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Conflict Of Laws: Refusal To Grant Full Faith And Credit To A Foreign Judgment For Lack Of Jurisdiction - Aldrich v. Aldrich

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Conflict Of Laws: Refusal To Grant Full Faith And Credit To A Foreign Judgment For Lack Of Jurisdiction

Aldrich v. Aldrich[1]

In June, 1945 a Florida court granted M. L. Aldrich an absolute divorce from M. S. Aldrich. The decree ordered

[1] 127 S.E. 2d 385 (W.Va. 1962).

On November 12, 1963, the United States Supreme Court ordered the parties to prepare proposed certificates for certification to the Supreme Court of Florida on the following questions:

monthly alimony payments to the plaintiff and provided that "in the event the defendant, Moriel Simeon Aldrich, shall pre-decease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250 shall, upon the death of said defendant, become a charge upon his estate during her lifetime, . . ." M. S. Aldrich paid the monthly award until his death in 1958. The assets of his estate consisted in part of ten acres of real property located in West Virginia.

In 1942 M. S. Aldrich and the plaintiff, as his wife, had conveyed the land to their son, Edwin, who was a minor. In 1946, after M. S. Aldrich had remarried, he and his new wife conveyed the same land to William T. Aldrich, another son, who is a beneficiary of his estate and one of the defendants in the case.

The plaintiff charged in this complaint, filed in West Virginia, that the conveyance to Edwin was without consideration and that the land was a part of the estate of M. S. Aldrich and was subject to the judgment of the Florida court for alimony which had accrued since his death. The Supreme Court of Appeals of West Virginia held that, although the Florida divorce court had *in personam* jurisdiction over the parties and *in rem* jurisdiction over the marriage, and had the power to render a valid divorce decree, the Florida court lacked jurisdiction to award alimony to extend beyond the death of the husband and that the award of such alimony therefore was not entitled to full faith and credit.

After stating the settled law that a judgment may be collaterally attacked when it is shown that the foreign court lacked jurisdiction,[2] the majority opinion reasoned

1. Is a decree of alimony that purports to bind the estate of a deceased husband permissible, in the absence of an express prior agreement between the two spouses authorizing or contemplating such a decree?

2. If such a decree is not permissible, does the error of the court entering it render that court without subject matter jurisdiction with regard to that aspect of the cause?

3. If subject matter jurisdiction is thus lacking, may that defect be challenged in Florida, after the time for appellate review has expired, (i) by the representatives of the estate of the deceased husband or (ii) by persons to whom the deceased husband has allegedly transferred part of his property without consideration?

4. If the decree is impermissible but not subject to such attack in Florida for lack of subject matter jurisdiction by those mentioned in subparagraph 3, may an attack be successfully based on this error of law in the rendition of the decree? 32 Law Week 4006. *Cert. granted*, 32 LW 4006 (U.S. Nov. 12, 1963).

[2] Rethorst v. Rethorst, 214 Md. 1, 133 A. 2d 101 (1957); Picking v. Local Loan Co., 185 Md. 253, 44 A. 2d 462 (1945); Roach v. Jurchak, 182 Md. 646, 35 A. 2d 817 (1944); Williams v. State of North Carolina, 317 U.S. 287, 143 A.L.R. 1273 (1942); Berkman v. Ann Lewis Shops, Inc., 246 F. 2d 44 (2d Cir. 1957); Carroll v. Gore, 106 Fla. 582, 143 So. 633 (1932);

that (1) the accepted common law rule in Florida, West Virginia and in most states is that alimony payments shall not survive the death of the husband in the absence of an express agreement or property settlement between the parties to the contrary;[3] (2) divorce proceedings are controlled by statute and the Florida statute[4] did not expressly give the Florida court power to award alimony payments to extend beyond the husband's death; and (3) a judgment may be valid in part and void in part.[5] Since the Florida court did not have the *power* to award such alimony payments, it likewise did not have jurisdiction; hence this part of the Florida divorce decree was void and not entitled to full faith and credit.[6]

Gavenda Brothers, Inc. v. Elkins Limestone Company, Inc., 145 W. Va. 732, 116 S.E. 2d 910 (1960); 50 C.J.S. *Judgments* § 889e (1947); RESTATEMENT (Fifth), PLEADING AND PRACTICE § 404c, at 328; 56 Mich. L. Rev. 33 (1957).

