July 2022
MPT-1
Item

In re Marriages of Walter Hixon

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Law Office of Marianne Morton
10 Court Plaza, Suite 2000
Franklin City, Franklin 33705

MEMORANDUM

To: Examinee
From: Marianne Morton
Date: July 26, 2022
Re: Walter Hixon matter

We represent Walter Hixon in connection with complications of his marital status. Mr. Hixon married Joan Prescott in 1986 in the State of Columbia. Several years later they separated. Mr. Hixon believed that Ms. Prescott died in 2001.

In 2012, he married Frances Tucker in the State of Columbia. They purchased a house together in Columbia early in the marriage. A few years ago, Mr. Hixon moved to Franklin for a job opportunity; Ms. Tucker remained in Columbia.

Last month, Mr. Hixon learned that Joan Prescott is still alive. He has informed Ms. Tucker of that fact. He wants to divorce Ms. Prescott, end his purported marriage with Ms. Tucker, and work out shares in the residential property that he and Ms. Tucker own.

I need you to write a memorandum to me addressing the following questions:

1. Does Columbia or Franklin law govern the grounds for annulling Mr. Hixon's marriage to Ms. Tucker?

2. Must Mr. Hixon file a lawsuit to annul his second marriage, and if yes, would he be able to obtain an annulment under the applicable law?

3. If Mr. Hixon files an annulment action in Franklin, would a Franklin court have jurisdiction to annul the marriage and to dispose of the parties' property?

4. Should we advise Mr. Hixon to file in Columbia or in Franklin?

Do not prepare a separate statement of facts, but be sure to incorporate the relevant facts into your analysis and state the reasons for your conclusions and recommendation. Do not address either Mr. Hixon's ending his marriage to Ms. Prescott or the risks of criminal prosecution he may face for bigamy; another associate will research those issues.

Transcript of Interview with Walter Hixon, July 14, 2022

Att'y Morton: Thank you for coming in today, Mr. Hixon.

Hixon: I appreciate your making the time. I am in a real mess.

Morton: Tell me how I can help you.

Hixon: Well, to make it short, I got married twice, but I didn't divorce my first wife because I thought she had died.

Morton: Yes, that would be a problem. If you can, it would help to start at the beginning.

Hixon: All right. I married my first wife, Joan Prescott, in 1986. I was 20 years old at the time and, to be honest, I had no idea what I was doing.

Morton: We may need to look up records of that marriage. Were you married here in Franklin?

Hixon: No. We married in Sparta, Columbia.

Morton: Do you remember the date?

Hixon: Yes, June 7, 1986. We got married at City Hall.

Morton: What happened after that?

Hixon: It was clear pretty quickly that we had made a bad mistake. We just couldn't find a way to make it work. We tried for a few years, living in a rented apartment. In 1990, I just moved out and started living with a friend of mine. Then I moved several hundred miles away to Corinth, Columbia, for a job.

Morton: You said you rented together. Did you buy anything together? Share finances?

Hixon: No. We had nothing at all, both working close to minimum wage. We made ends meet and didn't get into debt.

Morton: So when you separated, did you have any arguments over anything?

Hixon: We agreed that we would each keep our own cars. That was really all we had.

Morton: Any children?

Hixon: No.

Morton: Were you in college? Did either of you have any student debt?

Hixon: No. We had both finished high school a few years before we married, but neither of us went to college.

Morton: Did either of you have family in Columbia?

Hixon: Joan did. She came from Sparta originally. My family is all from here in Franklin.

Morton: Okay. You say you moved away.

Hixon: Yes. I got a job on a construction crew based in Corinth, and they offered me another job if I would move. So I did. After that, I had no contact with Joan at all.

Morton: Did you think about filing for divorce?

Hixon: No, I didn't. I thought the marriage was over, and I didn't have any reason to think about it. Honestly, I just avoided thinking about it. And eventually, I heard that she had died.

Morton: Tell me about that.

Hixon: That was much later, I guess. Sometime in 1993, I was promoted to crew chief and decided to stay in Corinth.

Morton: Any relationships during that time?

Hixon: Nothing serious.

Morton: You say you heard that Joan had died? What did you hear?

Hixon: Well, in 2001, I ran into an old mutual friend. He told me that Joan had just died in a car accident. I was sorry to hear about it, but we had had no contact for 11 years. I just moved on.

Morton: All right. I understand. Tell me about your second marriage.

Hixon: Well, in 2011, I met Frances Tucker. We really hit it off and started going out together. Franny and I saw eye to eye on most things at that point. So I proposed. We got married in July 2012.

Morton: Where?

Hixon: We got married in Corinth, Columbia. Her mother was still alive, and Franny wanted her mother to be part of it. So we had a church wedding, the reception, the whole deal.

