VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of December, 2022.

Present: Goodwyn, C.J., Powell, Kelsey, McCullough, Chafin and Mann JJ., and Millette, S.J.

Yuri Sasson, et al., Appellants,

against Record No. 211055
Court of Appeals No. 0075-21-4

Dana Shenhar, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no reversible error in the judgment of the Court of Appeals.

Yuri Sasson ("Sasson") and Dana Shenhar ("Shenhar") were married in September 1999. *See Sasson v. Shenhar*, 276 Va. 611, 616 (2008) (hereafter *Sasson I*). Later that same year, their son, Ilan Sasson ("Ilan") was born in Florida. *Id.* In July 2002, Sasson, Shenhar and Ilan moved to Spain. *Id.*

Sasson and Shenhar eventually separated in June 2005, with Shenhar retaining custody of Ilan. *Id.* at 617. Unbeknownst to Shenhar, Sasson also obtained an order from a Spanish court barring Shenhar from removing Ilan from Spain without mutual agreement between the parties or court permission. *Id.* However, in October 2005, Shenhar took Ilan to her parents' home in Fairfax County, Virginia without Sasson's knowledge. *Id.*

Sasson filed petitions in the Fairfax Juvenile and Domestic Relations Court ("J&DR court") requesting the court order Ilan's return to Spain. *Id.* at 618. In January 2006, the J&DR court ordered Ilan's immediate return to Spain. (*Id.* at 619. Shenhar appealed the matter to the circuit court; Sasson subsequently returned to Spain with Ilan. *Id.*

In June 2006, the circuit court (hereafter, the "original court") granted Shenhar's appeal, vacated the J&DR court's return order and ordered Sasson to return Ilan to the United States. *Id.*

at 619-20. After Sasson failed to comply with the order, the original court found Sasson in contempt. *Id.* at 621. In its written order (the "2006 Contempt Order"), the original court issued a capias for Sasson's arrest and imposed a $1,000 fine for each additional day Sasson did not return Ilan to Virginia. *Id.*

Sasson subsequently appealed the 2006 Contempt Order to the Court of Appeals. *Id.* Shenhar moved to dismiss Sasson's appeal, arguing that Sasson was a fugitive based on his refusal to return Ilan to the United States and the circuit court's finding of contempt. *Id.* The Court of Appeals granted Shenhar's motion, ruling that the Fugitive Disentitlement Doctrine barred Sasson's appeal. *See Moscona v. Shenhar*, 50 Va. App. 238 (2007). This Court affirmed, concluding that, "the record amply supports the Court of Appeals' determination that Sasson is unwilling to submit to the jurisdiction of Virginia's courts unless he receives a judgment in his favor." *Sasson I*, 276 Va. at 627. "Accordingly, [the Court] cannot say that the Court of Appeals abused its discretion in determining that Sasson had forfeited his right to appeal the judgments of the circuit court by willfully becoming a fugitive." *Id.* at 628.

In April 2020, Sasson and Ilan filed a petition for declaratory judgment, requesting that the 2006 Contempt Order be vacated and declared no longer enforceable. They argued that Sasson could no longer comply with the 2006 Contempt Order because Ilan was now an adult. They further argued that the 2006 Contempt Order makes it difficult for Sasson and Ilan to travel together, as it puts Sasson at risk of arrest when he travels outside of Spain. Shenhar demurred, arguing that Sasson remains a fugitive for his failure to comply with the contempt order.[1] In December 2020, the circuit court[2] sustained the demurrer and dismissed the case with prejudice.

Sasson and Ilan appealed. In a per curiam order, the Court of Appeals dismissed the appeal, concluding that "[n]othing in the record indicates that Sasson purged himself of the contempt order or that any circumstances have really changed since the Supreme Court's 2008 decision regarding Sasson's fugitive status." *Sasson v. Shenhar*, Record No. 0075-21-4, slip op. at 4 (October 13, 2021) (per curiam). Therefore, the Court of Appeals concluded that the

[1] Shenhar further asserted that Ilan had no standing to request declaratory relief on behalf of Sasson, as Ilan was not a party to the 2006 Contempt Order.

