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Domestic Relations--Age of Majority Statute--Eighteen or Twenty-One?--Plaintiff

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Recent Cases

DOMESTIC RELATIONS—AGE OF MAJORITY STATUTE—EIGHTEEN OR TWENTY-ONE?—Plaintiff, an eighteen-ytar-old resident of Jefferson County, Kentucky, applied to defendant county court clerk for a marriage license. Defendant refused to issue the license on the ground that Kentucky law[1] requires a person under twenty-one years of age to have parental consent before he or she can obtain such a permit. Plaintiff then sued to compel issuance of a marriage license to her without parental consent by reason of the adult status conferred upon eighteen-year-olds by Ky. Rev. Stat. 2.015 [hereinafter referred to as KRS],[2] enacted in 1964 by the General Assembly.[3] The lower court ordered the defendant county court clerk to issue the license and further declared that eighteen-year-olds were entitled to the issuance of a marriage license without parental consent. *Held*: Reversed. The amendments which were added to KRS 2.015 before it passed the Kentucky Legislature and which substituted eighteen years of age for twenty-one years of age in five particular statutes[4] limit the meaning of the phrase "for all purposes" appearing in section one; thus KRS 2.015 applies only to those statutes which do not designate age in terms of a precise number of years. *Commonwealth v. Hallahan*, 391 S.W.2d 378 (Ky. 1965).

The Court erroneously interpreted the statute, since the Legislature obviously intended to establish eighteen years as the age at which all

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[1] "If either of the parties is under twenty-one years of age and not before married, no license shall issue without the consent of his or her father or guardian, or if there is none or he is absent from the state, without the consent of his or her mother, personally given or certified in writing to the clerk over the signature of the father, guardian or mother, attested by two subscribing witnesses and proved by the oath of one of the witnesses, administered by the clerk. If the parties are personally unknown to the clerk, a license shall not issue until bond, with good surety, in the penalty of one hundred dollars is given to the Commonwealth, with condition that there is no lawful cause to obstruct the marriage." KY. REV. STAT. § 402.210 (1942) [hereinafter cited as KRS].

[2] "Persons of the age of eighteen years are of the age of majority for all purposes in this Commonwealth except for the purchase of alcoholic beverages and for purposes of care and treatment of handicapped children, for which twenty-one years is the age of majority."

[3] 1964 KY. SENATE JOURN. 56-70, 91-93. Judging from the legislative history of the bill, the 1964 General Assembly apparently gave little thought to the broad implications which would inevitably result from its passage. In the Senate, the bill was allotted only one day of consideration in committee and was passed unanimously only four days later. Similar treatment was afforded by the House of Representatives.

[4] KRS § 385.010 (1958); KRS § 389.010 (1944); KRS § 394.020 (1942); KRS § 394.030 (1942); KRS § 405.390 (1950).

but two specified disabilities of minority are removed. This is shown by an analysis of the two bases on which the decision is founded.

The Court's first basis is a rule of statutory construction: "Before a statute will be considered amended by implication by a later statute, the two statutes must be repugnant to each other and be irreconcilable, *or the latter act must cover the whole subject of the earlier act.*"[5] (Emphasis added.) Here, the Court's position would seem to be defeated by its own rule. The majority statute[6] clearly indicates the Legislature's intention to "cover the whole subject of the act,"[7] since it provides that eighteen years is the age of majority "for all purposes" except the purchase of alcoholic beverages and the care of handicapped children.

A more appropriate rule of construction, readily applicable to the majority statute, may be found in *Gateway Constr. Co. v. Wallbaum*: "the primary rule is to ascertain the intention [of the Legislature] from the words employed in enacting the statute and not to guess what the Legislature may have intended but did not express."[8] Application of the *Gateway* rule would have led the *Hallahan* Court to the proper decision.

