A suitor persuades a married woman to obtain an invalid divorce from her husband and actively helps her procure that decree so that they may marry. When their marriage turns sour and the wife sues for divorce and alimony, can the husband defend on the ground that they are not married because her former divorce was invalid? In *Mayer v. Mayer*, the North Carolina Court of Appeals held that "a husband, who actively participates in his wife's procurement of an invalid divorce from her prior husband, is estopped from denying the validity of that divorce." The court's decision was particularly significant because in estopping the husband from attacking the validity of his wife's divorce, the court gave practical effect to a "quickie" foreign divorce, which the court considered invalid on both jurisdictional and public policy grounds.

The *Mayer* decision is important for two reasons. First, the court addressed "[i]n the benefit of the bar" a question of first impression in North Carolina—whether recognition should be given to a divorce obtained in a foreign country in which neither party was domiciled. Second, the court applied the equitable doctrine of estoppel to prevent a husband, not a party to his wife's prior di-

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2. Id. at 531, 311 S.E.2d at 666.
3. See id. at 527-30, 311 S.E.2d at 663-65. Although divorces granted in sister states often are called foreign divorces, this Note reserves the term "foreign divorce" for divorces granted by a foreign nation.
4. Id. at 530, 311 S.E.2d at 665. The court stressed the narrowness of its holding: "Much of what we have said impels us to reject Doris Mayer's argument that her Dominican divorce was valid. Our narrow holding, however, must be emphasized—considering the circumstances of this case, Victor Mayer can neither assert the invalidity of Doris Mayer's Dominican divorce nor the invalidity of his subsequent marriage to Doris Mayer." Id. at 536, 311 S.E.2d at 669. The finding that the husband was estopped disposed of the case; it was not necessary to determine the validity of the divorce.
5. See infra notes 63-65 and accompanying text.
6. The court explained that "[u]nder quasi-estoppel doctrine, one is not permitted to injure another by taking a position inconsistent with prior conduct, regardless of whether the person had actually relied upon that conduct." *Mayer*, 66 N.C. App. at 532, 311 S.E.2d at 666. This doctrine is to be distinguished from "true" or "technical" estoppel. "True estoppel results from representations made or other conduct performed for the consumption of another who relies thereon to his damage in ignorance of the truth." Weiss, *A Flight on the Fantasy of Estoppel in Foreign Divorce*, 50 COLUM. L. REV. 409, 414 (1950); see also Rosenberg, *How Void is a Void Decree, or The Estoppel Effect of Invalid Divorce Decrees*, 8 FAM. L.Q. 207, 208 (1974) (quasi-estoppel broader than traditional estoppel theory because no need for reliance on factual representations by other party).

The Supreme Court of New Jersey discussed the type of estoppel under consideration in this Note, stating that it is applied to prevent a person from "taking a position inconsistent with prior conduct, if this would injure another, regardless of whether that person has actually relied thereon." *Kazin v. Kazin*, 81 N.J. 85, 94, 405 A.2d 360, 365 (1979). Professor Clark described this doctrine of estoppel as the "principle, that one who obtains a judgment cannot later collaterally attack it upon jurisdictional grounds." Clark, *Estoppel Against Jurisdictional Attack on Decrees of Divorce*, 70 YALE L.J. 45, 45 (1960). According to Professor Clark, it has long been applied to divorce decrees, and recently has been "broadly extended." Id. at 45 & n.7. Professor Rosenberg has defined this type of estoppel as follows: "When someone is barred from attacking a divorce decree of questionable validity because such an attack would produce an unfair result, the concept of equitable estoppel has been applied." Rosenberg, *supra*, at 207. This form of estoppel has been referred to as the "'equitable principle of estoppel,' 'so-called estoppel,' 'quasi-estoppel,' 'somewhat similar to estoppel,' [and] 'res judicata.'" 1 R. LEE, NORTH CAROLINA FAMILY LAW § 98, at 446 (4th ed. 1979); see Weiss, *supra*, at 414. The *Mayer* court referred to this doctrine as "quasi-estoppel," "estoppel,"
Divorce, from attacking the validity of that decree on the ground that the granting court lacked jurisdiction. Although North Carolina courts have estopped parties to a divorce from attacking the decree on grounds of subject matter jurisdiction, they had never similarly estopped a second spouse of one of the parties to the original divorce. This Note analyzes the Mayer decision and concludes that the invocation of estoppel was justified and consistent with the policy considerations supporting the doctrine.

In the summer of 1980, Doris Crumpler and Victor Mayer decided to marry, but they faced the obstacle of Mrs. Crumpler's marriage to Fred Crumpler. Under North Carolina law at the time, Doris Crumpler had a choice between absolute divorce based on a variety of fault grounds or absolute divorce based on one year's separation. Victor Mayer insisted on a "quickie" divorce and promised Mrs. Crumpler that he would support her in a manner better than that to which she was accustomed. As a result, on October 17, 1980, Doris Crumpler and Fred Crumpler executed a separation agreement, according to which she relinquished any right she might have had to alimony or support.

Subsequently, in February 1981, Doris Crumpler traveled to the Dominican

and "equitable estoppel." Mayer, 66 N.C. App. at 523-25, 530-36, 311 S.E.2d at 661-62, 665-69. This Note adopts the term "estoppel."

For an overview of the application of estoppel to divorce cases, see Clark, supra; Phillips, Equitable Preclusion of Jurisdictional Attacks on Void Divorces, 37 FORDHAM L. REV. 355 (1969); Rosenberg, supra; Swisher, Foreign Migratory Divorces: A Reappraisal, 21 J. FAM. L. 9, 37-48 (1982-83); Weiss, supra.

