

March 1951

## Divorce: Florida Alimony Suit After Valid Ex Parte Foreign Divorce

Marie L. Cook

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Marie L. Cook, *Divorce: Florida Alimony Suit After Valid Ex Parte Foreign Divorce*, 4 Fla. L. Rev. 106 (1951).  
Available at: <https://scholarship.law.ufl.edu/flr/vol4/iss1/11>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).



DATE DOWNLOADED: Mon Aug 22 16:27:40 2022

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 21st ed.

Marie L. Cook, Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce, 4 U. FLA. L. REV. 106 (1951).

ALWD 7th ed.

Marie L. Cook, Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce, 4 U. Fla. L. Rev. 106 (1951).

APA 7th ed.

Cook, M. L. (1951). Divorce: florida alimony suit after valid ex parte foreign divorce. University of Florida Law Review, 4(1), 106-108.

Chicago 17th ed.

Marie L. Cook, "Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce," University of Florida Law Review 4, no. 1 (Spring 1951): 106-108

McGill Guide 9th ed.

Marie L. Cook, "Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce" (1951) 4:1 U Fla L Rev 106.

AGLC 4th ed.

Marie L. Cook, 'Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce' (1951) 4(1) University of Florida Law Review 106

MLA 9th ed.

Cook, Marie L. "Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce." University of Florida Law Review, vol. 4, no. 1, Spring 1951, pp. 106-108. HeinOnline.

OSCOLA 4th ed.

Marie L. Cook, 'Divorce: Florida Alimony Suit after Valid Ex Parte Foreign Divorce' (1951) 4 U Fla L Rev 106

Provided by:

University of Florida / Lawton Chiles Legal Information Center

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

action abated upon dissolution.<sup>12</sup> Delaware, by express statutory provision,<sup>13</sup> requires the corporation to sue or be sued in its corporate name until the end of the three-year period, at which time the names of the trustees are substituted for the purpose of completing suit. While Florida provides by statute<sup>14</sup> that an action already pending will not abate by reason of dissolution, provided the names of the trustees or receivers are entered upon the record, the concluding clause of Section 612.50 is the only statutory language indicating that a suit still pending at the expiration of the three-year extension period may be prosecuted to judgment; and even this is not free from ambiguity. It is noteworthy, therefore, that in the instant case, in which the action was commenced after dissolution and was still pending after three years, the Court sanctioned continuation of the cause. It did so, however, with the sound caveat that the parties must "move promptly."<sup>15</sup>

SOL H. PROCTOR

DIVORCE: FLORIDA ALIMONY SUIT AFTER VALID  
EX PARTE FOREIGN DIVORCE

*Pawley v. Pawley*, 46 So.2d 464 (Fla. 1950)<sup>1</sup>

Respondent husband secured a Cuban divorce predicated on constructive desertion, a ground sufficient under both Cuban and Florida law. His wife did not appear, and the issue of alimony was not raised. Subsequently he remarried. Thereafter his first wife sued him in Florida for alimony unconnected with causes of divorce.<sup>2</sup>

---

<sup>12</sup>*In re Booth's Drug Store, Inc.*, 19 F. Supp. 95 (W.D. Va. 1937); *Trower v. Stonebraker-Zea Livestock Co.*, 17 F. Supp. 687 (1937); *Ex parte Davis*, 230 Ala. 668, 162 So. 306 (1935); see 16 FLETCHER, CORPORATIONS §8143 (Rev. ed. 1942).

<sup>13</sup>DEL. REV. CODE §2078 (1935), *Atkins v. W. A. Harriman & Co.*, 69 F.2d 66 (2d Cir. 1934).

<sup>14</sup>FLA. STAT. §612.53 (1949).

<sup>15</sup>At p. 9.

<sup>1</sup>On rehearing, Chapman, J., dissented, but not on the substantive point involved; his position was that the bill should not be dismissed and that complainant wife should be allowed to amend it. Application for certiorari was denied, 71 Sup. Ct. 90 (1950).

<sup>2</sup>FLA. STAT. §65.10 (1949): "If any husband having ability to maintain or

The chancellor dismissed her bill, held the Cuban divorce valid in all respects, and enjoined further attack on it. On appeal, HELD, (1) the Cuban decree should be recognized in Florida as a dissolution of the marital status; (2) complainant was not on the facts entitled to the relief sought; (3) her right to alimony was not destroyed by the foreign decree, and an appropriate proceeding to obtain it would lie. Decree affirmed in part and reversed in part, Chief Justice Adams and Justice Terrell dissenting.