[3] Dickey v. Dickey, 154 Md. 675, 141 A. 387 (1928); Blades v. Szatai, 151 Md. 644, 135 A. 841, 50 A.L.R. 232 (1927); Johnson v. Every, 93 So. 2d 390 (Fla. 1957); Underwood v. Underwood, 64 So. 2d 281 (Fla. 1953); Allen v. Allen, 111 Fla. 733, 150 So. 237 (1933); Platt v. Davies, 82 Ohio App. 182, 77 N.E. 2d 486 (1947); Foster v. Foster, 195 Va. 102, 77 S.E. 2d 471, 39 A.L.R. 2d 1397 (1953). *Cf.* Annot., 39 A.L.R. 2d 1406, 1409 (1953).

[4] 5 FLA. STAT. ANNO. (1947) § 65.08:

> "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 allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife. In any award of permanent alimony, the court shall have jurisdiction to order periodic payments or payments in a lump sum."

[5] Johnson v. Johnson, 199 Md. 329, 86 A. 2d 520 (1952); Spencer v. Franks, 173 Md. 73, 195 A. 306, 114 A.L.R. 263 (1937); 30A Am. Jur. *Judgments* § 20 (1940).

[6] The majority determined that the Florida statute was founded on the historical concept of alimony, that alimony is based on the duty of the husband to support his wife, which duty naturally terminates upon the death of either party. 17 Am. Jur. *Divorce and Separation* §§ 560-570 (1938). The majority relied on three Florida cases: Johnson v. Every, Underwood v. Underwood, and Allen v. Allen, *supra*, n. 5. In each case the parties entered into an agreement prior to divorce whereby alimony would survive the husband's death. The court held that such agreements were valid. In the Allen case, the court said: "As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state." The court in the Underwood case stated that such agreements to pay constituted property settlements and not alimony. The majority of the West Virginia court relied strongly on an extended quotation from the dissent in the Johnson case and this somewhat ambiguous statement by the majority: "We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony terminates with his death." The West Virginia court concluded from this statement that ". . . it is evident that the reference to the decree 'such as the one before' the court meant a decree based on a contract."

The dissenting judge[7] argued that full faith and credit cannot be refused for the reasons that (1) a final foreign judgment is erroneous,[8] (2) the foreign court applied the wrong substantive law,[9] or (3) there was an improper exercise of jurisdiction.[10] Further, he said it was not clear that the Florida decree was erroneous, applying either Florida law[11] or West Virginia law,[12] and he stated that, even if the Florida decree were shown to be contrary to the public policy of either state, that factor is not a ground for refusing full faith and credit.[13] In essence, the dissent charged that the majority opinion declared the Florida judgment void merely because the majority disagreed with the Florida court's construction of Florida law. The West Virginia court might have held that (1) this action was barred by limitations, (2) the land was not a part of the husband's estate because both purported conveyances to the sons were technically valid, or (3) the Florida divorce decree, operative on the husband personally, could not have extra-territorial effect upon his real property in West Virginia.[14] It is not clear why the West Virginia court chose to ignore these possibilities.

The essential flaw is in the reasoning that: "It is necessary to determine whether those provisions of the judgment are valid under the law of the State of Florida,"[15] and

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[7] 127 S.E. 2d 385, 394 (1962).

[8] Picking v. Local Loan Co., 185 Md. 253, 44 A. 2d 462 (1945); Coane v. Girard Trust Co., 182 Md. 577, 35 A. 2d 449 (1944); Marin v. Angedahl, 247 U.S. 142 (1918); Mahaffa v. Mahaffa, 230 Iowa 679, 298 N.W. 916 (1941); Rock Springs Coal and Mining Co. v. Black Diamond Coal Co., 39 Wyo. 379, 272 P. 12 (1928).

