

FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION**

IN RE HANI N. KHALIL)
and NESRINE D. HAMDALLAH KHALIL,) **D.C. Civ. App. No. 2001/183**
Appellants.)
)
) **Re: T.C. Fam. No. 31/2001**
)

On Appeal from the Territorial Court of the Virgin Islands

Considered: December 6, 2002

Filed: April 4, 2003

BEFORE: **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Judge of the Territorial Court, Sitting by Designation.

ATTORNEYS:

Eszart Wynter, Esq.¹
St. Croix, U.S.V.I.
Attorney for Appellants.

MEMORANDUM OPINION

PER CURIAM.

Hani Khalil and Nesrine Hamdallah Khalil appeal the Territorial Court's denial of their petition for declaratory

¹ Alicia Suarez, Esq. initially appeared for the appellants and filed the appellate brief in this matter. Her request for expedited review was also granted. However, Attorney Suarez fell ill just prior to this appeal being heard, requiring appellants to secure substitute counsel. On the eve of this appeal, Attorney Wynter filed a Notice of Appearance and was permitted to file a supplemental brief to be considered by the appellate panel.

relief which sought to have their marriage, entered into without a prior license, declared valid.² There is no appellee in this case. The issue presented on appeal is: Whether the appellants' marriage is valid, where it was entered into over one year prior to issuance of a marriage license and where the licensing statute does not expressly declare such marriages to be void or voidable. Stated simply, is a marriage license a condition precedent to a valid marriage under Virgin Islands law, such that the failure to obtain such license prior to entering a marriage renders that marriage void.³ The trial court answered that question in the affirmative and, for the reasons stated herein, we **AFFIRM**.

I. FACTS AND PROCEDURAL POSTURE

On October 8, 1999, Hani N. Khalil and Nesrine D. Hamdallah Khalil [collectively, "the Khalils" or "Appellants"] participated in a marriage ceremony at the Islamic Mosque on St. Croix. A "Marriage Certificate" was issued by the Virgin Islands International Islamic Society, indicating one Abdelkarim I. Taha performed the ceremony. [Appendix (App.) at 1]. Nesrine Khalil

² Whether the appellants' marriage is valid implicates Hani Khalil's right to remain in this country. Because of the pending application for adjustment of status and an impending immigration action against Hani Khalil, the appellants additionally requested and were granted expedited review.

³ This jurisdiction has not had occasion to decide the specific issue presented here.

(individually, "Nesrine") was 15 years old at the time of the ceremony.⁴ Subsequently, appellants applied to the Territorial Court for a marriage license. That license was issued on January 16, 2001 - approximately 15 months after the marriage ceremony took place.⁵

Appellants then filed for an adjustment of status for Hani Khalil [individually, "Hani"], pursuant to the Immigration and Naturalization Act, title 8, section 1255 of the United States Code. However, that application process was stymied after the Immigration and Naturalization Service called into question the validity of the appellants' marriage. Appellants petitioned the Territorial Court for declaratory relief, seeking to have their marriage declared valid. On September 25, 2001, that Court denied the requested relief, holding the issuance of a marriage license is a prerequisite to a legal marriage under title 16,

⁴ On the subsequent marriage license issued by the court on January 16, 2001, Nesrine indicated her birthday was November 12, 1983.

⁵ In his supplemental brief, counsel for the appellants claims a marriage license was initially issued to the Khalils prior to the solemnization ceremony, but was never returned by the officiating person. [Appellants' Supplemental Br. at 5]. Counsel contends the marriage license at issue here was actually the second one issued to the appellants. [Id.]. This assertion finds no support in the record. In their initial brief, appellants never claimed they had sought - or received, for that matter, a license prior to the ceremony; rather, their arguments relied entirely on the issuance of the January, 2001 license following the marriage ceremony. Indeed, a copy of that license was submitted as part of the record. [App. at 2]. Conversely, we note the absence of any evidence on this record that a prior license was ever sought or issued and, therefore, will not consider the appellants' arguments in that regard or the effect of a prior license on the issue before us.

sections 35 and 38 of the Virgin Islands Code. This appeal followed.

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has jurisdiction to review final judgments and orders of the Territorial Court in all civil matters. See, V.I. CODE ANN. tit. 4, § 33 (1997); Revised Organic Act of 1954 § 23A.

The trial court's application of the law to this case or its interpretation of applicable statutes present questions of law, subject to plenary review. See, *In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 193 (3d Cir. 2000); *Hess Oil V.I. Corp. v. Richardson*, 894 F. Supp. 211, 32 V.I. 336 (D.V.I. App. Div. 1995), *appeal dismissed*, No. 95-7381 (3d Cir. May 7, 1996).⁶ However, we review the trial court's factual determinations for clear error. *In re Cendant*, 233 F.3d at 193; see also, *Rivera v. Government of the V.I.*, 37 V.I. 68, 73 (D.V.I. App. Div. 1997).

