Michigan Law Review

Volume 57 | Issue 3

1959

# Conflict of Laws- Foreign Executors and Administrators - Constitutionality of Nonresident Motorist Statute Providing for Jurisdiction Over Personal Representatives

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CONFLICT OF LAWS—FOREIGN EXECUTORS AND ADMINISTRATORS—CONSTITUTIONALITY OF NONRESIDENT MOTORIST STATUTE PROVIDING FOR JURISDICTION OVER PERSONAL REPRESENTATIVES—Decedent was killed when his car collided with another on a Missouri highway. Both the driver of the second car and its owner, residents of Nebraska, were also killed. Decedent's widow brought a wrongful death action in Missouri against the Nebraska-appointed adminstratrixes of the estates of the driver and the owner of the second car. Summonses were served on the Secretary of State of Missouri in compliance with the Missouri Long Arm Statute which specifically provides for service upon and jurisdiction over the administrators of the estates of nonresident motorists.[1] The trial court overruled defendants' motions to quash. On petition for writ of prohibition, urging that the trial court had no jurisdiction, *held,* preliminary rule in prohibition discharged. The statute is a constitutional exercise of the police power. The assumption of jurisdiction over the foreign administratrix of the estate of a nonresident motorist involved in an accident in the state does not violate due process. *State ex rel. Sullivan v. Cross,* (Mo. 1958) 314 S.W. (2d) 889.

No jurisdiction over foreign administrators of nonresident motorists may be obtained under nonresident motorist statutes not containing specific provision for such jurisdiction.[2] For this reason twenty-two states have recently amended their statutes to include within their scope jurisdiction

1 Mo. Stat. Ann. (Vernon, 1952; Supp. 1958) §506.210.

2 Two separate grounds may be found for these holdings. (1) The statute is in derogation of the common law and must be strictly construed. See, e.g., Gregory v. White, (W.D. S.C. 1957) 151 F. Supp. 761; Riggs v. Schneider's Exr., 279 Ky. 361, 130 S.W. (2d) 816 (1939); State ex rel. Ledin v. Davison, 216 Wis. 216, 256 N.W. 718 (1934). (2) The agency for service of process is terminated by the death of the principal. See, e.g., Brogan v. Macklin, 126 Conn. 92, 9 A. (2d) 499 (1939); Dowling v. Winters, 208 N.C. 521, 181 S.E. 751 (1935). See generally Culp, "Recent Developments in Actions Against Nonresident Motorists," 37 MICH. L. REV. 58 (1938).

over personal representatives.[3] Seven of the eight cases to date arising under these statutes have upheld jurisdiction over the foreign administrator.[4] While these amendments have successfully removed the previous impediments to jurisdiction,[5] attacks on their constitutional validity have raised new questions. It is generally held that an administrator is immune from suit in his representative capacity outside the state of his appointment.[6] Some courts regard an action against an administrator as a proceeding in rem against the assets of the estate; hence, jurisdiction would fail because the out-of-state court has no control over the res.[7] More often courts have held that because an administrator is an officer of the court which appoints him, his ability to act is coterminus with the territorial limitations of the appointing court. Outside that area he has no official standing.[8] This rule of immunity has been used to invalidate statutes which provide for general jurisdiction over foreign administrators.[9] Its logical application in the principal case dictates the same result,

[3] Ala. Code (1940; Supp. 1957) tit. 7, §199; Ark. Stat. (1947) §27-341; Cal. Veh. Code Ann. (Deering, 1948; Supp. 1957) §404; Fla. Stat. (1957) §47.29; Ky. Rev. Stat. (1956) §188.020; La. Rev. Stat. (1950; Supp. 1956) §13-3474; Md. Code Ann. (1957) art. 66½, §115(f); Mass. Laws Ann. (1954) c. 90, §3A; Mich. Comp. Laws (1948; Supp. 1956) §257.403; Mo. Stat. Ann. (Vernon, 1952; Supp. 1958) §506.210; Neb. Rev. Stat. (1943; re-issue 1956) §25-530; N.M. Stat. Ann. (1953) §64-24-3; 62A N.Y. Consol. Laws (McKinney, 1952; Supp. 1958) §52; N.C. Gen. Stat. (1953; Supp. 1957) §1-105; N.D. Rev. Code (1943; Supp. 1957) §28-0611; Ohio Rev. Code (Baldwin, 1958) §2703.20; Pa. Stat. Ann. (Purdon, 1953; Supp. 1957) tit. 75, §1201; Tenn. Code Ann. (1956) §20-225; Tex. Civ. Stat. (Vernon, 1950; Supp. 1958) art. 2039a; Va. Code (1957) §8-67.1; Wis. Stat. (1957) §345.09; Wyo. Comp. Stat. Ann. (1945; Supp. 1957) §60-1101.

