SMU | Dedman School of Law

SMU Law Review

Volume 16 | Issue 3 Article 7

January 1962

Enforcement of Foreign Equitable Land Decrees: Comity vs. Full Faith and Credit

Marshall G. Martin

Enforcement of Foreign Equitable Land Decrees: Comity vs. Full Faith and Credit

Plaintiff sued for divorce in Oklahoma where both husband and wife resided and were domiciled. The Oklahoma court ordered the Defendant, who owned Texas land, to convey an undivided one-third interest in all his realty to the Plaintiff. The Defendant did not convey pursuant to the decree but went to Texas, where the Plaintiff then sought enforcement of the Oklahoma decree ordering the Defendant to convey the Texas land. *Held*: Texas will enforce a foreign equitable land decree directing conveyance of Texas land on principles of comity when the enforcement of the decree is not in conflict with established public policy of the state. *McElreath v. McElreath*, —Tex.—, 345 S.W.2d 722 (1961).

There must be jurisdiction over the subject matter and the person,[1] due process of law,[2] and a final judgment[3] in order for a judgment to be enforced under the full faith and credit clause[4] of the United States Constitution. With these requisites fulfilled, the judgment is then res judicata,[5] and when sued upon in the courts of other states, it must be given full faith and credit.[6] The state in which the property or person affected by the judgment is situated is called the situs.[7] Ordinarily courts of the situs state must give full faith and credit to a valid judgment of a sister state even though enforce-

[1] New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947); Morris v. Jones, 329 U.S. 545 (1947); Thompson v. Thompson, 226 U.S. 551 (1913); Simmons v. Saul, 138 U.S. 439 (1891).

[2] Griffin v. Griffin, 327 U.S. 220 (1946); Pink v. A.A.A. Highway Express Inc., 314 U.S. 201 (1941).

[3] Williams v. North Carolina, 325 U.S. 226 (1945); Barber v. Barber, 323 U.S. 77 (1944).

[4] 28 U.S.C. § 1738 (1950):

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

[5] Morris v. Jones, 329 U.S. 545 (1947); Titus v. Wallick, 306 U.S. 282 (1939).

[6] Examples of particular types of judgments which are conclusive and enforced under the full faith and credit clause are: adoption proceedings, Hood v. McGehee, 237 U.S. 611 (1915); garnishment lien, Gannon v. American Airlines, Inc., 251 F.2d 476 (10th Cir. 1958); Gordon v. Vallee, 119 F.2d 118 (5th Cir.), *cert. denied*, 314 U.S. 644 (1941); divorce decrees when all elements of jurisdiction are present and the decree is final, Williams v. North Carolina, 317 U.S. 287 (1942); alimony given under a final decree, Sistare v. Sistare, 218 U.S. 11 (1910). Probate judgments are not entitled to full faith and credit when they affect out-of-state land. *In re* Barrie's Estate, 240 Iowa 431, 35 N.W.2d. 658 (1949). Both in personam decrees directing the payment of money and other money judgments are entitled to full faith and credit. Barber v. Barber, 323 U.S. 77 (1944) (alimony decree); Fauntleroy v. Lum, 210 U.S. 230 (1908) (money judgment based on a gambling debt).

[7] Zanes v. Mercantile Bank & Trust Co., 49 S.W.2d 922 (Tex. Civ. App. 1932—Dallas) *error ref.*

ment will be contrary to the public policy of the situs state.[8] There may be exceptional cases in which the judgment of one state may not override the laws and policies of another state, but the United States Supreme Court is the final arbiter of the exceptions.[9]

Since one state has no jurisdiction over another state's land, the situs state is not required to give full faith and credit to foreign in rem judgments which directly affect the title to its land.[10] The conflict arises over whether foreign in personam decrees directing the conveyance of land are to be accorded the same treatment as in rem judgments.[11] It is fundamental that the forum court has jurisdiction to issue a decree forcing a defendant before it to convey out-of-state land, and a deed executed pursuant to that decree will be universally honored by courts of the situs state.[12] However, the same situs court may refuse to enforce an unexecuted foreign decree on the ground that other states are thereby given indirect control over situs land by enforcement of unexecuted decrees under the theory of full faith and credit.[13] Moreover, it is said that an equitable land decree only creates a duty to the forum court which promulgated the decree and is not a binding obligation which may be sued upon at the situs.[14] This view treats the decree as merely a means of enforcement which is entitled to recognition only within the state in which

[8] Roche v. McDonald, 275 U.S. 449 (1928); Fauntleroy v. Lum, 210 U.S. 230 (1908); Note, 11 Sw. L.J. 237 (1957). In *Fauntleroy v. Lum* the decree was based on a gambling debt. It was enforced in the situs state, Mississippi, despite the fact that gambling was a misdemeanor in Mississippi at that time.

