SSR 91-4

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SSR 91-4: SECTIONS 202(e)(1), 216(c), AND 216(d)(2) OF THE SOCIAL SECURITY ACT (42 U.S.C. 402(e)(1), 416(c), AND 416(d)(2)) RELATIONSHIP -- VALIDITY OF A HAITIAN DIVORCE -- ESTOPPEL -- TEXAS

20 CFR 404.335, 404.336(a)(2), and 404.345

The claimant and the worker were married in Connecticut on April 30, 1972, and both parties were domiciled in Texas when the worker divorced the claimant in Haiti on December 29, 1976. The worker died in Texas in 1979. On March 12, 1987, the claimant applied for widow's insurance benefits on the deceased worker's earnings record. Because the claimant and the worker were domiciled in Texas rather than Haiti when the divorce decree was entered, a Texas court could refuse to recognize the Haitian divorce as valid. The evidence of record, however, showed that the claimant consented fully to the divorce, submitted freely to the jurisdiction of the Haitian court, was represented by counsel in the proceeding, and received property pursuant to a settlement agreement which was incorporated into the divorce decree. The evidence also showed that the claimant allowed the divorce to go unchallenged for more than 10 years and that she acted in full recognition of its validity by filing separate tax returns under her maiden name from 1976 through 1979 and by having her last name legally changed from her married name to her maiden name in 1977. Further, the evidence showed that, when the claimant changed her name, she specifically cited the Haitian divorce decree and its failure to restore her maiden name as a reason for making the change. Held, in view of the foregoing, the claimant was estopped from denying the validity of her divorce from the worker and, thus, was not entitled to widow's insurance benefits on his earnings record. Moreover, the claimant was not entitled to benefits as the worker's surviving divorced spouse because, under 42 U.S.C. 416(d)(1), she had not been married to him for at least 10 years.

A question has been raised regarding the validity of a Haitian divorce. Specifically at issue is whether Texas would recognize such a divorce and whether a claimant who was a party to the divorce would be estopped from denying its validity. In this particular case, the Social Security Administration (SSA) believes that whether or not a Texas court would recognize the Haitian divorce, the claimant would be estopped from challenging its validity.

The worker and the claimant were married on April 30, 1972, in Madison, Connecticut. The worker flew to Haiti on December 29, 1976, to obtain a divorce and remained there for several days. On December 23, 1976, before the divorce was granted, the claimant signed a notarized statement acknowledging the divorce, submitting herself to the jurisdiction of the Haitian court, and appointing an attorney to appear on her behalf. On that same date, the parties signed a property settlement agreement which was incorporated into the divorce decree. The divorce decree was rendered in Haiti on December 29, 1976, though both parties were residents of Texas. On July 11, 1977, the claimant was granted a court order changing her last name from her married name to her maiden name. She also filed separate tax returns under her maiden name from 1976 through 1979. The worker died in Texas in 1979. On March 12, 1987, the claimant applied for widow's insurance benefits on the worker's earnings record.

To be eligible to receive widow's insurance benefits, a claimant must meet the requirements set out in section 202(e)(1) of the Social Security Act (the Act). According to that section of the Act, "the widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual . . . shall be entitled to a widow's insurance benefit. . . ." To be eligible as a widow as defined in section 216(c), a woman must be the surviving wife of the decedent. To be eligible as a surviving divorced wife under section 216(d)(2), a woman must have been married to the deceased worker for a period of 10 years immediately before the date the divorce became effective. Because the claimant and the worker were married in 1972 and divorced in 1976 in Haiti, the claimant would not qualify for benefits as a surviving divorced wife if this Haitian divorce were recognized as valid, since the duration of the marriage did not meet the 10-year requirement. If the divorce were not recognized, the claimant would be deemed to have been married to the worker until the time of his death and would therefore be eligible to receive benefits as a widow unless she is estopped from denying the validity of her divorce. The determination of whether the claimant would be entitled to survivor benefits thus depends initially upon the law in Texas as it pertains both to the recognition of foreign divorce decrees and to the applicability of estoppel.

Article 4, section 1 of the United States Constitution, the "full faith and credit" clause, requires each State of the union to enforce the acts, records, or judicial proceedings" of every other state." This clause does not, however, require States to enforce decrees of foreign countries. Schacht v. Schacht, 435 S.W. 2d 197 (Tex. Civ. App. -- Dallas 1968). Should a State decide to enforce such a decree, the decision would be based on the doctrine of comity. This doctrine allows a State court to give full effect to a decision of another jurisdiction based on the mutual interests of respect and justice. Therefore, while a Texas court could give effect to a Haitian divorce decree, it is not bound to do so.

