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Divorce: The Effect of a Bigamous Relationship on Alimony from a Previous Husband

Richard L. Fletcher

Procedural fairness and regularity are indispensable to the essence of liberty.[23] This fairness must not be abrogated or balanced away merely because an attorney refuses to answer all questions asked him at disciplinary proceedings. Rather than affording overzealous bar examiners the opportunity of reaching arbitrary results, this decision should encourage more definitive standards for assessing an attorney's ethical or professional qualifications. As Mr. Justice Fortas noted, the special responsibilities assumed by an attorney as licensee of the state and officer of the court "do not carry with them a diminution, however limited, of his Fifth Amendment rights."[24]

The determination of moral fitness by licensing and disciplinary proceedings is a grave responsibility by reason of the inherent public trust placed in attorneys as officers and servants of our courts and judicial system. The duty of protecting society from unqualified and ethically inept lawyers, however, does not carry with it the power to undermine summarily an attorney's rights under the fifth amendment. The humiliation, degradation, and penalty of disbarment is far more damaging to an attorney than is dismissal to a public employee; this disparity therefore warrants the existence of separate constitutional standards.

DONALD J. HALL

DIVORCE: THE EFFECT OF A BIGAMOUS REMARRIAGE ON ALIMONY FROM A PREVIOUS HUSBAND

Reese v. Reese, 192 So. 2d 1 (Fla. 1966)

A divorced husband petitioned for termination of alimony payments, alleging that his former wife had remarried. The wife's remarriage was, however, bigamous, although she was without knowledge of this defect. The Circuit Court for Dade County consequently terminated alimony payments. The District Court of Appeal for the

23. Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 224 (1953).
24. 87 Sup. Ct. 625, 630-31 (1967).

Third District affirmed,[1] and on certiorari, the Florida Supreme Court HELD, that a bigamous remarriage, being void *ab initio,* could not terminate the right to alimony under an earlier divorce decree. Judgment reversed, Chief Justice Thornal, Justices Caldwell and Thomas dissenting.

A divorced wife's *valid* remarriage will relieve her former husband from alimony obligation.[2] Many jurisdictions, however, adhere to the position that a bigamous marriage is absolutely invalid.[3] Under this rationale a divorced husband is not relieved of alimony obligations when his former wife enters into a bigamous relationship, since the ceremony does not constitute a valid remarriage.[4] Conversely, since alimony obligations still flow from the initial marriage, there is no right to alimony from the invalid bigamous relationship.

In some jurisdictions, however, even a bigamous marriage has certain attributes of legality. Courts have recognized that it may be inequitable to penalize a blameless woman and allow the guilty husband to escape alimony obligations.[5] If a bigamous marriage is completely void, the innocent wife has no remedy against her bigamous husband.[6] Further, any children born of the void marriage are illegitimate.[7] By recognizing some aspects of legality in a bigamous marriage, courts can protect an innocent party from "the odium of immorality and nullity. . . ."[8]

The Florida statutes list bigamy as a ground for divorce.[9] Other states with similar statutes have held that there is no objection to the employment of divorce procedure as a mechanism to accomplish the dissolution of a bigamous marriage.[10] The inclusion of such a ground refutes the contention that a divorce is available only to dissolve valid marriages.[11] Further, where the state has such a statute, the remedial

1. Reese v. Reese, 178 So. 2d 913 (3d D.C.A. Fla. 1965).

2. Chaachou v. Chaachou, 135 So. 2d 206 (Fla. 1961); Carlton v. Carlton, 87 Fla. 460, 100 So. 745 (1924). This rule is, of course, only applicable to installment alimony obligations and does not extend to lump sum alimony obligations.

3. *E.g.,* Cartwright v. McGowen, 121 Ill. 388, 12 N.E. 737 (1887); Stewart v. Vanderwort, 34 W. Va. 524, 12 S.E. 736 (1890).

4. See Cartwright v. McGowen, 121 Ill. 388, 12 N.E. 737 (1887).

5. Young v. Young, 97 So. 2d 470 (Fla. 1957).

6. See Abelt v. Zeman, 86 Ohio L. Abs. 109, 173 N.E.2d 907 (C.P. 1961).

7. Todd v. Todd, 151 Fla. 134, 9 So. 2d 279 (1942).

8. Worman v. Worman, 113 Fla. 233, 235, 152 So. 435, 436 (1953) (concurring opinion).

9. "No divorce shall be granted unless one of the following facts shall appear . . . (9) That either party had a husband or wife living at the time of the marriage sought to be annulled." FLA. STAT. §65.04 (9) (1965). See generally Annot., 3 A.L.R.3d 1108 (1965).

10. Leckney v. Leckney, 26 R.I. 441, 59 Atl. 311 (1904).

11. Reese v. Reese, 128 Kan. 762, 28 Pac. 751 (1929).

incidents of a divorce, such as alimony may be applicable, even though the marriage was invalid.[12] Therefore, the Florida statutes would seem to recognize implicitly that certain legal obligations arise from a bigamous relationship.

