CONFLICTS OF LAW-DIVORCE-RES JUDICATA EFFECT OF DECREE AS TO THIRD PARTIES

Paul M.D. Harrison S.Ed.
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Conflict of Laws Commons, and the Family Law Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol50/iss3/9

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
CONFLICTS OF LAW—DIVORCE—RES JUDICATA EFFECT OF DECREE AS TO
THIRD PARTIES—Respondent had applied for a determination of petitioner's
rights under the New York Decedent Estate Law, which provides for the widow
taking a statutory one-third share in her husband's estate after his decease. Re­
spondent contended that petitioner was not a widow of decedent, as the prior
divorce awarded against decedent in Florida was void because of failure to sat­
ify residence requirements. The evidence showed that the residence require­
ments had not been met, but also showed both of the parties to the divorce to
have made appearances in the Florida court. The trial and intermediate courts
held that respondent had no right to attack collateral the foreign decree, but the
New York Court of Appeals reversed. On certiorari, held, reversed. The Court
concluded, Justice Frankfurter dissenting, that under Florida law the respondent
would have no standing to make a collateral attack on the Florida jurisdiction,
and New York is obliged to act in the same manner. Johnson v. Muelberger,

The decision in the principal case settles a problem which has been the sub­
ject of intense discussion among courts and legal writers. In order to appre­
ciate the full significance of the decision, it is helpful to review briefly the
developments leading up to this case. The Supreme Court, in Davis v. Davis, clearly established that when the parties to a divorce proceeding litigate the juris­
diction of the court making the award, then that question is foreclosed from
collateral attack by the parties in a subsequent action. Later, the principle of
res judicata was applied against the parties in respect to jurisdictional authority
even though jurisdiction was not a litigated question, providing both parties had
made appearances and there had been an opportunity to question the jurisdiction
of the court. The decision in the principal case carries the doctrine of res judi­
cata one step further and establishes that the full faith and credit clause, as im­
plemented by statute, requires a sister state to prevent collateral attack by third
parties if such attack is not allowed in the jurisdiction where the decree was
rendered. It should be noted that the role of the sister state court is different in
this situation than when the sister state court is allowed to make a finding in
respect to domicile when an ex parte divorce decree is in question, as here the find­

---

3 Notes: 17 BROOKLYN L. REV. 70 (1950); 1951 WASH. UNIV. L.Q. 1 (1951); 19
FORDHAM L. REV. 327 (1950) which discusses the New York Court of Appeals decision
of the principal case; 50 Col. L. Rev. 833 (1950); Gaylord v. Gaylord, (Fla. 1950) 45 S.
(2d) 507; Mussey v. Mussey, 251 Ala. 459, 37 S. (2d) 921 (1948); Rediker v. Rediker,
35 Cal. (2d) 796, 221 P. (2d) 1 (1950).
4 305 U.S. 32, 59 S.Ct. 3 (1938).
378, 68 S.Ct. 1094 (1948).
6 Art. IV, §1, of the United States Constitution provides, "Full Faith and Credit shall
be given in each State to the public Acts, Records and judicial Proceedings of every other
State. And the Congress may by general laws prescribe the Manner in which such Acts,
Records and Proceedings shall be proved, and the Effects thereof." Congress has performed
ing is a matter of law and not of fact. The sister state court, in allowing or refusing a subsequent collateral attack, must look to the law of the divorcing state. Although it may be said that the approach to the problem of collateral attack is now firmly established as a result of this decision, both court and counsel will be faced with a tremendous task in accurately applying it to specific cases. This very difficulty is evident in the principal case, as the error of the New York Court of Appeals was not in their approach to the problem, but rather, in their erroneous findings as to the existing law in the divorcing state. Some courts refuse collateral attacks by third parties on the basis of privity with an original party who would be barred by reason of res judicata. Other courts refuse collateral attack on the theory that the third party does not have sufficient interest to make such an attack, but even among these courts there is a variation of opinion as to the sufficiency of interest and the time when the interests vest. It may easily be seen that a sister state court is liable to misconstrue the law of the divorcing state in extreme cases, which will require, in turn, further litigation of the issue. In the field of divorce law, where social policy calls for as much stability as possible, it is unfortunate that the state courts can not be given a more definite method of approaching the question of collateral attack by third parties. Courts and counsel alike may well recall Justice Jackson's remark: "confusion now hath made his masterpiece" in the field of divorce law.

Paul M. D. Harrison, S. Ed.

7 By virtue of the case of Williams v. North Carolina, 317 U.S. 287, 63 S.Ct. 207 (1942), it is established that a court may decree a binding ex parte divorce if one of the divorcing spouses has a bona fide domicile within the state. However, by the later case of Williams v. North Carolina, 325 U.S. 226, 65 S.Ct. 1092 (1945), it was held that a sister state may determine for itself whether a bona fide domicile did in fact exist in the divorcing state before giving effect to the foreign decree. This means, of course, that the finding of fact will bear materially on the recognition of the foreign decree. On the problem of domicile in general, see Frumer, "The Supreme Court and Domicile for the Purpose of Ex Parte Divorce Jurisdiction," 1 Syracuse L. Rev. 267 (1949).

8 State ex rel. Willys v. Chillingworth, 124 Fla. 274, 168 S. 249 (1936), was construed by the New York court as allowing third party collateral attack. The Supreme Court in the principal case disagrees with such an interpretation. A later Florida case, deMarigny v. deMarigny, (Fla. 1949) 43 S. (2d) 442, appears conclusively to express Florida law that collateral attack will not be allowed.