[9] Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, *rehearing denied*, 321 U.S. 801, 150 A.L.R. 413 (1943); Milliken v. Meyer, 311 U.S. 457 (1940); Fauntleroy v. Lum, 210 U.S. 230 (1908); Dowell v. Applegate, 152 U.S. 327 (1894); GOODRICH, CONFLICT OF LAWS § 215 (3d ed. 1949).

[10] Swift and Co. v. U.S., 276 U.S. 311 (1928); Hart v. Smith, 159 Ind. 182, 64 N.E. 661, 58 L.R.A. 949, 95 Am. St. Rep. 280 (1902); Columbus County v. Thompson, 249 N.C. 607, 107 S.E. 2d 302 (1959).

[11] *Cf.* authorities cited, note 6, *supra*.

[12] Hale v. Hale, 108 W. Va. 337, 150 S.E. 748 (1929).

[13] Hughes v. Fetter, 341 U.S. 609 (1951); Estin v. Estin, 334 U.S. 541 (1948); Morris v. Jones, 329 U.S. 545 (1947); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, *rehearing denied*, 321 U.S. 801 (1943); Williams v. State of North Carolina, 317 U.S. 287 (1942); Titus v. Wallick, 306 U.S. 282 (1939); DICEY, CONFLICT OF LAWS (1932), 456 *et seq.* "So far as judgments are concerned, the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between. . . ." Williams v. State of North Carolina, *supra*, 294-95. *Cf.* Haddock v. Haddock, 201 U.S. 562 (1905); Huntington v. Attrill, 146 U.S. 657 (1892).

[14] Epstein v. Epstein, 193 Md. 164, 66 A. 2d 381 (1949); Hood v. McGehee, 237 U.S. 611 (1915); Olmsted v. Olmsted, 216 U.S. 386 (1909); Fall v. Eastin, 215 U.S. 1 (1909).

[15] 127 S.E. 2d 385, 390 (W. Va. 1962).

the issue is simply: When enforcement of a foreign judgment is sought in a forum, may the forum examine the law of the foreign state to see if a particular judgment rendered by the courts of that state is in accordance with the authorities of that state?

The general principle is that a foreign judgment must be given the same force and effect as it would in the state in which it is entered.[16] If the majority's conclusion were adopted, it seems that this principle would be frustrated.[17] The purpose and effect of the full faith and credit clause "are to extend the *res judicata* effect of a judgment from the state of its rendition to all other states,"[18] and to avoid retrying the case in another forum.

When a statute requires a court to exercise jurisdiction in a particular manner or to a particular extent, and the court acts in violation of such statutory directive, its act is in excess of its jurisdiction and is void.[19] In the instant case, the majority reasoned that jurisdiction to grant alimony depends on divorce statutes and that the Florida divorce statute[20] did not give the Florida court jurisdiction to award this type of alimony. Yet, it is clear the Florida divorce statute only sets out the *means* by which a Florida court may order the payment of alimony; it does not limit the exercise of a court's jurisdiction to award

[16] 50 C.J.S. *Judgments* § 888b (1947). See also: 30A Am. Jur. *Judgments* § 236 (1958); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, *rehearing denied*, 321 U.S. 801 (1943).

[17] Coane v. Girard Trust Co., 182 Md. 577, 35 A. 2d 449 (1944); Morris v. Jones, 329 U.S. 545 (1947); Magnolia Petroleum Co. v. Hunt, *supra* note 16; 28 U.S.C. § 1738 (1948); 2 BLACK, JUDGMENTS (2d ed. 1902) Ch. 22, § 861.

