

TABLE OF CONTENTS

Appendix A:	Appellate division opinion, July 17, 2017	1a
Appendix B:	Trial court order, February 10, 2015.....	11a
Appendix C:	Trial court opinion, February 10, 2015.....	13a
Appendix D:	Supreme court order, February 9, 2018.....	24a

APPENDIX A

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

No. A-3379-14T4

MARIA I. ALVAREZ, Plaintiff-Appellant, v.
JOHN TORTORA, Defendant-Respondent.

Filed: July 17, 2017

Before: LIHOTZ, Presiding Appellate Judge, and
O'CONNOR and WHIPPLE, Appellate Judges.

PER CURIAM

Following a hearing, a Family Part court found the parties in this matrimonial matter were not married, and entered an order on February 10, 2015, dismissing plaintiff Maria I. Alvarez's complaint for divorce and defendant John A. Tortora's counterclaim for a declaration of the marriage was null and void. Plaintiff appeals from that order. We reverse the provision in the order dismissing the complaint, and remand for further proceedings.

I.

In this action plaintiff has maintained the parties, both American citizens, were married on April 26, 2004, in Havana, Cuba.¹ They have one child, born before the marriage. Both parties were previously married and divorced. Before commencing trial on the action for divorce, the court held a hearing on the husband's claim the parties were not in fact married. The pivotal evidence adduced at that hearing, at which only plaintiff testified and introduced documentary evidence, was as follows.

Plaintiff asserted she and defendant decided to get married in the spring of 2004. They decided to get married in Cuba, where some of her relatives resided. Plaintiff called a cousin living in Cuba and ascertained what was needed to get married there. In accordance with that information, both parties brought the divorce judgments generated from their former marriages and their birth certificates. Plaintiff's cousin also made an appointment for the parties to appear before an officiant licensed to perform marriages.

After arriving in Cuba in April 2004, plaintiff and defendant went to a place in Havana "like [a] Town Hall," and submitted the aforementioned documents in order to get a marriage license. The documents were translated into Spanish by staff at the office where marriage licenses were issued, for which the parties paid a fee of \$250 or \$275.

¹ The marriage certificate in fact states the marriage was on April 27, 2004.

A day or so later, the parties received their marriage license and returned to the same location, where they were married by an officiant in the presence of their daughter, two witnesses, and plaintiff's cousin. The ceremony, which was conducted in Spanish, was videotaped by one of the witnesses; that videotape was placed in evidence and played during the hearing.

Plaintiff testified to some of what the officiant stated during the ceremony. First, the officiant noted the documents the parties had submitted were complete. After the officiant commented about the need for the parties to respect each other and take care of their family, the parties are seen signing the marriage certificate on the videotape. The officiant then declared, "John and Maria having completed all the requirements to – for matrimony, I declare you man and wife." A copy of the marriage certificate was placed in evidence.

Plaintiff admitted the parties did not live together during their marriage, although they did see each other multiple times during the week. She also acknowledged there were a number of times during the marriage when she held herself out as single. Specifically, she did so on domestic violence applications against defendant, a bankruptcy petition she filed, an application for welfare benefits, a case information statement for child support against a former spouse, and income tax returns.

Plaintiff claimed defendant insisted she not reveal they were married because he wanted her to obtain benefits from the government she could not get if

married, such as food stamps. She testified she acceded to defendant's demands because he intimidated her.

Following the hearing, the court dismissed plaintiff's complaint and defendant's counterclaim. The court noted the parties failed to obtain a license from the United States government granting them permission to get married in Cuba. Although somewhat unclear, the court appears to have relied upon 31 C.F.R. § 515.201 and 31 C.F.R. § 515.560, which lists those activities in which an American can engage in Cuba if he or she obtains the appropriate license from the federal government. In the trial court's opinion, the parties were required to obtain a license from the United States government to get married in Cuba. Without citing any authority in support, the court concluded the parties' failure to secure such license voided their marriage.

