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Private Law: Conflict of Laws

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CONFLICT OF LAWS

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TORTS

Blanchard v. Blanchard[1] was a suit by one brother against another, both residents of Louisiana, as a result of an automobile accident which happened in Texas. There was no doubt about the defendant's negligence, but the Texas guest statute imposes liability only if the driver's negligence is gross and wanton. The court found that the defendant's negligence was indeed of such a nature and awarded a judgment for the plaintiff.

This decision is based upon the traditional conflicts rule of *lex loci delicti*, characterizing the place of the tort as the place where the impact or accident occurred (Texas). Under Louisiana law, the driver's liability would attach for a lesser degree of negligence, but the court did not consider the applicability of Louisiana law because liability did attach anyway under the more severe test. The concurring opinion accepted the majority view because it maintained the defendant's liability under the alternative which was most favorable to him, but not without asking what should really be the proper conflicts rule in Louisiana today for problems of tort liability.

As pointed out in the concurring opinion, the *lex loci delicti* conflicts rule is not statutory but was adopted by our jurisprudence from general Anglo-American sources. Since the meaning and interpretation of the rule are changing in Anglo-American law, the question is posed whether the Louisiana applications of the rule should not reflect the new trends. Although the answer can only be given by the courts themselves, the question evokes comment and merits serious consideration.

Two reasons suggest themselves in favor of following the trends in recent Anglo-American developments.[2] One is the logical continuation of following the patterns of the original sources; the other is the maintenance of uniformity. However, from a realistic and practical point of view, such a position is only warranted if the new trends answer the present-day Lou-

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1. 180 So. 2d 564 (La. App. 3d Cir. 1965).

2. *Id.* at 567.

isiana needs and interests as well as the traditional rule did at the time of its adoption. While making this observation for general consideration, I would nevertheless agree with the concurring opinion in the present case "that there is in truth little reason for Texas law to furnish the duty to be enforced by a Louisiana court in a suit between Louisiana residents arising out of an accident of a car based and insured in Louisiana."[3]

DIVORCE

A divorce rendered in a sister state is entitled to full faith and credit if the rendering court had jurisdiction by reason of at least the domicile of one of the parties.[4] Despite the real absence of such jurisdictional facts, the same result is produced if either of the principles of res judicata or estoppel precludes going behind the decree which has the appearance of validity. In *Turpin v. Turpin*,[5] the plaintiff had obtained an Arkansas divorce while both spouses continued to reside and be domiciled in Louisiana. However, in view of the fact that both spouses had already remarried, the court followed a prior decision of the Louisiana Supreme Court[6] and held that "plaintiff's acceptance and acquiescence serves to estop her from attacking the validity of the Arkansas divorce."[7] Whether the facts in connection with the Arkansas proceedings would also have supported a plea of res judicata is not indicated, and is unnecessary to the decision.

In *Boudreaux v. Welch*,[8] the plaintiff sued for the wrongful death of her husband, but she lost in the trial court and again in the court of appeal. The court of appeal held that she was not the lawful wife of the decedent on account of the invalidity of the Mississippi divorce from her prior marriage. The legal issue centered on whether Louisiana must give full fatih and credit to a divorce rendered in a sister state where neither spouse was domiciled. After the institution of the Mississippi divorce suit, the defendant in that suit had signed a "written waiver of service and entry of appearance," and it was contended by the plaintiff in the principal case that this had amounted to a personal appearance and voluntary submission to the Mississippi court

3. *Ibid.*
4. Williams v. North Carolina, 317 U.S. 287 (1942).
5. 186 So. 2d 650 (La. App. 2d Cir. 1966).
6. Rouse v. Rouse, 219 La. 1065, 55 So. 2d 246 (1951). See comments in 13 LA. L. REV. 232-34 (1953).
7. 186 So. 2d at 651.
8. 180 So. 2d 725 (La. App. 1st Cir. 1965), *writ granted*, 248 La. 800, 182 So. 2d 75 (1966).

and that the question of jurisdiction came within the res judicata decisions of the United States Supreme Court.[9] The court of appeal's denial of a recognition was based on the prior Louisiana Supreme Court's decision in *Eaton v. Eaton*,[10] where a "waiver of summons and entry of appearance" was distinguished from res judicata, and held insufficient as a submission to the jurisdiction.