[9] Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 438 (1943).

[10] Carpenter v. Strange, 141 U.S. 87 (1891); Tolley v. Tolley, 210 Ark. 144, 194 S.W.2d 687 (1946); West v. West, 268 P.2d 250 (Okla. 1954); see, *e.g.*, Deschenes v. Tallman, 248 N.Y. 33, 161 N.E. 321 (1928).

[11] Goodrich, Conflict of Laws § 218 (3d ed. 1949); Stumberg, Conflict of Laws 125 (2d ed. 1951); Barbour, *The Extra-Territorial Effect of the Equitable Decree*, 17 Mich. L. Rev. 527 (1919); Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 U. Chi. L. Rev. 620 (1954); Goodrich, *Enforcement of a Foreign Equitable Decree*, 5 Iowa Bull. 230 (1920); Lorenzen, *Application of Full Faith and Credit to Equitable Decrees for the Conveyance of Foreign Land*, 34 Yale L.J. 591 (1925).

[12] Muller v. Dows, 94 U.S. 444 (1876); Rozan v. Rozan, 49 Cal. 2d 322, 317 P.2d 11 (1957); see *e.g.*, Phillips v. Phillips, 224 Ark. 225, 272 S.W.2d 433 (1954). Barbour, *supra* note 11, at 547, 550, reasons that a "deed would be voidable for duress" if it did not deal rightfully with title to situs land. Thus, in accepting a deed executed pursuant to an equitable decree, the same result is achieved as if the unexecuted decree had been given full faith and credit. He questions whether the defendant's disobedience by leaving the state without executing the decree should be rewarded by the situs court's refusal to give full faith and credit to the valid sister state decree. See Gilliland v. Inabnit, 92 Iowa 46, 60 N.W. 211 (1894), for a case in which a deed was sought to be set aside on grounds of duress because it was executed pursuant to an equitable decree.

[13] Courtney v. Henry, 114 Ill. App. 635 (1904); Fall v. Fall, 75 Neb. 104, 113 N.W. 175 (1907), *aff'd sub nom.* Fall v. Eastin, 215 U.S. 1 (1909); Bullock v. Bullock, 5 N.J. Eq. 561, 30 Atl. 676 (Ct. Err. & App. 1894); Burton-Lingo Co. v. Patton, 15 N.M. 304, 107 Pac. 679 (1910).

[14] Bullock v. Bullock, *supra* note 13.

it was promulgated.[15] This approach seems to be confined to equitable land decrees, since equitable decrees directing the payment of money create enforceable obligations which are entitled to full faith and credit.[16] Writers have pointed to the fact that there is little distinction between an equitable decree for money and one for land as proof that a binding obligation is created by a land decree.[17] However, the United States Supreme Court in *Fall v. Eastin*[18] held that a foreign equitable land decree of a Washington court did not have to be given full faith and credit by the courts of Nebraska. The Court reasoned that the petitioner was attempting to have the decree, accompanied by a commissioner's deed, transfer title directly.[19] In refusing to accord the Washington decree full faith and credit, the Court characterized the decree as an attempt to affect directly the title to land outside the jurisdiction of the Washington court.[20] Also, the Court noted that there were differing statutory policies between Washington and Nebraska concerning property settlements after divorce.[21] Courts which refuse to enforce foreign equitable land decrees generally do so on the basis of this decision.[22] On almost identical facts as those in *Fall v. Eastin*, the Iowa Supreme Court in *Matson v. Matson*[23] held that a Washington equitable land decree was entitled to enforcement in Iowa. That court reasoned that since there was no conflict between the public policies of the two states the foreign decrees would be enforced.[24] Lack of conflicting public policy was held to be the factor distinguishing the case from *Fall v. Eastin*.[25] The *Fall v. Eastin* decision has been distinguished on this

[15] Wilson v. Braden, 48 W. Va. 196, 36 S.E. 367 (Sup. Ct. of App. 1900) (dictum).