Because pertinent to one of the issues on appeal, we mention plaintiff engaged in discovery on the issue of alimony, child support, and equitable distribution. The court ordered defendant to provide plaintiff certain financial discovery, \$5000 toward the cost of retaining an expert accountant, and \$15,000 in counsel fees.

II.

On appeal, plaintiff raises the following points for our consideration:

Point I: The trial court erred in dismissing plaintiff's complaint on the ground that the parties

were never legally married.

- A. The parties were validly married in accordance with Cuban law.
- B. Even if the parties were not legally married, defendant must be estopped from disputing the validity of the marriage to plaintiff based upon the doctrine of estoppel, quasi-estoppel and unclean hands.

Point II: The trial court erred in improperly applying the law of the case doctrine regarding the prior orders of the trial court concluding that the parties' marriage was valid.

Point III: The trial court erred by failing to enforce its five orders adjudicating defendant in violation of litigant's rights.

Point IV: The trial court erred in affording defendant affirmative relief while he remained in violation of court orders.

We initially address plaintiff's contention the court erred when it found the parties were never legally married. At the outset, we note our review of a Family Part court's factual findings is limited. *N.J. Div. of Youth & Family Servs. v. M.M.*, 189 N.J. 261, 278-79 (2007). We must defer to the findings of the Family Part if those findings are "supported by adequate, substantial, and credible evidence" in the record. *N.J. Div. of Youth & Family Servs. v. R.G.*, 217 N.J. 527, 552 (2014).

However, we owe no special deference to the trial

court's "interpretation of the law and the legal consequences that flow from established facts." *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995). A reviewing court is compelled to reverse if the trial court abused its discretion, failed to consider all the controlling legal principles, or reached a determination that "could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole." *Heinl v. Heinl*, 287 N.J. Super. 337, 345 (App. Div. 1996).

"An action for divorce is predicated on a valid marriage. . . ." *Wigder v. Wigder*, 14 N.J. Misc. 880, 881 (Ch. 1936). However, "the law of this State does not require [a] plaintiff [in an action for divorce] to prove the validity of . . . the parties' marriage." *Raspa v. Raspa*, 207 N.J. Super. 371, 377 (Ch. Div. 1985). "[O]nce plaintiff shows the parties were in fact married, the burden of proving invalidity shifts to defendant, and it must be met by clear and convincing evidence." *Ibid.* A plaintiff can demonstrate there was a marriage by producing the marriage certificate or a public record of the marriage. *Simmons v. Simmons*, 35 N.J. Super. 575, 579 (App. Div. 1955).

Here, a copy of the marriage certificate was admitted into evidence. Although unnecessary to establish the parties were in fact married once the marriage certificate was admitted, plaintiff also produced corroborating evidence of the marriage, specifically, the videotape of the wedding ceremony, in which the officiant made statements consistent with one conducting a marriage ceremony, such as declaring at the conclusion of the ceremony the parties

were “man and wife.”

At the point the marriage certificate was placed into evidence, the burden to show the marriage was invalid shifted to defendant. Moreover, defendant had the burden to show the marriage was invalid according to *Cuban* law. “It is a general principle of . . . interstate law, subject to but few exceptions, that the validity of a marriage, so far as it depends upon the preliminaries and the manner or mode of its performance or solemnization, is to be determined by reference to the law of the place where it was performed or solemnized.” *Sturm v. Sturm*, 111 N.J. Eq. 579, 582 (Ch. 1932). Defendant did not introduce any evidence disputing the validity of the marriage, let alone under Cuban law.

Defendant asserts the trial court correctly found the parties violated 31 C.F.R. § 515.560 when they failed to obtain a license from the federal government authorizing them to get married in Cuba. He further argues the court correctly concluded this omission voided the marriage. However, defendant does not cite and we were unable to find any authority supporting the premise a failure to obtain the federal government’s permission to get married in Cuba has the legal effect of voiding a marriage properly entered in Cuba in accordance with Cuban law.