The second basis of the Court's decision concerns sections two through six of the majority statute, which substitute eighteen years for twenty-one years in five other enumerated statutes.[9] The Court reasoned that, if section one impliedly modifies other majority provisions generally, these enumerations are without purpose. Thus, had the Legislature intended to modify KRS 402.210, it would have made this change explicit also.

However, in light of the plain language of the majority statute, the reasonable conclusion is that the Legislature intended the two exceptions in section one to be exclusive, and that sections two through six were intended to implement the "for all purposes" mandate in a few important specimen areas.

Consider the case of *Lincoln Bank and Trust Co. v. Queenan*,[10] in which the Court faced a similar problem in relation to Kentucky's adoption of the Uniform Commercial Code and reached a result opposite to that in *Hallahan*. Although the General Assembly had at-

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[5] 391 S.W.2d 378, 379.
[6] KRS § 2.015 (1965).
[7] 391 S.W.2d 378, 379.
[8] 356 S.W.2d 247, 249 (Ky. 1962). See also Fryman v. Electric Steam Radiator Corp., 277 S.W.2d 25 (Ky. 1955); Reed v. Greene, 243 S.W.2d 892 (Ky. 1951); Commonwealth Unemployment Compensation Comm'n v. Fritz, 236 S.W.2d 262 (Ky. 1950).
[9] Statutes cited note 4 *supra*.
[10] 344 S.W.2d 383 (Ky. 1961).

tempted to enumerate all the statutes affected by the Code, inevitably a few were overlooked. The Court in *Queenan* concluded that the Code's passage amended or repealed even those statutes which escaped notice.[11] The same reasoning applies to KRS 2.015. It seems obvious that the marriage statute[12] was left off the list of statutes specifically amended, not from deliberate legislative choice, but merely as a result of the impossibility of ferreting out all the sections affected by lowering the age of majority.

In reaching the result in *Hallahan,* the Court seemingly accepted the appellant's contention that generic terms denoting the age of majority and the phrase "twenty-one years of age" mean two different things.[13] However, the Legislature does not ordinarily make this distinction, as shown by the statutes concerning marriage.

The law provides that a marriage license can be issued to a female only in the county of her residence, unless she is "of full age."[14] Under the Court's interpretation of the majority statute, "full age" is eighteen years. However, an applicant must have parental consent until she reaches "twenty-one."[15]

Despite the use of different terminology, both sections are clear expressions of the same policy, the protection of minors. To pass a statute permitting women of eighteen years to obtain a license in any county while retaining the parental consent requirement for those under twenty-one is inconsistent, and such an interpretation of legislative intent is illogical. Rather, it would seem that the difference in terminology resulted from chance and that the General Assembly made no distinction between "of full age" and "twenty-one." The synonomy of the two terms was further indicated by the Court itself in *Combs v. Commonwealth,* when it said, "[W]e have a general, broad expression of policy, in KRS 402.210, against marriage of *minors* without parental consent."[16] (Emphasis added.) Thus, the Court has in fact recognized the Legislature's interchanging use of generic and specific terms for age in marriage statutes, although it did not do so in *Hallahan.*

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[11] *Id.* at 385: "Article 10 of the act adopting the Code (Chapter 77, Acts of 1958) repealed several chapters and sections of the Kentucky Revised Statutes by specific reference. However, as counsel for the intervenor General Motors Acceptance Corporation has expressed it, 'the search for an express repeal of specific inconsistent statutory provisions on such a scale is a formidable and exacting task.' It is inevitable that the unfolding years will witness the discovery of inconsistencies and obsolete matter that escaped initial detection and will reveal 'knotty halfway related points' between pre-existing statutes and the provisions of the Code."

[12] KRS § 402.210 (1942).

[13] Brief for Appellant, pp. 8-12.

[14] KRS § 402.080 (1942).

[15] KRS § 402.210 (1942).

[16] 283 S.W.2d 714, 715 (Ky. 1955).

