Case Western Reserve Law Review

Volume 6 | Issue 3

1955

# Domestic Relations

Walter Probert

trial and notice of appeal, defendant had paid his fine. It was held that the payment of the fine did not as a matter of law constitute an abandonment of the appeal.

MAURICE S. CULP

# DOMESTIC RELATIONS

Family problems give rise to much litigation in Ohio particularly on the matter of divorce and its incidents. Comparatively little appears in the appellate reports concerning these problems, however. The explanation is, in the main, the lack of any real contest in divorce cases. Yet part of the answer may appear in the Ohio Supreme Court's refusal to take these cases for fear, understandably, of becoming a glorified divorce court. In either event, the result is a hodge-podge of domestic relations law in Ohio — made up of local idiosyncracies and rules. Uniformity of decisions may not always be a virtue and indeed may often be inherently impossible. On the other hand such uniformity is not only desirable but vital in some areas. One such area involves the relationship of a separation agreement to a divorce decree. The supreme court decided two cases in this area in 1954. The rules laid down were not really new, but apparently there was confusion in the lower courts and the supreme court sought clarification. We may hope the court will continue this practice.[1] Two other cases flavoring of domestic relations were decided by the supreme court during the year, but their chief ramifications lie in other areas.[2]

Several interesting problems were acted upon in the cases reported from the lower Ohio courts. Very important to the practicing attorneys is the holding that execution will not issue from a decree ordering installment payments in support of a child.[3] More important than the rule, which is well known to lawyers as matter of practice, is the reason given for the rule. The common pleas court said that the levying of execution on such a

[1] The cases referred to in the text are: Newman v. Newman, 166 Ohio St. 247, 118 N.E.2d 649 (1954). An alimony decree based on a separation agreement may not be modified unless the power to modify is expressly reserved in the decree. Mozden v. Mozden, 122 N.E.2d 295 (1954). Mere reference to a separation agreement in the alimony decree with repetition of its provisions is an incorporation of the decree sufficient to bring the decree within the rule of the *Newman* case, even though the agreement is not expressly *approved* in the decree.

[2] Signs v. Signs, 161 Ohio St. 241, 118 N.E.2d 411 (1954). See section on TORTS, *infra*. The case involves the duty of a father to his child in negligence cases. *In re* Tilton, 161 Ohio St. 571, 120 N.E.2d 445 (1954) See section on CIVIL PROCEDURE, *supra*. The case involves the scope of a habeas corpus proceeding on the matter of custody.

[3] Roach v. Roach, 116 N.E.2d 46 (Cuyahoga Com. Pl. 1954).

decree in satisfaction of unpaid installments is in effect a modification of the decree. Therefore the obligor on the decree must have notice and a chance to be heard. The proper procedure then is to reduce past due installments to judgment and levy execution on that judgment. If a maintenance decree may be modified as to past installments, then the reasoning is correct.[4] The usual rule in the United States is *contra.* The rule stated by the Ohio court plays havoc with the enforcement of Ohio decrees in other jurisdictions. This is true because the full faith and credit clause of the United States Constitution does not require the enforcement of a decree where installments are unpaid if the past installments are subject to modification in the rendering state.[5]

Once again we have the decision that wilful absence for less than the statutory period of one year does not constitute gross neglect of duty as a ground for divorce.[6] It may be, however, that not much more is required to turn wilful absence into gross neglect. In one case, a court of appeals decided that a wife's desertion and prior "acrimonious conduct toward her husband, predicated upon his refusal to purchase a farm in the country" amounted to gross neglect of duty.[7]

A problem of importance to divorced parents was partially solved in a court of appeals case. A husband and wife were divorced and custody of their child was given to the wife. The wife remarried and proceeded to call the child of the first marriage by the surname of her second husband. The first husband filed a motion in the Common Pleas Court of Cuyahoga County to modify the original divorce decree to provide that his child should retain his father's surname. In the meantime a school in Avon Lake enrolled the child under the surname of the second husband, undoubtedly at the mother's instigation. Then the father, in Lorain County, sought an injunction ordering the Board of Education of Avon Lake to list the child by his father's surname on the Board's rolls. Apparently without regard to what the outcome of the motion for modification in Cuyahoga County might be, the Court of Appeals of Lorain County granted what appears to be a permanent injunction against the Board of Education.[8] The basis of the decision is that the mother did not have the legal authority to change the child's name. The child might be better off in his social relations if he bore the name of the second husband, in whose home he lives; but the father undoubtedly has an interest in seeing the name remain unchanged. It

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[4] The rule of the case necessarily applies to alimony decrees by a parity of reasoning.

[5] Furthermore the needy spouse may not be able to reduce the decree to a judgment in Ohio without personal service on the obligor.

[6] Casbarro v. Casbarro, 66 Ohio L. Abs. 505, 118 N.E.2d 209 (Ohio App. 1953).

[7] Slusser v. Slusser, 68 Ohio L. Abs. 7, 121 N.E.2d 317 (Ohio App. 1954).

[8] Kay v. Bell, 95 Ohio App. 520, 121 N.E.2d 206 (1953).