



PROBATE BATTLE ILLUSTRATES VALUE OF CONSTITUTION'S FULL FAITH & CREDIT CLAUSE

by

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Is fame hijacking justice with full faith and credit given to the misdeed? The Full Faith and Credit Clause of the United States Constitution demands that sister state courts give deference to one another. Specifically, Article IV states that "Full Faith and Credit (hereafter, "FF&C") shall be given in each State to the public Acts, Records and judicial Proceedings of every other state." This Clause is intended to further principles of federalism on which this country was founded, and specifically, the notion that we are a civilized society with respect for the law and disdain towards abuse of our legal system. Forum shopping is an example of such abuse. When a party dislikes the judge or jury in a particular place, said party is prohibited by law from shopping for a new forum to receive a more favorable outcome in a different court. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) (FF&C demands state's interest is significant) If the discontented party attempts to forum shop, then our courts must give deference to the court with original jurisdiction.

Moreover, the Constitution requires that all powers not specifically designated to the federal United States, such as bankruptcy, taxes, naturalization, copyrights, and treaties, are reserved to the sister states. *See Babcock v. Jackson*, 12 N. Y. 2d 473, (1963). (Court compares relative "interests" of two locations in a case) Probate is not a specifically enumerated federal power; thus it is one of the areas of law left to the states. In fact, state law must trump federal law in probate cases so that each state maintains jurisdiction over property within its borders. Yet, in the infamous probate case of *Vickie Lynn Marshall, aka, Anna Nicole Smith ("Vickie") vs. E. Pierce Marshall ("Pierce")* (hereafter, "*Marshall v. Marshall*"), five different courts from Texas to California to Washington D.C., and now back to California have issued judgments and opinions in the matter which result in a conflict of laws. *See Nevada v. Hall*, 440 U.S. 410 (1979) (scope of state sovereignty, FF&C, and constitutional implications).

In *Marshall v. Marshall*, Vickie's legal team employed a forum shopping strategy to escape an anticipated unfavorable ruling, resulting in a complete slap in the constitutional face of our court system. Thus, *Marshall* is an excellent case study for those interested in the conflict of laws and how attorneys may manipulate any uncertainty in our judicial system by employing forum shopping strategies to receive a more desirable outcome. *See* FF&C Statute 29 U.S.C § 1738. Some background and procedural history is essential to understand just how justice was hijacked and the act given full faith and credit.

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On June 27, 1994, J. Howard Marshall II married Vickie Lynn Hogan. About two weeks after the marriage, on July 13, 1994, as part of his estate planning, J. Howard made his trust, which did not include Vickie, irrevocable. *In Re: Marshall*, 392 F.3d 1118 (2004). After he made his trust irrevocable, beneficiaries could be cut out of the will, or, the amount given to a beneficiary could be altered, but, significantly, no new beneficiary could be added. Marshall made it clear throughout his marriage to Vickie, and during his estate planning process, that he would provide for her during his life, and that Pierce, his then surviving son, would be the trustee of decedent's trust property and the executor of J. Howard's estate. *Id.*

During their relationship, Marshall had delivered gifts to Vickie valued at approximately \$ 6.6 million in consideration of her marriage to him, and on September 29, 1994, Marshall memorialized the events in a document entitled "Act of Donation." *Id.* at 1124. Vickie's legal team contested the will that Marshall signed, but interestingly enough, has not contended that Marshall lacked the mental capacity to make these itemized gifts. *Id.* Prior to his death, Vickie initiated legal proceedings in the Texas probate court against Pierce seeking to invalidate the estate plan, alleging that he tortiously interfered with her property rights with respect to J. Howard's assets. After Marshall died, Vickie tried to prevent his will from being filed, and then amended her probate filing to claim that Pierce had tortiously interfered with J. Howard's alleged intent to give her more gifts of his assets. *Id.*

As the Texas Probate case unfolded, Vickie's legal team realized they would lose. While active probate proceedings were pending in Texas, in January 1996, Vickie filed for personal bankruptcy in a California court, hoping to trump the Texas Probate Court of record, specifically with respect to her tort claim that Pierce had interfered with a 450 million dollar gift expectancy—half of his estimated worth. *Id.* The resulting California Bankruptcy Court proceedings and subsequent appeals to the federal California District Court resulted in a money judgment to Vickie. *Id.*