Morton: And after that?

Hixon: Things went well for a while. I was working up to a management position in the construction company. When I met her, Franny was training to become a radiology technician and then got a good job with a local lab. About two years after that, we bought a house together.

Morton: When was that?

Hixon: February 2015. On the outskirts of Corinth.

Morton: Who owned it? And did you take out a mortgage?

Hixon: We were both on the deed and both on the mortgage with the bank.

Morton: Did you share expenses?

Hixon: Everything went into a joint account, and we paid bills out of that.

Morton: Again, any children?

Hixon: No.

Morton: You gave a Franklin address when you called in. When did you move to Franklin?

Hixon: In 2019. My company opened an office here in Franklin City and asked me to get it started. I talked with Franny. She did not want to move, but we both knew that this would be a good opportunity for me. So we decided to live apart.

Morton: Did you sell the Columbia house?

Hixon: No, Franny still lives there. We have both continued to make payments on the mortgage.

Morton: What happened next?

Hixon: My job went really well. But the separation really took it out of both of us. Our relationship fell apart. I visited her a few times, but Franny never came here, even for a visit.

Morton: You said at the start that your first wife, Joan, is still alive. When did you learn that?

Hixon: Recently. To my shock, last month I got an email from Joan asking to talk with me by phone. When we talked, I told her that I had heard that she had died. She said that she had been in a bad accident and had almost died, but she had recovered. She said that she was thinking of getting married again and asked if I would agree to a divorce.

Morton: What did you do then?

Hixon: I didn't know what to do. I called Franny to let her know. She was upset, as you would expect. And she was clear about two things. First, that was the end for us. And second, I had to clean up the mess.

Morton: Just a few more questions. Do you and Franny still own the house in Columbia?

Hixon: Yes.

Morton: So, what do you want to happen?

Hixon: I want to figure out what I have to do about the second marriage. I want my fair share of the Columbia house. And I want to get the divorce from Joan.

Morton: Thank you. Your situation raises some complicated questions. We will have to do some research before we can let you know your options.

Law Office of Marianne Morton
10 Court Plaza, Suite 2000
Franklin City, Franklin 33705

MEMORANDUM

To: Marianne Morton
From: George Dugger, investigator
Date: July 19, 2022
Re: Walter Hixon: marital records

At your instruction, I searched for records on the marriages of Walter Hixon.

Marriage to Joan Prescott

I contacted the Division of Vital Records in the State of Columbia and found a record of a marriage between Walter John Hixon and Joan Marie Prescott on June 7, 1986. Hixon is listed as age 20 and Prescott as age 21.

Marriage to Frances Tucker

I contacted the Division of Vital Records in the State of Columbia and found a record of a marriage between Walter John Hixon and Frances Frost Tucker on July 14, 2012. Hixon is listed as age 46 and Tucker as age 51.

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Excerpt from *Walker's Treatise on Domestic Relations*

§ 1.7 *Annulment as distinguished from divorce*

In the preceding sections, we described the grounds for annulment under Franklin law. In general, parties to a divorce action must prove that the original marriage was valid and ask the court to end that marriage. By contrast, in an annulment case, at least one party asserts that the marriage was void and asks that the court declare that the marriage is void.

A person might seek an annulment for various reasons. For example: a party might want the finality of a judicial decree declaring the marriage annulled; an annulment may satisfy the tenets of a party's religious faith; an annulment may serve as documentation that a party can use for other purposes, such as survivors' benefits and taxation; and an annulment could determine issues relating to children or property.

In Franklin, an annulment action may address the same issues as those that arise in a divorce. Franklin Domestic Relations Code § 19-7 provides: "The provisions relating to property rights of the spouses, support, and custody of children on dissolution of marriage are applicable to proceedings for annulment." Thus, where the parties have children, the court in an annulment case may also address custody, visitation, and child support issues in the same way as it would in a divorce. Finally, provided it has jurisdiction, a Franklin court can issue orders dividing the property interests of the parties to an annulment, using the same rules as those governing the equitable division of property in a divorce.

Selected Columbia and Franklin Statutes

Columbia Revised Statutes § 718.02 – Voidable Marriages

A. A marriage is voidable if any of the following conditions existed at the time of the marriage:

> (1) The spouse of either party was living and the marriage with that spouse was then in force and that spouse was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the annulment decree is sought.
>
> . . .

B. For a voidable marriage to be declared void, either party may seek and a court must issue an annulment decree.

Franklin Domestic Relations Code § 19-5 – Void Marriages

(a) The following marriages shall be void, without the need for any decree of divorce, annulment, or other legal proceeding:

> (1) All marriages between parties where either party is lawfully married to another person.
>
> . . .

