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FAMILY LAW: RECOGNITION OF MEXICAN DIVORCES IN FLORIDA

Kittel v. Kittel, 194 So. 2d 640 (3d D.C.A. Fla. 1967)

On November 29, 1963, defendant, a Florida resident, traveled to Mexico where he instituted an action for divorce. After complying with local residence requirements,¹ he filed suit alleging incompatibility of temperaments, a proper ground for divorce in Mexico. Defendant returned to the United States before the divorce was granted and remarried on December 27, 1963, the day the Mexican decree became final. Defendant's first wife instituted the present action to have the divorce decree declared void, and at trial the chancellor ruled in her favor. On appeal, the Third District Court of Appeal HELD, that the ex parte divorce was not entitled to recognition as a matter of comity. Decree affirmed.

States are required to recognize the divorce decrees of a sister state having proper jurisdiction by the judicial proceedings section of the full faith and credit clause.² Divorce decrees of foreign nations are recognized as a matter of comity based on respect for other sovereigns.³ Unless there is a valid reason to withhold recognition,⁴ the judgment of a foreign tribunal usually will be given effect, but each state is free to establish its own standards for granting comity.⁵

The Florida standards of comity were first expressed in *Pawley v. Pawley*,⁶ where the parties lived in Cuba for several years before their divorce. After a visit to the United States the husband returned to Cuba but the wife refused to accompany him. More than a year after his return, the husband secured a divorce in Cuba on the ground of desertion. The Florida Supreme Court recognized the divorce over the wife's challenge, discussing three reasons why the decree did not offend Florida public policy: (a) the husband's Cuban domicile was bona fide; (b) the grounds for divorce were sufficient under Florida law, and (c) the wife had a fair opportunity to defend the suit.

The *Kittel* court in following *Pawley* concluded that the decree in question violated Florida's public policy for three reasons. First, the Mexican court lacked jurisdiction of the subject matter because the husband's domicile was not genuine according to common law notions of domicile. Genuine domicile is the *sine qua non* of jurisdiction to render divorce in the United

1. *Codigo de Procedimiento Civiles Para El Estado de Chihuahua, Ley de Divorcis*, arts. 22-24 (Mexico 1952). Under Mexican law where the plaintiff establishes residence by securing a certificate from the municipal register, an authorized judge is competent to hear a contested divorce action.

2. U.S. CONST. art. IV, §1: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

3. *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895); *Beckwith v. Bailey*, 119 Fla. 316, 161 So. 576 (1935).

4. *Beckwith v. Bailey*, 119 Fla. 316, 161 So. 576 (1935).

5. A. EHRENZWEIG, *CONFLICT OF LAWS* §72 (2d ed. 1962).

6. 46 So. 2d 464 (Fla. 1950).

States.⁷ Domicile requires a relationship between a person and a place of such permanence that the courts of the place acquire a primary interest in determining the person's legal relationships.⁸ Domicile is evidenced by the simultaneous occurrence of physical presence with the intent to establish permanent residence,⁹ and may be acquired instantly in absence of contrary statute.¹⁰ Mere recital of domicile in a decree will not make the jurisdiction issue *res judicata*, and the factual foundations of domicile may be reexamined in collateral proceedings questioning the jurisdiction of the court.¹¹

Unlike the defendant in *Pawley*,¹² the defendant in *Kittel* had no previous domicile in Mexico. He apparently went there for the sole purpose of securing a divorce, staying only thirteen days. The Florida court properly concluded from the circumstances that his claim of bona fide domicile was a sham and that the Mexican court therefore lacked jurisdiction to render the decree.¹³ This finding alone would constitute a basis for Florida's refusal to recognize the decree, but two other factors implicit in the decision merit discussion.

As a condition to recognition, Florida requires that foreign divorces be rendered on facts legally equivalent to grounds for divorce in Florida.¹⁴ The *Pawley* court made the express finding that the facts constituting the legal ground of desertion in Cuba were sufficient for divorce under Florida law.¹⁵ In *Beckwith v. Bailey*,¹⁶ the court recognized an Idaho decree as a matter of comity despite its ineligibility for full faith and credit because of a defect of notice. As support for this extension of comity, the Florida court stated that Idaho's ground of cruelty was legally equivalent to the Florida ground of extreme cruelty. The *Kittel* divorce was based on incompatibility, which is not a proper ground in Florida, and it may be that the *Kittel* court refused recognition to prevent Florida residents from forum shopping for more liberal statutes.¹⁷

Finally, the fact that the wife had no real opportunity to contest the divorce was a persuasive factor in the *Kittel* result. The *Pawley* court decried the injustice that would result from recognition of a foreign divorce hastily obtained while the husband was on brief vacation.¹⁸ By flying to Juarez for two weeks, the defendant in *Kittel*, despite timely notice, effectively prevented his wife from defending the divorce. This inquiry into the funda-

7. *Williams v. North Carolina*, 317 U.S. 287 (1942).

8. *Williams v. North Carolina*, 325 U.S. 226 (1945).

9. *In re Toler's Estate*, 325 S.W.2d 755 (Mo. 1959); *In re Publicker's Estate*, 385 Pa. 403, 123 A.2d 655 (1956).

10. *Bixby v. Bixby*, 361 P.2d 1075 (Okla. 1961); *Winans v. Winans*, 205 Mass. 388, 91 N.E. 394 (1910).

11. *Williams v. North Carolina*, 325 U.S. 226, 230 (1945).

12. 46 So. 2d 464 (Fla. 1950).

13. *Kittel v. Kittel*, 194 So. 2d 640 (3d D.C.A. Fla. 1967).

14. *Ogden v. Ogden*, 159 Fla. 604, 33 So. 2d 870, 874 (1947); *Parker v. Parker*, 155 Fla. 635, 21 So. 2d 141 (1945).

15. 46 So. 2d 464 (Fla. 1950).

16. 119 Fla. 316, 161 So. 576 (1935).

17. A. EHRENZWEIG, *supra* note 5.

18. 119 Fla. 316, 161 So. 576 (1935).