

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Mehwish Aftab,  
*Appellant-Petitioner*

v.

Syed Danish Aftab,  
*Appellee-Respondent.*

October 7, 2022

Court of Appeals Case No.  
21A-DR-2527

Appeal from the Lake Superior  
Court

The Honorable Thomas P. Hallett,  
Judge  
The Honorable Shaun T. Olsen,  
Magistrate

Trial Court Cause No.  
45D03-1809-DC-434

**Pyle, Judge.**

## **Statement of the Case**

[1] In this interlocutory appeal, Mehwish Aftab (“Wife”) appeals the trial court’s denial of a motion to reconsider that she filed in the action dissolving her marriage to Syed Danish Aftab (“Husband”). Wife specifically argues that the trial court abused its discretion when it denied her motion to reconsider. Finding no abuse of the trial court’s discretion, we affirm the trial court’s judgment.

[2] We affirm.

## **Issue**

Whether the trial court abused its discretion when it denied Wife’s motion to reconsider.

## **Facts**

[3] In September 2018, Wife filed a petition to dissolve her twelve-year marriage to Husband. In the petition, Wife stated that she and Husband had married on March 3, 2006. The marriage took place in Lake County, Indiana. Wife further stated that on the morning of the wedding, she and Husband had entered into a prenuptial agreement (“the Agreement”) before going to the Mosque, where an Imam, or holy man, had performed the marriage ceremony. Wife further stated that she had signed the Agreement under duress.

[4] In February 2020, Wife filed a petition to determine the enforceability of the Agreement. Wife again alleged that she and Husband had married in March

2006 and that she had signed the Agreement under duress. Wife also alleged that the Agreement was unconscionable. In March 2021, following a hearing, the trial court issued a detailed nine-page order concluding that the Agreement was an enforceable agreement between the parties that should not preclude a claim by Wife for rehabilitative maintenance. Wife did not appeal this interlocutory order.

[5] In April 2021, Wife filed a motion to reconsider. Specifically, Wife explained that she had recently realized that she and Husband had actually been married in Pakistan on January 5, 2006. According to Wife, the Agreement was not valid because Husband and Wife had already been married when they had signed it. Wife, therefore, asked the trial court to reconsider its prior ruling that the Agreement was enforceable.

[6] The trial court held a two-day hearing on Wife's motion to reconsider in June and July 2021. For the purpose of the hearing, the parties agreed on the following facts. In January 2006, Wife was twenty-three-years old and lived in Pakistan with her parents and two-year-old son from a prior marriage. Wife had previously attended a university in Pakistan. Husband was a thirty-three-year-old United States citizen. He was an IT consultant and owned his own business. Husband and his parents arrived in Pakistan, went to Wife's parents' home, and arranged a marriage between Husband and Wife.

[7] On January 5, 2006, Husband and Wife participated in a ceremony. The significance of that ceremony is at issue in this case. Husband contends that the

ceremony was a Nikah, a religious blessing in anticipation of a marriage that would take place in Indiana. Wife, on the other hand, contends that the ceremony resulted in a legal Pakistani marriage, which would be recognized in Indiana. The parties seem to agree that a legal Pakistani marriage occurs when an Imam signs a Nikah Nama and registers it with the Nikah Registrar. According to Wife, it is the registration of the Nikah Nama that “makes it a lawful marriage.” (Tr. Vol. 2 at 125).

[8] At the hearing, Wife testified that, following the January 2006 ceremony, the Imam had signed a Nikah Nama. In addition, according to Wife, the Imam had registered the Nikah Nama, resulting in a lawful marriage between Husband and Wife. Wife tendered, and the trial court admitted into evidence, a Marriage Registration Certificate (“the Certificate”) that she had obtained from Pakistan. Wife claimed that the Certificate “actually prove[d] that everything was registered.” (Tr. Vol. 2 at 122). Wife specifically testified that the Certificate was “based on [a] [N]ikah [N]ama” and was “what ma[d]e it a lawful marriage.” (Tr. Vol. 2 at 125). According to the Certificate, the parties’ marriage had been registered in Pakistan on January 6, 2006. However, Husband questioned the authenticity of the Certificate, which contained the number of a passport that he had not been issued until 2011 and incorrectly stated his name.

