

Cabral v. Cabral, 2 ROP Intrm. 65 (1990)
RUBEN S. CABRAL, JR.
Appellant,

v.

NENITA AUSTRIA CABRAL,
Appellee.

CIVIL APPEAL NO. 15-89
Civil Action No. 440-89

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: June 22, 1990

Counsel for Appellant: Francisco Armaluuk, T.C.

Counsel for Appellee: Pro Se

BEFORE: MAMORU NAKAMURA; Chief Justice; ROBERT A. HEFNER, Associate Justice;
and FREDERICK J. O'BRIEN, Associate Justice Pro Tem

HEFNER, Justice:

Many years ago, it was said, "A . . . court must take jurisdiction if it should." *Cohen v. Virginia*, 17 U.S. 264, 5 L.Ed. 257 (1820).

This appeal is taken from an order of the trial court which declined to take jurisdiction of this divorce case. The reasons set forth by the court are:

- "1. Neither plaintiff nor defendant are Palauan nationals.
2. Defendant is outside the jurisdiction physically of this Court.
3. There are three minor children of the marriage, all of whom reside in 166 the Philippines. It would be beyond the capacity of this Court to monitor and supervise any support order regarding them.
4. Any property which may exist and in which both parties may have an interest is outside the jurisdiction of this Court.

A divorce where there are minor children involved requires ongoing jurisdiction of the Court until the children reach the age of majority.

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Neither plaintiff nor defendant are Palauan nationals and although plaintiff presently resides in Palau, such residence is a priori temporary and upon his returning to the Philippines the Court shall lose control and supervision over the case."

The instant action was commenced in the Trial Division of the Supreme Court as authorized by 21 PNC § 101. Jurisdiction is vested by that section and 21 PNC § 301. With these basic statutes in mind, we turn to the order of the trial court and the reasons it gave for declining to hear the divorce action.

MUST EITHER OR BOTH PARTIES
TO A DIVORCE ACTION BE PALAUAN NATIONALS?

There is no statute which requires the plaintiff or 167 defendant or both of them to be citizens of Palau in order to obtain a divorce. The jurisdictional requisite found in 21 PNC § 332 is residence, not citizenship. A court may grant a divorce to an alien who has satisfied the residence requirement of the jurisdiction where the action is brought. *Katindov v. Katindov*, 5 T.T.R. 412 (Tr. Div., 1971). See also *Hamrick v. Hamrick*, 6 T.T.R. 252 (Tr. Div. 1973).

MUST THE DEFENDANT BE PHYSICALLY
WITHIN THE REPUBLIC OF PALAU IN ORDER FOR
THE PLAINTIFF TO OBTAIN A DIVORCE?

Once again, the statutory framework for the filing and obtaining a divorce does not require the defendant in a divorce action to be physically present in Palau. Indeed, it is clear that only one of the parties need reside in the Republic. 21 PNC §§ 301, 332. If the plaintiff satisfies the residence requirement, there is no basis for the court to decline to entertain the action simply because the defendant is not physically present in Palau.

MUST THE MINOR CHILDREN
OF THE MARRIAGE RESIDE IN PALAU?

The concern expressed by the trial court in this regard is that if the children reside in the Philippines, the court would not be able "to monitor and supervise any support order regarding them."

This, of course, is not a jurisdictional impediment to hearing the matter but more of a ministerial matter. But, this is of no moment for the simple reason that it is the plaintiff 168 who is submitting himself to the jurisdiction of the court. The court has in personam jurisdiction over him and any order for child support is binding on him and enforceable. It is a rather simple matter for the court to enter a child support order and require the plaintiff to register proof of compliance with the court-much the same way as is done pursuant to the Reciprocal Enforcement of Support Act. 21 PNC §§ 501 to 581.

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21 PNC § 302 grants the court the power to issue orders for child support and once the court has in personam jurisdiction over the person obligated to pay the support, the court may proceed to enter its order.

MUST ALL THE REAL AND PERSONAL, PROPERTY
OF THE PARTIES EXIST IN PALAU
IN ORDER FOR THE COURT TO HAVE JURISDICTION?