8. See, e.g., McIntyre v. McIntyre, 211 N.C. 698, 191 S.E.2d 507 (1937); Watson v. Watson, 49 N.C. App. 58, 270 S.E.2d 542 (1980). Unless otherwise indicated, the term "jurisdiction" will be used throughout this Note to refer to subject matter jurisdiction rather than to personal jurisdiction.
9. See infra notes 89-107 and accompanying text.
10. Record at 44.
11. Both the Crumplers were domiciled in North Carolina. Mayer, 66 N.C. App. at 528, 311 S.E.2d at 664.
12. In North Carolina there are two kinds of divorce, divorce from the bond of matrimony (a vinculo matrimonii) or absolute divorce, and divorce from bed and board (mensa et thoro). 1 R. LEE, supra note 6, § 33. The former completely dissolves the marriage, and the parties are free to remarry. Id. at 166; N.C. GEN. STAT. § 50-11(a) (1984). The latter does not end the marriage but "merely suspends the effect of marriage as to cohabitation," 1 R. LEE, supra note 6, § 33, and "effects an authorized separation of the husband and wife." Schlagen v. Schlagen, 253 N.C. 787, 790, 117 S.E.2d 790, 793 (1961).
13. N.C. GEN. STAT. § 50-5 (1976) (adultery, impotence, pregnancy by another at time of marriage, criminal act and two years' separation, unnatural sex, incurable insanity), replaced by Act of June 24, 1983, ch. 613, 1983 N.C. Sess. Laws 548; see 1 R. LEE, supra note 6, § 64. Under § 50-5 the application for divorce had to be made by the injured party. Id. at 310. Doris Crumpler may not have been able to prove any of these fault grounds.
14. N.C. GEN. STAT. § 50-6 (1984); see 1 R. LEE, supra note 6, § 64, at 310.
15. Mayer, 66 N.C. App. at 535, 311 S.E.2d at 668; Record at 44-45. The court of appeals referred to this proposition as a "fact" and stated that the record "suggest[ed]" that it was so. Mayer, 66 N.C. App. at 535, 311 S.E.2d at 668. The district court's findings of fact stated that "defendant was aware of the arrangements for plaintiff to obtain a divorce from Mr. Crumpler in the Dominican Republic." Record at 96.
16. Mayer, 66 N.C. App. at 535, 311 S.E.2d at 668; Record at 45.
17. Mayer, 66 N.C. App. at 535, 311 S.E.2d at 668; Record at 96.
Republic,\(^{18}\) where she obtained a divorce on the ground of irreconcilable differences.\(^ {19}\) Although the trial court found that Mr. Crumpler "acquiesced" in the divorce,\(^ {20}\) he did not appear in the action either in person or through counsel.\(^ {21}\) Rather, Mr. Crumpler expressed an intention to obtain a divorce in North Carolina after one year's separation; at the time of the district court judgment Mr. Crumpler had neither obtained a divorce nor remarried.\(^ {22}\)

Victor Mayer accompanied Doris Crumpler to the Dominican Republic and paid for all expenses except the filing fees of the divorce.\(^ {23}\) After returning to North Carolina, Doris Crumpler signed, at Mr. Mayer's request,\(^ {24}\) an antenuptial agreement limiting her right to alimony to $1,000 per month for every month their marriage lasted.\(^ {25}\) Following the couple's marriage on March 6, 1981, they lived together in Doris Mayer's house until July 1981, when Mr. Mayer, without provocation, left his new wife.\(^ {26}\) Significantly, the district court found that during the period the Mayers lived together, they "held themselves out as husband and wife, and neither questioned the validity of their marriage until after the separation."\(^ {27}\)

After the separation, Doris Mayer filed a complaint seeking divorce from bed and board,\(^ {28}\) permanent alimony, and alimony pendente lite.\(^ {29}\) Defendant Victor Mayer counterclaimed for an annulment and asserted as a defense the invalidity of his wife's prior divorce and the resulting invalidity of his marriage.\(^ {30}\) Plaintiff contended that since defendant had participated in obtaining the Dominican divorce and had held himself out as her husband, he was estopped to deny the validity of that divorce.\(^ {31}\)

The district court denied plaintiff's motions for alimony pendente lite and

\(^{18}\) Id. Doris Crumpler remained in the Dominican Republic for five days. Id.

\(^{19}\) Mayer, 66 N.C. App. at 526, 311 S.E.2d at 663; Plaintiff Appellant's Brief at 15. In 1971 the divorce law respecting foreigners in the Dominican Republic was liberalized to attract the migratory divorce trade. Note, Caribbean Divorce for Americans: Useful Alternative or Obsolescent Institution?, 10 CORNELL INT'L L.J. 116, 116 (1976); see 7 MARTINDALE-HUBBELL LAW DIRECTORY, Dominican Republic Law Digest 3-4 (1985) (law of Dominican Republic permits nonresidents to obtain mutual consent divorce if one spouse is present and the other is represented by an attorney).

\(^{20}\) Record at 96.

\(^{21}\) Mayer, 66 N.C. App. at 528, 311 S.E.2d at 664; see Record at 96. The court of appeals noted that the district court had not found as a fact that Mr. Crumpler had made either an actual or a constructive appearance in the Dominican proceeding. Mayer, 66 N.C. App. at 528, 311 S.E.2d at 664.

\(^{22}\) Record at 96.

\(^{23}\) Id.

\(^{24}\) Id. at 32-33, 48-49.

\(^{25}\) Id. at 96-97 (agreement signed March 4, 1981). For example, if the marriage lasted for 12 months, Doris Mayer would be entitled to alimony of $1,000 per month for a period of 12 months.

\(^{26}\) Id. at 97.

\(^{27}\) Id.

