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NOTE

ALIMONY DECREES AVAILABLE MEANS OF ENFORCEMENT IN KENTUCKY

At common law a court of equity had two methods of enforcing alimony decrees. One method was by the writ of attachment of the person of the defaulting husband, under which he was cited as being in contempt of court and imprisoned until such a time as he had purged himself of his contempt by payment of the alimony then due under the decree.¹ This means of enforcement was resorted to practically to the exclusion of the second method, the writ of sequestration.² By means of this writ the courts of equity were given the power to take charge of the husband's property, both real and personal, and administer it for the benefit of the wife, to the extent of her claim derived from the alimony decree. The court could collect the rents and profits from the defaulting husband's lands, as well as the income from his personalty, or it could sell his personalty, and apply the proceeds to the payments due under the alimony decree.

With such an effective means of enforcement as was made available by the writ of sequestration, one might well question the advisability of so frequent resort by the common law courts to imprisonment for contempt in order to enforce payment of alimony. If such a question is justified in regard to the action of the common law courts it would appear that it is all the more justified as regards the Kentucky courts of today, in view of the ample means of enforcement, other than by imprisonment, now available in this jurisdiction.

In 1893, Kentucky passed what is now Kentucky Revised Statutes Section 426.430, which provides: "A final order or judgment in equity for money, land or other specific thing may be enforced by any appropriate writ of execution, allowable on a judgment at law, or by the ancient practice of courts of chancery. The writ shall issue and be returnable as other writs of execution."³

¹ Notes (1920) (Introduction) 8 A. L. R. 1156, (1911) 137 Am. St. Rep. 876, (1894) 24 L. R. A. 433.

² Notes (1925) 38 A. L. R. 1084, (1889) 1 L. R. A. 788, 10 R. C. L. 565, (1896) 24 Eng. Ru. Ca. 40.

³ 1893, c. 219, p. 1004, Art. V, sec. 1.

As will be noted from its wording the legislature did not intend this statute as a substitution for the common law powers of a court of equity, but rather as an addition to them.

Although the courts appear generally to have ignored the increased powers made available by this statute, a study of the cases arising since the date of its passage reveals that its provisions have been resorted to in a number of instances. One of the first decisions to take advantage of its existence was that of *Tyler v. Tyler*,⁴ where the wife was granted alimony in a lump sum, and the court held that equity could order execution by sale of the former husband's realty. The court also pointed out that the alimony judgment made the wife just like any other judgment creditor of the husband and the alimony due became a debt of record upon which execution would issue.

Since the decision in the above case the Kentucky courts have resorted to various means of securing payment of alimony. In addition to granting execution upon realty,⁵ execution has been ordered upon personalty,⁶ garnishment of the former husband's income has been permitted,⁷ his bank account has been attached,⁸ and notes owned by the husband have been ordered collected and the proceeds paid into court.⁹ To assure compliance with any alimony decree it might later grant, courts have permitted the wife to attach her husband's property upon filing her petition for divorce.¹⁰

In *Nisbet's Ex'rs. v. Nisbet*,¹¹ the wife sued the husband for alimony and joined as defendants the executors of the

⁴99 Ky. 31, 34 S. W. 898 (1896).

⁵*Ferree v. Ferree*, 285 Ky. 825, 149 S. W. 2d 719 (1941); *Harley v. Harley*, 283 Ky. 725, 142 S. W. 2d 992 (1940); *Tyler v. Tyler*, 99 Ky. 31, 34 S. W. 898 (1896); see *Ford v. Ford*, 230 Ky. 56, 18 S. W. 2d 859 (1929); *Franck v. Franck*, 107 Ky. 362, 54 S. W. 195 (1899).

⁶*Ferree v. Ferree*, 285 Ky. 825, 149 S. W. 2d 719 (1941); see *Ford v. Ford*, 230 Ky. 56, 18 S. W. 2d 859 (1929); *Tyler v. Tyler*, 99 Ky. 31, 34 S. W. 898 (1896).

⁷*Coggins v. Coggins*, 289 Ky. 570, 159 S. W. 2d 4 (1942); see *Nisbet's Ex'rs v. Nisbet*, 178 Ky. 456, 198 S. W. 1154 (1917).

⁸*Adkins v. Adkins*, 213 Ky. 100, 280 S. W. 477 (1926) (the court ordered that the funds be applied to payment of the wife's attorney's fees and costs, but nothing appears which would have prevented their being applied to satisfy the alimony claim).

⁹*Adkins v. Adkins*, 213 Ky. 100, 280 S. W. 477 (1926).

¹⁰*Ferree v. Ferree*, 285 Ky. 825, 149 S. W. 2d 719 (1941); *Adkins v. Adkins*, 213 Ky. 100, 280 S. W. 477 (1926).

¹¹178 Ky. 456, 198 S. W. 1154 (1917).

estate of the husband's deceased father. It was held that the wife was entitled to a full disclosure by such executors as to the amount and character of the husband's inheritance, with a view to ascertaining the portion thereof that might be applied toward the payment of alimony.

In the case of *Ferree v. Ferree*,¹² the equity court went so far as to order that a lien attach to the husband's lands to secure the payment of alimony, but it does not appear whether the lien was made a part of the alimony decree or was ordered in a subsequent suit by the wife to enforce the decree. However, the decision in *Campbell v. Trosper*,¹³ by dictum, points out that the Chancellor can provide for such a lien in his alimony decree.

Still another recourse open to a court of equity may be found where the husband is the beneficiary of a trust established for his support. In the case of *Ford v. Ford*,¹⁴ the husband's father had set up a trust for his son's benefit, and the court decreed that the trustee might be directed to pay a certain amount out of the proceeds of such trust for the support of the husband's children. This case serves to show that the court of equity may take charge of the proceeds payable out of a trust fund if a sufficiently equitable claim arises, and that if the proper circumstances exist those proceeds may be applied to the satisfaction of an alimony decree. This result was reached in a well known New York case.¹⁵

Under the present status of the law in Kentucky there appears to be only one type of alimony decree that cannot be enforced by any and all of the above named means, and that is the temporary support allowed the wife during the process of the suit for divorce. Such a decree is not regarded as a final judgment and therefore is enforceable by rule only.¹⁶ All other types of alimony, whether lump sum, settlement agreement, or that payable in a monthly amount until further order of the court, are considered as final judgments, upon which execution may issue as to the amount due.

In view of the virtually unlimited resources available to

¹² 285 Ky. 825, 149 S. W. 2d 719 (1941).

¹³ 108 Ky. 608, 57 S. W. 245 (1900).

¹⁴ 230 Ky. 56, 18 S. W. 2d 859 (1929).

¹⁵ *Wetmore v. Wetmore*, 149 N. Y. 520, 44 N. E. 169 (1896).

¹⁶ *Ford v. Ford*, 230 Ky. 56, 18 S. W. 2d 859 (1929).

a court of equity to enforce payment of alimony, it is difficult to comprehend why resort should so frequently be had by Chancellors to imprisonment. It is within the discretion of the court as to whether or not a request by the wife to have her defaulting husband imprisoned shall be granted.¹⁷ But a wise court should compel her first to seek relief by means of some one of the above methods. It is contended that the courts are entirely too prone to seek the easiest way out and relieve themselves and the wife of slight difficulties at the expense of the reputation, liberty and good name of the husband.

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¹⁷ Barrett v. Barrett, 287 Ky. 216, 152 S. W. 2d 610 (1941).