To be sure, if the parties violated this regulation and the federal government chooses to prosecute them, they would be subject to various civil and criminal penalties. *See* 31 C.F.R. § 515.701. However, none of the penalties provide a party’s marriage shall be deemed void if a party is found in violation of 31

C.F.R. § 515.560 or any other regulation in 31 C.F.R. § 515. The prohibited acts in which the parties allegedly engaged have no bearing on the question of whether they were legally married under *Cuban* law.

Defendant asserts the court could not have considered or placed any weight upon the marriage certificate because it did not contain an apostille. In general, an apostille is a special seal applied by an authority to certify a document is a true copy of an original. Apostilles are available in countries which are signatories to the 1961 Hague Convention Treaty Abolishing the Requirement of Legalization of Foreign Public Documents. *See Apostilles And Notary Certifications*, State of New Jersey Department of Treasury (June 30, 2017), <http://www.state.nj.us/treasury/revenue/dcr/programs/apostilles.shtml>. However, at the time in question, Cuba was not a signatory to this treaty. *See 12: Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, HCCH (June 30, 2017), <https://www.hcch.net/en/instrument/s/conventions/status-table/?cid-41>.

Moreover, the court admitted the certificate into evidence. In addition, N.J.R.E. 902(c) provides: “If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification” Here, defendant had ample time before the hearing to investigate the authenticity of the document, but did not introduce any evidence challenging the authenticity of the marriage certificate.

Defendant raises other arguments. He references other federal regulations he claims the parties violated and maintained such violations invalidated the parties' marriage. None of these arguments has sufficient merit to warrant discussion in a written opinion. *R. 2:11-3(e)(1)(E)*. The balance of defendant's arguments were not raised before the trial court; accordingly, we decline to address them. *Nieder v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (1973).

In summary, plaintiff presented a marriage certificate showing the parties wed in Cuba. Although unnecessary to shift the burden to defendant to prove the marriage was invalid, plaintiff also presented other evidence, specifically, the videotape, showing the parties participated in a marriage ceremony. After the marriage certificate was introduced, the burden shifted to defendant. However, he presented no evidence the marriage was invalid under Cuban Law – or under any law, for that matter. In fact, he did not present any evidence during the hearing at all. His argument the parties' alleged violations of federal regulations invalidated their marriage was unsupported by legal authority.

Because the court erred when it determined the marriage was invalid, we reverse the February 10, 2015 order dismissing the complaint, and remand this matter for disposition of plaintiff's cause of action for divorce. While defendant's answer shall be revived, those affirmative defenses pertaining to the question of the validity of the parties' marriage and his counterclaim shall not be.

Our decision obviates the necessity we address

plaintiff's remaining arguments. However, we make note of the fact plaintiff complains the trial court failed to address five orders compelling defendant to provide discovery, give plaintiff \$5000 toward the cost of retaining an expert accountant, and pay her \$15,000 in attorney's fees. Presumably the court did not address the provisions in those orders directing defendant to provide discovery and to contribute toward the cost of plaintiff's expert accountant because the court dismissed plaintiff's cause of action for divorce. In any event, because the court did not address the issues plaintiff raises in connection with these orders, we decline to do so in the first instance. *See Duddy v. Gov't Emps. Ins. Co.*, 421 N.J. Super. 214, 221 (App. Div. 2011). On remand, plaintiff may make the appropriate application to enforce these orders.

Finally, we further direct that, on remand, the case be assigned to a different judge. As the prior court may find it difficult to ignore its earlier findings, we believe it best the case be reconsidered by a new fact-finder.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: FAMILY PART
PASSAIC COUNTY

No. FM-02-1561-12

MARIA ALVAREZ, Plaintiff, v.
JOHN TORTORA, Defendant.

Filed: February 10, 2015

Before: TERRY PAUL BOTTINELLI, Judge of the
Superior Court

CIVIL ACTION

ORDER FOR DISMISSAL

BOTTINELLI, Judge of the Superior Court.

INTRODUCTION

THIS MATTER being brought before court and
good cause appearing;

IT IS on this 10th day of February, 2015;

ORDERED THAT: The complaint for divorce filed

12a

on January 6, 2012 and the Answer and Counterclaim
filed on March 16, 2012 are hereby dismissed.