A key factor which a Texas court would consider in determining whether to give full faith and credit to a foreign divorce is whether the parties to the divorce were domiciled in the foreign country when the decree was entered. Schacht, supra. According to the U.S. Supreme Court, "(u)nder our system of law, judicial power to grant a divorce -- jurisdiction strictly speaking -- is founded on domicile. . . . Domicile implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance." Williams v. North Carolina, 325 U.S. 226, 65 S.Ct. 1092, 89 LE 1577 at 1581 (1944). Thus, if the parties to a foreign divorce were not domiciled in the particular foreign country, the courts will rarely recognize the validity of the divorce, even where the country had no such domicile requirement. Turman v. Turman, 99 S.W. 2d 947 (Tex. Civ. App. -- Ft. Worth 1936), cert. denied 301 U.S. 698; 13 ALR 3d 1419; 24 AM. Jur. 2d section 1106.

In Texas, when determining the validity of a foreign divorce, a court will assume the divorce law of the foreign country is the same as the divorce law of Texas in the absence of proof to the contrary. Tallant v. State, 658 S.W. 2d 828 (Tex. Civ. App. -- Ft. Worth, 1983); Webb v. Webb, 461 S.W. 2d 204 (Tex. Civ. App. -- San Antonio, 1970). Texas law requires that one of the parties have residence in the State for 6 months and in the county where the divorce is sought for 90 days before the court in the county can assert jurisdiction over the parties. TEX. FAM. CODE

ANN. section 321 (Vernon 1986). Because neither the worker nor the claimant was domiciled in Haiti at the time of their divorce, as evidenced by the divorce decree which lists their hometown as Houston, Texas, a Texas court could refuse to recognize the divorce as valid based on jurisdictional grounds.

Even though a Texas court could decline to recognize the claimant's and the worker's Haitian divorce, however, it is SSA's opinion that the claimant would nonetheless be estopped from denying the validity of the divorce. This opinion is based on several grounds.

First, Texas courts have generally held that, where the parties to a foreign divorce have consented to the divorce and have submitted to the jurisdiction of the foreign court, they will be estopped from collaterally attacking the judgment. Dunn v. Tiernan, 284 S.W. 2d 754 (Tex. Civ. App. -- El Paso, 1955, writ ref. n.r.e.) (a husband who obtained bilateral divorce in a Mexican court was estopped from later collaterally attacking the decree). See also Webb v. Webb, supra (one who has consented to and participated in a foreign divorce is estopped from collaterally attacking the divorce and thus, the issue of whether the parties so participated is one of fact for the jury); Moody v. Moody, 465 S.W. 2d 836 (Tex. Civ. App. -- Corpus Christi, 1971, writ ref. n.r.e.) (a party who participated in a divorce suit, without objecting to the jurisdiction of the court, may not thereafter assail the decree in a collateral proceeding on the theory that one or more of the parties were nonresidents). Additionally, the Fifth Circuit Court of Appeals has recognized and applied this principle of Texas law. In Diehl v. U.S., 438 F.2d 705, 708 (5th Cir. 1971), the court stated that as a result of Dunn v. Tiernan, "it was settled in Texas that a party who seeks and obtains a Mexican divorce is thereafter estopped to deny its validity."

In the situation presented here, even though the claimant was not physically present in Haiti when the divorce decree was rendered, she signed a notarized settlement agreement 6 days before the date of the divorce by which she gave her full and total consent to the divorce. In addition, on that same day, she signed a notarized waiver submitting herself to the jurisdiction of the Haitian court and appointing an attorney to appear on her behalf, which he did. In the absence of some evidence that the claimant was subject to duress or coercion when she signed, it is SSA's opinion that such evidence of consent would be sufficient to allow a Texas court to estop the claimant from challenging the validity of the divorce based on the decisions in Dunn, Webb, and Moody, supra. No allegations of duress or coercion have been made.

SSA's second basis for concluding that the claimant would be estopped from denying the validity of the divorce is that, in Texas, courts have held that, where a party to an invalid divorce has received money or property pursuant to that divorce, that party will be estopped from later attacking the decree. Morehouse v. Morehouse, 111 S.W. 2d 831 (Tex. Civ. App. -- San Antonio, 1938). Similarly, a Texas court has ruled that when a party has received property pursuant to an annulment decree, the party is estopped from later asserting the invalidity of the decree. Lunt v. Lunt, 121 S.W. 2d 224 (Tex. Civ. App. -- El Paso, 1938).