After a long trial with many witnesses, on March 7, 2001, the Texas Probate Court received the jury's verdict, unequivocally and unanimously in favor of Pierce and his family. The jury sacrificed nearly six months of their personal lives performing a civic duty to consider approximately forty different witnesses, in addition to the volumes of evidence submitted. The probate court concluded it had "exclusive" jurisdiction under Texas law over Vickie's claim and rights to J. Howard's estate, including any claim to the "inter vivos" gift. The court ruled "that [she did] not possess any interest in and is not entitled to possession of any property within the Estate of [J. Howard] or any property [of the Living Trust] because of any representations, promises, or agreements. . ." *Id.* The Probate Court further said that all of Vickie's claims were resolved and dismissed, she was entitled to nothing from Pierce, and Pierce was entitled to his inheritance free and clear from any claim by her. *Id.*

The Texas jury held that Marshall had a valid estate plan, and further held that his intentions were not to provide beyond the millions he had gifted Vickie in his "Act of Donation." 392 F.3d 1118, 1124, 1136 (2004). Therefore, due to the laws of res judicata, *Hughes v. Fetter*, 341 U.S. 609 (1951) (upholding the strong unifying principle embodied in the FF&C clause) collateral estoppel, and judicial economy, the case cannot be tried again. The trial court of record is the Texas probate court, and as such, the federal bankruptcy judge in California overstepped his bounds and ruled on a Texas state matter in which the state probate court had already ruled. *Id.* Likewise, the federal District Court overstepped its jurisdiction as well. As a result, the rulings should be vacated.¹

Yet Vickie's legal team has continued to re-litigate the case for over a decade now, taking the matter on a path from Texas to California to Washington D.C. and now back to California, clogging our courts and costing millions of dollars to taxpayers who pay operating costs of courts, including salaries of judges and court personnel. *Durfee v. Duke*, 375 U.S. 106, 11, 115-6. Three courts have now rendered conflicting

¹A state court's holding regarding its jurisdiction over probate matters is binding on federal courts and is immune from collateral attack under the doctrine of res judicata. 293 F. 3d 1118, citing, *Underwriter's Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706-07 (1982); *Durfee v. Duke*, 375 U.S. 106, 11, 115-6 (1963).

judgments that affect the distribution of Marshall's estate, namely the Texas Probate Court, the U.S. Bankruptcy Court in California and the U.S. District Court in California. The Full Faith and Credit Clause is intended to protect against this precise type of conflict.

On December 30, 2004, the federal U.S. Court of Appeals for the Ninth Circuit overruled the lower federal District Court case as a "thinly veiled will contest" and held that the federal courts neither had jurisdiction nor authority to invade the power of the Texas probate court. 392 F. 3d 1118 (2004). Rather, the findings of the Texas jury, which ruled on the merits of the case, should be upheld. *Id.* The Court entered its judgment and decision in favor of Pierce, vacating the District Court judgment based on the "probate exception" to federal subject matter jurisdiction. *Id.*

The "probate exception" was extended in 1946 in the case of *Markham v. Allen*, 326 U.S. 490, wherein the court observed that a federal court has jurisdiction to adjudicate rights in a probate case so long as the federal court does not "interfere" with the probate proceedings or "control the property in the custody of the state court." *Id.* The Court further articulated that "a federal court may not exercise jurisdiction to disturb or affect the possession of property in the custody of a state court" if such jurisdiction "interferes with the probate proceeding." *Id.* at 494.² The meaning of the words "interfere with probate proceedings" has been articulated by various federal courts,³ yet confusion remains. The Court of Appeals notes that "[a]lthough Vickie Lynn Marshall styles her action as a tort action,⁴ it is clear that the exercise of federal jurisdiction would and, in this case, did interfere with the Texas probate court proceedings." 392 F. 3d at 1146.⁵

In *Storm v. Storm*, a case that mirrors Marshall, the grandson of the decedent filed an action seeking to obtain damages for tortious interference with an inheritance expectancy. 328 F.3d 941 at 942 (7th Cir. 2003). The court held that though the party seeking money "phrases his action as one involving tortious interference with his inheritance expectancy, the practical effect of his lawsuit would be similar to that of a successful will contest: the terms of the final, allegedly invalid testamentary instruments would essentially be bypassed, while [the plaintiff] would receive, as damages, the assets he would have otherwise been entitled to under what he says are [the decedent's] actual will and trust." *Id.* at 945.

On May 17, 2005, Vickie's legal team went to the United States Supreme Court and appealed the Ninth Circuit Court of Appeals decision based on the probate exception.⁶ Nearly one year later, on May 1,

²Notably, the Court of Appeal received over 440 pages of appellate briefs to review, resulting in one of the most extensive records ever produced in the Central District of California. *Id.* at 1134.