/s/ Terry Paul Bottinelli
TERRY PAUL BOTTINELLI
Superior Court Judge

APPENDIX C

NEW JERSEY SUPERIOR COURT,
FAMILY PART

No. FM-02-1561-12

MARIA ALVAREZ, Plaintiff, v.
JOHN TORTORA, Defendant.

Signed: February 10, 2015

LETTER OPINION

BOTTINELLI, Judge of the Superior Court.

Dear Counsel:

This Complaint for Divorce and Counterclaim thereto present unique issues not previously addressed in reported cases post Cuban embargo. When is a “marriage” between two American citizens conducted in Cuba recognized by New Jersey to be a legal marriage?

Case law addressing the legitimacy of marriage performed under Cuban law is sparse. It is generally accepted that a marriage celebrated according to rites and ceremony recognized by the laws of the country where the marriage takes place is valid everywhere.

Harral v. Harral, 39 N.J. Eq. 279, 287 (E & A, 1884).

The United States imposed an embargo against Cuba (in Cuba *el bloqueo*) which is a commercial, economic, and financial embargo imposed on Cuba. It began on 19 October 1960 (almost two years after the Batista regime was deposed by the Cuban Revolution) when the US placed an embargo on exports to Cuba except for food and medicine. On 7 February 1962 this was extended to include almost all imports.

According to the U.S. State Department, “Cuban Assets Control Regulations are enforced by the U.S. Treasury Department and affect all U.S. citizens and permanent residents wherever they are located, all people and organizations physically located in the United States, and all branches and subsidiaries of the U.S. organizations throughout the world. Regulation does not limit travel of U.S. citizens to Cuba *per se*, but it *makes it illegal for U.S. citizens to have transactions (spend money or receive gifts) in Cuba*, under most circumstances. Since even paying unavoidable airfare ticket taxes into a Cuban airport would violate the transactional law, it is impossible for ordinary tourists to visit Cuba without breaking the monetary transaction rule. The regulations require that persons subject to U.S. jurisdiction be licensed in order to engage in any travel-related transactions pursuant to travel to, from, and within Cuba. Transactions related solely to tourist travel are not licensable.” U.S. Department of State. 2008-11-07.

The essential facts are not in dispute. Plaintiff, Maria Alvarez is an American citizen born in Florida

and was a resident of Bergen County at the time of filing. She has cousins in Cuba. Defendant, John Tortora is an American Citizen and was and has been a resident of New York for many years.

Sometime in the spring of 2004 the Plaintiff contacted a travel agency in New Jersey and arranged for travel to Cuba for herself, the defendant and the parties' child, Bianca. It is Plaintiff's position that the parties went to Cuba for the purpose of getting married. In preparation for the trip the plaintiff testified that she had her passport, her birth certificate and a copy of her judgment of divorce from her last marriage with her when she went to Cuba. She did not contact any United States governmental agency nor official concerning the upcoming trip nor the validity of the documents which were in English nor did [she] arrange for them to be translated into Spanish. She did not have any of the documents certified as valid by any United States government official or Secretary of State or Assistant Secretary of State of New Jersey.

She is not sure exactly what documents Mr. Tortora had with him but believes he also brought his passport, birth certificate and divorce judgment. Those documents were in English and were not translated into Spanish prior to leaving the US. He also did not have any of the documents certified as valid by any United States government official or Secretary of State or Assistant Secretary of State of New Jersey.

The parties and their daughter (born October 2, 1995), flew to Cuba on Friday (April 23, 2004) from

JFK International. The trip was to last 5-7 days.

Ms. Alvarez testified that in the days following their arrival, specifically April 24, 2004, she and John went to Revolutionary Plaza in Havana where they submitted the documents they brought from the United States to an official in order to obtain a marriage license. As an aside, the dates are from her memory and were not confirmed by any writing. April 24, 2004 was a Saturday.