Restatement (Second) of Conflict of Laws (1971)

§ 6 Choice-of-Law Principles

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include:

. . .

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations,

. . .

(f) certainty, predictability, and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

* * *

§ 283 Validity of Marriage

(1) The validity of a marriage will be determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the marriage under the principles stated in § 6.

(2) A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.

Comment to § 283

a. Scope of section. The rule of this Section is concerned with what law governs the validity of a marriage as such, namely with what law determines, without regard to any incident involving the marriage, whether [the parties are lawful spouses].

. . .

Fletcher v. Fletcher

Franklin Court of Appeal (2014)

This case began as an action for divorce brought in Franklin district court by the appellee, Richard Fletcher, against the appellant, Wendy Fletcher. Richard requested custody of the parties' children and an award of child support.

The trial court awarded sole legal and physical custody of the children to Wendy. The trial court also awarded her alimony and child support. To date, Richard has paid all child support owed but has paid no alimony.

Richard moved to the State of Columbia two months after the divorce. He then filed an action in that state to annul his marriage to Wendy. He alleged for the first time that the marriage had been induced by Wendy's misrepresentations about her mental health, that he had learned of her severe mental illness only after the marriage, and thus that the marriage had been induced by fraud.

Wendy contested Richard's allegations. The Columbia trial court annulled the marriage on the ground of fraudulent inducement and noted that, by filing an appearance, Wendy had waived any objection to the court's jurisdiction. Richard then told Wendy that he would not contest custody of the children and would continue to pay child support, but that he would never pay her alimony.

Wendy then filed a motion in the Franklin court to enforce the alimony order. In his reply, Richard argued that the marriage had been invalidated by a Columbia court and that the alimony order was therefore void. The trial court terminated Richard's alimony obligation after the date of the Columbia court order, while also ordering Richard to pay all alimony due before that date. Wendy appealed, contending that the Franklin trial court had erred in giving full faith and credit to the Columbia annulment decree.

On appeal, Wendy contends that the Columbia annulment should not be given full faith and credit because the Columbia court did not apply Franklin law. Wendy correctly notes that fraudulent inducement does not constitute a ground to annul a marriage under Franklin law. By contrast, the law of the State of Columbia does permit annulment on that ground.

We must thus determine which state's law the trial court should have applied. In general, Franklin law holds that the validity of a marriage should be determined by the

law of the state with the most significant relationship to the spouses and the marriage, and that a marriage valid where contracted is valid everywhere. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283 (1971). If a state has no such relationship, that state must apply the law of the state that does.

For example, in *Simeon v. Jaynes* (Fr. Sup. Ct. 2009), one spouse sought to use a Franklin court to annul a marriage entered into in Columbia. The plaintiff spouse alleged that the marriage was bigamous because the defendant spouse had entered the marriage knowing of a previous valid marriage that had not been the subject of an annulment or a divorce. Under Franklin law, such a marriage is void from the start, without the need for any further action. By contrast, under Columbia law, such a marriage is voidable, requiring judicial action to end it. In that case, the parties had lived together only in Columbia, owned property there, and had incurred debts there. On these grounds, the Franklin Supreme Court held that the trial court should have applied Columbia law, given the significant connections between the spouses and the State of Columbia.

The Restatement advises that a court make this decision about the existence of "the most significant relationship" using the factors stated in RESTATEMENT § 6:

—*"the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue":* All states have legitimate policy interests in defining how a relationship as fundamental as marriage can be initiated and ended. The very fact that Columbia and Franklin recognize different reasons for annulling a marriage indicates the strength of the policy interests involved.

—*"the protection of justified expectations":* Wendy and Richard married in Franklin, lived the entirety of their married life here, had children in Franklin, and owned property together here. Wendy and the two children continue to reside here. The only connection to the State of Columbia lies in the short time during which Richard established a residence there. These facts strongly suggest that the parties had a justified expectation that Franklin law would govern the terms on which the marriage ended.

—*"certainty, predictability, and uniformity of result":* People often move between states, creating the need for a system of well-defined rules to govern which state's laws apply to the creation and termination of marriages.

—*"ease in the determination and application of the law to be applied":* As noted above, all the important events in this marriage occurred in Franklin. Considerations of ease and administrative efficiency strongly suggest Franklin as the appropriate forum.

As a result, the Columbia trial court erred in not applying the law of the State of Franklin. Its failure to do so resulted in an order that improperly invalidated a marriage that was validly entered into in Franklin. A marriage that is valid in Franklin should be valid everywhere "unless it violates the strong public policy of another state which has the most significant relationship to the spouses and the marriage at the time of the marriage." RESTATEMENT § 283(2). Since Columbia had only a minimal relationship to this marriage, we need not consider whether the marriage violated the strong public policy of Columbia.