B. A Marriage License is An Essential Element Of A Legal Marriage in the Virgin Islands, Notwithstanding The Absence of Such Express Declaration in the Statute.

1. Express Statutory Language and the Common Law View.

Appellants contend the lower court erred in interpreting the

⁶ See, also, 5 V.I.C. § 1267 (declaratory judgments subject to the same review accorded other matters).

local marriage statute to require a license prior to solemnization as a condition precedent to a legal marriage. In support of this argument, appellants assert the licensing provision is a mere directory statute, where it contains no express renunciation of unlicensed marriages.

In determining the elements indispensable to a valid marriage under Virgin Islands law, our inquiry must necessarily begin with the statutory language. *See, In re Segal*, 57 F.3d 342 (3d Cir. 1995). It is now axiomatic that the court's purpose in construing a statute is to effectuate the intent of the Legislature. *See*, 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION §§ 46.01-46.02 (6th ed. 2000). Therefore, if plain on its face, the language of the statute must prevail, unless doing so effects an absurd result contrary to that intended by the Legislature. *See, id.; Dutton v. Wolpoff and Abramson*, 5 F.3d 649, 654 (3d Cir. 1993); *see, also, Government of V.I. v. Knight*, 989 F.2d 619, 633 (3d Cir. 1993). Moreover, a statute must be read as a whole and in the context of the entire statutory scheme. *See, Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

The Virgin Islands Code defines a marriage as "a civil contract which may be entered into between a male and a female in accordance with law." V.I. CODE ANN. tit. 16, § 31 (1996). The

statute expressly mandates a ceremony - or solemnization - to effect a valid marriage:

No marriage shall be valid unless solemnized by -

- (1) a clergyman or minister of any religion whether he resides in the Virgin Islands or elsewhere in the United States; or
- (2) witnessed by a Local Spiritual Assembly of the Bahai is [sic] according to the usage of their religious community; or
- (3) any judge or [sic] any court of record.

16 V.I.C. § 32. However, the licensing requirement and its effect on the validity of a marriage is not similarly expressed in such unequivocal terms. Rather, the Legislature addresses licensure only in terms of the application and issuance procedures and the clergy's duty to ensure a license was obtained prior to performing the ceremony. In that regard, the statute provides:

Whoever, being authorized by section 32 of this title to solemnize marriages, solemnizes a marriage without first having had delivered to him a license addressed to him, issued by the clerk of the territorial court and authorizing marriage, shall be fined not more than \$500.

16 V.I.C. § 34. Significantly, no similar fine or other consequence is imposed on the persons marrying without benefit of a license. Moreover, the local statute is very specific about the types of conduct or omissions that would render a marriage void *ab initio* or voidable upon challenge by either party. Title

16, section 1(a) renders null and void any marriage entered into between persons having specified relationships and those who enter a marriage without first obtaining a divorce from a living spouse of a previous marriage. Such marriages have no effect from the beginning. Other types of marriages, while not void from their inception, are deemed voidable under the statute:

A marriage is illegal and shall be void from the time its nullity is declared by decree, if either party thereto -

- (1) is an idiot or a person adjudged a lunatic;
- (2) has consented thereto by reason of fraud or force;
- (3) is incapable, from physical causes, of entering into the marriage itself; or
- (4) is under the age of consent, which is hereby declared to be 16 years of age for males and 14 years for females.

16 V.I.C. § 2. On at least three occasions, therefore, the Legislature addressed the effect of certain conduct on the status of a marriage entered into under local law and, each time, refrained from imposing any adverse consequences on those who marry without benefit of a prior license. Relying on other jurisdictions' construction of similar marriage statutes, appellants argue that the absence of express statutory language nullifying such marriages compels the conclusion that the legislature did not intend the failure to obtain a prior license to be fatal to a legal marriage. We disagree.

At the outset, we acknowledge the majority view favoring upholding the validity of marriages despite a failure to adhere

to statutory procedures. Indeed, because of the policies favoring stability of the family and legitimacy of children, courts are loath to invalidate such relationships unless the statute expressly mandates that result or evinces a clear legislative intent to do so. See, e.g., *Meister v. Moore*, 96 U.S. 76, 79(1877) (discussing similar statute involving penalties against ministers, with no effect to the couple marrying without a license); see, also, *Carabetta v. Carabetta*, 438 A.2d 109 (Conn.1980) (reversing lower court's determination that a solemnized marriage, done without benefit of a license, was invalid, reasoning that the legislature's selective use of language of voidness, by applying it to only some of the statutory requirements for the creation of a legal marriage, precluded a finding that a marriage not otherwise listed is void for failure to comply with licensure requirements); *Feehley, v. Feehley*, 99 A. 663, 665 (Md. 1916) ("In view of the important considerations of morality and legitimacy involved, it is manifestly a sound and just rule of construction that statutes providing for marriage licenses are not held to have the effect of nullifying, for noncompliance with their terms, a marriage valid at common law, unless such an intention is plainly disclosed"); *DeMedio v. DeMedio*, 257 A.2d 290 (Pa. Super. 1969); *Springer v. Springer*, 75 N.Y.S.2d 471-473 (1947); *Johnson v.*