[4] Brooks v. National Bank of Topeka, (8th Cir. 1958) 251 F. (2d) 37; Feinsinger v. Bard, (7th Cir. 1952) 195 F. (2d) 45; Tarczynski v. Chicago, M., St. P. & P. R. Co., 261 Wis. 149, 52 N.W. (2d) 396 (1952); Plopa v. DuPre, 327 Mich. 660, 42 N.W. (2d) 777 (1950); Leighton v. Roper, 300 N.Y. 434, 91 N.E. (2d) 876 (1950); Oviatt v. Garretson, 205 Ark. 792, 171 S.W. (2d) 287 (1943). *Contra,* Knoop v. Anderson, (N.D. Iowa 1947) 71 F. Supp. 832. See also Derrick v. New England Greyhound Lines, (D.C. Mass. 1957) 148 F. Supp. 496, where it was held the statute did not purport to confer jurisdiction.

[5] The argument based on strict construction is eliminated. The courts hold further that such a statute is not limited by common law rules of agency. E.g., Oviatt v. Garretson, note 4 supra; State ex rel. Sullivan v. Cross, (Mo. 1958) 314 S.W. (2d) 889; Plopa v. DuPre, note 4 supra.

[6] Generally courts cannot acquire jurisdiction over a foreign administrator even by his consent or through personal service within the state. In re Estate of Thompson v. Coyle & Co., 339 Mo. 410, 97 S.W. (2d) 93 (1936); Burrowes v. Goodman, (2d Cir. 1931) 50 F. (2d) 92, cert. den. 284 U.S. 650 (1931); Judy v. Kelley, 11 Ill. 211 (1849); CONFLICT OF LAWS RESTATEMENT §513 (1934). But cf. Lawrence v. Nelson, 143 U.S. 215 (1892). *Contra:* Lackner v. M'Kechney, (7th Cir. 1918) 252 F. 403; Laughlin & McManus v. Solomon, 180 Pa. 177, 36 A. 704 (1897).

[7] Thorburn v. Gates, (S.D. N.Y. 1915) 225 F. 613; Wilson v. Hartford Fire Ins. Co., (8th Cir. 1908) 164 F. 817; McDOWELL, FOREIGN PERSONAL REPRESENTATIVES 83 (1957).

[8] Vaughn v. Northrup, 15 Pet. (40 U.S.) 1 (1841); Appeal of Gantt, 286 App. Div. 212, 141 N.Y.S. (2d) 738 (1955); Hargrave v. Turner Lumber Co., 194 La. 285, 193 S. 648 (1940); Jefferson v. Beall, 117 Ala. 436, 23 S. 44 (1897); CONFLICT OF LAWS RESTATEMENT §512 (1934). But see Johnson v. Jackson, 56 Ga. 326 (1876). See generally GOODRICH, CONFLICT OF LAWS, 3d ed., §190 (1949).

[9] Thorburn v. Gates, note 7 supra; Feldman v. Gross, (N.D. Ohio 1952) 106 F. Supp.

on the ground that the statute violates due process by asserting jurisdiction where none can be acquired.[10] One court has so held.[11] But it has been suggested that the exercise of jurisdiction in this type situation is not unconstitutional because the immunity rule is not jurisdictional in nature but is a rule of comity based on the convenience of administering estates.[12] This contention, however, goes against the established weight of authority[13] and has not been seized upon by the courts to sustain the statutes.[14] Most courts have recognized the rule as jurisdictional and then asserted jurisdiction in spite of it. The same practical considerations which underlie basic nonresident motorist statutes would seem to demand such holdings. The power of a state to provide a forum for suit against negligent nonresident motorists for the protection and convenience of its citizens can no longer be questioned.[15] Where death results from the accident, an even clearer case for the assumption of jurisdiction is presented. The immunity rule developed at a time when society was not faced with the problems of mass mobility and destruction created by the automobile. It is not fitted to meet our present needs in this respect and should therefore be treated as inapplicable in the restricted nonresident motorist setting. Although not expressly stated, this is in effect the view that the courts sustaining the statutes have taken. The reasoning of the instant case is typical. The court makes no extended analysis of the conventional jurisdictional defects. It simply states that the rule of limited territorial capacity must yield to the police power of the state in control of its highways.[16]