[16] Barber v. Barber, 323 U.S. 77 (1944); Sistare v. Sistare, 218 U.S. 1 (1910); Lynde v. Lynde, 181 U.S. 183 (1901); Pennington v. Gibson, 21 U.S. (16 How.) 30 (1853).

[17] "The decree assumes substantially the same form whether it be for the payment of money or the conveyance of land; it is *formally* but an order to the defendant to do an act, which may be the payment of $1000 or the execution of a deed to Blackacre." Barbour, *supra* note 11, at 542. Barbour also points out that the method of enforcement, subject to statutory differences, is the same.

[18] 215 U.S. 1 (1909).

[19] *Id.* at 11, 12.

[20] See Lorenzen, *supra* note 11, at 605. Lorenzen maintains that the Court considered the decree to be in rem and therefore not enforceable for lack of jurisdiction under the theory of full faith and credit.

[21] Fall v. Eastin, 215 U.S. 1, 6 (1909).

[22] See Taylor v. Taylor, 192 Cal. 71, 218 Pac. 757 (1923); Courtney v. Henry, 114 Ill. App. 635 (1904); Fall v. Fall, 75 Neb. 104, 113 N.W. 175 (1907); Bullock v. Bullock, 5 N.J. Eq. 561, 30 Atl. 676 (Ct. Err. & App. 1894); Burton-Lingo Co. v. Patton, 15 N.M. 304, 107 Pac. 679 (1910); Sharp v. Sharp, 65 Okla. 76, 166 Pac. 175 (1916) (adjudication and decree of title held invalid but with intimation that order to convey would have been upheld).

[23] 186 Iowa 607, 173 N.W. 127 (1919).

[24] *Id.* at 610, 173 N.W. at 132.

[25] *Ibid.*

same ground in its place of origin, Nebraska, and is no longer followed in numerous other jurisdictions.[26]

The theory that the enforcement of foreign equitable land decrees must depend on whether there are conflicts in public policy between the forum and situs states is not to be confused with the doctrine of full faith and credit.[27] The full faith and credit clause imposes an *obligation* on the situs court which does not depend on a lack of conflicting public policies between the forum and situs states.[28] The recognition accorded the foreign land decree in the *Matson* case was not based on the obligation of the full faith and credit clause but rather upon principles analogous to the theory of comity.[29] Under principles of comity the recognition given to foreign decrees depends entirely upon the courtesy and good will of the situs state's courts.[30] The theory of comity has been severely criticized because it prevents the settling of controversies in the area of conflict of laws by predictable rules and principles.[31] The United States Supreme Court repudiated the theory in *Fauntleroy v. Lum*,[32] and

[26] Rozan v. Rozan, 49 Cal. 2d 322, 317 P.2d 11 (1957) (dictum); see Meents v. Comstock, 230 Iowa 63, 296 N.W. 837 (1943); Dunlap v. Byers, 110 Mich. 109, 67 N.W. 1067 (1896) (dissolution of a partnership); McCune v. Goodwillie, 294 Mo. 306, 102 S.W. 997 (1907); Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959); Burnley v. Stevenson, 24 Ohio St. 474 (1873) (contract); Milner v. Schaefer, 211 S.W.2d 600 (Tex. Civ. App. 1948—San Antonio) *error ref.*; Greer v. Greer, 189 S.W.2d 104 (Tex. Civ. App. 1945—Texarkana), *rev'd on other grounds*, 144 Tex. 528, 191 S.W.2d 848 (1946); Hall v. Jones, 54 S.W.2d 835 (Tex. Civ. App. 1932—San Antonio) *no writ hist.*; Piedmont Coal & Iron v. Green, 3 W. Va. 54 (Ct. App. 1868) (dictum); Bailey v. Tully, 242 Wis. 226, 7 N.W.2d 837 (1943) (used as a defense); Mallette v. Scheerer, 164 Wis. 415, 160 N.W. 182 (1916); *cf.* Barber v. Barber, 51 Cal. 2d 244, 331 P.2d 628 (1958) (cited by the dissent in the instant case and approving Rozan v. Rozan, *supra*, but refusing enforcement for lack of jurisdiction); Redwood Investment Co. v. Exley, 64 Cal. App. 455, 221 Pac. 973 (1923).