[18] There is a presumption of validity in a foreign judgment. Where there is a doubt as to such validity, the court of a sister state should, therefore, give effect to the unifying policy of Article IV, Section 1 of the federal constitution in deciding whether to grant full faith and credit. The Supreme Court in Milwaukee County v. White Co., 296 U.S. 268 (1935), stated at p. 276: "The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by judicial proceedings of others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." There has been a growing trend in the decisions of the Supreme Court to strengthen the force and effect of the full faith and credit clause. EHRENZWEIG, CONFLICT OF LAWS §§ 57-60, pp. 202-212 (1959).

[19] Burnett v. King, 33 Cal. 2d 805, 205 P. 2d 657, 12 A.L.R. 2d 333 (1949); State *ex rel* Parsons v. Bushong, 92 Ohio App. 101, 109 N.E. 2d 692 (1945); Allison v. Howell, 204 Okl. 404, 230 P. 2d 706 (1951). Excess of jurisdiction implies that the judicial power is not in fact lawfully invoked. Malone v. Meres, 109 So. 677 (Fla. 1926); State *ex rel* Smilock v. Bushong, 93 Ohio App. 201, 112 N.E. 2d 675 (1952); Garner v. Garner, 182 Ore. 549, 189 P. 2d 397 (1948).

[20] 5 FLA. STAT. ANNO. (1947) § 65.08.

alimony.[21] The court did not consider this point in its opinion. The implication in the majority opinion that the Florida court acted in excess of its jurisdiction is unwarranted.

It seems that the West Virginia court has confused the power to act at all, which is jurisdiction,[22] with the exercise of that power.[23] "Lack of jurisdiction in the sense of lack of power to act at all results in a judgment which is void . . . while a so-called 'lack of jurisdiction', in the sense of lack of power to render an erroneous decision, results in a judgment which is valid until set aside."[24] Jurisdiction depends upon a court's right to hear and decide a cause of action in the first instance and not upon the decision of the court after jurisdiction has been acquired.[25] "Jurisdiction of the particular matter does not mean simple jur-

[21] Unlike divorce, alimony is a common law right, arising out of the husband's obligation to provide sustenance for his wife; and according to the weight of authority, an equity court "has inherent jurisdiction, independent of any action for divorce and irrespective of any statute, to entertain a suit by a wife for alimony or separate maintenance . . ." 42 C.J.S. *Husband and Wife* § 614b (1944). See Hite v. Hite, 210 Md. 576, 124 A. 2d 581 (1956); Comm. of Pa. for Use of Warren v. Warren, 204 Md. 467, 105 A. 2d 488 (1954); Woodcock v. Woodcock, 169 Md. 40, 179 A. 826 (1935). "After a court of equity, possessing the inherent power to grant alimony, has once taken jurisdiction, its jurisdiction will not be ousted because it does not have the power to do some of the things prayed for in the bill." White v. White, 181 Va. 162, 24 S.E. 2d 448 (1943). Suits for alimony irrespective of divorce are covered by statute in Florida (5 FLA. STAT. ANN. (1943) § 65.09) as are suits for separate maintenance (5 FLA. STAT. ANN. (1943) § 65.10). These statutes, however, seem to be sufficiently broad so as not to limit the inherent jurisdiction of the Florida equity courts. St. Anne Airways, Inc. v. Webb, 142 S. 2d 142 (Fla. 1962); Harmon v. Harmon, 40 S. 2d 209 (Fla. 1949); Kipplinger v. Kipplinger, 147 Fla. 243, 2 S. 2d 870 (1941); Howell v. Howell, 113 Fla. 129; 154 So. 328 (1933). See also: Daniel E. Murray, *Separate Maintenance*, 10 Miami L.Q. 338 (1956); Daniel E. Murray, *Survey of Domestic Relation Laws in Florida*, 12 U. of Miami L. Rev. 428 (1958).

[22] Jurisdiction means no more than the power lawfully existing to hear and deal with the general subject under which the case at bar falls. Industrial Addition Ass'n v. Commissioner, 323 U.S. 310 (1945); Thompson v. Terminal Shares, 89 F. 2d 652 (8th Cir. 1937), *cert. denied*, 302 U.S. 735; Malone v. Meres, 109 So. 677 (Fla. 1926).

