COURT OF CHANCERY OF THE STATE OF DELAWARE

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June 6, 2012

Glynis Gibson, Esquire Glynis Gibson, P.A. 34 The Green, Suite G Dover, DE 19901 Alexander W. Funk, Esquire Curley & Rodriguez, LLC 250 Beiser Boulevard, Suite 202 Dover, DE 19904

Re: Posley v. Posley

C.A. No. 6803-VCN

Date Submitted: April 4, 2012

Dear Counsel:

Petitioner Jacqueline T. Posley ("Jacqueline") brought this action against Respondent Casper J. Posley ("Casper")<sup>1</sup> for matters generally arising out of their "married" life together since 1989. She seeks, *inter alia*, a constructive trust over the assets that Casper has acquired since 1989 and a declaration of the validity of their marriage to allow Family Court to divide their assets and to allow her to seek military benefits, Social Security benefits, and other entitlements to which she may be entitled through Casper.

<sup>&</sup>lt;sup>1</sup> First names are used for convenience only.

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Jacqueline and Casper went through a marriage ceremony in New Jersey on

December 6, 1989. Although neither of them knew, Casper's divorce from his

previous spouse was not yet final then; that, of course, calls into question the

validity of their marriage.<sup>2</sup>

Casper has moved to dismiss this action under Court of Chancery

Rule 12(b)(1), lack of subject matter jurisdiction. The Family Court generally

provides married couples with an adequate remedy at law, even though a

substantial portion of its relief may be considered equitable in nature. That court's

ability to provide an adequate remedy at law typically deprives this Court of

subject matter jurisdiction over matters within the Family Court's jurisdiction.

Jacqueline argues that an invalid marriage—which theirs may be because

Casper's divorce was not final at the time of their marriage ceremony—precludes

the Family Court from exercising jurisdiction over the various disputes. If so, she

argues, it follows that she lacks an adequate remedy at law and, therefore, this

Court would have jurisdiction.

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<sup>2</sup> Jacqueline brought an action in New Jersey seeking to validate the marriage; that action was dismissed for lack of subject matter and personal jurisdiction. *See* Respondent's Mot. to Dismiss

for Lack of Subject Matter Jurisdiction, Ex. C.

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Casper has filed in Family Court for an annulment and other relief.<sup>3</sup>

Jacqueline has also joined issue there and asks the Family Court to exercise

jurisdiction "for the purpose of equitably dividing, distributing, and assigning the

marital property,"<sup>4</sup> relief that parallels the relief which she seeks here.

If Family Court concludes that it has jurisdiction over the matters which

Casper and Jacqueline have raised there, it makes little sense for those issues to be

litigated in this venue as well. Indeed, if the Family Court does have jurisdiction,

it would seem that it would be providing an adequate remedy at law and, thus,

deprive this Court of any subject matter jurisdiction. Similarly, it makes little

sense for this Court and for the Family Court both to address the question of

jurisdiction.

Thus, the Court will defer to the Family Court to resolve, at least initially,

the jurisdictional question. That results in a stay of this action in favor of the

pending Family Court action.

<sup>3</sup> *Id.* Ex. D.

<sup>4</sup> *Id.* Ex. E.

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Counsel are requested to provide a report on the status of the related proceedings in the Family Court within sixty days of the date of this letter.

## IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K