The Louisiana Supreme Court reversed and remanded,[11] holding that the case was controlled by the principle enunciated by the United States Supreme Court in *Johnson v. Muelberger*.[12] In that case, a daughter was precluded from making a collateral attack in New York against the Florida divorce of her parents even though she had not been a party to the suit. The Louisiana Supreme Court also pointed out that in the *Eaton* case, relied upon by the court of appeal, the waiver of summons and entry of appearance had been executed *before* the institution of the divorce suit, whereas in the present case it had been signed *after* the commencement of the proceedings and therefore more properly constituted a submission to the court's jurisdiction.

Since the question of full faith and credit involves a constitutional interpretation, the patterns of decision are determined by the United States Supreme Court. The problems of migratory divorce have existed on a national scale for a very long time; the Court's earlier policy of discouragement (in *Haddock* and *Atherton*) for the purpose of both social stability and uniformity of status proved to be a failure, and the more recent position has been to salvage at least the uniformity policy (*Williams, Sherrer, Coe, etc.*).[13] In this connection, it should be noted that, if the plaintiff had been suing for the wrongful death of her first husband, she would have lost because the divorce would have held good against her.[14]

The Louisiana Supreme Court's majority opinion considered the problem before it as "exactly the case"[15] of *Johnson v. Muelberger*, in which the United States Supreme Court had said:

9. Cited 180 So. 2d at 727.
10. 227 La. 992, 81 So. 2d 371 (1955); see comments in 26 LA. L. REV. 257-58 (1956).
11. 192 So. 2d 356 (La. 1966).
12. 340 U.S. 581 (1951).
13. Dainow. *Policy Considerations in Divorce Jurisdiction and Recognition.* 10 LA. L. REV. 54 (1949).
14. See Turpin v. Turpin, *supra*; and Rouse v. Rouse, *supra.*
15. 192 So. 2d at 359.

> " 'When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court *or strangers* in the rendering state, it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids'."[16] (Emphasis added.)

In the case at bar, issue had been joined when the signed waiver of summons and entry of appearance had been filed in the record, and "this was sufficient to foreclose the jurisdictional question as *res judicata.*"[17]

On the point that an *opportunity to litigate* the jurisdictional question is all that is necessary, there can be no difference of opinion now. However, the scope of the words "or strangers" in the *Johnson* case can stand re-examination in the light of the basic meaning of *res judicata.*

Generally, the principle of res judicata[18] applies to the original parties of the suit and those in privity with them. The law of a particular state can specify a broader or a narrower interpretation, and under the federal full faith and credit clause a sister state judgment must be given the same effect in the forum as it has in the state where rendered.

In the *Johnson* case, a daughter claimed certain rights as legatee under her father's will as against his wife of a subsequent marriage. The rights claimed by the daughter were derived through her father, and since he could not attack his prior divorce, she was held to be likewise precluded. The word "stranger" in the *Johnson* case refers to the daughter because she was not in any way personally involved in her parent's divorce action. In the light of this limiting fact about the narrow holding of that case, there may be doubt about extending its applicability to any and all kinds of strangers.

In the case under discussion, the collateral attack on the prior divorce was made by the defendant in a wrongful death action resulting from an automobile accident. There was absolutely no link or relationship between this Louisiana defendant and the Mississippi divorce proceeding. The application of the res judi-

16. Quoted *id.* at 359.
17. *Id.* at 359.
18. GOODRICH, CONFLICT OF LAWS 38, 259 (4th ed., Scoles 1964); LEFLAR, CONFLICT OF LAWS 129, § 70 (1959); EHRENZWEIG, CONFLICT OF LAWS 233, 251-54 (1962); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 130, 300 (3d ed. 1963).

cata principle to this situation appears to be stretching the point beyond its flexibility. It is not inconceivable that the law of Mississippi might forbid such a collateral attack, but this was not shown.

On the policy question, if the objective of the United States Supreme Court was to preserve uniformity of status, it can be argued that no collateral attack should be permitted by anybody, regardless of the actual absence of essential jurisdictional facts. However, this would go against the grain of well-established rules that a sister-state judgment is not entitled to full faith and credit when the rendering court lacked jurisdiction, unless the complainant is precluded from doing so by the rules of res judicata. Res judicata forbids reopening the jurisdiction question; it does not say that there was jurisdiction where there was not. If there actually was good jurisdiction, the judgment is entitled to full faith and credit against anybody and everybody. Res judicata operates differently and only against the parties and their privies, in whatever way that it is legislatively or judicially interpreted in the rendering state.

The dissenting opinion in the Louisiana Supreme Court maintained that the divorce decree would have been subject to collateral attack in Mississippi and therefore was not entitled to full faith and credit,[19] but without drawing the distinction concerning res judicata as described in the comments above.