[2] Although both the initial custody action and the subsequent declaratory judgment action were filed in Fairfax County, they were presided over by different judges.

Fugitive Disentitlement Doctrine still barred Sasson's appeal.[3] *Id.* at 5.

On appeal to this Court, Sasson argues that the circuit court and the Court of Appeals erred in dismissing his declaratory judgment action through the application of the Fugitive Disentitlement Doctrine. The Court, however, need not address this issue, as an independent reason exists to support the decision to dismiss Sasson's claim. *See Spinner v. Commonwealth*, 297 Va. 384, 391 (2019) (recognizing that, under the right-result-different-reason doctrine, it is unnecessary for the Court to address a lower court's rationale when an independent reason exists to affirm its decision). Specifically, the Court cannot overlook the fact that declaratory judgment is not the proper vehicle to challenge the validity of the 2006 Contempt Order under the facts of this case.

Declaratory judgment actions are meant to "guide parties in their future conduct in relation to each other, thereby relieving them from the risk of taking undirected action incident to their rights, which action, without direction, would jeopardize their interests." *Liberty Mut. Ins. Co. v. Bishop*, 211 Va. 414, 421 (1970). "They are not to be used as instruments of procedural fencing, either to secure delay or to choose a forum." *Id.* at 419. Further, "the power to make a declaratory judgment is a discretionary one and must be exercised with care and caution." *Id.* Therefore, a court's authority to enter a declaratory judgment must be based on "some real necessity for the exercise of jurisdiction." *USAA Cas. Ins. Co. v. Randolph*, 255 Va. 342, 346 (1998). "As a rule, this authority will not be exercised when some other mode of proceeding is provided." *Id.*

In *Sasson I*, the Court provided the specific "mode of proceeding" that Sasson would need to follow if he wanted to challenge the validity of the 2006 Contempt Order. Specifically, it was explained that "where a party maintains that an order of a court is void, the appropriate action to take is to appeal that order, or to attack it in a collateral proceeding, *while still submitting to the court's jurisdiction*." *Sasson I*, 276 Va. at 624 (citing *Leisge v. Leisge*, 224 Va. 303, 306 (1982)) (emphasis added). In other words, until he submits to the court's jurisdiction, Sasson has foreclosed any challenge to the validity of the 2006 Contempt Order.[4] To hold

[3] The Court of Appeals also ruled that Ilan lacked standing to bring an action attacking the 2006 Contempt Order. That decision is not before the Court in this appeal.

[4] Although this arguably presents Sasson with a Hobson's choice, the Court notes that it is one of his own creation. Notably, Sasson was given over three months to comply with the original court's order to return Ilan to the United States before he was found in contempt. Then,

otherwise would require the Court to tacitly condone Sasson's continued willful disobedience of court orders.[5]

The Court passes no judgment on the validity of the 2006 Contempt Order or the applicability of the Fugitive Disentitlement Doctrine. Instead, the Court affirms the lower courts' decision to dismiss Sasson's declaratory judgment action on the basis that such an action was improper under the facts of this case.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Fairfax County.

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Clerk

after he was found in contempt, he was given still more time to comply before the capias was issued and the fine of $1,000/day was imposed. He then had twelve years prior to Ilan reaching the age of majority to comply with the 2006 Contempt Order, which he failed to do. Rather than make any further attempt to purge his contempt, Sasson instead waited until May 2018 to file a motion to vacate the 2006 Contempt Order in the original court, which was denied. Thus, the record demonstrates that Sasson effectively chose to allow the fines to continue to accrue on a daily basis and, therefore, he cannot be heard to complain about the deleterious effects that resulted from his refusal to comply with the original court's orders.

[5] It is further worth noting that Sasson's decision to file a separate declaratory judgment action rather than submit to the original court's jurisdiction could have the incidental effect of allowing him to relitigate his claims before a different judge. As previously noted, using declaratory judgment actions for such "procedural fencing" is not permitted. *Bishop*, 211 Va. at 419.