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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2338-20**

**BALAKRISHNA
SARAVANAN KESAVAN,**

Plaintiff-Respondent,

v.

**LAKSHMI LEKHA
BALAKRISHNA SARAVANAN,**

Defendant-Appellant.

Submitted January 18, 2023 – Decided August 18, 2023

Before Judges Messano, Gilson and Rose.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hunterdon County,
Docket No. FM-10-0142-12.

Law Offices of Susheela Verma, attorneys for appellant
(Susheela Verma and Nishi Patel, on the brief).

Balakrishna Saravanan Kesavan, respondent pro se.

PER CURIAM

The parties in this matrimonial dispute are before us for a second time. In 2016, the Family Part entered a judgment of divorce (JOD) after striking defendant's answer and counterclaim and proceeding to a default hearing at which plaintiff was the sole witness. Kesavan v. Saravanan, No. A-5445-15 (App. Div. May 13, 2019) (slip op. at 2). As we explained in our prior opinion,

[w]hen plaintiff filed the divorce complaint in 2011, defendant no longer lived in New Jersey, having returned to her native country, India, with the parties' only child, who was thirteen years old at the time. By the time of the default hearing in 2015, plaintiff had also left New Jersey and lived primarily in India, periodically travelling to the United States as required for his employment.

[Ibid.]

During the protracted litigation, the court had "denied without prejudice defendant's motion asserting that New Jersey lacked jurisdiction to decide custody of the parties' child," id. at 3, but the parties' absence from New Jersey made conducting the litigation extremely difficult. Id. at 4–5. Defendant at some point had changed tack, and the court granted her motion for New Jersey to retain jurisdiction over the litigation. Id. at 6. Nevertheless, for a variety of asserted reasons, defendant never appeared in court, and the judge ultimately struck her pleadings without prejudice and scheduled a default hearing. Id. at 6–7.

During the hearing,

the judge expressed concern about deciding issues regarding assets in India and said he was "disinclined to adjudicate anything with regard to alimony" or child support for lack of jurisdiction over the child. Defense counsel asked, "[W]hy are we going through this exercise . . . ?" To which the judge answered, "because both . . . attorneys have insisted from the beginning that they want this [c]ourt to hear this case, and to maintain jurisdiction, and grant a divorce." Although at one point acknowledging "[t]here [are] no contacts with . . . New Jersey, no nexus whatsoever[,]" the judge accepted plaintiff's documentation demonstrating "sufficient minimum contacts with the [s]tate" and "other indicia" of residency. Despite the complaint being "within a whisper of being dismissed for lack of jurisdiction[,]" the judge observed "the lawyers insisted on how important it was to their respective clients [that] they get divorced here, because if it had to go to India, . . . it was going to take forever and there were other social implications" As a result, the court "reluctantly and hesitantly maintained jurisdiction by a thread."

[Id. at 7–8 (alterations in original).]

The judge entered a default JOD approximately nine months after the hearing concluded. Ibid. Although by its terms the JOD only dissolved the parties' marriage, the judge filed a comprehensive written decision with the JOD, which addressed equitable distribution, alimony, child support and counsel fees. Id. at 2 n.1.

Defendant appealed. She did not challenge the dissolution of the marriage but only the judge's findings on equitable distribution, alimony, child support and counsel fees; she argued the judge erred by striking her pleadings and entering default. Id. at 2. We agreed with defendant and reversed, vacating "the JOD to the extent it incorporate[d] the judge's written decision regarding equitable distribution, alimony, child support, and counsel fees." Ibid. In remanding the matter to a different judge, we required the court to resolve "whether [it] should exercise continuing jurisdiction over th[o]se issues[,] . . . noting only that both parties took alternating positions on the question, particularly as it related to equitable distribution of assets held in India, and there may indeed be legal support for the continued exercise of this state's jurisdiction." Id. at 16.