The Court does not discredit the *Ogden v. Ogden*<sup>3</sup> requirement that “. . . the foreign judgment must partake of the elements that would support it if procured in this country.”<sup>4</sup> Desertion by the wife, found by the Cuban court and later by the master and the chancellor in the instant case, is a ground for divorce under both Cuban and Florida law.<sup>5</sup> The Supreme Court of Florida further notes that substituted service provided by Cuban law was made;<sup>6</sup> that the wife had actual notice and an opportunity to defend in the Cuban proceeding;<sup>7</sup> that she and her husband had resided in Cuba for several years after their marriage and that Cuba had remained his domicil and also the marital domicil;<sup>8</sup> that she was no stranger to that forum and could speedily and inexpensively have reached Havana from Miami;<sup>9</sup> and that she had remained silent for more than three years after the Cuban divorce before filing her instant bill.<sup>10</sup>

Since complainant wife was guilty of constructive desertion, she has no standing under Section 65.10, which requires a finding of fault in the husband.<sup>11</sup> In order to enable her to obtain alimony,

---

contribute to the maintenance of his wife or minor children shall fail to do so, the wife, living with him or living apart from him through his fault, may obtain such maintenance or contribution upon bill filed and suit prosecuted as in other chancery causes . . . .”

<sup>3</sup>159 Fla. 604, 33 So.2d 870 (1947).

<sup>4</sup>*Id.* at 610, 33 So.2d at 874.

<sup>5</sup>FLA. STAT. §65.03(7) (1949); see the instant opinion at p. 468.

<sup>6</sup>At p. 467.

<sup>7</sup>At p. 468.

<sup>8</sup>At p. 470.

<sup>9</sup>*Ibid.*

<sup>10</sup>At p. 469.

<sup>11</sup>See note 2 *supra*, “. . . living apart from him through his fault . . . .”

Query: Does recognition of foreign divorce decree foreclose later inquiry as to fault, thus eliminating possibility of invoking §65.10 as a means of obtaining alimony in such situations?

the Florida Court had the alternative either of declaring the Cuban divorce invalid, thereby unjustifiably causing great hardship to the second wife, or of following the United States Supreme Court in its doctrine of "divisible divorce."<sup>12</sup> This in effect recognizes the validity of a foreign ex parte decree in so far as it dissolves the marital res and those dependent rights, such as dower, inseparably attached thereto, and yet refuses to recognize adjudication of those marital economic rights which are not lost merely upon dissolution of the res, such as alimony.<sup>13</sup> The use of "divisible divorce" as a legal term, however, is likely to prove misleading unless one bears in mind that it is, in effect, the rights connected with marriage which are divided, rather than the decree itself.

In full faith and credit cases involving a prior support order rendered in the wife's favor by a court of the original matrimonial domicile,<sup>14</sup> the United States Supreme Court has held that the later ex parte decree severs the marital status but does not deprive the wife, who is not under the in personam jurisdiction of the divorcing court, of her right under the support order, this being in the nature of a vested property right.<sup>15</sup> The instant case presents no previously rendered Florida support order. Nevertheless, the Supreme Court of Florida holds that, since the right of a wife to insist upon alimony is a personal one arising out of the husband's common law duty to support her, this right cannot be destroyed by a foreign decree based on constructive service in a suit in which she does not appear.<sup>16</sup>

The major issue in this case is whether the doctrine of "divisible divorce" is part of the law of Florida. The Court, in seeking to achieve a result just as to both the present and the former wife, applies this doctrine, despite a vigorous dissent. The decision preserves on the one hand the husband's right to remarry, and on the other leaves the ex-wife free to seek relief under Sections 65.04(8)<sup>17</sup> and 65.08<sup>18</sup> of the Florida Statutes. If a similar situation should,

<sup>12</sup>For a general discussion see Haslup, *Divisible Divorce*, 3 U. OF FLA. L. REV. 145, 159 (1950).

<sup>13</sup>See the instant opinion at p. 472, n.2, for a clear-cut differentiation.

<sup>14</sup>*Estin v. Estin*, 334 U.S. 541 (1948); *Kreiger v. Kreiger*, 334 U.S. 555 (1948).

<sup>15</sup>Haslup, *supra* note 12.

<sup>16</sup>For effect of appearance by both spouses see *Sherrer v. Sherrer*, 334 U.S. 343 (1948), *followed in* *Coe v. Coe*, 334 U. S. 378 (1948).

<sup>17</sup>"That the defendant has obtained a divorce from the complainant in any other state or country."

<sup>18</sup>"In every decree of divorce in a suit by the wife, the court shall make such orders touching the maintenance, alimony and suit money of the wife, or any