\(^{28}\) See N.C. GEN. STAT. § 50-7 (1984) (grounds for divorce from bed and board); supra note 12 (discussion of divorce from bed and board).


\(^{30}\) Record at 8; see N.C. GEN. STAT. § 51.3 (1984) ("All marriages between...persons either of whom has a husband or wife living at the time of such marriage...shall be void.").

\(^{31}\) Record at 16.
attorney's fees. Although the court determined that plaintiff would have satisfied the grounds for alimony and alimony pendente lite if the parties had been married, it concluded that plaintiff's Dominican divorce was invalid due to lack of jurisdiction in the granting court, and that therefore her subsequent marriage was void. Further, the court concluded that Victor Mayer was not estopped from asserting the invalidity of the divorce. It found estoppel inapplicable to a foreign divorce that the state deemed invalid, inapplicable to a person not a party to the divorce, and inapplicable to the facts of the case.

On appeal the court of appeals rejected Doris Mayer's contention that her foreign divorce should be recognized in North Carolina. The court concluded that comity should not be extended to the foreign divorce because there was not an adequate basis for jurisdiction—either domicile or some other sufficient relationship. In addition, the Dominican decree was denied recognition because it was offensive to North Carolina's public policy against the "hasty dissolution of marriages."

The court of appeals reversed the district court on the estoppel issue. Balancing conflicting public policies, the court noted that estoppel allows circumvention of a state's divorce law by giving practical effect to invalid divorces obtained elsewhere. It observed, however, that it would be even more contrary to public policy to allow Victor Mayer to avoid his marital obligations by denying the validity of the divorce. The court concluded that application of estoppel is not necessarily precluded when the party to be estopped is a second spouse rather than one of the parties to the original divorce.

Generally, a state has jurisdiction to grant a divorce when one of the spouses is domiciled in that state. As the Supreme Court stated in Williams v.

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32. Id. at 100.
33. Id. at 98; see also N.C. GEN. STAT. § 50-16.2(4) (1984) (grounds for alimony include supporting spouse's abandonment of dependent spouse).
34. Record at 98.
35. Id. at 99.
36. Id. at 99-100.
37. Mayer, 66 N.C. App. at 525-30, 311 S.E.2d at 662-65. The court of appeals first had to dispose of a procedural issue. The court determined that an immediate appeal was possible despite prior decisions holding that an order of alimony pendente lite is interlocutory and not immediately appealable. Id. at 525, 311 S.E.2d at 662.
38. Comity is the recognition granted by one nation to legislative, executive, or judicial acts of another nation. Hilton v. Guyot, 159 U.S. 113, 163-64 (1895). For further discussion of comity, see infra notes 56-65 and accompanying text.
40. Id. at 529-30, 311 S.E.2d at 664-65.
41. Id. at 536, 311 S.E.2d at 669.
42. Id. at 532, 311 S.E.2d at 666.
43. Id.
44. Id. at 534-36, 311 S.E.2d at 667-68.
45. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 71, at 218 (1971) provides: "A state has power to exercise judicial jurisdiction to dissolve the marriage of spouses one of whom is domiciled in the state." This rule is not absolute; jurisdiction sometimes is predicated on a different requirement. See id. § 72, at 219 ("A state has power to exercise judicial jurisdiction to dissolve the marriage of spouses, neither of whom is domiciled in the state, if either spouse has such a relationship to the state as would make it reasonable for the state to dissolve the marriage."). North Carolina generally has required domicile as a minimum requirement for jurisdiction to grant a divorce.
North Carolina (Williams II), 46 "Under our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on domicile." 47 Domicile is the place where one is physically present or living with the intent of making that place his home. 48 Because of the domicile requirement, the parties to a divorce proceeding cannot confer jurisdiction on a court. 49 The rationale underlying this restriction on the parties' choice of forum is that the domiciliary state is a third party to the marriage, and thus has an interest in the marital relationship. 50

Recognition of a divorce granted in a sister state is governed by the full faith and credit clause of the United States Constitution. 51 The Supreme Court held in Williams v. North Carolina (Williams I) 52 that domicile of one of the parties to a divorce is a sufficient jurisdictional basis to entitle the divorce decree to full faith and credit in every other state. 53 The scope of this entitlement to full faith and credit was narrowed somewhat by Williams II, which held that the recognizing state can deny full faith and credit to a divorce if the rendering sister state lacked jurisdiction—that is, if neither party was domiciled in the rendering state. 54 This freedom of the recognizing state to inquire into domicile and jurisdiction was thereafter limited by Supreme Court decisions holding that if the res judicata rules of the rendering state would bar collateral attack on the issue of domicile and jurisdiction when both parties participated (bilateral divorce), the full faith and credit clause bars attack on this ground in other states as well. 55

Recognition of foreign divorces, however, is not governed by the full faith and credit clause, 56 but instead is dependent on the doctrine of comity. 57 Com-

Wurfel, Choice of Law Rules in North Carolina, 48 N.C.L. REV. 243, 293 (1970). In addition, jurisdiction is dependent upon residence in the state for the length of time required by statute. 3 W. Nelson, Nelson on Divorce and Annulment 489 (2d ed. 1945). North Carolina has a durational residency requirement of six months. N.C. GEN. STAT. § 50-8 (1984); see 1 R. Lee, supra note 6, § 98, at 452.

