

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-1983
STATE OF WISCONSIN**

Cir. Ct. No. 02PR000086

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE ESTATE OF HARMON W. GRADELESS,
DECEASED:**

STEVEN W. GRADELESS,

APPELLANT,

V.

BEVERLY GRADELESS,

RESPONDENT.

APPEAL from an order of the circuit court for Portage County:
FREDERIC W. FLEISHAUER, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Steven Gradeless appeals a probate order that denied his petition for a judgment declaring his mother's divorce from his father void and affirmed the claim of Beverly Gradeless to be his father's widow. For

the reasons discussed below, we affirm the trial court's determination that the doctrine of estoppel bars Steven from raising a jurisdictional attack on the divorce judgment of his parents, Harmon Gradeless and Donna Jackson.

BACKGROUND

¶2 Harmon and Donna were married on September 2, 1948. Harmon initiated a divorce action in Illinois on June 22, 1962, representing to the Illinois court that he had been residing in Illinois for a year. He obtained a default divorce judgment barring future property or alimony claims on September 28, 1962.

¶3 On January 21, 1964, Donna married DeWayne Jackson in Indiana. Later that year, she obtained copies of the divorce judgment and other materials from the Illinois court. On November 13, 1973, Harmon married Beverly Keplinger in Wisconsin.

¶4 Harmon died in Wisconsin on April 9, 2002. Harmon's will gave Beverly and his three sons equal one-quarter shares in his farm.

¶5 Donna filed a claim against Harmon's estate. She alleged that Harmon had incurred an obligation to her pre-dating his marriage to Beverly, which she characterized as arising under WIS. STAT. § 766.55(2) (2001-02).¹ Attached to Donna's claim was a copy of a petition she had filed in Illinois on August 2, 2002, asking the Illinois court to reopen the property division component of her divorce judgment but to leave the dissolution of the marriage intact. Donna's petition alleged that Harmon made misrepresentations to the

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Illinois divorce court that allowed him to inequitably obtain property that was jointly owned by Harmon and Donna, and that he had obtained the default divorce judgment by misrepresenting to Donna that he had dropped the divorce matter. Donna asked the trial court to stay the probate proceeding until the Illinois court had ruled on her property rights stemming from her divorce from Harmon.

¶6 Steven filed a petition for declaratory judgment seeking to have his parents' divorce declared void for lack of jurisdiction because his father had actually been a resident of Wisconsin, rather than Illinois, at the time he initiated the divorce proceedings in Illinois.

¶7 Beverly filed a petition electing to receive 50% of the augmented deferred marital property (including the farm), pursuant to WIS. STAT. § 861.02. She also filed a cross-petition for declaratory judgment seeking to have her status as Harmon's widow affirmed.

DISCUSSION

¶8 For purposes of this appeal, we will assume that Harmon's claim of Illinois residency was false, providing a factual basis to render the Illinois divorce judgment invalid and Harmon's subsequent remarriage to Beverly void. *See* WIS. STAT. §§ 767.22(1) and 765.03. The question presented in this proceeding is whether Steven is nonetheless estopped from challenging the validity of his parents' divorce and his father's remarriage.

¶9 "A person may be precluded from attacking the validity of a foreign divorce decree if, under the circumstances, it would be inequitable for him [or her] to do so." *Schlinder v. Schlinder*, 107 Wis. 2d 695, 698, 321 N.W.2d 343 (Ct. App. 1982) (citation omitted). The estoppel doctrine may be applied to third

parties as well as to the married couple. *Id.* at 700-01. “[I]f the person attacking the divorce is, in doing so, taking a position inconsistent with his [or her] past conduct, or if the parties to the action have relied upon the divorce, and if, in addition, holding the divorce invalid will unset relationships or expectations formed in reliance upon the divorce, then estoppel will preclude calling the divorce in question.” *Id.* at 700 (citation omitted).

¶10 Steven claims that, because estoppel is an equitable doctrine based upon the individual circumstances of each case, the trial court needed to hold a hearing before rendering its decision. No hearing is required, however, if the facts alleged by the movant would be insufficient to warrant relief. *See State v. Bentley*, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996).

¶11 Here, Steven alleged numerous facts from which it could be argued that Donna did not have a reasonable opportunity to challenge her divorce from Harmon before it occurred, and perhaps even for a few years thereafter. Steven alleged nothing, however, that would negate the conclusions that both Harmon and Donna relied upon the divorce by remarrying, and that holding their divorce invalid now would upset those subsequent long-term relationships. Indeed, even Donna’s petition to the Illinois court seeking to reopen the property division component of her divorce—filed long after she had obtained more accurate information about the divorce and the threat of losing custody of her sons had passed—explicitly asked that the dissolution of her marriage to Harmon not be disturbed. Furthermore, Steven has provided no explanation for why he himself waited forty years before challenging his parents’ divorce. In other words, even if Steven’s allegations regarding his father’s misrepresentations were assumed to be true, the trial court could properly determine that undisputed events occurring over the forty years following the divorce precluded challenging the divorce at this late

date. Therefore, the trial court did not need to have a hearing in order to apply estoppel in this case.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

