

## Ruling upends Muslim marriage tradition

By: Commentary: Abel Awad ◉ August 6, 2020

In the consolidated appeals of *Nouri v. Dadgar* and *Ghazirad v. Mojarrad*, 245 Md. App. 324 (2020), the Court of Special Appeals enunciated a new stringent standard to apply to enforcement of an agreement involving a “mahr,” the promise of a gift from a groom to a bride.



The facts of these two cases are not remarkable. The appellant Dr. Bruce Nouri and appellee Dr. Shabnam Dadgar were married in two separate ceremonies. The first ceremony took place in Iran and Maryland at the same time. Dr. Nouri and Dr. Dadgar held a conference call with an Iranian officiant, family members and other witnesses. Except for the parties, the rest of the participants in the ceremony were located in Tehran, Iran.

The officiant performed the marriage ceremony using a standard marriage contract. The parties agreed that the mahr was a Quran immediately and the deferred portion was 1,353 gold coins. Shortly thereafter, the parties had a civil marriage ceremony at the Montgomery County Circuit Court.

In the second case, the appellant Mohammad Ghazirad and appellee Fatemeh Mojarrad were married in several ceremonies. The first ceremony was a civil ceremony that took place in Alabama on July 6, 2006. The second ceremony was a religious ceremony that took place on July 22, 2006 in Virginia in which the parties executed a standard Muslim marriage contract that included a postponed *ṣadāq* of 500 gold coins (Virginia law may be the applicable law).

The same trial judge held that the mahrs – valued at \$492,750 in Nouri and \$225,000 in Ghazirad — were enforceable contractual obligations. On appeal, the appeals court agreed with the trial judge that a mahr agreement is enforceable under neutral principles of law, does not violate public policy or involve the resolution of religious issues. But that was not enough to affirm. The court vacated both judgments and remanded for further proceeding to apply the new more stringent prenuptial agreement standard.

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The court reached this new stringent standard by concluding that the extensive defenses available to the enforcement of a contract — good faith, consideration, parties’ objective intent, fraud, duress, coercion, mistake, undue influence, or unconscionability — are not sufficient for a mahr agreement because it was made in contemplation of marriage and is akin to a premarital agreement made in a confidential relationship.

The validity of the mahr then depends on whether there was an “overreaching.” The court explained the absence of overreaching is when (a) there was ‘full, frank, and truthful disclosure of . . . assets’ before signing the agreement (b) the other party’s knowledge of those assets, (c) the agreement ‘was not unfairly disproportionate . . . at the time the agreement was entered,’ or (d) prove that there was no overreaching.

In addition, the appeals court continued, “the trial court may consider such factors as . . . whether the attacking party had the opportunity to seek legal advice before signing the agreement, and whether the attacking party voluntarily and knowingly relinquished his or her rights.”

In essence, the court pigeonholed a mahr agreement into a standard prenuptial agreement. A mahr is not a standard prenuptial agreement for a variety of reasons.

## History of mahrs

A mahr or sadaq is a standard provision in every Muslim marriage contract. The mahr is an amount of money or property that is paid and pledged by the groom to the bride. Generally, the mahr has two portions: the immediate portion is paid prior to consummation while the deferred portion is conditioned on consummation and to be paid upon demand, talaq (form of divorce) or death of the husband.

In fact, this right is so established that a husband is subject to imprisonment for failure to pay the mahr in most Muslim countries.

A mahr is more like an engagement ring in contemplation of marriage – the Prophet Muhammed had approved an iron ring as a mahr — than a prenuptial agreement in contemplation of marriage. Like an engagement ring that is not considered marital property, upon the consummation, the mahr becomes the wife’s separate property.

A brief explanation of the circumstances and traditions surrounding the execution of the marriage contract is necessary. A few days or months before the marriage ceremony, the bride, groom and their families discuss/negotiate the amount of the mahr. The parties do not circulate a draft marriage contract for review.

It is a standard preprinted form that is completed by the religious officiant. The parties are not represented by counsel at the ceremony or the negotiation of the mahr. There is no exchange of financial disclosures, and there are absolutely no express or implied waivers of state marital financial rights.

While Muslims execute by and large the same contract for the past 1,400 years, prenuptial agreements were created in the 20th century, which until recently many states considered contrary to public policy. Courts considered a prospective wife to be in an unequal bargaining position in need of protections before validating waivers of a statutory marital right.

Not surprisingly, the majority of states require premarital agreements to include advice of counsel and fair financial disclosure. These circumstances are not applicable to a mahr agreement, because it is not a waiver of rights a wife is entitled to under state law or Islamic law for that matter. The mahr in *Nouri* and *Ghazirad* did not waive the spouses’ Maryland law rights, including equitable distribution, alimony and inheritance.

The available contract defenses are more than sufficient to protect husbands in mahr disputes. A family court as a court of equity would consider the amount of the mahr received by a wife as a factor in the evaluation of equitable distribution and alimony. Maryland law has sufficiently developed law to adjudicate mahr disputes and without the need for additional legal theories and burdensome requirements.

For 14 centuries, Muslim women received their mahrs as a matter of law, religion and traditions. Unfortunately, the appeal court’s decision was based on misunderstanding the nature of mahr. The far-reaching unjust consequences for this misunderstanding mean that millions of mahrs in America would not satisfy the “overreaching” stringent standard announced as the law of Maryland.

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