46. 325 U.S. 226 (1945).
47. Id. at 229.
49. See, e.g., Golden v. Golden, 41 N.M. 356, 370, 68 P.2d 928, 936 (1937); Weiss, supra note 6, at 412.
52. 317 U.S. 287 (1942).
53. Id. at 298-302.
54. Williams II, 325 U.S. at 229.
55. Sherrer v. Sherrer, 334 U.S. 343, 350-52 (1948); Coe v. Coe, 334 U.S. 378, 384 (1948); Restatement (Second) of Conflict of Laws § 73 & comment b (1971). In other words, the res judicata rules of the state rendering the divorce are entitled to full faith and credit in all other states.
ity has been described as being "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows . . . [to decrees of another] having due regard both to international duty and convenience, and to the rights of its own citizens . . . ."\(^{58}\) Thus, the extension of comity to a foreign divorce is discretionary.\(^{59}\) It may be denied, for example, when the foreign court lacked jurisdiction or when the foreign divorce is contrary to the recognizing state's public policy.\(^{60}\)

The overwhelming majority of states withhold comity from a foreign divorce in cases in which the foreign court lacked jurisdiction because neither party was domiciled in the foreign nation.\(^{61}\) A minority of states, however, has extended comity to bilateral foreign divorces in which neither party was domiciled in the foreign nation.\(^{62}\)

Prior to the *Mayer* decision, no North Carolina cases had dealt with the recognition of a foreign divorce, nor had any cases dealt with the recognition of a divorce granted in a foreign nation where neither party was domiciled.\(^{63}\) The trial judge remarked at the close of the *Mayer* trial that this issue was "new ground in North Carolina."\(^{64}\) Professor Lee had reasoned in 1979 that since North Carolina would not recognize an *ex parte* sister-state decree granted without domicile, it was unlikely that the State would recognize a similar foreign divorce.\(^{65}\)

Some background on the doctrine of estoppel is necessary to an understanding of the *Mayer* decision. Estoppel may be applied to prevent attack on both sister-state\(^{66}\) and foreign divorces.\(^{67}\) This doctrine—that one who obtains or

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60. 1 R. LEE, *supra* note 6, § 104, at 487; 3 W. NELSON, *supra* note 45, § 33.11, at 440-42 (comity denied if divorce granted for cause not available under local law). The jurisdictional standards of the United States are used, rather than those of the foreign country. Annot., *supra* note 56, at 1424. Comity may be denied when the grounds upon which the divorce was granted are not available in and are contrary to the public policy of the state. *E.g.*, Everett v. Everett, 345 So. 2d 586, 588 (La. Ct. App. 1977); cf. Hilton v. Guyot, 159 U.S. 113, 165 (1895) (Comity is extended voluntarily and only when extension of it is not contrary to a nation's policies).
63. See 1 R. LEE, *supra* note 6, § 104, at 488. Southern v. Southern, 43 N.C. App. 159, 258 S.E.2d 422 (1979), dealt not with the extension of comity to a divorce decree but with the extension of comity to an in personam judgment for alimony and child support. The judgment was rendered in England, where the plaintiff was domiciled, but North Carolina's requirements for personal jurisdiction were not satisfied.
64. Record at 94.
65. 1 R. LEE, *supra* note 6, § 104, at 488-89.
66. *E.g.*, *In re Marriage of Winegard*, 278 N.W.2d 505, 509-10 (Iowa), cert. denied, 444 U.S. 951 (1979). In cases involving a bilateral sister-state divorce, attack on the divorce may be prevented
relies on a judgment may not later collaterally attack that judgment for lack of jurisdiction—is an exception to the general principle that a judgment rendered without jurisdiction is void and subject to collateral attack. Estoppel, however, is not applied in every case. Whether estoppel will be applied depends upon the facts of a particular case. Application of estoppel does not validate an invalid divorce decree, but rather silences a collateral attack. The practical effect is to give the invalid divorce decree some legal force, and to allow parties to confer jurisdiction for a divorce by their conduct. The result may be to allow an evasion of the recognizing domiciliary state’s divorce laws.

To assess the Mayer court’s application of estoppel, one must first consider the general level of acceptance accorded the doctrine, the factors that govern its application, and its use against third-party second spouses. Although some jurisdictions reject estoppel, the doctrine has been accorded “broad acceptance” by the courts. Among the factors that militate in favor of estoppel are procurement of the divorce by the party to be estopped, participation of the defendant in the invalid divorce, remarriage by either party, receipt of benefit such as alimony as a result of the divorce, and knowledge of and acquiescence in the questionable validity of the divorce.

Professor Clark has abstracted the basic components of a factual situation suitable for application of estoppel: “(1) the

by application of full faith and credit and res judicata. Restatement (Second) of Conflict of Laws § 73 & comment (1971); see supra notes 51-55 and accompanying text. Although such a bilateral sister-state divorce would be protected from attack under the rule of Sherrer v. Sherrer, 334 U.S. 343 (1948), courts sometimes discuss such cases in terms of estoppel. Clark, supra note 6, at 48.

67. Annot., supra note 56, at 1452. See generally Swisher, supra note 6, at 37-43 (overview of application of estoppel to prevent attack on foreign divorces).

68. Clark, supra note 6, at 45.

69. Id.


71. Id.; see Rosenberg, supra note 6, at 207-08. Estoppel “is an equity principle dependent upon events which may have occurred after the divorce was granted or apart from the divorce action. It is not a function of the decree but a personal disability of the party attacking the decree.” Clark, supra note 6, at 47.