Much of what has been said in regard to child support applies to the division of the property of the parties. Pursuant to 21 PNC § 302, the court can order the plaintiff to transfer property of the parties to the defendant whether that property is physically located in or out of Palau. Since there is no in personam jurisdiction over the defendant, the court may not order her to effectuate any transfer of property to the plaintiff. The plaintiff has subjected himself to the jurisdiction of the courts of Palau and he must abide by and accept this seemingly one-sided result. As in the matter of child support, the court can monitor and enforce the compliance of the plaintiff with any order to transfer property to the defendant. In any event, this is not a jurisdictional obstacle nor any reason for the court to refuse to hear the matter.

169 MUST THE PLAINTIFF RESIDE IN THE REPUBLIC
OF PALAU UNTIL ALL THE CHILDREN OF THE PARTIES ATTAIN
18 YEARS OF AGE FOR THE COURT TO ASSUME JURISDICTION?

The trial court has expressed its concern over the problem of supervising and enforcing any orders it may issue regarding the children of the parties. Presumably, this involves custody, visitation and support. As noted above, so long as the plaintiff is in Palau, the court has not only the power but also the means to enforce its orders in this regard. The fact that a party obtaining a divorce will, perhaps, leave the jurisdiction sometime in the future while his children are still under the age of 18 years, is clearly no reason for the court to decline to hear the matter. In the mobile society of today, if such were the case, no divorces would be possible where there are minor children.

THE REAL ISSUE - JURISDICTION OVER WHAT?

This court senses the concerns of the trial court in the entertaining and granting of a divorce when the other spouse has never resided in Palau. However, under the statutes of the Republic (as in many other jurisdictions), this is no impediment to the granting of a divorce. This is because there is an important distinction drawn between a court's jurisdiction over the res - the marriage - and whether the court has in personam jurisdiction over both parties.

Once the plaintiff has met the residence requirements, the court has jurisdiction of the res or the marriage status irrespective of the residence of the defendant. *Atherton v. 170 Atherton*, 181 U. S. 155, 45 L.Ed. 794 (1901). The next step is to determine whether the nonresident defendant is supplied with sufficient due process notice of the action. A court may have jurisdiction to grant a divorce even though the defendant has not been served personally within the jurisdiction where the divorce is granted and has not even appeared in the case. *Williams v.*

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North Carolina, 317 U.S. 287, 63 S.Ct. 207 (1942).

So long as the absent defendant is given notice which meets the requirements of due process of law, the court may proceed to grant the divorce action since it has jurisdiction over the res-the marriage. *Williams v. North Carolina, supra*.¹

Here, the file reflects two important facts. First, the plaintiff alleges under oath he has satisfied the residence requirement of 21 PNC § 332 by being a resident of Palau for over two years immediately prior to filing the complaint.² ¶71 Second, the defendant was served notice of the suit by having been sent to her a copy of the complaint and summons. This, significantly, was pursuant to the court's order dated August 16, 1989.

Although the trial court has jurisdiction over the res, it has no in personam jurisdiction over the defendant but it does have in personam jurisdiction over the plaintiff.

CONCLUSION

The trial court has jurisdiction to entertain this case and must exercise its jurisdiction. The Order of October 3, 1989 is Vacated, and this matter is Remanded to the trial court for further proceedings consistent with this Order.

¹ In *Williams*, the basic facts, other than the international factors present in the case sub judice, are strikingly similar to those presented here. The husband resided in one jurisdiction with his wife and left to another jurisdiction where the wife had never been and was never served. The husband established domicile, filed for divorce, and served the wife by substitute service. The divorce was held to be valid.

² The trial court appears to have made a finding (without a hearing) that the plaintiff is really not a resident of Palau since he is a non-citizen worker. This is a matter of proof for the court to inquire into at the hearing when the plaintiff and any witnesses testify. See annotation at 51 A.L.R.3d 223 et seq. Domicile or residence is established by physical presence and the intent to remain permanently or indefinitely.