On remand, a different judge held a virtual case management conference. Plaintiff, who still resided in India, failed to appear. Defendant, who also still resided in India, appeared through counsel. The judge reinstated defendant's pleadings. At a second virtual case management conference held on December 11, 2020, plaintiff appeared pro se and defendant again appeared through counsel.

Defense counsel advised that with respect to equitable distribution, plaintiff had "transitioned" all assets that were previously in the United States to India. She said that because the parties' child had reached majority, issues regarding child support were now moot. Defense counsel nevertheless asserted that New Jersey still had jurisdiction to resolve the remaining issues of equitable distribution and spousal support. Among other things, plaintiff told the judge that given the current circumstances, India was the appropriate forum for the litigation. Without rendering a decision, the judge ordered both parties to brief the jurisdictional issue.

The judge's March 10, 2021 order determined that "issues of equitable distribution and support" "must be pursued in India." In a written opinion that accompanied the order, the judge concluded, "New Jersey no longer has jurisdiction[,] "noting "jurisdiction to distribute marital assets does not always accompany jurisdiction to adjudicate the cause of action." The judge also discussed the doctrine of forum non conveniens, citing controlling precedent. She could not "foresee an ability to conduct proceedings [in New Jersey] appropriately and fully." Citing defendant's problems obtaining a visa to attend the trial in 2015 and the restrictions posed by the COVID-19 pandemic, the judge had "no confidence that the parties []or witnesses would be able to travel"

to New Jersey. The judge also reasoned a remote trial was not feasible, "given the abundance of documentary evidence and the need for translation, coupled with the claims of fraud raised by [p]laintiff in the original proceedings." Lastly, because all the parties' property was in India, the judge concluded the court "ha[d] little means of enforcing any order." The order did not dismiss the parties' pleadings.

Defendant now appeals. She argues that the judge erred by refusing to decide equitable distribution and spousal support issues because New Jersey lacked jurisdiction or was an inappropriate forum under the doctrine of forum non conveniens.¹ Defendant also argues that because plaintiff filed his complaint in New Jersey and asserted throughout the earlier proceedings that New Jersey had jurisdiction to decide all issues, plaintiff is barred from relitigating the issue pursuant to the doctrines of res judicata and collateral estoppel.

¹ As noted, defense counsel acknowledged the remand need not address child support issues, which were now moot, although we note there was an issue of arrears that was addressed during the default hearing. In any event, defendant has not briefed any issues regarding child support or counsel fees, both of which were included in our remand order. We deem them to be waived. Pullen v. Galloway, 461 N.J. Super. 587, 595 (App. Div. 2019).

We have considered the arguments in light of the record and applicable legal principles. We reject defendant's contention that plaintiff is barred from contesting the continuing jurisdiction of New Jersey or whether it is an appropriate forum to resolve the remaining issues of equitable distribution and spousal support. We agree with the Family Part judge's application of the doctrine of forum non conveniens and affirm the March 10, 2021 order under review.

I.

Defendant contends that plaintiff is precluded from relitigating whether New Jersey has continuing jurisdiction under the doctrines of res judicata and collateral estoppel. Specifically, defendant asserts that the Family Part made a final decision on all jurisdictional issues at the time of the default hearing, thereby barring defendant from raising the issue again on remand. We disagree.

"Th[e] Court has recognized that 'the term "res judicata" refers broadly to the common-law doctrine barring relitigation of claims or issues that have already been adjudicated.'" Tarus v. Borough of Pine Hill, 189 N.J. 497, 520 (2007) (quoting Velasquez v. Franz, 123 N.J. 498, 505 (1991)). "In essence, the doctrine of res judicata provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot

be relitigated by those parties or their privies in a new proceeding." Velasquez, 123 N.J. at 505 (emphasis added) (citing Roberts v. Goldner, 79 N.J. 82, 85 (1979)). "Collateral estoppel, in particular, represents the 'branch of the broader law of res judicata which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.'" Tarus, 189 N.J. at 520 (quoting Sacharow v. Sacharow, 177 N.J. 62, 76 (2003)).