[9] Wife further testified that family members had attended the Nikah ceremony in Pakistan and that 200 to 300 guests had attended the marriage ceremony in

Indiana. Wife also testified that she had “[a]lways” celebrated her wedding anniversary in January. (Tr. Vol. 2 at 157).

[10] On the other hand, Husband testified that the January 5, 2006, ceremony was a “Nikah, a religious blessing[,]” which set forth the plan for a marriage and a dowry. (Tr. Vol. 2 at 89). According to Husband, he had neither consented nor intended to marry Wife in January 2006, and the Nikah had not resulted in a legal marriage in Pakistan. Rather, Husband explained that a Nikah simply allows a man to be alone with a woman who is not his mother or his sister. Husband further explained that he and Wife had planned to marry when they arrived in Indiana. According to Husband, before leaving for Indiana, Wife had asked him if they could have a Nikah “for the respect of her family[]” since Husband and Wife would be travelling to Indiana together and living together before their Indiana marriage. (Tr. Vol. 2 at 103). Husband also testified that he and Wife had agreed that the Imam would neither sign nor register a Nikah Nama.

[11] Husband further testified that following the Nikah, the Imam had neither signed nor registered a Nikah Nama. Husband also testified that before the March 2006 Indiana marriage ceremony, he and Wife had gotten a marriage license from the Lake County Clerk, and neither he nor Wife had indicated on their marriage license application that they had gotten married in January 2006. In addition, Husband testified that following the March 2006 Indiana marriage ceremony, the Imam at the mosque in Merrillville had signed and properly registered a Nikah Nama.

[12] When shown a copy of the Certificate that Wife claimed had made the Pakistani ceremony a valid marriage, Husband testified that it was a fraudulent document. According to Husband, Wife had been able to procure a fraudulent document from Pakistan in the past. Specifically, Husband testified that when Wife's son from a previous marriage had needed a passport, Husband had told Wife that if she did not have sole custody of her son, the son's father would need to sign the passport application. Husband further testified that Wife had told him that she did not have sole custody of her son but that her father, who had been a high-ranking government official in Pakistan, "had connections" and could get her an affidavit stating that she had sole custody of her son. (Tr. Vol. 2 at 216). According to Husband, Wife had received the necessary affidavit from an advocate of the Supreme Court in Pakistan. Husband also testified that he and Wife had always celebrated their wedding anniversary in March. No other witnesses testified at the hearing.

[13] During closing argument, Husband argued, in relevant part, as follows:

It's their motion, they bear the burden. So they come in with an interpretation filed by them. They do not bring in an interpreter. They bring documents that the parties cannot agree what the intent is[.] So I understand that there are two different arguments being made to the Court about the significance of that ceremony in her parents' home[.] It's the Court's job to look at the . . . evidence[.] You heard her testimony[.] This is not someone who is ignorant of the system. This may be someone who is actually very skilled at using the system[.] And now you know, wh[en] she doesn't succeed with one story, she makes another[.] [Husband] paid respect to her, her family, her culture, and went through this blessing [in Pakistan]. He did not consent to

marriage [in Pakistan]. Both parties agree that in either country, it takes two to consent to it.

(Tr. Vol. 3 at 21-23).

[14] In September 2021, the trial court issued an order concluding that “the parties were not married[] but [had] received a religious blessing in Pakistan regarding their intent to be married in Indiana.” (Appellant’s App. Vol. 2 at 44). The order contained no specific findings.

[15] In October 2021, Wife filed a petition asking the trial court to certify its September 2021 order for a discretionary interlocutory appeal so that she could “appeal the issue of whether the Nikah Nama executed by the parties . . . was sufficient evidence of a valid marriage.” (Appellant’s App. Vol. 2 at 87). Husband filed an objection to Wife’s petition, wherein he pointed out that Wife’s 2018 dissolution petition and 2021 petition to determine the enforceability of the prenuptial agreement had both stated that the parties had been married in March 2006. According to Husband, Wife had not alleged that the parties had married in January 2006 until the trial court had concluded in March 2021 that the parties’ prenuptial agreement was enforceable. According to Husband, Wife’s motion to reconsider was nothing more than a collateral attack on the trial court’s March 2021 order. Husband argued that the evidence at the hearing on Wife’s motion to reconsider had clearly established that the January 2006 ceremony had been a religious blessing. Husband also argued that another delay of the dissolution proceeding would cause him substantial expense. Specifically, Husband argued that Wife’s petition to certify the trial

court's order for an interlocutory appeal was "an additional effort by [Wife] to delay the dissolution proceedings, wherein she remain[ed] in [Husband's mother's home] by herself while [Husband] and three children [were] displaced and [Husband] continue[d] to afford all expenses and pa[id] support" during the pendency of the proceedings.<sup>1</sup> (Appellee's App. At 93).

