UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MAUD SANBORN,	)	
	)	
Plaintiff	)	
	)	
v.	)	***Civil No. 92-188 B***
	)	
DONNA E. SHALALA,	)	
Secretary of Health and	)	
Human Services,	)	
	)	
Defendant	)	

REPORT AND RECOMMENDED DECISION [1]

In this Social Security Act (``Act") appeal the plaintiff challenges the determination of an administrative law judge that she is not entitled to benefits under Title II of the Act as the surviving divorced spouse of a fully-insured deceased wage earner because she was not married to him for a period of 10 years immediately before her divorce from him became effective.

The plaintiff was married to Carlton Sanborn in England on March 10, 1955. Record p. 39. They were divorced in a Maine Superior Court (York County) proceeding by divorce judgment dated March 1, 1965. *Id*. p. 40. Although the record does not indicate the date of entry of the divorce judgment, the parties agreed at oral argument that the entry date was March 8, 1965. They

[1] This action is properly brought under 42 U.S.C. 405(g). The Secretary has admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 12, which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the Secretary's decision and to complete and file a fact sheet available at the clerk's Office. Oral argument was held before me on March 1, 1993 pursuant to Local Rule 12(b) requiring the parties to set forth at oral argument their respective positions with citation to relevant statutes, regulations, case authority and page references to the administrative record.

also agree that no appeal was taken and no waivers of appeal were filed.

The plaintiff's entitlement to surviving divorced spouse's insurance benefits under 42 U.S.C. 402(e) and 416(d) turns on whether she ``had been married to [Mr. Sanborn] for a period of 10 years immediately before the date the[ir] divorce became effective." 42 U.S.C. 416(d)(2). The Secretary's regulation effectively defines the term ``effective" to mean ``final." Thus, someone in the plaintiff's position is entitled to the benefits at issue if she was ``married to the insured for at least 10 years immediately before [her] divorce became final." 20 C.F.R. 404.336(a)(2). If the divorce became final upon docketing on March 8, 1965, then the plaintiff's marriage to the decedent fell two days short of the required duration. If, on the other hand, it became final after March 9, 1965, then the 10-year requirement is satisfied. It is undisputed that Rule 73 of the Maine Rules of Civil Procedure as it read in 1965 provided a period of 30 days following entry of a Superior Court judgment within which any party could file an appeal therefrom.

The Administrative Law Judge concluded that, in the absence of the filing of an appeal, a Maine divorce judgment ``becomes both final and effective, at least insofar as it affects the marital status of the parties, as of the date of entry of the judgment." Record p. 15. He accordingly found that the plaintiff was not married to Mr. Sanborn for the requisite 10 years and denied her claim.[2] The plaintiff argues that this decision was erroneous because Maine divorce judgments do not become final until they are no longer appealable. Statement of Specific Errors at 2. In this regard, she misconstrues Maine law.

This court has had occasion to speak to the issue of when judgments entered by Maine courts become final:

> Under Maine law a judgment is final when it is properly docketed and directs a specific disposition of the matters in issue, *Fernald v. Maine State Parole Board*, 447 A.2d 1236, 1237 (Me. 1982); *Breau*

[2] It is apparent that the Administrative Law Judge based his ruling on the inaccurate assumption that the divorce judgment was entered on the docket on March 1, 1965. *See* Record p. 18. This error is harmless, however, since the actual docketing date was itself not more than 10 years after the date of marriage.

> *v. Breau*, 418 A.2d 193, 195 (Me. 1980), and where it finally disposes of the action and leaves no further question for consideration by the court, *Martel v. Inhabitants of the Town of Old Orchard Beach*, 404 A.2d 994, 995 (Me. 1979), *citing In Re Spring Valley Development*, 300 A.2d 736, 754 (Me. 1973).

Crane v. Commissioner of Dep't of Agric., Food & Rural Resources, 602 F. Supp. 280, 288 (D. Me. 1985) (Cyr, C.J.). Thus, a Maine judgment, including a divorce judgment, does not lack finality simply because the allowed appeal period has not expired. Indeed, as a general rule an appeal may not be taken until the judgment appealed from is final. *See, e.g., Cyr v. Cyr*, 429 A.2d 210, 211 (Me. 1981) (``The final-judgment rule applies to domestic relations disputes with no less force than to other types of controversy."); *Breau v. Breau*, 418 A.2d 193, 195 (Me. 1980) (Superior Court may not entertain an appeal from District Court unless there is a final judgment); *Maine Central R.R. v. Bangor & Aroostook R.R.*, 395 A.2d 1107, 1112 (Me. 1978) (generally, appeal to Law Court lies only after a final judgment, decree or order).

The plaintiff's reliance on the reported practice of clerks of court of refusing to issue attested copies of divorce judgments in unappealed cases and in the absence of appeal waivers until the day following the expiration of the appeal period and on 19 M.R.S.A. 662(2)[3] is misplaced. To the extent the reported practice exists, it is sanctioned neither by statute, rule or case law. And the presently effective version of section 662 does no more than validate as final, nonappealable and effective for all purposes all previously entered divorce judgments, except those as to which the appeal period has not yet expired, where counterclaims or other claims pending in the same action

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[3] All judgments or orders heretofore entered granting a divorce, annulment, disposition of property under Title 19, section 722-A, or other disposition, award or division of property incident upon a divorce or annulment, and otherwise final except for the pendency of another claim or counterclaim in the same action, are declared final, nonappealable and effective for all purposes as of the date of entry of such judgment or order. This subsection does not apply to any judgment for divorce, annulment or property disposition in which the appeal period, including any extensions, has commenced but has not expired as of the effective date of this subsection.

19 M.R.S.A. 662(2).

were never adjudicated. The exception simply makes clear that the provision's broad reach, which includes a declaration of nonappealability, does not apply to divorce judgments as to which the appeal period had not expired as of the provision's effective date.[4]

Concurring as I do with the Administrative Law Judge's conclusion that the plaintiff and Mr. Sanborn were not married for a period of 10 years before their divorce became effective within the meaning of section 416(d)(2) of the Act, I recommend that the Secretary's decision be ***AFFIRMED***.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 3rd day of March, 1993.

_____

David M. Cohen
United States Magistrate Judge

[4] The version of section 662 in effect at the time of the plaintiff's divorce from Mr. Sanborn merely validated all divorces granted prior to its effective date on libels inserted in a writ of attachment. It did not speak in terms of the effectiveness or finality of divorce judgments. The presently effective version, the purpose of which was to clarify the status of divorce judgments entered in circumstances where counterclaims or other claims pending in the same action were never adjudicated -- usually because of oversight --, was enacted in 1981.