[27] The orthodox view of full faith and credit

> requires that the judgment of a state court which had jurisdiction of the parties and the subject matter in the suit, shall be given in the courts of every other state the same credit, validity and effect which it has in the state where it was rendered, and be equally conclusive on the merits . . . and the judgment, if valid where rendered, must be enforced in such other state although repugnant to its own statutes. Roche v. McDonald, 275 U.S. 449, 451-52 (1928).

It has also been stated that:

> That clause [full faith and credit] compels that controversies be still so that where a state court has jurisdiction of the parties and subject matter, its judgment controls in other states to the same extent as it does in the state where rendered. Riley v. New York Trust Co., 315 U.S. 343, 349 (1942).

[28] Once the requisites of jurisdiction, due process, and finality are satisfied and the decree is determined to be one which is within the terms of the full faith and credit clause there is an *obligation* on the situs court to enforce the decree even if it is contrary to local public policy. Roche v. McDonald, *supra* note 27.

[29] For an excellent definition of comity see Esmar v. Haeussler, 341 Mo. 33, 106 S.W.2d 412, 414 (1937).

[30] Goodrich, *op. cit. supra* note 11, at § 7.

[31] *Ibid.*

[32] 210 U.S. 230 (1908) (5-4, White dissenting) (recognizing under the theory of

Mr. Justice Frankfurter has stated that ". . . the Full Faith and Credit Clause puts the Constitution behind a judgment instead of the too fluid, ill-defined concept of 'comity.' "[33]

The position of the Texas courts concerning recognition of foreign equitable land decrees based on divorce proceedings was uncertain prior to the decision in the instant case. In an earlier case, *Hall v. Jones*,[34] involving a title dispute, a Texas court held that where a party had initiated a suit in Oklahoma involving title to Texas land, that party was estopped from challenging the adverse Oklahoma decree in a later suit brought by him in Texas. Prior to the principal case, the strongest Texas case for enforcement of foreign equitable land decrees was *Milner v. Schaefer*,[35] in which a partner's agreement to convey Texas land was incorporated into a Colorado decree dissolving a partnership. It was held that the partner was bound by the decree since the partners themselves had voluntarily invoked the decision of the Colorado court. Both the *Milner* and *Hall* cases involved situations in which the party seeking to avoid a foreign equitable land decree had begun or approved the litigation in the foreign jurisdiction.[36] This was not the situation in the Texas civil appeals decision of *Greer v. Greer*.[37] The *Greer* case held that a foreign equitable land decree based on divorce proceedings was entitled to recognition in Texas. However, that decision is weakened by a subsequent reversal on the ground that the land in the decree was not sufficiently described.[38]

The instant case authoritatively places Texas among the states which will enforce foreign equitable land decrees arising out of divorce proceedings. The court decided the case on principles of comity and reserved making a decision on the applicability of the full faith and credit clause until a case arises involving the enforce-

full faith and credit a Missouri judgment for a gambling debt which was not otherwise collectible in the situs state, Mississippi). Fauntleroy v. Lum implicitly overruled Haddock v. Haddock, 210 U.S. 562 (1905) in its use of "comity." For a discussion of the cases see Schofield, *Full Faith and Credit vs. Comity and Local Rules of Jurisdiction and Decision*, 10 Ill. L. Rev. 11 (1915).

[33] Williams v. North Carolina, 325 U.S. 226, 228 (1945); see Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198, 201 (1918) (an opinion by Cardozo criticizing the doctrine of comity).

[34] 54 S.W.2d 835 (Tex. Civ. App. 1932—San Antonio) *no writ hist.*

[35] 211 S.W.2d 600 (Tex. Civ. App. 1948—San Antonio) *error ref.*

[36] See Toledo Society for Crippled Children v. Hickok, 152 Tex. 578, 261 S.W.2d 692 (1953), in which an Ohio court had determined the validity of a devise of Texas land. The Texas Supreme Court refused to be bound by the decision but stated in dictum that if the parties who sought to avoid the Ohio decree had begun the litigation, they would have been estopped to deny the Ohio decree.

[37] 189 S.W.2d 104 (Tex. Civ. App. 1945—Texarkana), *rev'd on other grounds*, 191 S.W.2d 848 (1946).