[16] The trial court granted Wife's petition and certified its September 21, 2021 order for interlocutory appeal. This Court's motions panel accepted jurisdiction of the interlocutory appeal.

## Decision

[17] At the outset, we note that there is a well-established preference in Indiana for granting latitude and deference to the trial court in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). Appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence." *Id.* (cleaned up). "On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." *Id.* (cleaned up). "Appellate judges are not to reweigh the evidence

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<sup>1</sup> Husband and Wife had two children during the course of their twelve-year marriage. Those children, as well as Wife's son from a prior marriage, had apparently been living with Husband during the course of the dissolution proceedings.



nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Id.* (cleaned up).

[18] We now turn to the sole issue in this case. Specifically, Wife argues that the trial court abused its discretion when it denied her motion to reconsider because, according to Wife, the evidence that she presented at the hearing revealed that she and Husband had been legally married in Pakistan in January 2006. We review a trial court’s reconsideration of a prior ruling for an abuse of discretion. *Celadon Trucking Services, Inc. v. United Equipment Leasing, LLC*, 10 N.E.3d 91, 94 (Ind. Ct. App. 2014), *trans. denied*. An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Id.*

[19] Our review of the evidence in this case reveals that Wife testified that the parties had been married in Pakistan in January 2006. In support of her testimony, Wife tendered a Certificate, which Wife claims proves that the parties were validly married in January 2006. Husband, however, challenged the authenticity of the Certificate and testified that Wife had procured a fraudulent document in the past. Husband further testified that he had agreed to a religious blessing out of respect for Wife’s family; however, he unequivocally testified that he had neither consented nor intended to marry Wife in January 2006 in Pakistan. We further note, as Husband points out, “[t]he Trial Court did not have the benefit of an expert in Pakistani law, nor a representative from the Pakistani government who could definitively say if the parties[] were legally

married in . . . Pakistan. Instead, the Trial Court only had the testimony of the parties and the documents admitted into evidence.” (Husband’s Br. 11).

[20] Faced with this conflicting testimony from the parties, it was within the trial court’s discretion to assess each party’s credibility and to determine, in light of the evidence presented, which party to believe. The trial court believed Husband’s testimony that he had agreed to a religious blessing and had not intended to marry Wife in Pakistan in January 2006 and concluded that the January 2006 ceremony in Pakistan was a religious blessing rather than a lawful marriage. We cannot reassess witness credibility or reweigh the evidence. *See Steele-Giri*, 51 N.E.3d at 124. Because the evidence does not positively require the conclusion contended for by Wife, we find no basis for reversal. *See id.* Accordingly, the trial did not abuse its discretion when it denied Wife’s motion to reconsider.<sup>2</sup>

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<sup>2</sup> Wife further argues that “[e]ven if th[is] Court affirms the trial court’s decision that the parties’ January 5, 2006, Nikah Nama constituted a religious blessing instead of a valid marriage recognized under Indiana Law, the Prenuptial Agreement should be deemed void based on fraud, duress and unconscionability.” (Wife’s Br. 19). However, Wife seems to misunderstand the scope of this interlocutory appeal. We have previously explained that our scope of review in an interlocutory appeal is limited to the interlocutory order on appeal. *DuSablon v. Jackson County Bank*, 132 N.E.3d 69, 76 (Ind. Ct. App. 2019), *trans. denied*. Specifically, interlocutory appeals are not vehicles through which one may attack the trial court proceedings as a whole and without regard to the order on appeal. *Id.* Here, the September 21, 2021 order that the trial court certified for interlocutory appeal concluded only that the January 2006 ceremony in Pakistan was a religious blessing rather than a lawful marriage. That order did not address the validity of the Agreement. Rather, it was the trial court’s March 2021 order that determined that the Agreement was enforceable. Wife did not appeal that order, and we will not allow her to attack it in this appeal. *See DuSablon*, 132 N.E.3d at 76.

[21] Affirmed.

[22]

[23] Robb, J., and Weissmann, J., concur.