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The Middle Initial

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THE MIDDLE INITIAL

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The Colorado attorney whose practice includes the examination of titles to property and the approval or rejection of such titles based on variences concerning middle names and initials is faced with a serious problem. A consideration of the Colorado cases in point may suggest some revision of his office procedure.

The problem of "what's in a name" arose early in Colorado in the 1872 case of *Doane v. Glenn*[1] when the court said:

> The next error assigned is the refusal of the court to allow plaintiffs to read in evidence the deposition of James W. Hanna. Several objections were made by the defendants, which we will notice in the following order:
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> 1. The commission is to take the deposition of James H. Hanna, and the deposition taken is that of James W. Hanna.
>
> There is nothing in the first objection. In legal contemplation, the middle letter constitutes no part of one's name. The law knows but one Christian name, and the omission or incorrect insertion of a middle name or initial is immaterial in pleading; so also in a commission to take depositions.[2]

During the period between 1872 and 1957, there was no decision of the Colorado Supreme Court involving the question of a variance with respect to middle initials or names, but there were three decisions of the Colorado Court of Appeals relating to that question.

The first case was *German Nat'l Bank of Denver v. Nat'l. State Bank of Boulder*.[3] In that case the variance was between the name W. J. Motley, which appeared in a garnishment summons served on a bank, and W. G. Motley, the name of one who had an account in the bank. The Court of Appeals reversed a judgment against the defendant bank, saying in part:

> Out of these facts sprang the law which is found laid down in the early authorities, that the middle letter formed no part of the name of any person. In other words, in conformity with the then existing custom, the court said that a man was known by his first name, and accuracy in that respect was all that the law required. The law and the decisions, which were the outgrowth of the existing conditions of society, can manifestly have no application to our modern commercial organizations. The wide extension and rapid increase of population, the great and unprecedented growth of commercial transactions, have compelled the use of different forms, and the adoption of different methods to distinguish individuals. The middle name, or the middle letter, is as much a part of a man's name in this part of the present century as either his christian [sic] or his surname. The result is that the more modern authorities in the eastern and

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1 1 Colo. 495 (18/2), *rev'd on other grounds*, 88 U.S. (21 Wall.) 33 (1874).

2 *Id.* at 502.

3 3 Colo. App. 17 (1892).

> commercial states have adjudged that the middle letter, or the middle name, is as essential to the accuracy of the writ as either the christian [sic] or the surname.[4]

However, after having stated that the middle name or middle letter is as much a part of a man's name as either his Christian or his surname, the court proceeded to limit and confine its decision to that particular class of cases, namely, cases which involved garnishments of banks.

The same case[5] was again before the Court of Appeals following a retrial in which the court affirmed its former opinion and then proceeded to give additional grounds for this affirmation, all of which related exclusively to business practice in banking.

The third decision of the Court of Appeals was in the case of *Gibson v. Foster*,[6] where the court said:

> The middle name or initial in a person's name has become quite material in modern times, especially as a distinguishing identification of the person. Many persons now have the same Christian, or given, name, and the same patronymic, family or surname, and it is by the middle name or initial only, in many instances, that the person may be distinguished or identified in writing....
>
> There is no presumption that Albert S. and A. L. Deleplane, or that A. S. and A. L. Deleplane, are the same person.

However, the language quoted above was probably dictum, since the court could have disposed of the variance in names without going into questions relating to the middle name or initial by basing its decision on the fact that only the initial A of the Christian name was used instead of the full Christian name Albert.

The great weight of authority supports the early holding of *Doane v. Glenn* that in legal contemplation the middle letter constitutes no part of one's name and that the law knows but one Christian name, and the omission or incorrect insertion of a middle name or initial is immaterial.

Mr. Patton, in his work on titles, says:

> It is an ancient rule that the law shall recognize but two names of an individual, the family or surname, and the given or Christian name. Under this rule, if two or more Christian names are used, the middle name, names, or initials are disregarded, and any discrepancy therein is immaterial. Of more general acceptance at this time is the holding that the insertion in one name and the omission in the other of a middle name or initial is immaterial unless the first name is itself an initial only. The rule came into existence at a time when few people had more than two names, but several courts now hold that in modern times a middle name or initial has become an essential part of the given name, for the purpose of distinguishing persons, and that it should be considered in determining the question of variance. Whether justified by the decisions of their own state or not, it has become a very general practice for ex-

4 *Id.* at 19.
5 German Nat'l Bank of Denver v. Nat'l State Bank of Boulder, 5 Colo. App. 427 (1895).
6 24 Colo. App. 434, 436 (1913).

aminers to require additional evidence of identity when the records show a difference in middle names or initials, or show their insertion in one only of two otherwise similar names.[7]

Attorneys in Colorado, in examining abstracts of title, have uniformly considered the middle initial or the middle name to be as much a part of a person's name as the Christian name, or initial, in spite of the *Doane v. Glenn* decision. According to Mr. Patton, this would seem to be in accordance with the general practice for examiners "whether justified by the decisions of their own state or not." This practice of the Colorado attorneys is undoubtedly based upon the realities of the modern day as against a legal fiction based upon conditions existing in the Middle Ages.