³See *Sutton v. English*, 246 U.S. 199 (1918); see also, *Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33 (1909).

⁴See *Storm v. Storm*, 328 F. 3d 941, 943-945 (7th Cir. 2003) (probate exception bars claim that plaintiff's father tortiously interfered with plaintiff's expected inheritance by persuading grantor to amend irrevocable *inter vivos* trust); *Rienhardt v. Kelly*, 164 F. 3d 1296, 1300-1301 (10th Cir. 1999) (probate exception bars claim that defendants exerted undue influence on testator and thereby tortiously interfered with plaintiff's expected inheritance).

⁵"[M]ere labels – whether an action is styled as a tort action or will contest – are not decisive in our probate-exception analysis." When the district court entered a judgment in favor of Vickie in the form of a damage award based upon what the court thought she should have received from J. Howard Marshall II's estate, the power of the Texas probate court was negated. See *Storm v. Storm*, 328 F. 3d 945.

⁶In the decision, the Ninth Circuit Court of Appeals articulated that "other circuits have considered the probate exception but justify their decisions without strict adherence to the doctrine as enunciated by the Supreme Court" in *Markham*. See, e.g., *Lepard v. NBD Bank*, 384 F.3d 232, 237 (6th Cir. 2004) (stating that "[t]he standard for determining whether federal jurisdiction may be exercised is whether under state law the dispute would be cognizable only by the probate court") (quoting, *McKibben v. Chubb*, 840 F.2d 1525, 1529 (10th Cir. 1988)); *Storm v. Storm*, 328 f.3d 921,944 (7th Cir. 2003) (stating that in determining whether it has jurisdiction over a particular case, a court should consider the policy goals underlying the probate exception, such as encouraging legal certainty, promoting judicial economy, avoiding unnecessary interference with the state law system, and

2006, the U.S. Supreme Court reversed the Court of Appeals and held that the lower federal District Court may have properly asserted jurisdiction over Vickie's tort claim against Pierce. 126 S. Ct. 1735, 2006 (WL 1131904). The U.S. Supreme Court said that the Court of Appeals may have been overly broad in its "sweeping extension of the probate exception" when it held that federal courts had no jurisdiction whatsoever. *Id.* The U.S. Supreme Court held that there might be federal issues that are not at the heart of the probate proceedings, and the case has now been remanded back to the Court of Appeals for consideration of the issues. Some issues still pending are: 1) whether Vickie's claim was "core"; and, 2) Pierce's arguments on claim and issue preclusion. *Id.*

In this case, J. Howard's estate plan was held to be valid by the Texas probate court. This finding of validity was bypassed by the District Court when it granted damages "in the amount that J. Howard intended to give her" despite the probate jury's contrary findings of the decedent's intent. Vickie's legal team couches her claims in terms of tortious interference. Thus upholding the decision of the District Court allows Vickie a second bite to relitigate her claim against the estate. *Marshall v. Marshall* shows why state law should trump federal law when it comes to probate. The *Marshall* case could feasibly set a precedent legalizing court shopping where lawyers will be required to advise clients to forum shop until they receive a favorable ruling, and hijacking justice in doing so.

Under the reasoning of Vickie's lawyers, estate plans would be subject to never ending legal interference, devastating our core value system as a civilized society. If federal courts interfere with the power of a state probate court, then states lose their sovereign status. The state court's power is gone and the state is essentially placed under federal supervision in violation of the Constitution, which opens the floodgates for anyone with enough money to shop for the most favorable court in any state. For instance, one could imagine the spectacle of a federal court in Alaska deciding property rights in Florida. Litigants who are eager to achieve a favorable decision at any cost jeopardize the superior legal system our founding fathers created.

respecting relative expertness of probate judges; also stating that courts should construe the probate exception narrowly); *Breaux v. Dilsaver*, 254 F.3d 533, 536 (5th Cir. 2001) (stating that "[i]n determining whether a suit in federal court 'interferes' with state probate proceedings, [the 9th Circuit] consider[ed] whether the plaintiff's claim 'implicates the validity of the probate proceedings or whether the plaintiff is merely seeking adjudication of a claim between the parties'") (citations omitted); *Mangieri v. Mangieri*, 226 F. 3d 1, 2 (1st Cir. 2000) (stating that "courts tend to view the probate exception as extending to all suits 'ancillary' to the probate of a will") (citing *Georges v. Glick*, 856 F.2d 971, 973 (7th Cir. 1988)).