72. Packer v. Packer, 6 A.D.2d 464, 468, 179 N.Y.S.2d 801, 805 (1958); Clark, supra note 6, at 55.

73. Rosenberg, supra note 6, at 207.

74. Phillips, supra note 6, at 364 & n.48.

75. Id. at 364.


77. Clark, supra note 6, at 49; see Restatement (Second) of Conflict of Laws § 74 & comment b (1971). Rejection of estoppel has been termed the “traditional theory,” Swisher, supra note 6, at 40, while acceptance has been described as a sociological approach, since estoppel has been viewed as consistent with sociological theories of divorce. See Clark, supra note 6, at 56. This sociological approach was expressed succinctly by the court in Kazin v. Kazin, 81 N.J. 85, 98, 405 A.2d 360, 367 (1979) (“There remains little, if any, interest in encouraging the resurrection of deceased marriages, even if pronounced dead by other tribunals whose processes are not completely consistent with our own.”).

attack on the divorce is inconsistent with prior conduct of the attacking party; (2) the party upholding the divorce has relied upon it, or has formed expectations based on it; (3) these relations or expectations will be upset if the divorce is held invalid." 79 The broad scope of estoppel is illustrated by section 74 of the Restatement (Second) of Conflict of Laws: "A person may be precluded from attacking the validity of a foreign divorce decree if, under the circumstances, it would be inequitable for him to do so." 80

Courts historically have been more hesitant to apply estoppel to a third party than to a party to an invalid divorce. 81 The issue of estopping a third party most often arises with respect to a second spouse, usually a second husband, of a party to the invalid divorce. 82 The second husband may be estopped from attacking the validity of his wife’s divorce if he married with knowledge of the nature of her prior divorce, and thus received benefits from that divorce through his marriage. 83 He also may be estopped if he persuaded his future wife to obtain the invalid divorce, financed or arranged the divorce, 84 or promised support. 85

Some courts and commentators have argued the equity of estopping a second spouse from attacking the validity of a divorce he has participated in procuring. 86 Since such a person, although technically not a party, stands in the same position as the plaintiff in the divorce proceeding, the same reasons for applying estoppel to a party to the divorce also apply to him. 87 Further, it has been argued that application of estoppel to the parties to an invalid divorce but not to a second spouse "creates the impossible situation of wife or husband 'at will,' where the divorced party who remarried cannot avoid the obligation of his remarriage, while his second spouse could at any time seek and obtain an annulment." 88

79. Clark, supra note 6, at 56-57.
80. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 74 (1971). "Foreign" as used in the Restatement means both sister-state and foreign country.
81. Rosen v. Sitner, 274 Pa. Super. 445, 451, 418 A.2d 490, 492-93 (1980). See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 74 comment b (1971); RESTATEMENT OF CONFLICT OF LAWS § 112 (1934) ("nor is any opinion expressed as to whether... a third person may be precluded from questioning the validity of a divorce decree").
82. Clark, supra note 6, at 66; see, e.g., Spellens v. Spellens, 49 Cal. 2d 210, 317 P.2d 613 (1957); Poor v. Poor, 381 Mass. 392, 409 N.E.2d 758 (1980).
86. Goodloe v. Hawk, 113 F.2d 753, 756 n.9 (D.C. Cir. 1940) ("Equity has regard for realities . . . . [the appellant is as responsible for the action of the Virginia court, in a real sense, as the appellee."); Harlan v. Harlan, 70 Cal. App. 2d 657, 661, 161 P.2d 490, 493 (1945) ("[the second spouse is] as much as any other . . . responsible for . . . the suit"); Rosenberg, supra note 6, at 217; Weiss, supra note 6, at 425.
87. Clark, supra note 6, at 66-67.
Prior to *Mayer*, North Carolina courts had estopped attacks on divorce decrees for lack of jurisdiction to prevent a person from asserting that the divorce to which he was a party was invalid. In *McIntyre v. McIntyre* the North Carolina Supreme Court estopped defendant in a suit for alimony from asserting as a defense the invalidity for lack of jurisdiction of a divorce decree he had obtained in Nevada from his first wife. The court concluded that "reason and justice" required this result because defendant had invoked the jurisdiction of the Nevada court, and thereby had been able to remarry. The court also stressed that his remarriage had created new expectations on the part of his second wife. In *Watson v. Watson* defendant in the original divorce sought to have a Florida divorce her husband had obtained declared void for lack of jurisdiction because he was not domiciled there. The court applied estoppel to defendant as one alternative ground of its decision. Even if the divorce were invalid, the wife would have been estopped because she had received benefits from the divorce by entering into a settlement agreement and receiving "valuable consideration."

The husband in *Redfern v. Redfern* did not attack the validity of his divorce per se, but rather its validity at the date of his marriage to his second wife. The fact setting thus differed from the typical estoppel situation. Although the court in *Redfern* found the divorce valid at the date of the second marriage, the opinion also contained language suggesting a decision based on estoppel. In *Redfern*, defendant had instituted the divorce proceeding and had continued to live with his second wife after discovering that the divorce judgment was not signed until after the date of the second marriage. He failed to tell his second wife of this flaw; therefore, the court noted he "should be equitably estopped" from asserting this defense to his second wife's action for alimony.

Parties guilty of culpable conduct sometimes have not been allowed to invoke the doctrine of estoppel. Estoppel was denied in *Donnell v. Howell*, a case upholding an Alabama divorce, in which the wife stipulated that she had obtained the divorce by fraud as to domicile. The court did not discuss the case in terms of "clean hands"—the principle that one seeking the protection of eq-

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90. 211 N.C. 698, 191 S.E. 507 (1937).
91. *Id.* at 699, 191 S.E. at 507.
92. *Id.* at 699, 191 S.E. at 508.
93. *Id.*
94. 49 N.C. App. 58, 61, 270 S.E.2d 542, 544 (1980).
95. *Id.*
96. *Id.* at 64, 270 S.E.2d at 546; *see 1 R. Lee supra* note 6, § 98, at 463 ("A person cannot attack a divorce decree after using the benefits which it confers.").
97. 49 N.C. App. 94, 270 S.E.2d 606 (1980).
98. *See Note, supra* note 88, at 327 (divorce usually attacked for lack of "jurisdiction over the subject matter or domicil").
100. 257 N.C. 175, 125 S.E.2d 448 (1962).
uity must have a clear conscience—"but stated that estopping the husband (who also had made the fraudulent allegations) would, due to the joint stipulation of fraud, be an "offense against public morals."102

Thus, prior to Mayer North Carolina courts had estopped either the plaintiff or the defendant in the original divorce proceeding based on the following factors: procurement of the divorce (invocation of jurisdiction), remarriage, new expectations upset by invalidating the divorce, receipt of benefit, and knowledge of and acquiescence in the invalid divorce.