At the default hearing, the judge found the court had "both in personam and subject matter jurisdiction over the parties in this case." However, as we noted above, the judge expressed grave concern as to whether New Jersey should continue to exercise jurisdiction over marital assets for purposes of equitable distribution and to decide issues of support.

The decision to conduct the default hearing and enter the JOD was not a final determination of the jurisdictional issue because defendant prosecuted an appeal, which brought to light the trial judge's trepidations about continued jurisdiction. We granted the only relief sought by plaintiff, who did not challenge the dissolution of the marriage, and "vacate[d] the JOD to the extent it incorporate[d] the judge's written decision regarding equitable distribution, alimony, child support, and counsel fees." Kasavan, slip op. at 2. We also

ordered the judge on remand to specifically address the continued jurisdiction of New Jersey's courts to consider issues of equitable distribution and spousal support because both parties, and many of their assets, were located in a foreign country.² Simply put, defendant may not rely upon the trial judge's determination, to the extent one was made, as a final judgment entitled to preclusive effect, because our judgment specifically remanded the issue of the Family Part's continued jurisdiction to the trial court.

II.

We briefly discuss our disagreement with the judge's conclusion that New Jersey no longer had jurisdiction over the dispute. "The scope of subject matter jurisdiction is governed by the extent to which the Legislature chooses to allow litigants to seek divorce in this State." Tatham v. Tatham, 429 N.J. Super. 502, 507 (App. Div. 2013). Pursuant to N.J.S.A. 2A:34-10, the Family Part

ha[s] jurisdiction to grant the divorce if plaintiff was a bona fide resident of this [s]tate when the cause of action arose and continued to be such a resident when the complaint was filed, provided that [he] had been a resident for one year prior to the commencement of the action.

² In the written decision that accompanied the JOD, the judge detailed the parties' assets that were in located in India at the time and subject to equitable distribution.

[Raybin v. Raybin, 179 N.J. Super. 121, 126 (App. Div. 1981).]

The 2016 default JOD adequately confirms the Family Part's initial exercise of both subject matter and personal jurisdiction over this divorce action.

Having initiated the proceeding in New Jersey, plaintiff subjected himself to this State's continuing jurisdiction over the litigation, at least with respect to the remaining issues of equitable distribution and spousal support. See, e.g., Kreuzer v. Kreuzer, 230 N.J. Super. 182, 185 (App. Div. 1989) (recognizing "personal jurisdiction over [an out-of-state husband who filed a divorce complaint] by reason of the continuous nature of the matrimonial action" (citing Zelek v. Brosseau, 47 N.J. Super. 521, 527 (App. Div. 1957))).

The remand judge focused on the undisputed fact that all marital assets were now in India as the reason why New Jersey lacked jurisdiction over the remaining issues to be resolved on remand. She wrote, "[I]t is clear that jurisdiction to distribute marital assets does not always accompany jurisdiction to adjudicate the cause of action."

While that may be true as a general proposition, the judge's reliance on Judge Pressler's opinion in Drobney v. Drobney, 146 N.J. Super. 317 (App. Div. 1977), was misplaced. In Drobney, we said, "Personal obligations deriving from the marital relationship or its termination, including . . . support and alimony,

are dependent for adjudication on the court's acquisition of either personal jurisdiction over defendant or quasi in rem jurisdiction over property in which [s]he has an alienable interest." Id. at 323 (emphasis added). Here, New Jersey acquired personal jurisdiction over both parties at the time of the original divorce proceedings. Defendant's first appeal raised no jurisdictional challenge, nor does she raise one now.

The judge's reliance on Slodowski v. Slodowski, 156 N.J. Super. 376 (Ch. Div. 1978), also was misplaced. The issue there was the enforceability in a New Jersey court of an "Ohio decree which purport[ed] to distribute the real property acquired during the marriage," some of which was located in New Jersey. Id. at 380. Although the divorce was itself valid, because the plaintiff was domiciled in Ohio, "the Ohio court could not distribute property located outside its boundaries, or enforce such distribution, without relying on such in personam jurisdiction as it might have over [the] defendant." Ibid. (citing Higginbotham v. Higginbotham, 92 N.J. Super. 18 (App. Div. 1966)). Because the

defendant resided in Sweden at the time the complaint was filed and served on her by regular mail, and since she never responded to the summons, the Ohio court did not have the requisite personal jurisdiction over her. Its distribution of the [New Jersey] realty is thus not entitled to the full faith and credit of this court.