We thus conclude that the Franklin trial court erred in giving full faith and credit to the Columbia annulment order.

Reversed and remanded.

Daniels v. Daniels

Franklin Court of Appeal (1997)

Elizabeth and John Daniels were married in Columbia and resided there until they separated. Mr. Daniels then moved to Franklin, purchased real property, and a year later, filed for divorce in Franklin district court. Ms. Daniels remained in Columbia and did not come to Franklin with her husband. In his complaint, Mr. Daniels requested only that he be granted a total divorce from Ms. Daniels and that the Franklin property be awarded to him.

In response, Ms. Daniels entered a special appearance solely for the purpose of challenging the court's jurisdiction. Mr. Daniels opposed that challenge. After a hearing, the trial court concluded that it had "jurisdiction over the *res* of the marriage relationship itself" and "*in rem* jurisdiction with respect to the property located within this State." We granted Ms. Daniels's application for an interlocutory appeal.

On appeal, Ms. Daniels insists that the trial court erred in ruling that it had *in personam* jurisdiction over her. But the trial court never ruled that it had *in personam* jurisdiction over Ms. Daniels. The trial court ruled only that it had jurisdiction over the *res* of the marriage so as to determine the issue of divorce. It also ruled that it had *in rem* jurisdiction over the marital property located in Franklin. If these rulings are correct, the trial court would not need to exercise *in personam* jurisdiction over Ms. Daniels herself.

In personam jurisdiction over both parties to the marriage is not a prerequisite to the grant of a divorce by a Franklin court. The party seeking a divorce need show only that the trial court has jurisdiction over the *res* of the marriage. A court has jurisdiction over the *res* of the marriage relationship when one of the parties to the marriage has been domiciled within the state for the requisite period, which in Franklin is six months. The United States Supreme Court has stated that "each state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent." *Williams v. North Carolina,* 317 U.S. 287, 298–99 (1942).

Ms. Daniels's reliance on the Franklin Long Arm Statute is misplaced. That statute deals only with the exercise of *in personam* jurisdiction over nonresidents. The Long Arm Statute does not apply in every case in which the defendant is a nonresident. It applies

only in cases in which *in personam* jurisdiction over the nonresident defendant is required. However, Franklin case law has long held that *in personam* jurisdiction is not required to terminate the marriage relationship, whether through divorce, *Price v. Price* (Fr. Sup. Ct. 1972), or by annulment, *Carew v. Ellis* (Fr. Sup. Ct. 1957). Provided that the plaintiff has established residency in Franklin for at least six months, the trial court may exercise jurisdiction over the marriage relationship.

Ms. Daniels argues in the alternative that the presence of issues other than ending the marriage requires the trial court to have *in personam* jurisdiction over her. Ms. Daniels correctly notes that a trial court with jurisdiction to grant a divorce cannot award alimony or attorney's fees unless it has *in personam* jurisdiction. *Boyd v. Boyd* (Fr. Sup. Ct. 1977).

However, the only other issues relate to disposition of marital property located in the State of Franklin. We have long held that, even in the absence of *in personam* jurisdiction over the defendant in a case seeking to end a marriage, a Franklin court can render a valid judgment with respect to real property located in Franklin. *Gore v. Gore* (Fr. Sup. Ct. 1985) (divorce); *Carew v. Ellis, supra* (annulment). These cases hold that where division of the property is at issue, a Franklin court can exert *in rem* jurisdiction over the property in Franklin without establishing *in personam* jurisdiction over the defendant.

Finally, Ms. Daniels argues that due process requires that a Franklin court have *in personam* jurisdiction over her before it can dispose of property in which she has a marital interest, citing *Shaffer v. Heitner,* 433 U.S. 186 (1977). That case holds that assertions of jurisdiction by a state court must satisfy the "minimum contacts" standard. The Supreme Court in *Shaffer* held only that the mere presence of property in a state, standing alone, will not constitute sufficient "minimum contacts" to support the state's exercise of its *in rem* jurisdiction, *if* the property is unrelated to the underlying cause of action. However, the Court noted in dicta that, "when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant," a state court may properly exercise jurisdiction over the property. *Shaffer, supra* at 199 n. 17.

Ms. Daniels correctly notes that her only contact with this state is that her husband moved to Franklin after their separation but while they were still married. Were it not for her marriage to Mr. Daniels, a Franklin court could not exercise jurisdiction over her. But, as noted, Franklin does have jurisdiction over both the marriage and the marital property.

Because Mr. Daniels's complaint addressed the division only of property located in Franklin, the trial court's exercise of jurisdiction did not violate due process.

Affirmed.

MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

Do not include your actual name anywhere in the work product required by the task memorandum.

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