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RECENT DEVELOPMENT

***TSHIANI V. TSHIANI*: UNDER THE DOCTRINE OF COMITY, MARYLAND RECOGNIZES A VALIDLY PERFORMED FOREIGN MARRIAGE CONDUCTED BY PROXY OR TELEPHONE; MARRIAGES BY PROXY OR TELEPHONE ARE NOT PROHIBITED BY STATUTE OR REPUGNANT TO MARYLAND PUBLIC POLICY.**

By: S. Michael Stedman

The Court of Special Appeals of Maryland, applying the doctrine of comity, held that a foreign marriage performed by proxy or by telephone is valid. *Tshiani v. Tshiani*, 208 Md. App. 43, 56 A.3d 311 (2012), *cert. granted*, 430 Md. 644, 62 A.3d 730 (2013). The court determined that proxy marriages, if valid where performed, are neither expressly prohibited by statute, nor repugnant to Maryland public policy. *Id.* at 57, 56 A.3d at 320. The intermediate appellate court concluded that the evidence presented in the circuit court sufficiently demonstrated that the parties foreign marriage was valid. *Id.* at 54, A.3d at 318.

On December 23, 1993, Marie-Louise and Noel Tshiani married in what is now the Democratic Republic of Congo (“Congo”). Noel did not attend the wedding ceremony due to his work in another country. However, Noel did participate by telephone, and also designated his cousin to physically represent him in the ceremony. After the wedding, Marie-Louise followed Congolese tradition, and left to live with her new husband in Arlington, Virginia.

After moving to the United States, Marie-Louise and Noel purchased property as tenants by the entirety, had children, and held themselves out as husband and wife. In 1994, the couple renewed their marital vows in Virginia. Through his employment, Noel applied for a dependency allowance for Marie-Louise, obtained health insurance for her, and added her as a beneficiary under his life insurance. Noel obtained a green card for Marie-Louise stating she was his wife. Noel also listed Marie-Louise as his wife on his federal and state tax returns since 1994.

During divorce proceedings in the Circuit Court for Montgomery County, Noel denied knowing about, or participating in, the December 1993 wedding ceremony. Noel argued that the wedding was not recognized outside of Congo. The court entered a judgment for absolute divorce, finding that Noel’s actions following the wedding were sufficient to establish the existence of a lawful marriage. Noel appealed the circuit court’s judgment of absolute divorce to the Court of Special Appeals of Maryland.

In order for a foreign marriage to be valid in Maryland, the marriage must have been valid where it originated. *Tshiani*, 408 Md. App. at 52, 56 A.3d at 317. Therefore, the Court of Special Appeals of Maryland began its analysis by determining whether or not the marriage was valid in Congo. *Id.* at 51-52, 56 A.3d at 316-17. The court stated that if there is evidence suggesting a lawful marriage, then a presumption exists that the marriage was valid where it originated. *Id.* at 52, 56 A.3d at 317 (citing *Redgrave v. Redgrave*, 38 Md. 93, 97 (1873)). Evidence that may raise this presumption includes official records of the marriage, and admissions or declarations of the husband and wife. *Tshiani*, 208 Md. App. at 52, 56 A.3d at 317 (citing *Wright v. State*, 198 Md. 163, 168-69, 81 A.2d 602, 605 (1951)).

The court first analyzed the evidence of the two marriage certificates. *Tshiani*, 208 Md. App. at 53, 56 A.3d at 317. The first marriage certificate was from the Congolese Embassy, which Noel used to obtain spousal benefits for Marie-Louise from his employer. *Id.* The second certificate was from the Virginia church where the couple renewed their wedding vows. *Id.* at 53, 56 A.3d at 317-18. The Virginia certificate stated that Noel and Marie-Louise were “united in matrimony” under the laws of Virginia and Congo. *Id.*

The court also placed heavy weight on Marie-Louise’s testimonial evidence pertaining to the wedding ceremony in Congo, noting that statements of the husband and wife have always been sufficient to prove a marriage. *Tshiani*, 208 Md. App. at 53-54, 56 A.3d at 317-18 (citing *Brell v. Brell*, 143 Md. 443, 448, 122 A. 635, 636 (1923)). Other evidence relied on by the court included how the couple held themselves out as husband and wife, Noel’s procurement of a green card for Marie-Louise, and Noel’s previous admissions that he and Marie-Louise were married. *Tshiani*, 208 Md. App. at 54, 56 A.3d at 318. Relying on this evidence, the court concluded that Marie-Louise and Noel were validly married in Congo. *Id.*