However, the problem has been pinpointed by the Colorado Supreme Court in two comparatively recent decisions, in which the rule of *Doane v. Glenn* is again applied.

7 1 Patton, Titles § 76 (2d ed. 1957).

The first of these two decisions is *Nelson v. District Court.*[8] That case involved the variance of the name Elizabeth G. Nelson, which was signed to the receipt for a registered letter that was sent to secure service of process, from the name Elizabeth L. Nelson, which appeared in the complaint as the name of the defendant. The court said:

> The middle initial is not the test; it is no part of a person's name.
>
> The middle initial is no part of a person's name, according to the weight of authority, and, therefore, no importance attaches to its omission, or to the insertion of an erroneous initial in place of the correct one. A similar mistake made by the insertion of a middle initial where the correct name contains no middle initial is likewise regarded as immaterial. . . . 42 Am. Jur., page 86, sec. 99.[9]

That decision was followed by the supreme court in its opinion in the case of *Clark v. Nat'l Adjusters, Inc.*[10] In that case a money judgment by default had been entered in a previous action, and the defendant against whom the judgment was obtained brought a suit to have the judgment vacated and to set aside the proceedings that had been taken subsequent to such judgment. One of her grounds of attack upon the service of process in the first action was that she was improperly named in the summons, the name therein having been Odessa Clark and not Odessa W. Clark. In passing upon such ground, the court said, "The omission in the summons of the plaintiff's middle initial was immaterial. This court has held that in legal contemplation such initial constitutes no part of one's name, the law knowing but one Christian name."[11]

The variance in each of the three decisions of the Colorado Supreme Court did not involve a full middle name. In *Doane v. Glenn*[12] and in *Nelson v. District Court*[13] there was a difference in the middle initials. *Clark v. Nat'l Adjusters, Inc.*,[14] involved the omission of the middle *initial.* The *Nelson* decision made no reference to middle names, but, in *Doane,* the court used the phrase "and the omission or incorrect insertion of a middle name or initial" and in both the *Doane* and *Clark* cases, the court used the phrase "the law knows but one Christian name."

However, if these decisions are to be considered applicable to deeds, encumbrances and other instruments affecting title to real estate, they must be considered to be applicable not only to the insertion or omission of a middle initial but also to the insertion or omission of a middle name and to the use of a middle name in one instrument that is entirely different from the middle name used in the other instrument. If, as the Colorado Supreme Court said, "the law knows but one Christian name" and if such holding is applicable to instruments affecting title to real estate, it logically follows that as long as the Christian name and the surname are the

8 136 Colo. 467, 320 P.2d 959 (1957).
9 *Id.* at 480, 320 P.2d at 962.
10 140 Colo. 593, 348 P.2d 370 (1959).
11 *Id.* at 595, 348 P.2d at 372.
12 1 Colo. 495 (1872).
13 *Supra* note 7.
14 *Supra* note 9.

same, any variance in the middle name must be disregarded as being immaterial.

None of these decisions related to variances in names appearing in deeds, deeds of trust and other instruments affecting title to real estate. Each of them involved proceedings in lawsuits. In *Doane* the variance was in a commission for the taking of a deposition; in *Nelson* the variance was in the receipt for a registered letter sent to secure service of process; in *Clark* the variance was in the summons. In *Doane* the court said "the law knows but one Christian name, and the omission or incorrect insertion of a middle name or initial is immaterial in pleading, so also in the commission to take depositions," but in *Nelson* and in *Clark* the opinions contained no language which prevented the rules laid down therein from being general rules applicable in all situations, including those in which the instruments affect title to real estate.