The greatest disadvantage of the *Hallahan* decision is that it leaves many areas of Kentucky law in a state of confusion. For instance, can any eighteen-year-old Kentucky resident now petition for adoption of a child?[17] Can he change his name?[18] The *Hallahan* opinion rightly urges the General Assembly to either clarify or repeal the majority statute.[19] The Legislature should repeal it at the first opportunity, carefully determine the areas in which an eighteen-year-old is capable of exercising sound judgment, and then draft a new statute—one designed to implement its intentions without confusion.

Steven L. Beshear

DOMESTIC RELATIONS—THE VALIDITY OF FOREIGN DIVORCES. — Two New York women, Susan Rosenstiel and Helena Wood, obtained bilateral divorces[1] in Juarez, Chihuahua, Mexico. Each married again, and in later actions concerning the second marriage,[2] the prior Mexi-

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[17] KRS § 199.470 (1950).

[18] KRS § 401.020 (1964). See also KRS § 387.020 (1942); KRS § 387.040 (1942); KRS § 387.080 (1942); KRS § 391.020 (1942); KRS 391.030 (1942); KRS § 405.010 (1942); KRS § 405.020 (1942); KRS § 405.080 (1942); KRS § 411.150 (1942).

Aside from problems concerning statutory law are the possible effects of KRS § 2.015 upon certain common law principles. For example, consider a situation which has only recently arisen in Kentucky concerning the family purpose doctrine. An eighteen year old, living with his parents, purchased an automobile in his own name and later, while driving, was involved in an accident in which a passenger in his car was injured. He had no income or insurance coverage. Two questions immediately arise: 1) can an eighteen-year-old now legally contract for the purchase of a car, and 2) does the fact that he is eighteen years old now exclude the application of the family purpose doctrine in the above situation?

For a discussion of two other problems involving the age of majority in relation to the common law, see 65 OPS. ATT'Y GEN. 67 (1965); 65 OPS. ATT'Y GEN. 41 (1965).

[19] Having been made aware of the difficulties inherent in KRS § 2.015 by the reactions of the Court and the public, a few members of the 1966 General Assembly attempted to either clarify or repeal the statute by the introduction of several bills; however, each proposal was either voted down or tabled. 1966 Final Legislative Record 14, 28, 30.

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[1] The bi-lateral divorce is obtained in Juarez by one party to the marriage crossing into that city and signing the Municipal Register, an official book of residents of the city. The plantiff then files with the district court a certificate showing such registration and a petition for divorce. Later, the defendant appears in the court by an attorney duly authorized to act in his behalf and admits the allegations of the complaint. The divorce decree, which is recognized as valid in Chihuahua, is then made. Stern, *Mexican Divorce-The Mexican Law*, PRAC. LAW., May 1961, pp. 78-82; Berke, *Mexican Divorces*, PRAC. LAW., March 1961, pp. 84-86. In *Wood v. Wood*, however, the plaintiff did not sign the Municipal Register but personally submitted to the jurisdiction of the court. Wood v. Wood, 41 Misc. 2d 95, 245 N.Y.S.2d 800 (Sup. Ct. 1963).

[2] Mrs. Wood sued for a separation decree from her second husband, who counterclaimed for an annulment or a separation. Wood v. Wood, 41 Misc. 2d 95, 245 N.Y.S.2d 800 (Sup. Ct. 1963). Mrs. Rosenstiel's husband was asking the court

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can divorces were attacked as invalid in New York. The Supreme Court of New York County refused to give recognition to this type of divorce.[3] On appeal, the Supreme Court, Appellate Division, reversed the decisions,[4] and the cases were presented to the Court of Appeals. *Held*: affirmed. The Mexican bi-lateral divorce will be recognized as valid in New York. *Rosenstiel v. Rosenstiel*, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965); *Wood v. Wood*, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965).