[Ibid.]

Here, although she never appeared personally, defendant appeared in the matrimonial litigation in New Jersey through counsel.

Although we disagree with the judge on whether New Jersey retained continuing personal jurisdiction over the parties, and thereby jurisdiction over the equitable distribution of marital assets and resolution of issues of spousal support, we agree that the judge's invocation of the equitable doctrine of forum non conveniens was correct.

"The doctrine of forum non conveniens 'is firmly embedded in the common law of this State.'" Kurzke v. Nissan Motor Corp., 164 N.J. 159, 164, (2000) (quoting Civic S. Factors Corp. v. Bonat, 65 N.J. 329, 332 (1974)). "[T]he essence of the doctrine is that a court may decline jurisdiction whenever the ends of justice indicate a trial in the forum selected by the plaintiff would be inappropriate." Ibid. (quoting D'Agostino v. Johnson & Johnson, Inc., 225 N.J. Super. 250, 259 (App. Div. 1988), aff'd, 115 N.J. 491 (1989)). "Because application of the forum non conveniens doctrine is entrusted to the trial court's sound discretion, '[a]n appellate court should not substitute its judgment for that of the trial judge unless there is a showing of clear abuse of that discretion.'" Greely v. Greely, 194 N.J. 168, 177 (2008) (alteration in original) (quoting Kurzke, 164 N.J. at 165).

The trial court's discretion is guided by consideration of the factors delineated by the United States Supreme Court in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508–09 (1947). Kurzke, 164 N.J. at 165. The court must consider the private interests of the litigants, including

(1) the relative ease of access to sources of proof, (2) the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining the attendance of willing witnesses, (3) whether a view of the premises is appropriate to the action[,] and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive, including the enforceability of the ultimate judgment.

[Id. at 166 (quoting D'Agostino, 225 N.J. Super. at 263).]

In addition, courts must consider matters of public interest, such as

(1) the administrative difficulties which follow from having litigation pile up in congested centers rather than being handled at its origin, (2) the imposition of jury duty on members of a community having no relation to the litigation, (3) the local interest in the subject matter such that affected members of the community may wish to view the trial[,] and (4) the local interest in having localized controversies decided at home.

[Id. at 165 (quoting D'Agostino, 225 N.J. Super. at 263).]

On occasion, even though New Jersey retained continuing jurisdiction over the parties, our courts have applied the doctrine of *forum non conveniens*

to matrimonial disputes. See, e.g., Kreuzer, 230 N.J. Super. at 185, 189 (finding that "under the doctrine of forum non conveniens a court may decline jurisdiction for sufficient reason," and affirming the trial court's decision to decline jurisdiction (quoting Vargas v. A.H. Bull Steamship Co., 25 N.J. 293, 295 (1957))); List v. List, 224 N.J. Super. 432, 433–34 (Ch. Div. 1988) (dismissing post-judgment motion by applying forum non conveniens sua sponte when both parties resided in another state).

Routinely, the doctrine is invoked by the defendant or responding party who objects to being hailed into an inconvenient, foreign court. In Greely, the Court faced "an anomalous circumstance," 194 N.J. at 177, because the plaintiff, who originally filed her divorce complaint in New Jersey, sought dismissal after the defendant had responded, discovery had ensued, and court-ordered settlement efforts had occurred, id. at 172. In reversing our judgment and affirming the trial court's denial of the plaintiff's efforts, the Court said:

We cannot accept the notion that the doctrine of forum non conveniens can be triggered solely by a plaintiff's after-the-fact choices. As a practical matter, acceptance of plaintiff's assertions that her original forum choice is now inconvenient simply because she has elected to relocate elsewhere could open the door to crass forum shopping.