Two cases in which a third party was not estopped involved culpable conduct by the party seeking estoppel or lack of participation in the divorce by the third party. In Cunningham v. Brigman103 a wife asserted estoppel against the children of her second husband. She alleged that after her remarriage her second husband had learned that her divorce was of questionable validity, but nonetheless continued to live with her. The court stated that estoppel is for the protection of innocent persons. Because the wife had procured her divorce based on a false affidavit, she could not invoke the doctrine of estoppel.104 In an earlier case, Pridgen v. Pridgen,105 the court had allowed a second husband to annul his marriage on the ground that his wife had been divorced by her first husband in an invalid proceeding. The court did not discuss the possibility of estopping the second husband based on benefit to him from marriage, his wife's remarriage, or the expectations that would be upset by invalidating the divorce.106 On the facts in these cases—when the conduct of the wife claiming estoppel was not innocent or when the second husband had not been involved in the prior decree—North Carolina courts had declined to estop the third-party second spouse.107

The Mayer court was eager to reach questions concerning the recognition of "quickie" foreign divorces in North Carolina.108 Although the court could have avoided the issue altogether,109 it analyzed in some detail the jurisdictional and public policy issues bearing on the recognition of the Dominican divorce. The court also resolved the question of appealability so as to permit immediate appeal of the validity of the Dominican divorce, further evidence of its desire to

101. For a discussion of "clean hands" as applied in estoppel cases, see Rosenberg, supra note 6, at 221.
102. Donnell, 257 N.C. at 185, 125 S.E.2d at 455.
103. 263 N.C. 208, 139 S.E.2d 353 (1964) (will contest).
104. Id. at 211, 139 S.E.2d at 355.
105. 203 N.C. 533, 166 S.E. 591 (1932).
106. A case peripherally related to the question at hand is Carpenter v. Carpenter, 244 N.C. 286, 93 S.E.2d 617 (1956), in which the court held the decree at most voidable, not void. Id. at 295, 93 S.E.2d at 626. The court did not allow collateral attack by a second husband on the ground for divorce alleged in his wife's prior divorce. Id. at 289, 93 S.E.2d at 622. The court carefully limited the question before it to collateral attack on the ground for divorce alleged rather than collateral attack on jurisdiction.
107. Cunningham concerned refusal to estop those whose claim was derived from a third-party second spouse. See generally Clark, supra note 6, at 67 (person whose claim is derived from one who would have been estopped is also estopped).
109. Id. at 523, 311 S.E.2d at 661; see supra note 4.
address the foreign divorce issue. The court's refusal to extend comity to a foreign divorce granted without domicile (or other sufficient relationship between the parties and the forum), and its refusal to extend comity to a foreign divorce contrary to the state's public policy against hasty divorce, shut off the "quickie" foreign divorce as a viable alternative for North Carolinians.

The court in Mayer preserved the legal distinction between sister-state and foreign divorce decrees. Briefly stated, the court's reasoning regarding the jurisdictional prerequisites for recognition of the Dominican divorce was: since comity requires domicile and there was no domicile in this case, comity will not be extended. Doris Mayer had argued that the standards by which North Carolina extends comity to foreign divorces should mirror those by which the state recognizes sister state divorces. Those standards include the rule that full faith and credit must be granted to bilateral divorces when the rendering state's rules of res judicata preclude collateral attack on the issues of domicile and jurisdiction. This rule has the effect of protecting divorces granted without domicile from collateral attack on jurisdictional grounds. The Mayer court maintained the distinction between recognition of sister-state and foreign divorces, thus recognizing that this particular loophole is not available for foreign divorces.

The court's holding in Mayer brings North Carolina in line with the majority of states that have considered the foreign divorce issue. The court observed that the majority of American jurisdictions will not recognize a foreign divorce if the parties were not domiciled in the granting nation. Doris Mayer had urged the court to join the "growing minority of jurisdictions" that have extended comity to bilateral foreign divorces without the domicile of either party in the foreign nation. The Tennessee Supreme Court recently joined this minority in Hyde v. Hyde. In Hyde the court upheld a divorce obtained in the Dominican Republic by nondomiciliaries of that country, one of whom was present in person and the other represented by an attorney. It has been noted

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110. See Mayer, 66 N.C. App. at 525, 311 S.E.2d at 662. The court reasoned that cases holding that orders for alimony are interlocutory and not immediately appealable are based on a desire to prevent delay in the execution of orders for alimony. Id.; see Fliehr v. Fliehr, 56 N.C. App. 465, 289 S.E.2d 105 (1982); Stephenson v. Stephenson, 55 N.C. App. 250, 285 S.E.2d 281 (1981). Such cases, therefore, did not bar appeal in Mayer since the appeal was from a denial of alimony. Mayer, 66 N.C. App. at 525, 311 S.E.2d at 662.

111. Id. at 528, 311 S.E.2d at 664; see supra note 45.

112. Id.

113. Plaintiff-Appellant's Brief at 5-8.

114. See supra notes 51-55 and accompanying text.

115. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 73 comment d (1971).

