6325

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-191441 DATE: May 11, 1978

MATTER OF: Richard D. Bruce - Transportation expenses of minor married daughter

DIGEST: A Forest Service employee's minor daughter who was secretly married before traveling with her parents to her father's new official duty station must be regarded as having a valid marriage status at the time of the move, and, therefore, may not be considered an unmarried minor child so as to entitle the employee to reimbursement for her transportation.

This decision to Mr. H. Larry Jordan, a certifying officer for the United States Department of Agriculture, is in response to his letter dated March 3, 1978, reference AC-2 HLJ, with enclosed voucher, requesting an advance decision as to the propriety of paying the claim of Richard D. Bruce, an employee of the Forest Service, for transportation, per diem, and temporary quarters for his 16 year old daughter who was secretly married at the time of his permanent change of station from Marion, Virginia, to Grangeville, Idaho.

The record indicates that in May, 1977, Barbara K. Bruce, age 16, and Jackie W. Litton, age 17, traveled from Marion, Virginia, to North Carolina and were there married without the consent or knowledge of Barbara's parents. Barbara then returned to her family home and traveled to Grangeville in the company of her parents without revealing the existence of this marriage. It was at some time after their arrival in Idaho that Barbara informed her parents of the marriage. Apparently, the Bruces have since consented to the marriage for the Littons are now living together in Grangeville.

Initially, Mr. Bruce claimed travel and transportation expenses from Virginia to Idaho for both himself and his family; however, this amount did not include any claim for transportation, per diem or temporary quarters for Barbara. It appears that Mr. Bruce assumed at first that since Barbara was now a married woman she was no longer a member of his family, and therefore, he could not claim her travel expenses. However, he later consulted a Virginia attorney who was of the opinion that under Virginia law the marriage of Barbara Bruce and Jackie Litton is void since Barbara's

parents had not given their consent, and moreover, that the law of Virginia rather than North Carolina governs this question because the couple were married in North Carolina solely to evade the laws of Virginia. Mr. Bruce now claims an additional $610.33 in travel expenses and temporary quarters allowance for Barbara incident to the transfer from Virginia to Idaho. He argues that since in his eyes and "in the eyes of the Law" Barbara was single, he is entitled to payment for these expenses.

The payment of travel and transportation expenses is authorized by 5 U.S.C. 5721 - 5733 (1976) and implemented by the Federal Travel Regulations (FPMR 101-7) (May 1973) chapter 2. Since payment of these expenses is confined to those incurred by the employee and his immediate family, FTR para. 2-1.4d (May 1973) has defined "immediate family" as:

> "Any of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel: spouse, children (including step-children and adopted children) unmarried and under 21 years of age or physically or mentally incapable of supporting themselves regardless of age, or dependent parents of the employee and of the employee's spouse." (Emphasis added).

Thus, if Barbara Bruce was in fact validly married to Jackie Litton at the time the Bruces moved from Virginia to Idaho, she would not have been a member of Mr. Bruce's "immediate family" as defined by the above regulation, and consequently, Mr. Bruce would not be entitled to payment of his claim.

As a general rule, a marriage which satisfies the requirements of the state where it was contracted will be recognized everywhere 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. Restatement (Second) of Conflict of Laws § 283 (1971). Although Virginia has recognized this rule (see Toler v. Oakland Smokless Coal Corporation, 173 Va. 425, 4 S.E.2d 364 (1939)), Virginia's public policy also requires

a minimum age of 16 before a person can marry as well as the consent of a parent or guardian for anyone under the age of 18 who has not been previously married. Va. Code §§ 20-48, 20-49. In addition, any marriage which does not comply with these policies is void. Va. Code § 20-45.1(a).

Therefore, since both Barbara Bruce and Jackie Litton were residents of Virginia at the time of their North Carolina marriage, returned to Virginia immediately after the marriage, and being under 18 years of age were married without the consent of a parent or guardian contrary to Virginia Law, it appears that Virginia is the state with the "most significant relationship" to the marriage so that its law rather than North Carolina's should determine the validity of the marriage. Tolar v. Oakland Smokeless Coal Corporation, supra; Restatement (Second) of Conflict of Laws, supra. Consequently, since these two did marry in violation of the Virginia public policy that requires parental consent for anyone under 18 years of age (Va. Code §§ 20-48, 20-49), it would appear that this marriage is void under the provisions of Va. Code § 20-45.1(a).

However, in the past the Virginia Supreme Court has been disinclined to declare a marriage such as the one under discussion here to be void. See Kirby v. Gilliam, 182 Va. 111, 28 S.E.2d 40 (1943); Needam v. Needam, 183 Va. 681, 33 S.E.2d 288 (1945); Payne v. Commonwealth, 201 Va. 209, 110 S.E.2d 252 (1959). That court has made the distinction between a statute which declares a marriage "void" and one which declares a marriage "absolutely void." Thus, the court has held that if a statute declares a certain marriage "absolutely void" then it is in fact a void marriage; however, if another statute should declare some other type of marriage merely "void" then that marriage is considered only voidable—that is, there is a valid marriage until it is decreed void by a court of competent jurisdiction. Kirby v. Gilliam, supra; Payne v. Commonwealth, supra. In addition, the court has also stated that the statutory provision which requires parental consent prior to marriage is only "directory and preventive, rather than prohibitive, of the consummation of the marriage contract." Needam v. Needam, supra. Thus, when faced with a fact situation similar to the one presented here, the Virginia Supreme Court has held that the marriage in question was voidable rather than void and therefore a valid marriage would exist until a court decreed otherwise. Kirby v. Gilliam, supra; Needam v. Needam, supra.

As mentioned above, Va. Code § 20-45.1(a) provides in pertinent part that:

> "All marriages which * * * have not complied with the provisions of §§ 20-48 or 20-49 [parental consent requirement], are void."

Yet based on the Virginia Supreme Court's interpretation of such statutes, the law in Virginia appears to be that the failure to obtain parental consent when required does not actually render a marriage "void" under § 20-45.1(a) but merely "voidable." Therefore, Barbara Bruce and Jackie Litton were validly married at the time the Bruce's moved from Virginia to Idaho. This being so, Barbara was not a member of Mr. Bruce's "immediate family" as defined by FTR para. 2-1.4d, and Mr. Bruce is, therefore, not entitled to payment for travel expenses incurred on Barbara's behalf during the move. Cf. 37 Comp. Gen. 129 (1957).

Even if North Carolina law were to govern the question of the validity of this marriage the result would be the same because, although North Carolina also requires parental consent for the marriage of persons under 18 years of age (N.C. Gen. Stat. § 51-2), a marriage without this consent does not render the marriage void but only voidable. See Sawyer v. Slack, 196 N.C. 697, 146 S.E. 864 (1929).

Accordingly, the voucher returned herewith may not be certified for payment.

R.F. Keller

Deputy Comptroller General
of the United States