on him to prove that this is a matrimonial debt.

2) Ms. Mohammadpoor has limited financial means to assist in the repayment of this debt and any division of the debt would simply give rise to a claim for spousal support.

3) The length of time that the parties cohabited with each other during their marriage was extremely short.

CONCLUSION

[59] A Divorce Order will issue based on the breakdown of the marriage caused by a separation in excess of one year. A Corollary Relief Order will also issue. The Corollary Relief Order will contain a provision related to the payment of 100 gold coins (Bahar-e Azadi) by Mr. Merati to Ms. Mohammadpoor. The Order will further provide that the parties will retain ownership of the items currently in each of their possession, with the exception of the return of items of personal property to Ms. Mohammadpoor currently in the possession of Mr. Merati.

Chiasson, J.