Prior to the present case the Florida decisions have uniformly adopted the proposition that alimony obligations may arise from a bigamous relationship.[13] In *Young v. Young*[14] the court recognized that Florida law includes bigamy as a ground for divorce and that alimony may be granted if a divorce is available on statutory grounds. Since the legislature recognized such a ground, the court concluded that it would "make such orders with reference to allowances for the wife as fit the circumstances of the parties and the nature of the case."[15]

In *Burger v. Burger*[16] the court clarified its interpretation of the problem. Where a wife is an *innocent* victim of a bigamous husband's wrong, the court may allow permanent alimony and attorneys' fees against the bigamous husband. Although dicta, the above language is an express recognition that alimony may be an incident of a bigamous marriage where the wife is the innocent victim of her presumed husband's fraud. The implication is that the bigamist may not set up his own fraud as a defense against the wife's petition for divorce and alimony. The reasoning of the *Burger* decision was specifically applied in *Brown v. Brown*,[17] a 1965 decision. Applying the older doctrine, the lower court refused to grant alimony because it considered a bigamous marriage void.[18] The Florida Supreme Court reversed the decision and remanded the case to decide whether the wife was an innocent victim of her presumed husband's wrong and therefore entitled to permanent alimony.

The *Young, Burger,* and *Brown* cases concerned an attempt to obtain divorce and alimony from a bigamous husband. In these cases the court apparently rejected the old doctrine that a bigamous marriage creates no enforceable legal obligations. In the present case the court was faced with a variant fact situation. Here the innocent victim of a bigamous relationship had elected to forfeit her rights against the bigamous husband. Instead, she was attempting to retain alimony from a former husband. The issue before the court was the

12. See Abelt v. Zeman, 86 Ohio L. Abs. 109, 173 N.E.2d 907 (C.P. 1961); Leckney v. Leckney, 26 R.I. 441, 59 Atl. 311 (1904).

13. See Brown v. Brown, 186 So. 2d 510 (Fla. 1966); Burger v. Burger, 166 So. 2d 433 (Fla. 1964); Young v. Young, 97 So. 2d 470 (Fla. 1957).

14. 97 So. 2d 470 (Fla. 1957).

15. *Id.* at 471.

16. 166 So. 2d 433 (Fla. 1964).

17. 186 So. 2d 510 (Fla. 1966).

18. Brown v. Brown, 179 So. 2d 622 (1st D.C.A. Fla. 1965).

effect of the doctrine announced in *Young, Burger,* and *Brown* on this type of fact situation.

The district court in the present case applied *Young, Burger,* and *Brown,* but with an eye to the form, not the substance, of the earlier holdings. The district court reasoned that since the wife was innocent she could claim permanent alimony *from the bigamous husband.* The court considered it fundamental that she could not receive alimony from both husbands, nor could she be allowed to choose the more profitable. The bigamous marriage was therefore effective to terminate the alimony *from the former husband.*

In reversing the district court, the Florida Supreme Court held that a bigamous marriage is void and ineffective to alter the legal rights of the wife vis-à-vis her former husband. The court relied on *Dawson v. Dawson,*[19] a district court case, in which it was held that there was no right to alimony when the marriage was initially invalid. The *Dawson* case was, however, an action for alimony *unconnected with divorce.*[20] In this context, alimony is awarded when married couples are living apart and the wife wishes to obtain separate maintenance, but not a final divorce.[21] Since the parties remain married by the terms of the statute, it is only logical that this form of alimony be grounded on a valid marriage.

The *Dawson* decision is not only questionable precedent but also dangerous in that it applies the old doctrine that the wife of a bigamous husband has no divorce or alimony rights against him. The court cites *Dawson* for this proposition and in so doing calls into question its own holdings in *Young, Burger,* and *Brown.* The court apparently did not realize that these three cases could have been followed in the present case without changing the actual result.

In *Young, Brown* and *Burger* the innocent wife was attempting to collect alimony *from the bigamous husband.* In these cases the court indicated that it would not allow a bigamous husband to set up his own fraud in order to defeat the rights of an innocent wife. In the present case the wife elected to retain alimony from the former husband.[22] If the bigamous husband's fraud cannot destroy the innocent wife's legal rights as against him, it is equally logical that it cannot destroy her rights against a former husband. The obligation incurred by the former husband remains, despite the fraud of a third party, as long as the wife is innocent. In effect, this bigamous marriage

19. 164 So. 2d 536 (1st D.C.A. Fla. 1964).

20. This action is based on FLA. STAT. §65.09 (1965).

21. Preston v. Preston, 116 Fla. 246, 157 So. 107 (1934).

22. In fact, there was no real opportunity for election because the bigamous husband committed suicide a day and one-half after the marriage. Consequently the wife could not get alimony payments from him.