She testified that the official took the documents and arranged for them to be translated into Spanish. A few days later she was notified to appear at an officer for the wedding. She testified that there was a ceremony conducted in Spanish on April 26, 2004 and used that date in her Complaint for Divorce.

A video of the event was presented. Present in the office was the "officiant" as well as the parties and their 8 year old daughter. Also present were the plaintiff's cousin who, together with the plaintiff, acted as an interpreter; another cousin who acted as a witness; a friend of that cousin who also was a witness and presumably the videographer.

The proceeding took but a few minutes and was conducted in Spanish. The entirety of the event was captured on video although the audio is, for the most part, inaudible and unintelligible. There was no exchange of wedding rings nor recitation of vows by the parties.

The plaintiff presented two copies of what purports to be a Cuban Marriage Certificate. One is from the

actual date of the proceeding and the second is a copy which she obtained in a later trip in January, 2012. Both documents indicate the event took place on April 27th, not April 26th of 2004 as she testified to.

From the birth of their daughter Bianca, now Serena, in 2005 until the present time the parties never lived together as husband and wife. Did they show commitment to each other or to a marriage?

It is with this background that the court is asked to determine whether there was a valid Cuban marriage which is to be recognized by the State of New Jersey?

For several decades travel to Cuba for Americans has been highly restricted by the U.S. Department of Treasury under the official Embargo. For Americans, only travelers licensed through the Officer of Foreign Assets Control are legally allowed to visit Cuba. Travelers have to meet one of 12 different criteria for authorized travel. Those categories include family visits; official business of the U.S. government, foreign governments or certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; public performances; clinics and workshops, athletic and other competitions and exhibitions.

In connection with the assertion that there was a valid marriage, plaintiff submits a document called a "post nuptial" agreement prepared by the defendant either while in Cuba or shortly thereafter. That document was previously declared to be invalid but is

presented because of the language chosen by defendant. In addition, on the video the defendant is heard to utter words to the effect that “I’m a dead man now.”

Testimony of the plaintiff together with other documents presented by the plaintiff do not, however, bode well for her as to whether or not the parties entered into a marital contract or, by their actions, who commitment to each other or marriage. For example:

- In several requests for Temporary Restraining Orders filed before the Complaint for Divorce was filed the box “married” was not checked in the New Jersey Domestic Violence Civil Complaint and Temporary Restraining Order. The jurisdictional question, 6.(A) provides: The plaintiff and the defendant are 18 years old or older or emancipated AND are 1. Married [or] divorced OR 2. Present household members {or} former household members; OR (B) The defendant is 18 years old or older or emancipated AND 1. The plaintiff and defendant are unmarried, X co-parents . . . 8 the plaintiff and defendant X never resided together;
- In a written filing for bankruptcy (1/5/2012) she listed herself as “not married;” According to plaintiff’s brief, that representation has now been amended.
- The Code of Federal Regulations requires a license to travel to Cuba. While the plaintiff

has cousins in Cuba, the defendant has no relatives in Cuba. Plaintiff does not recall what type of license was applied for and what specific request and what documents were submitted for authorization for the defendant to travel to Cuba in 2004;

- The parties did not specifically request permission from the U.S. Government to enter Cuba for the purpose of marriage;
- Contrary to stated US policy, no documents were presented to any U.S. Government office for translation nor for verification of their authenticity;
- Neither party presented a copy of their birth certificate nor their prior divorce documents to the Cuban Interest Section of the US government for approval before travel;
- The plaintiff did not know the date of the “marriage” to Mr. Tortora;
- Since no licenses to travel were presented, it is presumed by the court that neither party received authorization to spend U.S. dollars in Cuba for any purpose other than in connection with a vacation. Plaintiff testified that the defendant paid \$250 - \$275 to obtain a license to marry. Payment of same is outside the scope of ordinary travel expenses and is not authorized by the US Government;
- Contrary to requirements of the Cuban

Government, copies of the documents presented in Cuba were not “legitimized” by the U.S. Government. Cuba requires:

Legalization and Certification of Documents

Documents to be used in Cuba for legal procedures must be legalized by the corresponding authorities of the country. Documents must be translated by a notarized translator and legalized, both the original and the translation, by the competent authorities and then by the Cuban Consulate, or, having the originals legalized by the competent authorities and then having them translated at the Cuban Consulate along with the legalization of the original and the translation.

