

P E N N S Y L V A N I A LAW WEEKLY

From 'Playmate' to Pay-Mate.

The Playboy centerfold, the oil magnate, and – oh yes – exceptions to federal jurisdiction

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Special to the Law Weekly

Chief Justice John Marshall, the architect of judicial review in the American constitutional system, and Vicki Lynn Marshall (better known as Anna Nicole Smith), the 1993 *Playboy* magazine "playmate of the year," had nothing in common except for their surname.

But earlier this month, their names were linked together forever, at least in legal research search engines, as part of Justice Ruth Bader Ginsburg's opinion in *Marshall v. Marshall* (U.S. May 1, 2006).

As a result of the U.S. Supreme Court ruling, Vicki Marshall has the opportunity to receive \$89 million arising out of her marriage to the late oil magnate J. Howard Marshall II. She may yet be the merry widow.

Even though the money at stake and the cast of litigants is remarkable, the subject matter of the decision is quite pedestrian.

The legal issues in the case dealt with federal court jurisdiction and the acknowledged "domestic relations" and "probate" exceptions to such federal court jurisdiction.

How ironic that Ginsburg, writing for the Court, should quote the revered Chief Justice Marshall in the *Marshall v. Marshall* matter as follows:

"It is most true that this Court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction, if it should We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Marshall v Marshall*, citing *Cohen v. Virginia*, VI Wheat. 264 404 (1821).

The sole issue before the Supreme Court in *Marshall* was limitations on federal jurisdiction, and not whether Anna Nicole Smith should inherit from her late husband's estate.

Vicki Lynn Hogan, born in November 1967, married Billy Smith at the age of 17 in 1984. She had a child after which her husband left her to raise the child by herself. She began dancing topless in local strip clubs and began to pose nude for magazines to make some extra money. In 1993, Vicki Lynn Hogan Smith became *Playboy* "Playmate of the Year" and in 1994 she married an 85-year-old millionaire by the name of J. Howard Marshall II who died in 1995. That is when the long and tortuous battle over his estate began.

J. Howard did not provide for Vicki in his will. However, according to her, her late husband intended to provide for her financial security by means of a Trust. J. Howard's son, E. Pierce

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Marshall determined to fight Vicki Lynn Marshall regarding her right to receive any part of his father's estate. Pierce, the son, offered J. Howard's estate for probate in Texas. While the probate proceedings were ongoing, Vicki Lynn Marshall filed for bankruptcy in the bankruptcy court for the Central District of California. In June of 1996, Pierce filed a proof of claim in Vicki's bankruptcy proceeding, alleging that he had been defamed by his father's widow. He alleged that Vicki's attorneys had represented to the press that Pierce, in order to exclude Vicki from his father's estate, had committed forgery and was guilty of fraud, and over-reaching. By filing a proof of claim in the bankruptcy action, Pierce was asking for the relief that the debt owed to him from his assertion of defamation would not be dischargeable by that bankruptcy.

Vicki filed an answer asserting truth as a defense to the allegation of defamation and filed counterclaims against Pierce, one of which was a claim of tortious interference with a gift expected by Vicki as a result of being J. Howard's widow. By filing the counterclaim, Vicki's objection to Pierce's claim became an adversary proceeding. The bankruptcy court ruled in favor of Vicki and awarded her \$449 million minus whatever she recovered in the probate action in Texas, together with \$25,000 in punitive damages. The bankruptcy court also stated that the matter before it was a "core proceeding," which characterization permitted it to enter a final judgment.

Pierce filed a post-trial motion arguing that bankruptcy court lacked subject matter jurisdiction because the Texas probate proceedings were pending and that the Texas state court was the only forum in which Vicki's tortious interference claim could be tried. The bankruptcy court held that the "probate exception" had been waived because it was not timely raised by Pierce. That court also relied on *Markham v. Markham*, 326 U.S. 490 (1946).

At this point, the Texas probate court was moving forward and the bankruptcy court in California had awarded many millions of dollars to Vicki Marshall. The award by the bankruptcy court was not for her inheritance, but rather for her claim for Pierce's tortious interference. Pierce, through the Texas probate court, sought a declaration that his father's will and trust was valid. There was a jury trial and the Texas probate court declared J. Howard's will and living trust valid.

The case then jumped back to the California forum where Pierce sought review of the bankruptcy court's judgment in the federal district court. That court upheld the decision of the bankruptcy court, but ruled that Vicki's claim was not a "core proceeding." Thus, the district court exercised plenary jurisdiction de novo and reviewed the bankruptcy court's findings. The district court held that Pierce had tortiously interfered with Vicki's expectancy and awarded Vicki \$44.3 million Dollars in compensatory damages and an equal amount in punitive damages. Pierce appealed to the U.S. 9th Circuit Court of Appeals, which reversed the district court. The U.S. Supreme Court granted certiorari in order to resolve the confusion of the various federal courts concerning the probate and domestic relations exceptions to federal jurisdiction. The sole issue before the Supreme Court was whether the federal courts can exercise jurisdiction when there is a prior probate proceeding pending in a state court.

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Ginsburg first cited *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), dealing with the "domestic relations" exception to the exercise of federal jurisdiction. In that matter, a mother who was a citizen of Missouri filed in federal district court on behalf of her daughters, naming her daughters' father and his female companion, both citizens of Louisiana, as defendants. The mother sought damages for the alleged abuse of the children. The district court in Missouri dismissed the case for lack of subject matter jurisdiction, holding that the matter fell within the "domestic relations" exception to diversity jurisdiction. The court of appeals agreed.

However, the Supreme Court reversed, clarifying and examining the judicially created doctrine of the "domestic relations" exception. In *Ankenbrandt*, the Supreme Court determined that only divorce, alimony, and child custody decrees remained outside the federal jurisdictional boundaries.

The *Marshall* Court addressed federal jurisdiction with regard to the "probate" exception, observing that the *Markham* decision makes clear that "...while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of the state court, (citations omitted) it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court (citations omitted)."

The *Marshall* Court noted that Vicki's claim did not involve a purely probate matter such as the administration of an estate or the probate of a will. After a long tracing of the narrow intent of the "probate court" exception, the Supreme Court held that the judgment of the 9th Circuit should be reversed.

Although the ruling in favor of Vicki Marshall garnered great attention and publicity, the issue before the Court was federal court jurisdiction in light of the historical "domestic relations" exception and "probate court" exception to federal court jurisdiction.

However, as Emily Dickinson wrote, "a rose by any other name is still a rose."

Whatever reasons the Supreme Court had to accept Anna Nicole Smith's appeal and to have ruled in her favor, the fact remains that she is now entitled to seek \$89 million, representing compensatory and punitive damages for prevailing on her counterclaim against Pierce for tortious interference with an expected gift.

The Playmate of the Year has found her muse in the highest court in the land.

God bless America, and God bless this honorable Court! •

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