A divorce judgment from a foreign country, to be recognized as a matter of comity in New York, must not offend the public policy of the State,[5] *i.e.*, "the law of the state, whether found in the Constitution, the statutes, or judicial record."[6] The public policy of New York as stated in the judicial record had never failed, until *Wood* and *Rosenstiel* were decided in the lower courts of the state, to uphold the validity of the Mexican bi-lateral divorce,[7] while barring the so-called "mail order"[8] and "*ex parte*"[9] divorces. The courts concluded that the bi-lateral divorce should be recognized, even when the parties go from their home state to a foreign country for the express purpose of obtaining a divorce on grounds not recognized in New York.[10] The Court of Appeals, in *Rosenstiel*, stated that a balanced public policy requires New York to recognize the bi-lateral divorce, although no domicile of either party is shown in Mexico.[11]

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to annul his marriage on the grounds that the Mexican divorce she had obtained from her first husband was invalid in New York. Rosenstiel v. Rosenstiel, 43 Misc. 2d 462, 251 N.Y.S.2d 565 (Sup. Ct. 1964).

[3] Wood v. Wood, 41 Misc. 2d 95, 245 N.Y.S.2d 800 (Sup. Ct. 1963); Rosenstiel v. Rosenstiel, 43 Misc. 2d 462, 251 N.Y.S.2d 565 (Sup. Ct. 1964).

[4] Wood v. Wood, 253 N.Y.S.2d 204 (App. Div. 1964); Rosenstiel v. Rosenstiel, 253 N.Y.S.2d 206 (App. Div. 1964).

[5] Rosenbaum v. Rosenbaum, 309 N.Y. 371, 375, 130 N.E.2d 902, 903 (1955).

[6] Glazer v. Glazer, 276 N.Y. 296, 302, 12 N.E.2d 305, 307 (1938).

[7] Weibel v. Weibel, 37 Misc. 2d 162, 234 N.Y.S.2d 298 (Sup. Ct. 1962); Busk v. Busk, 229 N.Y.S.2d 904 (Sup. Ct. 1962) (not otherwise reported); Skolnick v. Skolnick, 24 Misc. 2d 1077, 204 N.Y.S.2d 63 (Sup. Ct. 1960); Bowen v. Bowen, 22 Misc. 2d 496, 195 N.Y.S.2d 307 (Sup. Ct. 1959); Fricke v. Bechtold, 8 Misc. 2d 844, 168 N.Y.S.2d 197 (Sup. Ct. 1957); Costi v. Costi, 133 N.Y.S.2d 447 (Sup. Ct. 1954) (not otherwise reported); Mountain v. Mountain, 109 N.Y.S.2d 828 (Sup. Ct. 1951) (not otherwise reported); Mitchell v. Mitchell, 194 Misc. 73, 85 N.Y.S.2d 627 (Sup. Ct. 1949).

[8] Caldwell v. Caldwell, 298 N.Y. 146, 81 N.E.2d 60 (1948); Querze v. Querze, 290 N.Y. 13, 47 N.E.2d 423 (1943). The "mail order" divorce is obtained by sending the power of attorney to Mexico and neither party appearing before the Mexican court.

[9] Maltese v. Maltese, 32 Misc. 2d 993, 224 N.Y.S.2d 946 (Sup. Ct. 1962). The "ex parte" divorce is obtained by the presence of one party before the Mexican court without the other party's attorney.

[10] Matter of Rhinelander, 290 N.Y. 31, 36, 47 N.E.2d 681, 684 (1943).

[11] Rosenstiel v. Rosenstiel, 16 N.Y.2d 64, 73-74, 209 N.E.2d 709, 713, 262 N.Y.S.2d 86, 90.