116. Mayer, 66 N.C. App. at 528-29, 311 S.E.2d at 664. The court reasoned that even if Doris Mayer's divorce had been obtained in a sister state, the Sherrer holding would not apply since her divorce was not bilateral. Under Williams II the court would be free to inquire into the jurisdiction of a sister state. Thus, North Carolina also could inquire into the jurisdiction of the Dominican court. If Doris Mayer's divorce had been bilateral, domicile still would have been required because the divorce was foreign. Id.

117. Id. at 529, 311 S.E.2d at 664; see supra note 61 and accompanying text.

118. Record at 9-11; see supra note 62 and accompanying text.

119. 562 S.W.2d 194 (Tenn. 1978).
that the *Hyde* court’s concern with possible prejudice to the parties rather than to the State resulting from the foreign nation’s failure to require domicile for jurisdiction is unusual.\(^{120}\) The *Mayer* court, on the other hand, sided with the majority of jurisdictions.\(^{121}\) In effect, the court reasserted the validity of domicile as the basis for divorce jurisdiction, a requirement that flows from the state’s interest in the marital relationship.\(^{122}\)

On the question of public policy, the court concluded that the Dominican Republic’s immediate\(^{123}\) no-fault divorce was contrary to North Carolina’s policy against hasty divorce.\(^{124}\) The court pointed out by reference to the State’s statutes that North Carolina has a public policy against “the hasty dissolution of marriages.”\(^{125}\) Until 1983 State law permitted immediate divorce, but only on proof of fault.\(^{126}\) At present the only ground for absolute divorce is separation for one year.\(^{127}\) The court rejected an argument that the ground of irreconcilable differences, upon which the Dominican divorce had been granted, was “substantially equivalent” to one year’s separation.\(^{128}\) The distinction relied on by the court was that the Dominican divorce could be obtained at once—a clear conflict with the State’s asserted public policy against hasty divorce. The *Mayer* court’s holding on this point differs from the Tennessee court in *Hyde v. Hyde*.\(^{129}\) The *Hyde* court considered the grounds for the Dominican divorce comparable to grounds available in Tennessee, since both were no-fault grounds.\(^{130}\) The Tennessee court so found despite the fact that the Tennessee no-fault statute required a cooling-off period,\(^{131}\) which one commentator viewed as evidence of a state public policy against hasty divorce.\(^{132}\)

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\(^{120}\) Note, *supra* note 61, at 247 n.59.

\(^{121}\) *Mayer*, 66 N.C. App. at 529, 311 S.E.2d at 664.

\(^{122}\) See *supra* notes 45-50 and accompanying text. It is significant that the court’s discussion of jurisdiction opened with, “[T]he Dominican Republic had no interest in the marriage of the two North Carolinians.” *Mayer*, 66 N.C. App. at 528, 311 S.E.2d at 664.

\(^{123}\) The Dominican divorce for foreigners does not have a durational residence requirement. See 7 MARTINDALE-HUBBELL LAW DIRECTORY, Dominican Republic Law Digest 3-4 (1985); Swisher, *supra* note 6, at 10 n.4. Dominican officials have announced that foreigners can have access to the courts within 72 hours. Note, *Caribbean Divorce for Americans: Useful Alternative or Obsolescent Institution?*, 10 CORNELL INT’L L.J. 116, 124 (1976).

\(^{124}\) *Mayer*, 66 N.C. App. at 529-30, 311 S.E.2d at 664-65.

\(^{125}\) Id. at 529, 311 S.E.2d at 664-65.

\(^{126}\) See *supra* notes 45-50 and accompanying text. It is significant that the court’s discussion of jurisdiction opened with, “[T]he Dominican Republic had no interest in the marriage of the two North Carolinians.” *Mayer*, 66 N.C. App. at 528, 311 S.E.2d at 664.


\(^{129}\) *Mayer*, 66 N.C. App. at 529-30, 311 S.E.2d at 665.

\(^{130}\) *Id.* at 529, 311 S.E.2d at 665.

\(^{131}\) Id. at 197.

\(^{132}\) Note, *supra* note 61, at 248-49; see TENN. CODE ANN. § 36-4-103(c) (1984). The Tennessee statute requires that bills for divorce on the ground of irreconcilable differences be on file for 60 (no minor child) or 90 (minor child) days before being heard. *Id.* This requirement is distinct from the durational residency requirement. *Id.* § 36-4-104.

\(^{133}\) Note, *supra* note 61, at 249. The commentator further noted that in *Hyde* neither party challenged the validity of the Dominican decree, and that the court might not have upheld the divorce had there been such a challenge. *Id.* at 250.
The court of appeals in *Mayer* concluded that the trial court had correctly refused to recognize the Dominican decree. The court thus rejected the "sociological" view, urged by Doris Mayer, that every divorce decree should be recognized since there is nothing to be gained by denying divorce when the marriage has in fact ended. The court appeared to endorse the realism of the sociological view but was not prepared to recognize a divorce granted on grounds that did not guarantee the marriage was ended, a fact that one year's delay would tend to confirm.

The court's refusal to recognize the Dominican decree was intended to force North Carolinians to submit their marital difficulties to the "legislature's judgments on the question of divorce." The effect of this refusal will be limited because the expense of a foreign divorce would have prevented many couples from even considering one. After *Mayer*, what will happen to North Carolina couples who want absolute divorce but are unwilling to wait a year? The couples' options include committing perjury in a North Carolina court as to the duration of their separation. Another option would be for one spouse to transfer domicile to a sister state with shorter durational residency or cooling off period requirements. Alternatively, the couple may obtain a bilateral divorce in a sister state so as to take advantage of the rule that full faith and credit bars attack on the issue of domicile and jurisdiction when the res judicata rules of the rendering sister state would bar such attack. The *Mayer* decision thus has undermined only one method of evading North Carolina's divorce law.

