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PAR. 10

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IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

JOHN ELBERT REPP

Plaintiff

vs. No. 75852

JAN OLIVIA REPP

Defendant

JAN 10 MISC A* 10.00 * 10.00

FINAL DECREE

This cause came on to be heard on this the 17th day of December, 1974 before the Hon. Terry E. McNabb, Special Judge of the Fourth Circuit Court for Davidson County, Tennessee, upon the Complaint heretofore filed, personal service upon the defendant, default judgment duly entered against the defendant and the entire record herein.

As a preliminary matter, the Court heard from James Cope, Esq., attorney who desired to enter a special appearance on behalf of defendant Jan Repp for the purpose of entering a paper writing allegedly a decree of divorce from the State of Florida purporting to award a divorce to the defendant Jan Repp.

Over objection of counsel for plaintiff on the grounds that no proof could be adduced by the defendant before the default judgment was set aside, costs paid and an answer filed, the Court received said paper writing.

Following the allowance of the tendering of the Florida divorce, plaintiff duly moved to amend his complaint to set aside the alleged Florida divorce decree on the grounds of fraud. There being no objection thereto, said motion was granted. As to the text of the amendment, plaintiff stated that the original complaint should be amended to add the following words:

> "The alleged Florida divorce decree entered in this cause was false, fraudulent and void in that the defendant was not a resident of the State of Florida for six months next preceding the filing of the petition for divorce as required by the laws of that state; further that said defendant left this jurisdiction with

the minor children of the parties on false pretenses stating that she was only going for a visit because her mother was having surgery and would return with the children upon the completion of such surgery. Such fraud perpetrated on the plaintiff deprived him of the right to issue a writ of Ne Exeat Republica and to seek a judicial determination as to the best interests of the minor children and the proper custodian of such children."

Upon the testimony of witnesses heard in open Court, the Court is of the opinion and finds as follows:

1. This Court has jurisdiction of the parties, the minor children and the subject matter by reason of personal service upon the defendant pursuant to T.C.A. Sec. 20-235. The Florida decree was a result of service by publication and, therefore, that Court did not obtain in personam jurisdiction over the plaintiff.

2. That the postoffice return receipt card forming the basis of service of process in this cause was signed by the father of the defendant on her behalf and received by him at defendant's residence and accordingly he was a person authorized to accept delivery for her within the meaning of the Statute.

3. That because of the entry of a special appearance on behalf of defendant and the previous attendance of counsel observing on her behalf, defendant duly knew of the fact that this cause was set for hearing but has failed to file any responsive pleading in the cause and the default judgment taken against her is valid and should stand.

4. That plaintiff received no copy of any bill of divorce or complaint fromthe Florida Courts, nor was he told of the date of hearing of such divorce. According to the evidence, the first knowledge plaintiff had of any Florida divorce was the receipt of a copy of the alleged divorce decree, dated November 18, 1974. Following such receipt, he learned that a divorce action had been filed against him by the defendant on September 26, 1974, less than six months after she left the State of Tennessee.

5. That the defendant left this jurisdiction under false pretenses on June 1, 1974 and that the action in Florida was filed less than six months after defendant moved to Florida, and, therefore, jurisdiction was obtained in that Court by fraud, Florida's statutory requirements as to residence not having been complied with.

6. That the divorce decree and proceedings in the State of Florida are void and of no effect and they are not entitled to full faith and credit on the grounds hereinbefore mentioned.

7. That based on the evidence, the defendant is guilty of such cruel and inhuman treatment or conduct toward the plaintiff as makes further cohabitation unsafe and improper and that plaintiff is awarded an absolute divorce.

8. That the parties own certain real and personal property within the jurisdiction of this Court. Based on the evidence, the title to all of such personal property and real estate should be divested from the defendant and vested in the plaintiff. More particularly plaintiff is awarded all right, title and interest in the homeplace and furnishings therein, said homeplace being located at 8009 Stallion Court, Nashville, Davidson County, Tennessee, more particularly described as follows:

> Land in Davidson County, Tennessee, being Lot No. 33 on the Plan of Stacy Square, Section 2, as of record in Book 4175, page 30, Register's Office for said County.
>
> Said Lot No. 33 fronts 70.0 feet on the easterly margin of Stallion Court and extends back 137.8 feet on the northerly line, and 122.9 feet along the southerly line to a dead line in the rear, which is a broken line, measuring a total of 103.85 feet thereon.
>
> Being part of the same property conveyed to John E. Repp and wife, Jan C. Repp, by deed from Hillsboro Homes, Inc., of record in Book 4380, page 727, Register's Office for Davidson County, Tennessee.

9. All right, title and interest belonging to the defendant in a 1972 Ford Torino automobile, serial # 2835H271822 should be, and accordingly hereby is divested from the defendant and vested in the plaintiff.

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10. Based upon the testimony of the parties, it appears that plaintiff is the proper person to have control, and custody of the minor children of the parties, James Repp, age 6 years and John Repp, Jr., age 7 years, and that such custody is accordingly awarded to plaintiff.

In this regard, the Court has considered the cases of Beekman v. Beekman, 43 So. 923, and Bovin v. Hinsey, 183 So. 614. Under Florida Law, the domicile of the father is the domicile of the children and domicile in Florida cannot be acquired while the father is domiciled in another state.

11. In Burden v. Burden, 44 Tenn. App. 312, it was held that a foreign decree entered without notice purportedly awarding custody of minor children was not entitled to full faith and credit and the Tennessee courts could subsequently maintain an action for custody of the children.

Based on the evidence presented, this court has found that no notice of the Florida suit or date of hearing was given the plaintiff until he received a c opy of the Florida final decree, and, therefore, under Burden, supra, the Florida divorce is not entitled to full faith and credit.

12. Where, as here, the proof shows that the defendant had not acquired a Florida residence as of the date of filing for a Florida divorce and where such divorce is not entitled to full faith and credit, the Court must and does hold that both the wife and children are domiciliaries of Tennessee. Further, based upon the proof, the defendant is not living apart from the plaintiff for justifiable reasons or by agreement. For all of the foregoing reasons, this Court finds it has jurisdiction over the children in support of its award of custody to the plaintiff in Paragraph 10 of this Order.

Costs of this cause are taxed to the defendant.

Enter this 3rd day of ~~December~~ Jan, 75.

Terry E. McNabb, Special Judge

APPROVED FOR ENTRY:

Stanley H. Sidicane
Attorney for Plaintiff

Deputy Clerk

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GEORGE L. BOOKER Clerk
... is a true copy

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IDENTIF. REFERENCE

JAN 10 2 57 PM '75

FELIX A. WILSON REGISTER
DAVIDSON COUNTY, TENN.

I hereby certify that this is a true copy of original instrument filed in my office this 10th day of January 1975
GEORGE L. BOOKER Clerk.
By Barbara Eddings
Deputy Clerk