Johnson, 112 S.E.2d 647 (S.C. 1960); *Picarella v. Picarella*, 316 A.2d 826 (Md.App. 1974); *see, also*, 52 AM.JUR.2d *Marriage* § 32 (2002).

We are, therefore, cognizant that the majority view reflects a policy favoring directory construction of marriage license statutes, and we have fully considered the reasoning of those jurisdictions that have so ruled. However, we depart from that view and rule today that the Virgin Islands licensing provision must be given mandatory effect, because the statute reflects a contrary legislative intent and because such a result would be abhorrent to public policy and to the regulatory purpose implicit in the marriage statute.

2. Statutory Scheme Evinces Legislature's Intent to Mandate Licensing.

A statute is generally deemed mandatory, where it includes express prohibitions stated in mandatory terms, coupled with adverse consequences for noncompliance. *See, e.g., Deibert v. Rhodes*, 140 A. 515 (E.D.Pa. 1928); *Holbrook v. United States*, 284 F.2d 747 (9th Cir. 1960). Absent such express terms, a statutory provision is generally regarded as directory, where it requires or regulates conduct but imposes no penalty for noncompliance nor affects the validity of such conduct. *Id.* Given this

distinction, failure to adhere to statutory terms will generally render an action a nullity only if there is clear evidence the legislature intended the terms to be mandatory. *See, Deibert*, 140 A. at 517. However, in determining whether the Legislature intended a statute to have directory or mandatory effect, we are not required to view the statutory provision in a vacuum; rather, we must give due consideration to the entire statutory scheme, the public policy advanced by the statute, and the results which would follow such construction. *See, Holbrook*, 284 F.2d at 752-54; *see, also*, SUTHERLAND STAT. CONSTR. §§ 57:4- 57:7 (court must consider the public policy to be promoted and the result of construing a statute as directory versus mandatory, and reject literal interpretations where result is contrary to apparent intent of the legislature). This is in line with the judiciary's duty, in interpreting statutes, to search for legislative intent and purpose and to avoid absurd results. *See, SUTHERLAND STAT. CONSTR. at §§ 46:02, 57:4.*

Appellants' argument supporting directory construction rests on a familiar maxim of statutory construction that, where a statute explicitly addresses some things, any similar elements not specifically included are impliedly excluded from the scope of such provision. *See, e.g., St. John Hotel & Tourism Ass'n. Inc. v. Government of V.I.*, 216 F. Supp. 2d 460, 464 (D.V.I.

2002); *Collinsgru v. Palmyra Bd. of Educ.*, 161 F.3d 225 (3d Cir. 1998). However, the Third Circuit has cautioned that this maxim is to serve merely as an aid in discovering legislative intent and is not intended to be employed to "override" a contrary intent evident in the entire statute. *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999); *see, also*, SUTHERLAND STAT. CONSTR. §§ 47:24-47:25. Such contrary intent is present here.

Section 35 of the statute sets forth the procedures and guidelines for the issuance of a marriage license and requires the court to examine every applicant, under threat of perjury, to determine certain personal information specified in the statute. *See*, 16 V.I.C. § 35(a), (c). That section provides in pertinent part:

- (a) The clerk of the territorial court, **before issuing any license to solemnize a marriage**, shall examine the applicants therefor under oath, and ascertain with respect to each such applicant—
- (1) the full name, and age at last birthday;
 - (2) date and place of birth;
 - (3) nationality, and usual residence;
 - (4) names of parents or guardian, if the applicant is under age;
 - (5) previous marital status (never married, widowed, divorced, marriage annulled); and
 - (6) whether related to the other applicant, and if so in what degree.

