UPDATE IN THE LAW ON ANULMENTS

In a case that has just recently been published, *In re the Marriage of Jeffrey D. Seaton and Patricia L. Seaton*, (November 8, 2011), the Court of Appeal held that a bigamous marriage is void from its inception, even if it has not been declared void by a court of law. In that case, the Parties were married for over 17 years. The husband sought a nullity, which was granted by the Trial Court, because prior to their marriage, the wife had married a man in La Vegas, Nevada and had never obtained a divorce or an annulment of that marriage. One piece of evidence that the Trial Court had found particularly strong in granting the nullity that apparently the wife had sought out an attorney who had drafted the nullity documents, but they were never filed. In her appeal, the wife argued that at that time she "married" the man in Las Vegas, her divorce from her previous husband was not yet final, and was thus void from its inception, so no judgment by a Court of Law was necessary.

In general, both in Nevada and in California, the idea that a void marriage never existed is a legal fiction that should be used only where it promotes substantial justice between the parties to the void marriage, and not where the rights of third parties are involved. (*Sefton v. Sefton, (1955) 45 Cal.2d 872, 874,* at pp. 875-876; *Shank v. Shank* (1984) 100 Nev. 695, 697 [citing *Sefton* with approval].) For example, where a valid marriage ends with a judgment of dissolution requiring one of the spouses to pay alimony to the other spouse until remarriage, a subsequent bigamous marriage operates to cut off the alimony obligation. This is so regardless of the fact that the bigamous marriage was void from inception, and therefore never existed with respect to the parties to the purported marriage. (*Shank*, *supra*, 100 Nev. at pp. 697-698.) In such cases, the right of the previous spouse to assume "that his [or her] obligation to pay alimony had ceased" and "recommit his [or her] assets previously chargeable to alimony to other purposes" trumps the legal fiction that the bigamous marriage never happened. (See, *Sefton*, *supra*, 45 Cal.2d at pp. 876-877; see also *Berkely v. Berkely*, (1969) 269 Cal.App.2d 872, 873, at p. 873.) Similarly, the legal fiction that a void marriage never existed has been abandoned where the rights of children are involved. Thus, children born during a bigamous marriage are considered legitimate even though the marriage was void from inception. (*Glass v. Glass* (Mo.Ct.App. 1977) 546 S.W.2d 738, 740, fn. 1, cited with approval in *Shank*, *supra*, 100 Nev. at p. 697; *Sefton*, *supra*, 45 Cal.2d at pp. 875-876; *Adoption of Jason R.* (1979) 88 Cal.App.3d 11, 16.)

The relevant Nevada statute provides that a marriage is "void without any decree of divorce or annulment or other legal proceedings" when either party has a "former husband or wife then living." (N.R.S., § 125.290.) Notwithstanding this unambiguous language consistent with California law, in *Williams v. Williams* (2004) 120 Nev. 559, 564 (*Williams*), the Nevada Supreme Court stated that although a bigamous marriage is void under this provision, an annulment proceeding is nevertheless required to legally sever the marital relationship. (*Williams*, *supra*, 120 Nev. at p. 564.) The trial court in *Seaton* relied on *Williams* and declared Patricia's marriage to Jeffrey a nullity because

she had not severed her marital relationship with Henry at the time she married Jeffrey. Patricia urged them to disregard the Nevada Supreme Court's statement in *Williams* as *dicta*, and apply the plain meaning of the Nevada bigamy statute, i.e., that her marriage to Henry was void without an annulment decree.

The Nevada Supreme Court agreed with Patricia that the relevant statement in *Williams* is *dicta*. While *Williams* involved a bigamous marriage, neither party disputed that the marriage was void. The dispute on appeal was whether the would-be wife was entitled to half of the parties' joint property as a putative spouse, and, if so, whether she was also entitled to spousal support. (*Williams*, *supra*, 120 Nev. at p. 564.) The Nevada Supreme Court adopted the putative spouse doctrine as a rule of Nevada marital law, and held that substantial evidence supported the trial court's finding of putative spouse status and also that the trial court correctly divided the parties' joint property as quasi-community property but erred in awarding spousal support. (*Id*. at pp. 566-568, 570.) However, at the start of the analysis, the Nevada Supreme Court stated: "Although their marriage was void, an annulment proceeding was necessary to legally sever their relationship. An annulment proceeding is the proper manner to dissolve a void marriage and resolve other issues arising from the dissolution of the relationship." (*Id*. At p. 564, fn. omitted.) Because this statement was unnecessary to the determination of the questions involved in the case, it is *dicta* and not controlling. (*St. James Village, Inc. v. Cunningham* (2009) 210 P.3d 190, 193; *Kaldi v. Farmers Ins. Exch.* (2001) 117 Nev. 273, 282.)

The Court of Appeal in the *Seaton* case agreed with the wife and ruled that the wife's marriage to the man in Las Vegas was void from the beginning, without the need for a formal annulment proceeding. As between them, the marriage never existed. Thus, the marriage to Mr. Seaton, which occurred well after wife's divorce from her first husband was finalized, was valid.