[38] Greer v. Greer, 144 Tex. 528, 191 S.W.2d 848 (1946).

ment of a foreign equitable land decree which is violative of established public policy. However, the majority followed the reasoning of *Matson v. Matson*[39] and pointed out that a conflict in public policy between the situs and forum states will preclude enforcement of a foreign decree under the theory of comity. It is significant that although Texas statutes specifically prohibit the divesting of title to separate property,[40] the Oklahoma court here decreed such a divestiture pursuant to an Oklahoma statute.[41] The majority did not consider this conflict in statutory provisions a violation of "established public policy," yet the court formulated no definitive standard by which to ascertain what constitutes a violation of public policy.[42] Although the court refused to determine the validity of the application of the full faith and credit clause, the majority accepted the view which is essential to that doctrine—that an equitable decree is a binding obligation upon which a suit may be based.[43] Mr. Justice Griffin, in dissent, took a contrary position by saying that no right was created by the decree alone. He made a distinction between the instant case and those cases in which the courts have recognized foreign equitable land decrees on the ground that they were based on antecedent debts.[44] The court also rejected the proposition that recognition of the foreign equitable land decree would give a foreign court control of land in the situs state.[45] It is significant that much of the authority and reasoning used by the majority is based (1) on applications of the full faith and credit doctrine, or (2) on theoretical treatments of that doctrine (a point also noted and criticized by the dissent). Thus, there is an indication that if the court is faced with an extreme conflict in public policies it may utilize the doctrine of full faith and credit to enforce a valid foreign land

[39] 186 Iowa 607, 173 N.W. 127 (1919).

[40] Tex. Rev. Civ. Stat. Ann. art. 4638 (1960).

[41] Okla. Stat. tit. 12, § 1278 (1951).

[42] A more restricted meaning than that which the present court had in mind is often enunciated by courts as a rule of public policy. "Fundamental public policy is declared in the Constitution . . . to be looked for in legislative enactments. . . ." District Grand Lodge No. 25, G.U.O.O.F. v. Jones, 138 Tex. 537, 160 S.W.2d 915, 920 (1942); see, *e.g.*, New Amsterdam Cas. Co. v. Jones, 135 F.2d 191 (6th Cir. 1943).

[43] 345 S.W.2d at 727.

[44] 345 S.W.2d at 735. Although distinguished by the dissent on other grounds, it should be noted that Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959); Matson v. Matson, 186 Iowa 607, 173 N.W. 127 (1919); and Mallette v. Scheerer, 164 Wis. 415, 160 N.W. 182 (1916) are cases in which decrees were not based on an antecedent debt and yet were enforced.

[45] The court accepted the reasoning of Barbour, *supra* note 11, at 547-50, that the defendant should not be rewarded for disobedience to the court rendering the decree since if the defendant does obey, and executes a deed pursuant to the decree, it will be honored in the situs state. "Whatever intrusion on the [situs] state's exclusive control is implied in recognition of the decree is accomplished through the recognition of the deed" by the situs state court. Currie, *supra* note 11, at 629.

decree. Moreover, the majority goes much further than most courts by enforcing the decree in the face of differing statutory provisions.

In a federal system it is imperative that valid judgments of sister states be fully recognized by other states in order that justice may not be thwarted by the simple expedient of the losing party's crossing a state line. The full faith and credit clause is the means by which such recognition is compelled. Moreover, because of its obligatory nature, the doctrine of full faith and credit results in a certitude which is indispensable to effective judicial relief outside the forum state. The use of the doctrine of comity does not result in this desired certitude. This shortcoming is accentuated by the fact that the application of the doctrine of "comity" depends upon questions of conflicts in public policy between states. The Texas Supreme Court in this case correctly recognized the foreign equitable land decree, but the use of the doctrine of comity rather than full faith and credit in according recognition is lamentable. The court has reserved to itself the power to strike down a particularly odious foreign land decree at the expense of certitude and predictability. A lawyer having the choice of presenting his case on the theory of comity or full faith and credit, when faced with a possible conflict in public policy, can rely alternatively upon the doctrine of full faith and credit—and will find support in the dictum of this opinion. However, the ultimate solution to the problem of the effect to be given to foreign equitable land decrees must, in all probability, await a final solution by the United States Supreme Court.

Marshall G. Martin