Assuming that these decisions are applicable to instruments affecting title to real estate, none of them would impair the effect of the Colorado curative statute.[15] That statute remedies variances between names appearing in two instruments, both of which have been recorded for more than three years, in three situations, namely: (1) where the full Christian name appears in one instrument and only the initial letter of that Christian name appears in the other; (2) where the full middle name appears in one name and only the initial letter of that middle name appears in the other; and (3) where the initial letter of a middle name appears in one name and does not appear in the other. The three cases would not be applicable to a variance arising from the first of these, namely, the full Christian name appearing in one instrument and only the initial letter of that Christian name appearing in the other, because the decisions relate only to the middle name or the middle initial. If applicable to instruments affecting title to real estate, the decisions would render immaterial the other two variances, namely, the variance arising from a full middle name appearing in one name and only the initial letter of that middle name appearing in the other, and the variance arising from the initial letter of a middle name appearing in one instrument and not appearing in the other, because, under such decisions, any variance with respect to the middle name or middle initial would be immaterial.

However, if such decisions are applicable to instruments affecting title to real estate, they would have a much greater effect upon

15 Colo. Rev. Stat. § 118-6-16 (1953).

discrepancies in middle names than does the statute. In the first place, under the statute, both instruments must have been of record for at least three years, whereas, by the decisions, the variance would be considered immaterial irrespective of the record date. Secondly, the variances remedied by the statute are variances which are not inconsistent with each other, because, in order that the statute may remedy the defect there must be a situation in which the middle initial in one instrument is the initial of the middle name that appears in the other instrument, or a situation in which the middle initial appears in one name but does not appear at all in the other name, whereas, under the decisions, the variance would be considered immaterial no matter how inconsistent the names might be with each other, so long as the Christian name and the surname are the same. For example, if the names of the grantee in one instrument appeared as John Jones Smith and the name of the grantor in the subsequent instrument appeared as John Robertson Smith the statute would not apply, but the decisions would render the variance immaterial because they apply no matter what the discrepancy in the middle names and initials might be. Such a result would seem to be entirely unacceptable to the overwhelming majority of attorneys.

Colorado attorneys cannot ignore these decisions. If after examining the abstract for the purchaser and in accordance with the general practice of attorneys in this state, one should reject the title as unmarketable because of a discrepancy such as in the example cited above, he might find himself faced with the necessity of having to sustain his rejection of the title in a suit brought by the purchaser to recover the deposit that had been paid on the purchase price, by convincing the court that these three Colorado Supreme Court decisions are not applicable to variances in middle names or middle initials in instruments affecting the title to real estate.

Three alternative courses should be given consideration by the attorneys of Colorado. The first of these is for the attorneys of the state to accept the three decisions as being applicable to instruments affecting the title to real estate and to pass as immaterial all variances of every nature in middle names and initials in instruments affecting title to real estate. The second course is to have presented to the Colorado Supreme Court for its determination the question of whether such three decisions are applicable to instruments affecting title to real estate. The third course is to seek legislative enactment of a statute which expressly sanctions the general practice of Colorado attorneys, which now exists and has existed for many decades, of considering the middle name and the middle initial as material parts of a person's name.

In my opinion, the first course, that of accepting the decisions as applying to instruments affecting title to real estate, is unthinkable, since it would not only upset the general practice of attorneys in this state, but it would ignore the realities of the modern age in which the middle name or initial must be considered as a part of the identification of a person. It would result in great confusion, particularly with respect to the necessity of including in abstracts those judgments against, wills of, and decrees of heirship with respect to persons having the same Christian name and surname but different

middle initials or middle names as compared with the names of the owners of record of the properties.

The second course, that of securing a determination from the court of the question of whether the three decisions are applicable to variances in names in instruments affecting title to real estate, is also impracticable. A case involving this question would require several years of litigation if commenced in the district court and reviewed on writ of error and in the meantime, the confusion and uncertainty would continue to exist.

The most practical and logical solution is through legislative action. The Legislature could resolve the problem simply by adding the following language at the beginning of the 1953 Colorado Revised Statutes, Sec. 118-6-16: "The middle name or the initial of a middle name appearing in a name contained in an instrument affecting title to real estate or in a signature or an acknowledgment thereto shall be deemed *prima facie* to be a material part of such name"; and by which amendment there are also inserted the words "Provided, however, that" at the beginning of the first sentence of said section as it now reads. Such a statute would be consistent with the reasoning of the Colorado Court of Appeals in *German National Bank of Denver v. Nat'l. State Bank of Boulder*[16] and in *Gibson v. Foster*.[17] The validity and constitutionality of such amendment would be unassailable, because it would relate to the *prima facie* presumption of identity of persons resulting from identity of names, and therefore would merely state a rule of evidence. Furthermore, such amendment might be enacted in the session of the Legislature which begins in January, 1961 which would avoid a long period of uncertainty.

16 3 Colo. App. 17 (1892).
17 24 Colo. App. 434 (1913).