ALIMONY

Succession of King[20] presented the unusual problem of "post-demise alimony" claimed by a divorced woman from the estate of her deceased ex-husband, whose succession was being administered in Louisiana. The divorce had been rendered in Florida; this incorporated an alimony settlement, the installments of which had been paid until the husband's death. The present claim is for future alimony commuted into a lump sum on the basis of the plaintiff's 20-year life expectancy. The defendant's exception of no cause of action was maintained with the aid of one concurring opinion, and there was also a dissent; although a writ of review was granted,[21] the parties reached an amicable settlement so that the matter was "dismissed with

19. 192 So. 2d at 360, 363.
20. 184 So. 2d 583 (La. App. 4th Cir. 1966).
21. 249 La. 386, 186 So. 2d 631 (1966).

prejudice" by the Louisiana Supreme Court.[22] This leaves the question moot, but the issue is one worth noting. Each of the three judges of the court of appeal wrote a separate opinion.

What appears as the judgment of the court is based upon the finding that the alimony part of the Florida decree was subject to modification in Florida and, since it was accordingly not a *final* judgment, it was not entitled to full faith and credit in Louisiana. Furthermore, since the decedent had left a substantial legacy to his former wife, she was not in necessitous circumstances, and the combination of both benefits would exceed the marital fourth allowed to a destitute widow under Louisiana law.[23]

The concurring opinion treated the original alimony agreement as merged in the Florida judgment, and considered that the wife's proper remedy would have been to ask the Florida equity court to grant a lump sum out of the estate in lieu of the alimony.

The dissenting opinion maintained that in the facts of this case under the law of Florida the wife had a cause of action in Florida as a charge on the decedent's estate, and that Louisiana was obliged to recognize and enforce an obligation established by a valid Florida judgment in accordance with Florida law. The dissenting judge crystallized the difference on the bench as follows:

> "The concept of post-demise alimony is foreign to the laws and jurisprudence of Louisiana. My reluctant willingness to accept the concept for application in the instant case as opposed to the unwillingness of my colleagues, who form the majority, to do so, is the basic point of difference between us."[24]

Furthermore, the dissent continued, although the original alimony adjudication was subject to modification (and assuming the power of the Louisiana court to entertain an application for such modification), the executor had not attempted to do so. This leaves the Florida judgment in continuing effect with the monthly payments continuing to accrue and be executory.

As a matter of "full faith and credit" a valid sister-state judgment must be recognized and enforced to the same extent

22. 249 La. 603, 188 So. 2d 75 (1966).
23. LA. CIVIL CODE art. 2382 (1870).
24. 184 So. 2d at 589.

as it would be in the rendering state. Since Florida law treats accrued installments of alimony as executory and not subject to modification,[25] the plaintiff had a cause of action, at least to the extent of the installments accrued since the husband's death.

With reference to future installments, it is to be noted that there was no alleged basis of invalidity of the Florida judgment and it must therefore be treated as fully effective until modified. No such effort had been made by the decedent or his executor, and again it would appear that the plaintiff had a cause of action.

Furthermore, since the alimony agreement was incorporated into the divorce decree, the Florida law recognizes such alimony payments as a charge on the decedent's estate.[26] No distinction is drawn between accrued and future installments. This judgment is entitled to have the same effect in Louisiana as it has in Florida, including the possibility of commuting the future installments into a single lump sum payment. In view of the fact that the succession assets were being administered in Louisiana, the plaintiff's only practical recourse was here, and, to say the very least, her suit should have been entertained for a thorough consideration of the merits.

Finally, if the dissenting evaluation of the basic difference between the judges is correct, the real motivation behind the majority can be identified more accurately and technically as the objection of local public policy. If the plaintiff's suit were based on an original cause of action involving an ordinary choice-of-law problem, there would be place for the public policy bar to the suit, or even other considerations of Louisiana interests in the particular case. However, since the suit was based on a valid Florida judgment, there is no place for such considerations where constitutional full faith and credit are required.

The irony of it all is that the same practical result might have been reached in a much more defensible legal manner by permitting the suit and by exercising the same power of modification for future installments as existed in the Florida courts under Florida law. Then, if the plaintiff were found not to be in necessitous circumstances by reason of the substantial legacy ($40,000), the future installments might well have been modified and commuted into the lump round figure of zero.

25. See authorities cited at 184 So. 2d 592.
26. See authorities cited at 184 So. 2d 590-91.