The *Mayer* decision demonstrates that even a foreign divorce decree that lacks jurisdiction and is substantively contrary to public policy may be given limited practical effect through the application of estoppel.

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133. *See Mayer*, 66 N.C. App. at 530, 311 S.E.2d at 665. The court limited the holding to the issue of estoppel. *Id.; see supra note 4.*

134. *See Clark*, supra note 6, at 52-53; *supra note 77.*

135. *See Plaintiff-Appellant's Brief* at 15-16. These arguments were summarized by the *Mayer* court. *Mayer*, 66 N.C. App. at 526, 311 S.E.2d at 663. The sociological view of divorce has been described as seeing "divorce as a regrettable but necessary legal recognition of marital failure." *Clark*, supra note 6, at 54. The court noted that passage of N.C. GEN. STAT. § 50-6 (1984) (grounds of one year's separation) represented a concession to or partial acceptance of the sociological view of divorce. *Mayer*, 66 N.C. App. at 529, 311 S.E.2d at 665.


137. When travel and lodging are taken into account, it has been estimated that the cost of a Caribbean divorce generally exceeds that of an American divorce. *Note, supra note 123, at 126.*

138. Perjury has been said to be widespread in American divorce proceedings. *M. Wheeler, No-Fault Divorce 5 (1974).*

139. Domicile of one of the parties to a divorce is a sufficient jurisdictional basis to entitle the divorce decree to full faith and credit in every other state. *Williams v. North Carolina*, 317 U.S. 287, 298-302 (1942). A durational residency requirement for divorce is a statutory requirement that a party to the divorce have been a resident of the state for a certain length of time prior to the filing of the action for divorce. *N.C. GEN. STAT. § 50-8 (1984)* requires residence of six months. Such a residence requirement is a jurisdictional requirement, *see Eudy v. Eudy*, 24 N.C. App. 516, 211 S.E.2d 536, aff'd, 288 N.C. 71, 215 S.E.2d 782 (1975), but is distinct from the domicile requirement. *Swisher, supra note 6, at 22; see supra note 45.*

140. *See supra note 55 and accompanying text.*

141. For the practical effect that estoppel gives to an invalid divorce decree, *see supra notes 73-75 and accompanying text.*
mined that allowing an evasion of the State's divorce law was preferable to allowing Victor Mayer to deny the validity of his wife's prior divorce, which he had actively participated in procuring.¹⁴²

The Mayer decision opens the door to further applications of estoppel to prevent a second husband from attacking his wife's prior divorce on grounds of jurisdiction. Two arguments adduced by the court¹⁴³ offer strong support for the application of estoppel to third-party second spouses like Victor Mayer. First, one who procures a divorce, though not technically a party to the action, has invoked the jurisdiction of the court to the same extent as the plaintiff and is equally responsible for the decision.¹⁴⁴ To apply estoppel to a divorce plaintiff but not to the second spouse who actively induced the invalid divorce would be to value form over substance. Second, failure to estop a third-party second spouse would allow him to induce reliance on the second marriage and escape at will any obligation of support.¹⁴⁵ Escape from a failed marriage is, of course, sanctioned by the state in the form of divorce, but escape from support obligations is not permitted.

The Mayer court assembled a list of factors favoring application of estoppel that will help guide lower courts in future cases involving possible estoppel of a third-party second spouse. The factors present in Mayer were (1) persuasion to obtain the divorce, (2) promise of support, (3) reliance on this promise (by signing away alimony rights from first husband), (4) escort to the site of the divorce, (5) financing the divorce, (6) reliance on the divorce by marriage and remarriage, (7) receipt of benefits (by marriage, living in his wife's house, borrowing money), and (8) acceptance of the marriage as valid until after separation.¹⁴⁶ Additional factors—such as the presence of a child from the second marriage or a marriage that had been long in duration—would have strengthened the case for estoppel. The case for estoppel may be further strengthened when the party seeking estoppel has not taken the risk of a new marriage while aware of the possible consequences.¹⁴⁷

North Carolina's public policy, as enunciated in Mayer, against hasty divorce is buttressed by the Mayer court's determination that domicile be the jurisdictional basis for foreign divorce. The court thus sought to prevent interference by foreign nations in the marital status of the state's domiciliaries. The Mayer case illustrates, however, that the state's control over the marriage of its domiciliaries, and its substantive public policy, sometimes may be overridden. The

¹⁴². Mayer, 66 N.C. App. at 531, 311 S.E.2d at 666.
¹⁴³. The court also noted that estoppel previously had been applied by North Carolina courts. It downplayed the factual distinctions between Mayer and the prior cases, since estoppel depends on the facts of each case, rather than on general rules. Id. at 533-34, 311 S.E.2d at 667. The court also noted the broad language of RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 74 (1971) and the expansion from earlier versions. Mayer, 66 N.C. App. at 532 & n.4, 311 S.E.2d at 666 & n.4.
¹⁴⁴. Id. at 534, 536, 311 S.E.2d at 666, 667-68; supra notes 86-87 and accompanying text.
¹⁴⁵. See Mayer, 66 N.C. App. at 532, 534, 311 S.E.2d at 666, 667-68.
¹⁴⁶. Id. at 535, 311 S.E.2d at 668.
¹⁴⁷. Id. at 531-32, 311 S.E.2d at 666. The district court stated in its order that "plaintiff knew or should have known that the Dominican Republic divorce might not be recognized in North Carolina." Record at 100.
court's will to effectuate state divorce policy was properly tempered in *Mayer* by considerations of equity. The court's use of estoppel against a third-party second spouse expands the use of estoppel in North Carolina in a fashion consistent with the basic doctrine.

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