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Civil Procedure--Alimony Award Subsequent to Ex Parte Divorce

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Recent Decisions

CIVIL PROCEDURE — ALIMONY AWARD SUBSEQUENT TO EX PARTE DIVORCE

Mr. Armstrong while domiciled in Florida obtained by constructive service a divorce decree against his wife who had established a domicile in Ohio.[1] Both parties were natives of Ohio but had become domiciled during the 1920's in Florida, where they engaged in business. However, they did not sever their Ohio ties and generally spent the summer months on a farm which they had purchased there. In 1950 after marital difficulties developed between the Armstrongs, Mrs. Armstrong returned to Ohio and she took up residence there. She had in her possession a strong box containing securities owned by Mr. Armstrong and also some money which she had withdrawn from their joint bank account.

Subsequent to the Florida decree Mrs. Armstrong sued her husband for divorce and alimony in Ohio. The Ohio common pleas court denied the divorce because the Florida court had already awarded a divorce to the husband. However, since the Ohio court had personal jurisdiction over both parties, it did make an award of alimony. Mr. Armstrong appealed to the court of appeals[2] and then to the Supreme Court of Ohio,[3] and in both instances the findings of the lower court were affirmed.

The basic problem confronting the Supreme Court of the United States was whether the Ohio court could, in conformity with the requirements of full faith and credit,[4] make an award of alimony after the husband had obtained a divorce in Florida by virtue of constructive service on the wife.

In affirming the Ohio decision the Supreme Court was divided in its approach.[5] Four Justices concurred in interpreting the Florida decree as not purporting to adjudicate the subject of alimony.[6] They therefore concluded that no constitutional issue of full faith and credit was pre-

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[1] Armstrong v. Armstrong, 350 U.S. 568 (1956), *affirming*, 162 Ohio St. 406, 123 N.E.2d 267 (1954), *affirming*, 99 Ohio App. 7, 130 N.E.2d 710 (1954).

[2] Armstrong v. Armstrong, 99 Ohio App. 7, 130 N.E.2d 710 (1954)

[3] Armstrong v. Armstrong, 162 Ohio St. 406, 123 N.E.2d 267 (1954)

[4] U.S. CONST. art. IV, § 1.

[5] Three opinions were written in which the court was divided 4,4,1.

[6] Relative to alimony the Florida decree stated that: "This court, therefore, finds the defendant has not come into this court in good faith or made any claim to the equitable conscience of the court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant ", Armstrong v. Armstrong, 350 U.S. 568, 569 (1956). It appears that these four members of the court (Justices Burton, Harlan, Minton and Reed) were quite liberal in their construction of the decree.

sented. The Ohio courts gave full recognition to the Florida divorce and determined only the question of alimony, a subject which the Florida decree did not embrace.[7]

In a concurring opinion four Justices took the position that the Florida decree specifically denied alimony. Thus having presented the issue of full faith and credit, these Justices resolved the controversy on the basis that Florida did not have sufficient jurisdiction to render a personal judgment against Mrs. Armstrong. Hence the part of the decree pertaining to alimony was void, and as such Ohio need not give it full faith and credit.

A third opinion by Mr. Justice Frankfurter expressed his adoption of the interpretation that Florida had not touched upon the subject of alimony. In addition he failed to find a federal issue since Ohio was merely dealing with property within its own borders.

The present holding of the Supreme Court is consistent with prior decisions in the areas of divisible divorce, full faith and credit and due process. The principle of divisible divorce was first established in *Estin v. Estin*.[8] In the *Estin* case the court held that an ex parte divorce decree could be effective insofar as it dissolved the marital relationship but would be ineffective in the sphere of alimony. As in the present controversy the husband in the *Estin* case secured a foreign divorce decree which made no provision for alimony by virtue of constructive service upon the wife. However, Mrs. Estin had obtained a *prior* support order which was held to survive the foreign decree. It should be noted that in both the *Estin* and *Armstrong* cases the issue is unlike those in which the wife is personally served or has made an appearance.[9]

In answering the husband's contention that the law of the matrimonial domicile (Florida) should govern, the court in the *Armstrong* case pointed to *Williams v. North Carolina*,[10] wherein it was held that the concept of matrimonial domicile was no longer appropriate. Also in line with the *Williams* cases it was found that Ohio must uphold the Florida divorce because of full faith and credit, but could challenge the findings in relation to the wife's domicile.

The court in the present case implicitly reaffirmed the notion that

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[7] It should be noted that the Florida decree specifically ordered Mrs. Armstrong to return the securities which she had taken. These were the same securities which the Ohio court ordered Mr. Armstrong to transfer to Mrs. Armstrong as alimony.

[8] Estin v. Estin, 334 U.S. 541 (1948). See Kreiger v. Kreiger, 334 U.S. 555 (1948).

[9] See Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948).

[10] Williams v. North Carolina, 325 U.S. 226 (1945); Williams v. North Carolina, 317 U.S. 287 (1942) (two cases).

[11] May v. Anderson, 345 U.S. 528 (1953); Williams v. North Carolina, 325 U.S. 226 (1945); 143 A.L.R. 1294 (1943).