[23] Generally speaking "power" is used in reference to the means employed in carrying jurisdiction into execution. Kendall v. U.S. (12 Peters) 37 U.S. 524, 622 (1838).

> "A state may create or affect legal interests whenever its contacts with a person, thing or occurrence are sufficient to make such action reasonable. The power so to create or affect legal interests is 'jurisdiction' as that term is used in the Restatement of this subject. When there has been compliance with the requirement of reasonableness . . . a state's exercise of power will not be refused recognition in other states for lack of jurisdiction."

RESTATEMENT (Second) CONFLICT OF LAWS § 4 (Tent. Draft No. 3, 1956).

[24] 21 C.J.S. *Courts* § 27 (1940). See also: 49 C.J.S. *Judgments* § 19 (1947).

[25] Erickson v. U.S., 264 U.S. 246 (1924); Hart v. Keith Exchange, 262 U.S. 271 (1923); Louisville & Nashville R.R. Co. v. Rice, 247 U.S. 201 (1918); Malone v. Meres, 109 So. 677 (Fla. 1926).

isdiction of the particular case when occupying the attention of the court, but jurisdiction of the class of cases to which the particular case belongs."[26]

Jurisdiction is not lost because of an erroneous decision, however erroneous that decision may be.[27] Whether the Florida judgment is in fact erroneous is a matter which the appellate court of Florida should determine.[28] But, for the West Virginia court to refuse full faith and credit, more must be shown than that the Florida judgment is erroneous or even voidable; it must appear that the judgment is absolutely void.[29]

If a plaintiff in a case such as this case could convince a court that the court of a sister state had improperly exercised its jurisdiction, the right of any court to finally decide a matter would be abridged. The court of one state would be given thereby what is tantamount to quasi-appellate jurisdiction over the court of a sister state.[30]

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[26] Thompson v. Terminal Shares, 89 F. 2d 652 (8 Cir. 1937); Malone v. Meres, *supra* note 25; O'Brien v. People, 216 Ill. 354, 75 N.E. 108, 108 Am. St. Rep. 219, 3 Am. Cas. 966 (1915) and cases cited therein.

[27] Picking v. Local Loan Co., 185 Md. 253, 44 A. 2d 462 (1945); Stephenson v. Kirtley, 269 U.S. 163 (1925); Thompson v. Terminal Shares, *supra* note 26; Malone v. Meres, *supra* note 25.

[28] Assuming that the Florida court lacked jurisdiction, comity alone would suggest that a determination of that question should first be decided by the appellate court of Florida. Assuming the Florida judgment to be incorrect in the light of past cases, it may be that the appellate court of Florida would want to modify the state policy with reference to such alimony payments for the reasons expressed by the dissent in Foster v. Foster, 195 Va. 102, 77 S.E. 2d 471, 39 A.L.R. 2d 1397 (1953):

> "In a case of absolute divorce, if alimony payments upon which the wife solely depends for her support stop with the death of the husband, then regardless of the value of the husband's estate, she must look to charity for help. She cannot otherwise share in her husband's estate because a decree of divorce from the bond of matrimony extinguishes her marital rights in his property."

[29] Malone v. Meres, 190 So. 677 (Fla. 1926).

[30] The leading case in Maryland dealing with the full faith and credit clause is Coane v. Girard Trust Co., 182 Md. 577, 35 A. 2d 449 (1944). There the rule was stated: "Where a final judgment has been rendered by a court of competent jurisdiction, the full faith and credit clause of the federal constitution precludes all inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles involved, and the judgment is conclusive as to all defenses which might have been interposed with proper diligence." It appears therefore that the *Aldrich* case will not affect Maryland law. See Levin v. Singer, 227 Md. 47, 175 A. 2d 423 (1961); Ross v. Pick, 199 Md. 341, 86 A. 2d 463 (1952).