The argument against recognition of such a divorce is based on this lack of domicile and the fact that residence may be established merely by observing a statutory formality. There is no dispute that the Chihuahua court acquires jurisdiction under its own laws. But those against recognition feel that Chihuahua does not acquire jurisdiction as New York understands that term. The contention is that because the residence requirements in the state of Chihuahua are minimal and neither spouse has to obtain a valid domicile, jurisdictional power based on the semblance of domicile is inadequate basis for a decree.[12]

New York, however, had recognized a divorce granted in France between parties who were not domiciled there but were residents of New York.[13] The court in *Wood* and *Rosenstiel* relied on this decision to dispose of the jurisdictional and domicilary argument, concluding that domicile is not an indispensable prerequisite to jurisdiction. Further, the court felt that New York's public policy would be affected no differently by the one day formality in Mexico than by the six weeks necessary to gain residence in Nevada; thus recognition should not be withheld in the first instance while being granted in the latter.[14]

Although the *Wood* and *Rosenstiel* decisions are based on a procedural problem—*i.e.*, the question of the jurisdiction of the Mexican court over the parties—the conclusion that a divorce decree from Chihuahua does not offend the public policy of New York liberalized the substantive law of the state. Whether purposely or not, the court eased the restrictions placed on divorce by the strict New York statute.[15] The instant cases could have been resolved without causing such a consequence of the decision; the question of recognition did not have to be decided, since each husband had known before his marriage of the prior Mexican divorce of his wife. The cases could have been decided by the application of the doctrine of equitable estoppel.[16]

Whether this impact on the substantive law of divorce was a motive behind the court's decisions is of little consequence now; shortly after *Wood* and *Rosenstiel*, the New York legislature amended the divorce

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[12] *Id.* at 75-76, 209 N.E.2d at 714, 262 N.Y.S.2d at 92 (separate opinion).

[13] Gould v. Gould, 235 N.Y. 14, 138 N.E.2d 490 (1923). The French court, however, applied New York law and granted the divorce on the ground of adultery.

[14] Rosenstiel v. Rosenstiel, 16 N.Y.2d 64, 74, 209 N.E.2d 709, 712, 262 N.Y.S.2d 86, 91.

[15] N.Y. DOM. REL. LAW § 170, as amended, N.Y. SESS. LAWS 1966, ch. 254, § 170. The statute, which formerly allowed one ground for divorce, adultery, has been amended to include new grounds for divorce. See note 17 *infra*.

[16] Wood v. Wood, 253 N.Y.S.2d 204, 205 (App. Div. 1964) (concurring opinion); Rosenstiel v. Rosenstiel, 253 N.Y.S.2d 206, 210 (App. Div. 1964) (concurring opinion).

statute to include additional grounds for divorce.[17] Simultaneously, however, the legislature set forth the public policy of New York in regard to divorces obtained outside the state by New York residents.[18] Since neither section of the new statute becomes effective until September 1, 1967, New York couples seeking a divorce before that time on grounds other than adultery will still have to go outside the state for the divorce. It is clear from the statute that the *Wood* and *Rosenstiel* decisions will validate a Mexican bi-lateral divorce obtained before the effective date of the statute. It is equally clear that divorces obtained from the Mexican courts by New York residents after that date will not be recognized in New York.

The statute will also affect divorces granted to New York residents by sister-states, and New York will probably look more closely to determine if a *bona fide* residence was established in the state granting the decree. The requirements of the faith and credit clause do not bar examination by another state of the jurisdictional bases, including domicile, upon which a divorce decree from a sister-state was issued. If jurisdiction is found lacking, then full faith and credit need not be given.[19]

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[17] N.Y. SESS. LAWS 1966, ch. 254, § 170. The grounds now available for divorce in New York are: (1) cruel and inhuman treatment of the plaintiff by defendant such that conduct by defendant so endangers the physical and mental well being of the plaintiff as to render it unsafe or improper for the plaintiff to cohabit with defendant; (2) abandonment of the plaintiff by the defendant for a period of two or more years; (3) confinement of defendant to prison for three or more consecutive years after the marriage; (4) adultery, which now is defined as an act of sexual or deviant sexual intercourse; (5) separation of husband and wife pursuant to a decree of separation for a period of two years after issuance of such decree, providing satisfactory proof has been submitted by the plaintiff that he or she has performed all the terms and conditions of such decree; (6) separation of husband and wife pursuant to a written agreement of separation, subscribed and acknowledged by the parties thereto in the form required to entitle a deed to be recorded, for a period of two years after execution of the agreement, providing satisfactory proof has been submitted by the plaintiff that he or she has duly performed all the terms and conditions of such agreement. Such agreement shall be filed in the office of the county wherein either party resides within thirty days after execution thereof.