The court then determined whether the valid marriage would be recognized in Maryland. *Tshiani*, 208 Md. App. at 55, 56 A.3d at 318. In making its determination, the court relied on the doctrine of comity, under which courts “give effect to laws and judicial decisions of another state or jurisdiction . . . out of deference and respect.” *Id.* (quoting *Wash. Suburban Sanitary Comm’n v. CAE-Link Corp.*, 330 Md. 115, 140, 622 A.2d 745, 757 (1993)). Despite the doctrine of comity, Maryland will not recognize foreign marriages that are statutorily prohibited or repugnant to public policy. *Tshiani*, 208 Md. App. at 55, 56 A.3d at 319 (citing *Port v. Cowan*, 426 Md. 435, 444-45, 44 A.3d 970, 976 (2012)).

In examining the first exception, the court stated that the General Assembly would have to “unequivocally void such marriages” in order to

expressly prohibit the validity of a marriage. *Tshiani*, 208 Md. App. at 57, 56 A.3d at 320 (citing *Port*, 426 Md. at 447, 44 A.3d at 978). The court found no statute in Maryland that expressly prohibited marriage by proxy or by phone. *Tshiani*, 208 Md. App. at 56-57, 56 A.3d at 319-20. The court also emphasized that laws disallowing proxy marriages are outdated, as advances in technology have significantly reduced the chance that a party would enter into a proxy marriage after that person has withdrawn their intent. *Id.* at 59, 56 A.3d at 321.

In examining the second exception, the court noted that Maryland courts have never found a valid foreign marriage to be repugnant to public policy. *Tshiani*, 208 Md. App. at 57, 56 A.3d at 320. The court pointed out that the closest it has come to finding a foreign marriage to be repugnant to public policy was in later-discredited dicta, which suggested that it would not recognize a valid foreign interracial marriage, due to the marriage being condemned by statute. *Id.* (citing *Henderson v. Henderson*, 199 Md. 449, 459, 87 A.2d 403, 409 (1952)).

The court emphasized that Maryland has historically been liberal in its recognition of foreign marriages, even marriages that would have been invalid had they been performed in the State. *Tshiani*, 208 Md. App. at 57, 56 A.3d at 320. The court pointed out that, unlike previously recognized foreign marriages, no law in Maryland suggests that a proxy or phone marriage would be prohibited if performed in the State. *Id.* at 58, 56 A.3d at 321.

Further supporting the rationale behind recognizing proxy marriages, the court highlighted that such marriages are becoming more prevalent as technological advances emerge. *Tshiani*, 208 Md. App. at 60, 56 A.3d at 322. A proxy marriage may be the only option a couple has, as was the case with Noel and Marie-Louise. *Id.* Taking into account these factors, the court determined that proxy or phone marriages did not meet Maryland's repugnancy standard. *Id.* at 61, 56 A.3d at 322. The court held that Maryland would honor the valid foreign marriage because neither exception to the doctrine of comity applied. *Id.*

Tshiani reinforces Maryland's liberal recognition of valid foreign marriages. Since no Maryland law expressly prohibits proxy marriages, a party could potentially marry another by proxy in Maryland. A foreseeable effect *Tshiani* could have is a push for the state legislature to officially recognize proxy marriages, or to expressly prohibit the recognition of those marriages. Allowing proxy marriages would benefit couples like Marie-Louise and Noel, who want to marry, but are not in the same place. This would also benefit soldiers serving overseas, and allow them the opportunity to marry in their home state by proxy. Advances in technology have nearly erased the chances of fraud in proxy

marriages, but participants in a proxy marriage should remain aware of the possibility of fraud.

On March 22, 2013, the Court of Appeals of Maryland granted Noel Tshiani's petition for a writ of certiorari to determine whether the State recognizes phone marriages. The court will also determine if Maryland requires both parties to be physically present at the wedding ceremony in order to have a valid marriage.