The principal case leaves open the question whether the foreign judgment will be given full faith and credit in the domiciliary state when it is presented there as a claim against the estate.[17] Courts in the past have uniformly refused to give effect to a judgment rendered in another state against a domestic administrator on the ground that his

308; Helme v. Buckelew, 229 N.Y. 363, 128 N.E. 216 (1920). See also CONFLICT OF LAWS RESTATEMENT §514 (1934). *Contra:* Dewey v. Barnhouse, 75 Kan. 214, 88 P. 877 (1907); Craig v. Toledo, A.A. & N.M.R. Co., 2 Ohio N.P. 64 (1895).

10 For an excellent discussion of the application of the general rule of immunity to a statute of the type under discussion see comment, 36 IOWA L. REV. 128 (1950).

11 Knoop v. Anderson, note 4 supra.

12 MCDOWELL, FOREIGN PERSONAL REPRESENTATIVES 119 (1957); comment, 57 YALE L. J. 647 at 652 (1948); Culp, "Recent Developments in Actions Against Nonresident Motorists," 37 MICH. L. REV. 58 at 73 (1938).

13 See generally 3 BEALE, CONFLICT OF LAWS §512.1 (1935). See also the cases cited in note 9 supra in which statutes purporting to give jurisdiction over foreign personal representatives were invalidated. The courts so holding felt the rule was jurisdictional.

14 The principal case, at 894, recognizes this as a possible analysis when it quotes from 57 YALE L. J. 647 at 652, note 12 supra. But the court does not predicate its holding on this theory.

15 Hess v. Pawloski, 274 U.S. 352 (1927).

16 Principal case at 895.

17 Principal case at 894.

immunity to suit outside the state of his appointment deprived the sister state court of jurisdiction.[18] Should this corollary to the general immunity rule be followed here, it is likely any judgment rendered in the present case would have to be relitigated in Nebraska to be enforced against the estate. This result could be avoided through recognition by Nebraska that in the nonresident motorist situation there is a legitimate basis for the exercise by Missouri of jurisdiction over a Nebraska administratrix. Thus the reason for denying full faith and credit disappears. If there is sufficient connection with the state to sustain jurisdiction as a matter of due process, the requirements of full faith and credit in this respect are also met.[19] As more states amend their nonresident motorist statutes to encompass personal representatives, the more likely it is that full faith and credit will be given, whether required or not. A court which upholds the validity of such a statute will find itself in an anomalous position if it refuses to recognize judgments rendered under a similar statute in another state.[20] On the other hand, the full faith and credit question may in fact never arise. As a practical matter, if the deceased nonresident carried liability insurance, any judgment obtained may voluntarily be paid by the insurer. Even if the judgment is not paid, if the insurer is licensed to do business within the state the policy might be held to constitute an asset within the state for which ancillary administration may be granted.[21] Missouri then could enforce its own judgment.[22]

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[18] Judy v. Kelley, note 6 supra; In re Estate of Thompson v. Coyle & Co., note 6 supra; York v. Bank of Commerce & Trust Co., 19 Tenn. App. 594, 93 S.W. (2d) 333 (1935); In re Cowham's Estate, 220 Mich. 560, 190 N.W. 680 (1922); CONFLICT OF LAWS RESTATEMENT §514 (1934). See generally MCDOWELL, FOREIGN PERSONAL REPRESENTATIVES 85, 103-104 (1957).

[19] Milliken v. Meyer, 311 U.S. 457 (1940); Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915). See CONFLICT OF LAWS RESTATEMENT §42 (1934).

[20] Since Nebraska has enacted a statute of this type, Neb. Rev. Stat. (1943; re-issue 1956) §25-530, but has not yet passed on its validity, it would be confronted with a difficult question if the judgment in the principal case is presented there for full faith and credit.

[21] In re Estate of Rogers, 164 Kan. 492, 190 P. (2d) 857 (1948); Furst v. Brady, 375 Ill. 425, 31 N.E. (2d) 606 (1940); Gordon v. Shea, 300 Mass. 95, 14 N.E. (2d) 105 (1938). *Contra,* In re Roche, 16 N.J. 579, 109 A. (2d) 655 (1954).

[22] The court in the principal case, at 895, recognizes that the presence of liability insurance might make it unnecessary to present the claim in Nebraska, but it does not state whether this is because there might be voluntary payment or because ancillary administration might be granted.