[18] N.Y. SESS. LAWS 1966, ch. 254, § 250. This section states that proof that a person obtaining a divorce in another jurisdiction was (1) domiciled in New York within twelve months prior to commencing the proceedings and resumed residence within eighteen months after his departure from the state, or (2) at all times maintained a place of residence in the state, shall be prima facie evidence that the person was domiciled in the state when the divorce proceedings commenced. The provisions of this section do not apply to a divorce obtained in another jurisdiction prior to September 1, 1967.

[19] Williams v. North Carolina, 325 U.S. 226 (1945). See generally Annot., 28 A.L.R.2d 1303 (1953); Annot., 1 A.L.R.2d 1385 (1948). In a recent Kentucky case, Hanshew v. Mullins, 385 S.W.2d 186 (Ky. 1964), the Court of Appeals stated that jurisdiction of a sister-state to render a divorce was always open to inquiry by the courts of Kentucky. Further, the Kentucky Court stated that a divorce judgment in which jurisdiction of the parties has not been obtained or

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Liberalization of the grounds for divorce should be accompanied by a stricter policy towards recognition of divorces obtained in one jurisdiction by residents of another. Now that the cause which has sent New York couples to foreign courts for "quickie" divorces has been alleviated, there is less need to recognize such divorces. Further, the legislature of New York has clearly established the state's public policy concerning recognition of foreign divorces, and New York residents must abide by this decision.

William T. Cain

CONSTITUTIONAL LAW—RIGHT TO PUBLIC TRIAL—TOTAL EXCLUSION EXCEPT THE BAR AND PRESS.—Defendant was convicted of indecent assault of a female. After the jury had been sworn and the prosecution had finished its opening statement, the state asked the court to exclude from the courtroom all spectators except members of the bar and press and all witnesses not on the stand. This motion was granted over the defendant's objection. *Held*: Reversed and remanded. Excluding all spectators except the bar and press because salacious testimony is expected violates the defendant's constitutional right[1] to a public trial. *State v. Schmit*, 139 N.W.2d 800 (Minn. 1966).

An evaluation of the *Schmit* case requires consideration of the following questions.

1. What constitutes a public trial?
2. What leeway does the criminal trial court have in excluding the public or a portion thereof?
3. Must the accused show specific prejudice caused by the exclusion?

The courts do not agree as to what constitutes a public trial. Some jurisdictions hold it simply to be "not secret,"[2] while others, like Minnesota, hold that a criminal trial must be free for the public to attend if it desires and that the doors of the courtroom should not be closed.[3]

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in which neither party was domiciled in the state is void and subject to collateral attack, and another state need not give full faith and credit to the decree. For discussion of the Kentucky domestic relations law, see Whiteside, *Ten Years of Kentucky Domestic Relations Law*, 1955-1965, 54 KY. L.J. 206 (1966).

[1] MINN. CONST. art. 1, § 6. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

[2] Keddington v. State, 19 Ariz. 457, 459, 172 Pac. 273, 274 (1918). *Cf.*, Geise v. United States, 262 F.2d 151 (9th Cir. 1958); Callahan v. United States, 240 Fed. 683 (9th Cir. 1917); State v. Croak, 167 La. 92, 94, 118 So. 703, 704 (1928).

[3] People v. Hartman, 103 Cal. 242, 245, 37 Pac. 153, 154 (1894); State v. Schmit, 139 N.W.2d 800, 805 (Minn. 1966).