Payment of the consular fee must be made for this service. Cuban Interests Section in USA, Washington, D.C.

- The parties did not advise the travel agency which obtained travel documents that they wanted to marry in Cuba. Any activity falling outside of the twelve categories found in Title 31 CFR 515.560 permitting “tourist activities” was prohibited by the United States government;
- The applicant for a license to travel to Cuba must state with specificity activities contemplated in Cuba;
- The parties, although having a child in common, never lived together even after their trip to Cuba;

- On her filed Case Information Statements (CIS's) plaintiff did not respond to the question requiring her to list "date of marriage;"
- On Federal income tax returns attached to her various CIS filings she did not list her status as "married," or "married filing separately" but instead as "head of household."
- IRS Tax Tip 2011-09, January 13, 2011 explains: The first step to filing your federal income tax return is to determine which filing status to use. Your filing status is used to determine your filing requirements, standard deduction, eligibility for certain credits and deductions, and your correct tax. There are five filing statuses: Single, Married Filing Jointly, Married Filing Separately, Head of Household and Qualifying Widow(er) with Dependent Child.

Here are eight facts about the five filing status options the IRS wants you to know so that you can choose the best option for your situation.

1. Your marital status on the last day of the year determines your marital status for the entire year.
2. If more than one filing status applies to you, choose the one that gives you the lowest tax obligation.
3. *Single filing status generally applies to anyone who is unmarried, divorced or legally separated*

according to state law.

4. *A married couple may file a joint return together. The couple's filing status would be Married Filing Jointly.*
5. If your spouse died during the year and you did not remarry during 2010, usually you may still file a joint return with that spouse for the year of death.
6. A married couple may elect to file their returns separately. Each person's filing status would generally be *Married Filing Separately*.
7. *Head of Household generally applies to taxpayers who are unmarried.* You must also have paid more than half the cost of maintaining a home for you and a qualifying person to qualify for this filing status. As to the propriety in plaintiff utilizing this filing status, that issue is left to others to decide.
8. You may be able to choose *Qualifying Widow(er) with Dependent Child* as your filing status if your spouse died during 2008 or 2009, you have a dependent child and you meet certain other conditions.
 - The parties, while back in the United States did not take any steps to get married in either New York or New Jersey prior to or after the birth of their daughter and,
 - Finally, Plaintiff failed to advise social

welfare agencies that she was married before accepting government assistance after 2004.

Although plaintiff presented what purports to be a marriage license from Cuba, that document does not contain any authentication by the *Ministerio de Relaciones Exteriores*, MINREX (Cuban foreign ministry) that the officiant was authorized to conduct a marriage nor verification that any purported marriage of two United States citizens would be deemed valid in Cuba.

Torres v. Torres, 144 N.J. Super. 540 (Ch. Div. 1976) confirms that it is necessary to meet the requirements of solemnization of the country of Cuba and the parties demonstrate that the requirements of solemnization are met. The requirement of solemnization of marriage can be met by both a showing of legal process and a showing of commitment.

The propensity of the plaintiff to be less than truthful on submissions to governmental agencies, her misstatements on filings; lack of proof of the validity of the purported marriage together with all of the other items cited above bolster the position of the defendant that there was no valid marriage between these parties.

The Complaint for Divorce is dismissed.

Very truly yours,
/s/ Terry Paul Bottinelli
TERRY PAUL BOTTINELLI,
Judge of the Superior Court

APPENDIX D

SUPREME COURT OF NEW JERSEY

No. C-521

MARIA I. ALVAREZ, Plaintiff-Respondent, v.
JOHN A. TORTORA, Defendant-Petitioner.

Signed: February 9, 2018

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-003379-14 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 6th day of February, 2018.

/s/ MARK NEARY

MARK NEARY

Clerk of the Supreme Court