[Id. at 177 (citing Glukowsky v. Equity One, Inc., 180 N.J. 49 (2004)).]

Defendant cites Greely for support. She argues that plaintiff started this litigation in New Jersey, and his contention that India now provides a more convenient forum is both an inadequate reason to decline jurisdiction and a blatant attempt at forum shopping by plaintiff. But, as we noted in American Home Products Corp. v. Adriatic Insurance Co., "[a] forum non conveniens analysis examines whether the New Jersey forum is totally inappropriate, regardless of who filed the action or when it was filed." 286 N.J. Super. 24, 35 (App. Div. 1995) (emphasis added). Moreover, in Greely, only the plaintiff moved out of state; the defendant remained in New Jersey, the forum state selected by plaintiff in the first instance. Here, both parties have lived in India since at least 2015, and all their assets are now situated in that country.

The remand judge appropriately considered the doctrine of forum non conveniens in deciding whether the exercise of New Jersey's jurisdiction was appropriate. Her analysis of the private interest factors was sound and supported by the record. It reflected that both parties now have been living in India for years, all their marital assets are located in that country, and reliable proof of the value of those assets are readily available in India as opposed to New Jersey. The logistical challenges of trying the litigation in New Jersey, including travel difficulties, the need for translation of many documents, and the inability or

difficulty in using compulsory process to compel the appearance of witnesses in New Jersey further favors deference to the Indian courts. The judge further explained why conducting the trial remotely is unfeasible. The remand judge reasonably exercised her discretion by concluding the private interest factors favored dismissal.

The judge did not, however, specifically consider the public factors as required by Kurzke, 164 N.J. at 165. Because there is no need for additional factfinding and this litigation has now been pending for a dozen years, we choose to exercise our original jurisdiction pursuant to Rule 2:10-5 and consider the public factors ourselves. See, e.g., Accardi v. Accardi, 369 N.J. Super. 75, 92 (App. Div. 2004) (invoking original jurisdiction in recognizing "[t]he financial drain of this continual litigation takes resources away from the families"); Wilde v. Wilde, 341 N.J. Super. 381, 388–89 (App. Div. 2001) (citing delay in resolving grandparents' parenting time application as a basis to exercise original jurisdiction and resolve an "as applied" constitutional challenge to N.J.S.A. 9:2-7.1 without ordering a plenary hearing on remand).

The first public factor, "the administrative difficulties which follow from having litigation pile up in congested centers rather than being handled at its origin," is not difficult to assess. Kurzke, 164 N.J. at 165. There is no doubt

that the current situation in Vicinage Thirteen is dire, given the Chief Justice's February suspension without an end date of all matrimonial matters due to judicial vacancies. Although defendant argues plaintiff filed his complaint in New Jersey precisely because the court system in India would be unable to expeditiously resolve the dispute, there exists no independent verification of that assertion in the record. Moreover, when plaintiff filed the complaint in 2011, he resided in New Jersey. This factor currently in favor of dismissing the pleadings in New Jersey.

Public factors two, "the imposition of jury duty on members of a community having no relation to the litigation," and three, "the local interest in the subject matter such that affected members of the community may wish to view the trial," do not apply here. Ibid. Defendant argues factor four, "the local interest in having localized controversies decided at home," ibid., weighs in her favor because New Jersey litigants want assurances that lawsuits commenced in our courts will be finalized in our courts. Perhaps, but it is undisputed that this is no longer a "localized controversy" implicating "local interests." The parties have resided in India for years, and, although it is not exactly clear when their remaining assets were transferred to India, defendant represented to the remand judge that all marital assets were now in that country. We conclude the public

interests also weigh heavily in favor of invoking the doctrine of forum non conveniens and dismissing these pleadings.

Affirmed. We remand the matter solely for the judge to enter an order dismissing the complaint and defendant's answer and counterclaim. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION