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CLERK OF SUPERIOR COURT
STATE OF WASHINGTON
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No. 34256-1-II

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STATE OF WASHINGTON
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DEPUTY

THE COURT OF APPEALS, DIVISION II

State of Washington

In re the Marriage of:
MARIUSZ K. KOWALEWSKI, Petitioner

and

BARBARA KOWALEWSKA, Respondent

PETITION FOR REVIEW

J. Mills
WSBA# 15842
Attorney For Appellant
944 Court E
Tacoma, Washington 98402
(253) 284-0802

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A. Identity of Petitioner

Mr. Kowalewski, the appellant, requests that The Supreme Court accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court of Appeals Decision

Mr. Kowalewski seeks review of a commissioner's decision affirming the Superior Court, and the Court of Appeals decision dated November 28, 2006 denying a Motion to Modify. A copy of the decision terminating review is appended.

C. Issue Presented for Review

Does the Superior Court have authority to divide real estate located in Poland as part of a marriage dissolution proceeding filed in Washington?

Can authority to divide foreign real estate be conferred on the Superior Court in a divorce action by consent of the parties?

Did the Superior Court in this case actually divide Polish real estate by awarding to various parties in its Decree "all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of" the parties' property located in Poland even if the court later

clarifies its decision by indicating the court did not intend to affect title to the Polish real estate?

Statement of the Case

This case calls upon the court to reaffirm the holding and rationale of Brown v. Brown, 46 Wn.2d 370, 372, 284 P.2d 859 (1955) (attached), or alternatively to clarify the authority of Washington courts to divide foreign property. Brown holds generally that Washington courts are without authority to decide ownership issues as to real property located in foreign jurisdictions. A copy of Brown is appended.

This is a routine dissolution case, with one unusual aspect: The parties have real property in Poland – both an Apartment located in Wroclaw, Poland, and a parcel of farmland in Orlowiec, Poland. See Decree at paragraph 1.2, paragraph “m”. (A copy of the Decree is appended.

In its Decree of Dissolution, the court awarded the Apartment to Ms. Kowalewska and the farmland to Mr. Kowalewski. Specifically, the court awarded “all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of” the parties’ property in Poland. CP 12.

The court also divided all of the parties' real and personal property in Washington State, but the sole issue on appeal is whether the court properly had jurisdiction to affect title to the property in Poland.

Appellant concedes that all of the parties consented to jurisdiction at the time of the divorce trial. Hence, one question presented is whether, and to what extent, the parties can properly agree to confer jurisdiction over the Polish property.

Following the entry of the Decree, and after the time for appeal had expired, Mr. Kowalewski sought to vacate the Decree's provisions relating to the Polish real estate on the basis of CR 60(b)(1) – "mistake . . . or irregularity in obtaining a judgment", CR 60(b)(5) – "The judgment is void", and CR 60(b)(11) – "Any other reason justifying relief from the operation of the judgment." CP 18.

The trial court denied Mr. Kowalewski's motion to vacate, making some express findings and conclusions in its order.

First, the court found that it "has had personal and subject matter jurisdiction over the parties and the matter herein at all relevant times." CP 22.

Second, the court found that "the parties expressly waived any objection to the court's exercise of jurisdiction over their rights in real property situate outside the State of Washington." CP 22-23.

Third, the court opined that it “did not purport to directly affect title to the property in Poland.” CP 23.

Fourth, the court decided issues about the propriety of dividing the Polish real estate “should have been raised previously in [Mr. Kowalewski’s] motion for reconsideration and/or his appeal.” CP 23.

For these reasons, the motion was denied. A timely appeal followed. The decision below was upheld by the Court of Appeals.

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The question of the Superior Court’s jurisdiction to affect title to real estate located outside Washington State seems to be settled. According to Brown v. Brown, 46 Wn.2d 370, 281 P.2d 850 (1955), the Superior Court cannot affect title to real estate located in Poland or any other jurisdiction.

The decisions below conflict with the Brown case and accordingly review is authorized by RAP 13.4(b)(1).

The Brown case involved a divorce Decree issued by California courts which purported to award title to property in Spokane to husband. When challenged in Washington, our Supreme Court held:

It is a fundamental maxim of international jurisprudence that every state or nation possesses an exclusive sovereignty and jurisdiction within its own territory. The rule is well

established that in divorce proceedings the courts of one state can not directly affect the legal title to land situated in another state.

Brown, 46 Wn.2d at 372. (Citations omitted.)

Just as California courts cannot affect legal title to real estate in Washington State, so too, Washington State courts cannot affect legal title to real estate in Poland.

The Decree in this case contains the following operative language:

BARBARA B. KOWALEWSKA is awarded as her exclusive property all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of, the parties' apartment located in Wroclaw, Strzegomska 290/12, Poland.

CP 12.

And, the Decree contains the following additional operative language:

MARIUSZ K. KOWALEWSKI is awarded as his exclusive property all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of, the parties' farmland located in Orłowiec, Poland.

CP 12.

It is impossible to imagine any language *more* intended to affect title to the real estate. Brown indicates that the court was without jurisdiction to do so.

All parties concede that no objection to the court's authority was raised at the trial. However, parties cannot confer subject matter jurisdiction on the court by agreement between themselves; a court either has subject matter jurisdiction or it does not; if it does not, any judgment entered is void, and is, in legal effect, no judgment at all. Marriage of Furrow, 115 Wn. App. 661, 63 P.3d 821(2003) (citing to In re Habeas Corpus of Wesley, 55 Wn.2d 90, 93-94, 346 P.2d 658 (1959)).

Ultimately, this case is about comity and about the Sovereign authority of Poland.

Polish courts are certainly capable of dividing *fairly* property in Poland. They may have much more information about values and other facts, such as chain of title and circumstances under which the property came to be owned by the parties. Thus, notions of comity¹ militate in favor of having Polish property divided by the courts in Poland.

There may be special laws applicable to ownership of Polish property by foreigners that might apply. On these issues, too, the Polish courts are more competent to decide what should be done.

¹ Comity is the idea that no one court is necessarily more fair or reasonable than another and that courts should respect the integrity and fairness of other jurisdictions, and that it cannot be presumed that another court is somehow "less fair" than are the courts in Washington, at least without some substantive showing on that question, and none appears in the record here.

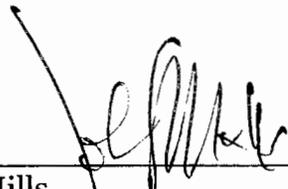
In all events, neither Mr. Kowalewski, nor Ms. Kowalewska, nor their lawyers have authority to waive, or agree to waive, the sovereign authority of Poland to decide ownership of real estate in Poland. Only the duly elected government of Poland can do that. Cf. State v. Morse, 156 Wn.2d 1, 8, 123 P.3d 832 (2005) (“Ordinarily, only the person who possesses a constitutional right may waive that right.”)

It may be that because we now live in a mobile society where it is very common for married persons to hold real estate in many different jurisdictions, the cost and complexity of dividing such assets in multiple jurisdictions is no longer reasonable and accordingly, perhaps Brown should be overruled, or modified in some fashion. If so, obviously, that is something that must be done by The Supreme Court.

CONCLUSION.

For reasons set out above, the court should accept review of this case.

RESPECTFULLY SUBMITTED this 28th day of December, 2006.



J. Mills
WSBA# 15842
Attorney for Mr. Kowalewski

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARIUSZ K. KOWALEWSKI,

Appellant,

v.

BARBARA B. KOWALEWSKI,

Respondent.

No. 34256-1-II

ORDER DENYING MOTION TO MODIFY

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
CLERK

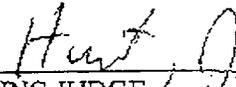
APPELLANT has filed a motion to modify a Clerk's ruling dated August 25, 2006, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 20th day of November, 2006.

PANEL: Jj. Hunt, Quinn-Brintnall, Penoyar

FOR THE COURT:


PRESIDING JUDGE

John Stratford Mills
Attorney at Law
944 Court E
Tacoma, WA, 98402-5604

Jason P Benjamin
Law Offices of Benjamin & Healy PLLC
10116 36th Avenue Ct SW Ste 310
Lakewood, WA, 98499-6001

Thomas Ted Osinski Jr
Attorney at Law
944 Court E
Tacoma, WA, 98402-5604

Timothy L. Healy
Law Offices of Benjamin & Healy PLLC
10116 36th Avenue Ct SW Ste 310
Lakewood, WA, 98499-6001

06
MAY 11 2006
COURT OF APPEALS
DIVISION II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In re the Marriage of:

MARIUSZ K. KOWALEWSKI,

Appellant,

and

BARBARA B. KOWALEWSKA,

Respondent.

No. 34256-1-II

RULING AFFIRMING ORDER
DENYING MOTION TO
VACATE DECREE

Mariusz Kowalewski appeals an order denying his motion to vacate the decree dissolving his marriage to Barbara Kowalewska. He contends that the trial court exceeded its jurisdiction when it awarded property in Poland as part of the decree. Kowalewska filed a motion on the merits under RAP 18.14. Concluding that Kowalewski has not shown that the trial court exceeded its jurisdiction, this court grants the motion on the merits and affirms the order denying his motion to vacate the decree.

In 2003, Kowalewski petitioned to dissolve his marriage to Kowalewska. On March 25, 2005, following a trial, the court found that:

The parties have community property in Poland. Wife shall be awarded the apartment property and husband the farm property in Poland. These properties are deemed substantially equal in value in the absence of any reliable evidence as to their current fair market value.¹

In its decree, the court ordered:

PARCEL 3: Apartment in Poland

BARBARA B. KOWALEWSKA is awarded as her exclusive property all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of, the parties' apartment located in Wroclaw, Strzegomska 290/12, Poland.

PARCEL 4: Farmland in Poland

MARIUSZ K. KOWALEWSKI is awarded as his exclusive property all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of, the parties' farmland located in Orlowiec, Poland.²

Neither party appealed the decree. On October 27, 2005, Kowalewski moved under CR 60(b)(1), (5) and (11) to vacate the decree to strike the provisions regarding the property in Poland. He asserted that the trial court did not have jurisdiction to award real property located outside the state of Washington. The trial court denied his motion, finding:

that the Court has had personal and subject matter jurisdiction over the parties and the matter herein at all relevant times; that Washington law grants the Court jurisdiction to divide the parties' interests in all property of either or both of them, wherever situated; that the parties expressly waived any objection to the court's exercise of jurisdiction over their rights in real property situate outside the State of Washington; that the Court did not purport to directly affect title to property in Poland by dividing the parties rights and interests in said property by the provisions of the Decree; and that this matter was or should have been raised previously in petitioner's motion

¹ Clerk's Papers (CP) at 5.

² CP at 12.

for reconsideration and/or his appeal, and that this motion is therefore without merit.³

Kowalewski appeals, contending that under *Brown v. Brown*, 46 Wn.2d 370 (1955), Washington courts have no jurisdiction to award real property located outside the state of Washington as part of a dissolution decree. In concluding that a California divorce decree, which awarded a deed to property in Washington to the husband, had no legal force in Washington, the *Brown* court held:

It is a fundamental maxim of international jurisprudence that every state or nation possesses an exclusive sovereignty and jurisdiction within its own territory. The rule is well established that in divorce proceedings the courts of one state can not directly affect the legal title to land situated in another state.

46 Wn.2d at 372.

This court reviews a trial court's decision on a motion to vacate a judgment for an abuse of discretion. *Lockett v. Boeing Co.*, 98 Wn. App. 307, 309 (1999), *review denied*, 140 Wn.2d 1026 (2000). A court abuses its discretion when its decision is based on untenable grounds or untenable reasons. *Lockett*, 98 Wn. App. at 309-10. Kowalewski contends that in light *Brown*, the trial court's denial of his motion to vacate was an abuse of discretion.

But, as the Washington Family Law Deskbook notes:

The key word in the preceding quote from the *Brown* case is "directly." Almost all modern decisions hold that a court can award to one party out-of-state realty held by the other party, as long as the court acts in personam and does not attempt to change title by way of a direct decree.

³ CP at 22-23.

See *Power of Divorce Court to Deal with Real Property Located in Another State*, 34 A.L.R.3d 962 (1970).

WASHINGTON FAMILY LAW DESKBOOK (Wash. St. Bar Assoc. 2d ed. 2000), at 32-6.

Kowalewski contends that by awarding Kowalewska "all right, title and interest, including rights to sell, rent or make any decision over, and full monetary value of, the parties' apartment located in" Poland, the trial court "directly" affected the legal title to that apartment.⁴ Thus, he contends that that portion of the decree is void.

But in denying Kowalewski's motion to vacate, the trial court clarified that its decree did not purport to directly affect title to property in Poland. Kowalewski invoked the jurisdiction of the Washington court by petitioning to dissolve his marriage. The decree divided the personal interests of Kowalewski and Kowalewska in their community property, including their interests in the real property in Poland. The effect of that decree on the title to the real property in Poland is a matter for the Polish courts. Just as Washington courts "owe[d] no deference" to the California decree in *Brown*, 46 Wn.2d at 373, the Polish courts may owe no deference to the Washington decree. But that does not make the Washington decree void for lack of subject matter jurisdiction.

Under RAP 18.14(e)(1)(c), an appeal is clearly without merit if the issues on review "are matters of judicial discretion and the decision was clearly within the discretion of the trial court." The trial court's denial of Kowalewski's motion to vacate was clearly within its discretion. Thus, his appeal is clearly without merit. Accordingly, it is

⁴ CP at 12.

34256-1-II

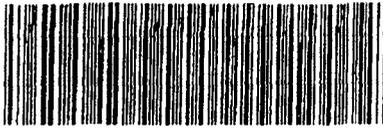
ORDERED that the order denying Kowalewski's motion to vacate the decree is affirmed.

DATED this 25th day of August, 2006.

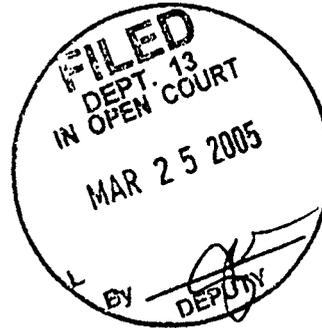
Eric B. Schmidt

Eric B. Schmidt
Court Commissioner

cc: J. Mills
Thomas T. Osinski, Jr.
Jason P. Benjamin
Timothy L. Healy
Hon. Kathryn J. Nelson



03-3-03700-1 22783936 DCD 03-28-05



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Marriage of:
MARIUSZ K. KOWALEWSKI,
Petitioner,
and
BARBARA B. KOWALEWSKA,
Respondent.

No. 03-3-03700-1
DECREE OF DISSOLUTION
(DCD)
Clerk's Action Required

I. JUDGMENT/ORDER SUMMARIES

1.1 Restraining Order Summary:

Restraining order Summary is set forth below:

Name of person restrained: MARIUSZ K. KOWALEWSKI
Name of person protected: BARBARA B. KOWALEWSKA
See paragraph 3.8.

**VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.8 BELOW
WITH ACTUAL KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE
UNDER CHAPTER 26.50 RCW, AND WILL SUBJECT THE VIOLATOR TO
ARREST. RCW 26.09.060**

DECREE (DCD) (DCLSP) (DCINMG)
WPF DR 04.0400 (6/2004)
RCW 26.09.030; .040; .070 (3) -- Page 1 of 7

DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500

ORIGINAL

1 1.2 Real Property Judgment Summary:

2 Real Property Judgment Summary is set forth below:

3 **PARCEL 1: 8111 North Way SW, Lakewood, Washington**

4 Assessor's property tax parcel or account number: 9460000560

5 Legal description of the property awarded: Easterly 175 feet of westerly 210 feet of
6 tract 23, West Shore tracts, Lakewood, Pierce County, Washington

7 **PARCEL 2: 18 West Shore Ave. SW, Lakewood, Washington**

8 Assessor's property tax parcel or account number: 9460000590

9 Legal description of the property awarded: Tract 24, West Shore tracts, Lakewood,
10 Pierce County, Washington

11 **PARCEL 3: Apartment in Poland**

12 BARBARA B. KOWALEWSKA is awarded as her exclusive property all right, title and
13 interest, including rights to sell, rent or make any decision over, and full monetary value
14 of, the parties' apartment located in Wroclaw, Strzegomska 290/12, Poland.

15 **PARCEL 4: Farmland in Poland**

16 MARIUSZ K. KOWALEWSKI is awarded as his exclusive property all right, title and
17 interest, including rights to sell, rent or make any decision over, and full monetary value
18 of, the parties' farmland located in orlowiec, Poland. *KCB*

19 1.3 Money Judgment Summary:

20 Judgment Summary is set forth below.

- 21 A. Judgment Creditor MARIUSZ K. KOWALEWSKI
- 22 B. Judgment Debtor BARBARA B. KOWALEWSKA *(signature)*
- 23 C. Principal judgment amount \$55,000.00 *

24 DECREE (DCD) (DCLSP) (DCINMG)

25 WPF DR 04.0400 (6/2004)

26 RCW 26.09.030; .040; .070 (3) -- Page 2 of 7

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DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500

KCB * PROVIDED THE QDRD FOR \$9000 is entered (total \$105,000) (approximately)

1 D. Interest to date of Judgment \$-0-
 2 E. Attorney's fees \$-0-
 3 F. Costs \$-0-
 4 G. Other recovery amount \$-0-
 5 H. Principal judgment shall not bear interest; see provisions below.
 6 I. Attorney for judgment creditor Kevin G. Byrd
 7 J. Attorney for judgment debtor Gordon G. Hauschild

8 II. BASIS

9 Findings of Fact and Conclusions of Law have been entered in this case.

10 III. DECREE

11 IT IS DECREED that:

12 3.1 STATUS OF THE MARRIAGE.

13 The marriage of the parties is dissolved.

14 3.2 PROPERTY TO BE AWARDED THE HUSBAND.

15 The husband is awarded as his separate property the property set forth in the
 16 Findings of Fact and Conclusions of Law entered herein and incorporated by
 17 reference as part of this decree.

18 3.3 PROPERTY TO BE AWARDED TO THE WIFE.

19 The wife is awarded as her separate property the property set forth in the Findings
 20 of Fact and Conclusions of Law entered herein and incorporated by reference as
 21 part of this decree.

22 3.4 LIABILITIES TO BE PAID BY THE HUSBAND.

23 The husband shall pay the community or separate liabilities set forth in the
 24 Findings of Fact and Conclusions of Law entered herein and incorporated by
 25 reference as part of this decree.

26 DECREE (DCD) (DCLSP) (DCINMG)
 WPF DR 04.0400 (6/2004)
 RCW 26.09.030; .040; .070 (3) -- Page 3 of 7

DAVIES PEARSON, P.C.
 ATTORNEYS AT LAW
 920 FAWCETT -- P.O. BOX 1657
 TACOMA, WASHINGTON 98401
 TELEPHONE (253) 620-1500

1 The husband shall pay all liabilities incurred by him since the date of separation.

2 3.5 LIABILITIES TO BE PAID BY THE WIFE.

3
4 The wife shall pay the community or separate liabilities set forth in the Findings
5 of Fact and Conclusions of Law entered herein and incorporated by reference as
6 part of this decree.

7 The wife shall pay all liabilities incurred by her since the date of separation.

8 * * *

9 3.6 HOLD HARMLESS PROVISION.

10 Each party shall hold the other party harmless from any collection action relating
11 to separate or community liabilities set forth above, including reasonable
12 attorney's fees and costs incurred in defending against any attempts to collect an
13 obligation of the other party.

14 3.7 SPOUSAL MAINTENANCE.

15 Does not apply.

16 3.8 CONTINUING RESTRAINING ORDER.

17 A continuing restraining order is entered as follows:

18 MARIUSZ K. KOWALEWSKI is restrained and enjoined from
19 assaulting, harassing, molesting or disturbing the peace of BARBARA
20 B. KOWALEWSKA.

21 MARIUSZ K. KOWALEWSKI is restrained and enjoined from going
22 onto the grounds of or entering the home, workplace or school of
23 BARBARA B. KOWALEWSKA.

24 MARIUSZ K. KOWALEWSKI is restrained and enjoined from
25 knowingly coming within or knowingly remaining within 500 FEET of

1 the home, work place or school of BARBARA B. KOWALEWSKA.

2 **VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.8 WITH**
3 **ACTUAL KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE**
4 **UNDER CHAPTER 26.50 RCW, AND WILL SUBJECT THE VIOLATOR TO**
5 **ARREST. RCW 26.09.060**

6 **CLERK'S ACTION:**

7 The clerk of the court shall forward a copy of this order, on or before the next
8 judicial day, to: LAW ENFORCEMENT SUPPORT AGENCY (LESA)
9 records, which shall enter this order into any computer-based criminal
10 intelligence system available in this state used by law enforcement agencies to
11 list outstanding warrants

12 **SERVICE:**

13 The restrained party and attorney appeared in court; service of this order is not
14 required.

15 **EXPIRATION.**

16 This restraining order is permanent.

17 This restraining order supercedes all previous temporary restraining orders in
18 this cause number.

19 **3.9 JURISDICTION OVER THE CHILDREN.**

20 Does not apply because there are no dependent children.

21 **3.10 PARENTING PLAN.**

22 Does not apply.

23 **3.11 CHILD SUPPORT.**

24 Does not apply.

25 **DECREE (DCD) (DCLSP) (DCINMG)**
26 **WPF DR 04.0400 (6/2004)**
RCW 26.09.030; .040; .070 (3) -- Page 5 of 7

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ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500

1 3.12 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

2 Attorney's fees, other professional fees and costs shall be paid by the party
3 incurring same.

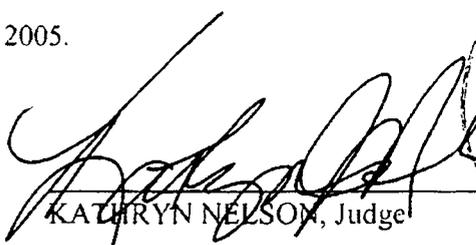
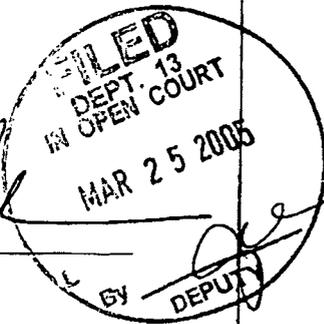
4 3.13 NAME CHANGES.

5 Does not apply.
6 The wife's name shall be changed to

7 3.14 OTHER.

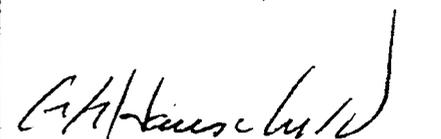
8
9 The Court hereby retains jurisdiction over this matter to determine any matters
10 which may arise in connection with the restraining order entered herein. Said
11 restraining order merges with and supersedes all prior restraining orders issued by
12 this court.

13 Dated this 25th day of March, 2005.

14
15 
16 KATHRYN NELSON, Judge
17
18 

17 Presented by:
18
19 DAVIES PEARSON, P.C.

Approved for entry, Notice of Presentation
waived, by:

20
21 
22 GORDON G. HAUSCHILD
23 WSBA #21005
24 Attorneys for respondent

20
21 
22 KEVIN G. BYRD
23 WSBA #12894
24 Attorney for petitioner

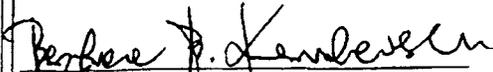
25 DECREE (DCD) (DCLSP) (DCINMG)
26 WPF DR 04.0400 (6/2004)
RCW 26.09.030; .040; .070 (3) -- Page 6 of 7

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920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500

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Approved by:

Approved by:



BARBARA B. KOWALEWSKA

MARIUSZ K. KOWALEWSKI

DECREE (DCD) (DCLSP) (DCINMG)
WPF DR 04.0400 (6/2004)
RCW 26.09.030; .040; .070 (3) -- Page 7 of 7

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DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500

**46 Wn.2d 370; CHARLES S. BROWN, Appellant, v. MURIEL H. BROWN, Respondent;
281 P.2d 850**

Page 370

46 Wn.2d 370, CHARLES S. BROWN, Appellant, v. MURIEL H. BROWN, Respondent

[No. 33063. Department Two. Supreme Court March 28, 1955.]

CHARLES S. BROWN, Appellant, v. MURIEL H. BROWN,
Respondent.(fn1)

[1] JUDGMENT - FOREIGN JUDGMENTS - CONSTITUTIONAL PROVISIONS - FULL FAITH AND CREDIT - COLLATERAL ATTACK. A decree rendered in a sister state can be collaterally attacked in the courts of this state upon the ground that it is void for want of jurisdiction.

[2] DIVORCE - EFFECT OF DIVORCE - DISPOSITION OF PROPERTY - REAL PROPERTY SITUATED IN ANOTHER STATE. In divorce proceedings, the courts of one state cannot directly affect the legal title to land situated in another state.

[3] COURTS - JURISDICTION - LOCAL ACTIONS - ACTIONS AFFECTING REAL PROPERTY. An action for partition of real estate situated in this state and a cross-action for cancellation of a deed to a one-half interest therein were properly brought in this state, because they are both local actions exclusively within the jurisdiction of the courts of this state.

Appeal from a judgment of the superior court for Spokane county, No. 138161, Bunge, J., entered June 11, 1954, upon findings in favor of the defendant, in an action for partition, tried to the court. Affirmed.

Joseph L. McDole and Samuel W. Fancher, for appellant.

Clarke & Eklow, for respondent.

----- Begin Footnote -----

(fn1) Reported in 281 P. (2d) 850.

[2] See 51 A. L. R. 1081; 14 Am. Jur. 430.

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MALLERY, J. -

The defendant wife owned a house and two lots in Spokane before her marriage to plaintiff on December 11, 1949. Thereafter, he coerced her into deeding him an undivided one-half interest in the property. On September 19, 1952, he procured an interlocutory decree of divorce by default, in a California action in which she did not appear. It approved a property settlement between the parties, which included the deed to the property in question.

The final decree of divorce was entered October 7, 1953, and the plaintiff husband brought this action, as a tenant in common, for the partition of the Spokane real estate, on November 25, 1953. The

defendant wife cross-complained seeking cancellation of the deed for fraud, duress, and coercion.

The plaintiff's demurrer to the cross-complaint was overruled. The court dismissed plaintiff's action for partition and granted defendant's prayer on her cross-complaint.

The plaintiff appeals. He does not challenge the sufficiency of the evidence to sustain the judgment, but, instead, contends that the demurrer should have been sustained, and that no evidence should have been admitted in support of the cross-complaint.

He relies upon the rule of *In re Garrity's Estate*, 22 Wn. (2d) 391, 156 P. (2d) 217, that where a property settlement is approved by a divorce decree, the rights of the parties rest upon the decree rather than the property settlement. From this, he argues that the validity of the deed is *res judicata*, and that respondent's cross-complaint to cancel it is a collateral attack upon the California decree.

[1] Assuming, without deciding, that this is so, it is still not decisive of the case. A decree can be collaterally attacked upon the ground that it is void for want of jurisdiction. In *Maple v. Maple*, 29 Wn. (2d) 858, 189 P. (2d) 976, we said:

"In two recent decisions of this court, it has been laid down as the law that the provisions of the Federal constitution requiring that full faith and credit be given in each state to the judicial proceedings of every other state do not prevent a collateral attack upon the jurisdiction of a sister state to

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render a judgment which is later offered in evidence in an action brought in another state, and that the record of a judgment rendered in the sister state may, in such collateral attack, be contradicted as to the facts necessary to give the court of that state jurisdiction. *Mapes v. Mapes*, 24 Wn. (2d) 743, 167 P. (2d) 405; *Wampler v. Wampler*, 25 Wn. (2d) 258, 170 P. (2d) 316."

[2] The California court had no jurisdiction over the Spokane real estate. It is a fundamental maxim of international jurisprudence that every state or nation possesses an exclusive sovereignty and jurisdiction within its own territory. The rule is well established that in divorce proceedings the courts of one state can not directly affect the legal title to land situated in another state. See 51 A. L. R. 1081. As was said in *Schluter v. Schluter*, 130 Cal. App. 780, 20 P. (2d) 723:

"If the lower court attempted to fix title to the property in Texas in the interlocutory decree of divorce, it went beyond its jurisdiction, and these portions of the decree complained of are of no binding force and effect. This is clearly made to appear in *Taylor v. Taylor*, 192 Cal. 71 [218 Pac. 756 758, 51 A. L. R. 1074], where it is said:

"Appellant's first contention is unquestionably correct. That the courts of one state cannot make a decree which will operate to change or directly affect the title to real property beyond the territorial limits of its jurisdiction must be conceded. The doctrine that a court, not having jurisdiction of the res, cannot affect it by its decree is firmly established. [Citing cases.]"

[3] In a divorce action, the fact that a court can effectuate its decree by contempt proceedings against persons within its jurisdiction, even though interests in land in another state are thereby indirectly affected, is of no comfort to appellant. He admits in his brief:

". . . the California Court at no time attempted to transfer title or change the ownership of the real

property in question . . . , but to the contrary left the property exactly as it was prior to the divorce. . . ."

To this it may be added that the California court required no acts of the parties with relation to the land in question. There can be, therefore, no occasion for contempt

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proceedings in the California court with which we need concern ourselves. Appellant brought his action for partition and respondent her cross-complaint for cancellation of the deed in Washington, because they are both local actions exclusively within the jurisdiction of the Washington courts. We owe no deference to a sister state in such matters.

The judgment is affirmed.

HAMLEY, C. J., HILL, WEAVER, and ROSELLINI, JJ., concur.

May 16, 1955. Petition for rehearing denied.

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