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Divorce: Florida Alimony Suit After Valid Ex Parte Foreign Divorce

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action abated upon dissolution.[12] Delaware, by express statutory provision,[13] 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[14] 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."[15]

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DIVORCE: FLORIDA ALIMONY SUIT AFTER VALID EX PARTE FOREIGN DIVORCE

Pawley v. Pawley, 46 So.2d 464 (Fla. 1950)[1]

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.[2]

[12] *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).

[13] DEL. REV. CODE §2078 (1935), Atkins v. W. A. Harriman & Co., 69 F.2d 66 (2d Cir. 1934).

[14] FLA. STAT. §612.53 (1949).

[15] At p. 9.

[1] 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).

[2] 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*[3] requirement that ". . . the foreign judgment must partake of the elements that would support it if procured in this country."[4] 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.[5] The Supreme Court of Florida further notes that substituted service provided by Cuban law was made;[6] that the wife had actual notice and an opportunity to defend in the Cuban proceeding;[7] 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;[8] that she was no stranger to that forum and could speedily and inexpensively have reached Havana from Miami;[9] and that she had remained silent for more than three years after the Cuban divorce before filing her instant bill.[10]

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.[11] In order to enable her to obtain alimony,

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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 . . . ."

[3]159 Fla. 604, 33 So.2d 870 (1947).

[4]*Id.* at 610, 33 So.2d at 874.

[5]FLA. STAT. §65.03(7) (1949); see the instant opinion at p. 468.

[6]At p. 467.

[7]At p. 468.

[8]At p. 470.

[9]*Ibid.*

[10]At p. 469.

[11]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."[12] 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.[13] 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 domicil,[14] 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.[15] 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.[16]

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)[17] and 65.08[18] of the Florida Statutes. If a similar situation should,

[12]For a general discussion see Haslup, *Divisible Divorce*, 3 U. OF FLA. L. REV. 145, 159 (1950).

[13]See the instant opinion at p. 472, n.2, for a clear-cut differentation.

[14]Estin v. Estin, 334 U.S. 541 (1948); Kreiger v. Kreiger, 334 U.S. 555 (1948).

[15]Haslup, *supra* note 12.

[16]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).

[17]"That the defendant has obtained a divorce from the complainant in any other state or country."

[18]"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

however, arise in regard to a valid divorce obtained in a sister state, in order to grant the wife relief under the aforementioned statutes the Florida Court will have to overrule *Keener v. Keener*,[19] holding that a prerequisite to invoking Section 65.04(8) is a finding of invalidity of the foreign decree.

In holding that the wife can litigate the issue of alimony after her husband obtains a valid divorce in an ex parte proceeding based upon constructive service, the Florida Court has made a logical extension of the *Estin* case.[20] It is submitted that this view will in all probability be given the stamp of approval by the United States Supreme Court when it is confronted with a situation of this type, notwithstanding the distinction between comity and full faith and credit.

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DIVORCE: SUIT BY GUARDIAN FOR INSANE WARD

Scott v. Scott, 45 So.2d 878 (Fla. 1950)

Plaintiff husband, an insane ward, instituted suit for divorce through his guardian. The circuit court certified to the Supreme Court of Florida the question[1] of whether an insane spouse could obtain a divorce by a suit brought by his guardian. HELD, an action for divorce cannot be instituted and maintained by a guardian on behalf of a ward duly adjudged mentally incompetent prior to insti-

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allowance to be made to her, . . . but no alimony shall be granted to an adulterous wife." The logical inconsistency in recognizing a foreign divorce decree as valid and yet suggesting that the wife "sue for divorce" and thereby obtain alimony can perhaps be explained on the ground that the Florida Legislature has failed to foresee "divisible divorce" and to provide a much-needed statutory remedy whereby she can seek alimony.

[19]152 Fla. 13, 11 So.2d 180 (1942) (Husband secured ex parte divorce in North Carolina; later he and his divorced wife each moved to Florida, where she sued him for divorce and alimony without questioning validity of foreign decree; suit here held barred if foreign decree valid). The chancellor certifying the question under R. PRAC. SUP. CT. FLA. 38 was Hobson, Circ. J., and the opinion of the Supreme Court was written by Terrell, J., Brown, C. J., dissenting.

[20]Estin v. Estin, 334 U.S. 541 (1948).

[1]R. PRAC. SUP. CT. FLA. 38.