Id. at § 35(a) (emphasis added). This section thus imposes a mandatory duty on the court to conduct such examination before a

marriage license may be issued, and focuses on issues which are pertinent to a determination that the parties are legally competent to marry. See, e.g., 16 V.I.C. §§ 1-2, 36, 38. The statute further defines the age of consent to marry as 18 and expressly prohibits the court from issuing a license to marry to anyone under that age, absent a showing of parental consent. See, 16 V.I.C. § 36 (stating, in mandatory terms, that the court shall not issue a license unless parental consent is shown).⁷ Significantly, section 38, which must be read in conjunction with sections 35 and 36, provides:

If it appears from the examination required by section 35 of this title that the parties are **legally competent** to marry, and if the provisions of sections 36 and 37 of this title, should they be applicable, have been complied with, the territorial court shall issue a license addressed to some particular minister, judge or other person authorized to solemnize marriage . . . "

Id. at § 38 (emphasis added). This provision utilizes conditional language, which clearly and unequivocally predicates the issuance

⁷ That section provides:

Consent of parents or guardians required

If upon the examination prescribed by section 35 of this title, it appears that the male or female applicant is under 18 years of age and has not been previously married, the court shall not issue a license unless the father of such person, or if there be no father, the mother, or if there be no father or mother, the guardian, shall consent to such proposed marriage, either personally or in court, or by an instrument in writing attested by a witness and proved to the satisfaction of the court.

of a license on a judicial determination that the parties are legally competent to marry. See, WEBSTER'S NEW COLLEGE DICTIONARY 549 (2001) ("If", as used in the provision, is defined as "in the event that" or "on condition that"); Compare, 16 V.I.C. § 37 (Though requiring an eight-day posting period for applications prior to issuance of licenses, the Legislature specifically included an exception to that requirement, permitting the court to exercise its discretion to dispense with that requirement; no similar exceptions are provided for in sections 35 and 36 of the statute.). Though not specifically defined in the statute, "legal competence", in the context of section 38, appears to incorporate the statutory age requirement by reference to sections 35 and 36. Finally, the language of the marriage license, as mandated by statute, makes clear that the authority for solemnization is derived solely from the marriage license. See, 16 V.I.C. § 38 (a), (b) (license template); see, also, § 34.

Viewing the statute as a whole as we must, see, SUTHERLAND STAT. CONSTR. § 46:05, we conclude that there exist a mandatory licensing requirement and an important regulatory purpose for the protection of minors and others which should not be readily disregarded. This regulatory purpose is particularly important here, where one party to the ceremony - Nesrine - was below the

statutory age at the time of the purported marriage. In foregoing the licensing process, the Khalils deprived the court of an important role in ensuring that Nesrine was legally competent to marry or had the consent of her parents to do so.

To rule that a license is a dispensable requirement for a lawful marriage would have the absurd effect of rendering the applicable statute entirely meaningless and effectively permitting common-law marriages to be entered into and subsequently legitimized by the courts. See, *Bloch*, 473 F.2d at 1071; *In re Estate of Pringle*, 2000 WL 1349231,*7 (Terr.Ct. 2000) (noting that common law marriages are not recognized in the Virgin Islands). Finally, such a construction could potentially result in needlessly protracted divorce actions and fraud, because of the added difficulty in proving the existence or term of an unrecorded marriage. See, e.g., 16 V.I.C. § 41 (imposing recordkeeping duty on the court). This could not have been what the Legislature intended.

III. CONCLUSION

While cognizant of the common law view that marriages are deemed valid despite defective procedures, unless statutorily declared void, we conclude that licensure is essential to a valid marriage in the Virgin Islands. When viewed as a whole, the Virgin Islands marriage statute reflects a clear legislative intent to require licensure and to condition the issuance of such license on a determination of legal competence. To rule otherwise would render ineffective the statutory scheme and deprive the court of its duty to ensure that only those deemed competent by law contract to marry. A prior license is, therefore, a necessary predicate to a legal marriage under Virgin Islands law, despite the absence of an express statutory declaration to that effect. The trial court did not improperly apply the law, and its decision will be **AFFIRMED**.

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION**

IN RE HANI N. KHALIL)
and NESRINE D. HAMDALLAH KHALIL,) D.C. Civ. App. No. 2001/183
Appellants.)
)
) Re: T.C. Fam. No. 31/2001
_____)

On Appeal from the Territorial Court of the Virgin Islands

**Considered: December 6, 2002
Filed: April 4, 2003**

BEFORE: **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Judge of the Territorial Court, Sitting by Designation.

ATTORNEYS:
Eszart Wynter, Esq.
St. Croix, U.S.V.I.
Attorney for Appellants.

ORDER

PER CURIAM.

For the reasons stated in an accompanying Memorandum Opinion of even date, it is hereby

ORDERED that the trial court's determination that a marriage license is a condition precedent to a legal marriage in the Virgin Islands is **AFFIRMED**.

In re Hani and Nesrine Khalil
D.C.Civ.App.No. 2001/183
Order
Page 2

SO ORDERED this **4th** day of **April, 2003**.

ATTEST:

WILFREDO F. MORALES

Clerk of the Court

/s/

By: _____

Deputy Clerk

Copies to:

Judges of the Appellate Panel
Judges of the Territorial Court
Hon. Geoffrey W. Barnard
Hon. Jeffrey L. Resnick
Eszart Wynter, Esq.
Venetia Harvey Velazquez, Esq.
Nydia Hess