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HLM-2
Savigny

DECISION



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

21480

FILE: B-204367

DATE: April 6, 1982

MATTER OF: Bennie B. Paradise, USN, Retired (Deceased)

DIGEST: In the absence of a determination of the validity of a foreign divorce by a court of competent jurisdiction, the marital status of former service member who obtained a divorce in Mexico and who subsequently remarried is too uncertain for this Office to determine the proper recipient of member's Survivor Benefit Plan annuity.

The question presented for our decision is whether the Mexican divorce obtained by Bennie B. Paradise from his first wife, Rita Paradise, should be recognized so his subsequent marriage to Mary Paradise may be recognized for the purposes of entitlement to a Survivor Benefit Plan annuity under 10 U.S.C. § 1447 et seq. for her, or whether the claim of Rita Paradise for the annuity should be honored. For the reasons set forth below we conclude, in the absence of a determination by a court of competent jurisdiction as to whether the divorce of Bennie B. Paradise from Rita Paradise was valid, that the marital status of both Mary Paradise and Rita Paradise is too uncertain for us to authorize the payment of a Survivor Benefit Plan annuity to either of them.

The request for an advance decision was submitted by the Disbursing Officer, Navy Finance Center, and was assigned submission number DO-N-1371 by the Department of Defense Military Pay and Allowance Committee.

Bennie B. Paradise married Rita Paradise on August 29, 1949, in Franklin, Kentucky. They subsequently obtained a divorce in Chihuahua, Mexico, on August 20, 1970. Mr. Paradise later married his second wife, Mary Paradise, in Newport, Kentucky, on October 14, 1970. He elected coverage under the Survivor Benefit Plan for Mary Paradise as his spouse in 1973. Mr. Paradise died in Ohio on March 21, 1981.

A Survivor Benefit Plan annuity may be paid only to the spouse, children, or a person with an insurable interest in a member of the uniformed services. See 10 U.S.C. § 1450 (1976).

B-204367

The Mexican divorce decree indicates that Mr. Paradise personally appeared at the divorce proceedings in the City of Juarez and that he submitted himself to the jurisdiction and competency of the Mexican court. The decree also states that Rita Paradise made an appearance through her attorney at the proceedings and submitted to the Mexican court's jurisdiction and requested the court to adjudicate the divorce.

We have consistently taken the position that where jurisdiction over the parties has not been demonstrated, foreign divorce decrees are of doubtful validity. Thus, unless one or both spouses is a bona fide resident of the country where the divorce is granted, or unless the divorce is recognized by a court of competent jurisdiction in the United States, the marital status is too doubtful to serve as a basis for the payment of public funds. See generally 55 Comp. Gen. 533 (1975), 45 Comp. Gen. 155 (1965), 38 Comp. Gen. 97 (1958), and 36 Comp. Gen. 121 (1956). Recognition of the divorce in this case would depend upon the principal of comity. However, American courts with few exceptions have generally refused to recognize the validity of foreign divorces where one or both spouses went to a foreign country, and purported to establish a permanent residence or domicile, for the sole purpose of obtaining a divorce. See generally 13 ALR 3d 1423.

In Kentucky, where both of the marriages involved in this case were performed, we have found no reported decisions dealing with the question of recognition of a foreign divorce where one or both spouses have sought a divorce in a foreign country and submitted to the jurisdiction of the foreign court. Thus, we cannot speculate whether Kentucky courts would hold the Mexican divorce in this case valid.

Therefore, it is our view that there is too much uncertainty as to the marital status of either claimant to permit payment in the absence of proceedings in a court of competent jurisdiction to decide that issue. 56 Comp. Gen. 533 (1975) and 45 Comp. Gen. 155 (1965). See also Longwill v. United States, 17 Ct. Cl. 288 (1881), and Charles v. United States, 19 Ct. Cl. 316 (1884).

B-204367

Both parties should be advised that their claims may not be allowed on the basis of the evidence presented. They may of course pursue their legal remedies in the Court of Claims or other court of competent jurisdiction.

Milton J. Fowler
Comptroller General
of the United States