The evidence of record clearly indicates that the claimant and the worker entered into and signed a property settlement agreement which stipulated that the parties desired a divorce and that the settlement agreement was to be determinative of the disposition of all of the property owned by

the parties. This agreement was incorporated into the Haitian divorce decree which ordered the provisions of the agreement to be carried out. Pursuant to the agreement, the worker relinquished any rights he had in the home belonging to the claimant in Boulder, Colorado, and in addition, the claimant was to receive her share of personal and community property. Thus, it appears from the evidence that the claimant did receive property pursuant to the divorce and could therefore be estopped from challenging the divorce on that basis.

A third factor which would weigh against the claimant if she asserted the invalidity of the divorce is the length of time which has expired since the divorce was rendered. Because mora than 10 years elapsed between the date of the divorce and the date the claimant applied for benefits, a court could apply laches against the claimant.[1] In Texas jurisprudence, there is support for the proposition that for laches to apply, a mere lapse of time is insufficient; there must also be a resulting disadvantage to another. Simpson v. Simpson, 380 S.W. 2d 855 (Tex. Civ. App. -- Dallas, 1964, writ ref. n.r.e.). Here, there is nothing in the record to indicate that this 10-year lapse has caused a hardship to anyone (e.g., no party has remarried in the intervening 10 years), and therefore SSA does not believe that laches would be an independent ground for estoppel against the claimant. However, it should be noted that the court in Dunn indicated that a delay of 22« months in attacking a foreign divorce decree would subject the delaying party to a charge of laches and, thus, weighed this factor against the attacking party. SSA believer, therefore, that a delay of 10 years in challenging this decree would be weighed heavily against the claimant in a court's decision on whether to allow such a challenge.

Finally, it should be strongly emphasized that the court's decision on whether to allow the claimant to attack the Haitian divorce decree would be based on principles of equity. As the court stated in Dunn:

"Estoppel being an equitable matter and divorce itself being an equitable matter, the principles of equity must apply. This being true it would not be equitable for he who was a party to the fraud and who had benefitted therefrom, to now cry fraud to his own advantage. . . ."

284 S.W. 2d at 767. In the instant case, the claimant fully agreed to the divorce, submitted herself freely to the jurisdiction of the Haitian court, was represented by counsel in the proceeding, and received property pursuant to a settlement agreement incorporated into the divorce decree. She then acted in full recognition of the decree as valid by having her last name changed in July of 1977 from her married name to her maiden name, citing the Haitian divorce decree and its failure to restore her maiden name as a reason for making the change. Further, she began filing separate tax returns under her maiden name. The claimant enjoyed whatever benefits she sought from her divorce during the 10-year period that the divorce remained unchallenged. To now find that the divorce was invalid so that the claimant could collect benefits as the deceased worker's widow, in SSA's view, would appear to a court to be clearly inequitable, and SSA therefore concludes that a Texas court would estop the claimant from challenging the divorce.

SSA notes that its operating instructions comport with this conclusion. GN 00305.465 of the Program Operations Manual System (POMS) lists five grounds upon which a party may be estopped from denying the validity of a divorce. Three of these grounds appear to be applicable

to this situation. First, GN 00305.465B of the POMS states that a party may be estopped where he or she was the defendant in a divorce action and accepted the court's jurisdiction. As stated above, the claimant gave her full consent and submitted to the jurisdiction of the Haitian court. Next, GN 00305.465D of the POMS states that estoppel may be found where a party has accepted property or money or a property settlement on the basis of the divorce decree. The claimant agreed to the property settlement incorporated into the Haitian divorce and received a home and personal property pursuant to the settlement. Finally, GN 00305.465E of the POMS notes that estoppel may lie where the party otherwise accepted or acted in recognition of the decree as valid (e.g., knew of the divorce and allowed it to stand unchallenged for a long time). The claimant in this case let her divorce go unchallenged for more than 10 years, and when she had her name changed, she specifically cited the Haitian divorce as one of her reasons for making the change.

In conclusion, the law and facts in this case indicate that, because the worker and the claimant were domiciled in Texas rather than Haiti when the divorce decree was entered, a Texas court could refuse to recognize the Haitian divorce as valid. The claimant, however, is the only person with standing to challenge the degree. Because she submitted to the jurisdiction of the Haitian court, agreed to a property settlement, and then subsequently acted in recognition of the divorce as valid, SSA believes that she would be estopped rom denying the validity of the divorce. Therefore, SSA concludes that the divorce would stand as valid, making the claimant ineligible to receive widow's benefits under section 202(e)(1) of the Act. Moreover, because the claimant was married only 4 years prior to the divorce rather than 10 years as required by section 216(d)(1) of the Act, she would also be ineligible as a surviving divorced spouse.

[1] Laches is an equitable doctrine which is defined as a failure to do something which should be done or to claim or enforce a right at a proper time. Black's Law Dictionary (5th Ed. 1979). The effect of laches is to prevent one from bringing a claim after the proper time for bringing the claim has elapsed.