Kentucky Law Journal

Volume 27 | Issue 4 Article 11

1939

Husband and Wife--Divorce--Assignability of Alimony

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There are only slight suggestions of the possibility of a less sympathetic attitude toward the adopted child. In *Lanferman* v. *Vanzile*[21] three judges in a strong dissent declared that "kindred" means "relatives by blood" and that "the courts should depart from this elemental blood-guideship only when enforced to do so by an inexorable statutory demand." There is a trace of this idea of blood-relationship as the basis of all inheritance laws in an earlier case.[22]

Since most of the dicta in the Kentucky cases indicate a sympathy for the view of the majority of jurisdictions,[23] it seems almost certain that when this question is decided, Kentucky will be found in agreement with the weight of authority. It is submited that desirable social results are to be gained in following the majority rule. The adult by adopting the child takes upon himself the responsibility of caring for the child and giving him an equal start in life with other children. In order to fulfill the apparent intention of the adult in adopting the child, it is necessary to permit the child to inherit from the adult, and he should not be prevented from inheriting through the negligence or oversight of the adult.

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HUSBAND AND WIFE—DIVORCE—ASSIGNABILITY OF ALIMONY

It is the purpose of this note to discuss the assignability of alimony when the assignment is for (1) a future installment, (2) assignment of a gross award, and (3) an assignment of an installment which has already accrued and is past due.

Before entering into a discussion of the question we shall consider the nature and purposes of alimony, the various things to be taken into consideration by the courts in making the award, and also the interests of the parties and the public in relation thereto.

Alimony is considered as being an allowance which a husband, by order of the court, pays to his wife, living separate from him, for her maintenance.[1] The amount to be awarded for alimony depends upon a great variety of considerations and is governed by no fixed rules.[2] The ability of the husband to pay;[3] the needs of the wife; the acquisition of the estate;[4] whether there are children to be supported and educated,

[21] 150 Ky. 751, 150 S. W. 1008, 1011 (1912).
[22] Merritt v. Morton Admx., 143 Ky. 133, 136 S. W. 133 (1911).
[23] See note 11, supra.
[1] Chase v. Chase, 55 Me. 21 (1869); Odom v. Odom, 36 Ga. 286 (1867).
[2] Richmond v. Richmond, 2 N. J. Eq. 90 (1838); Ricketts v. Ricketts, 4 Gill 105 (Md. 1846); Burr v. Burr, 7 Hill 207 (N. Y., 1843); McGee v. McGee, 10 Ga. 477 (1851).
[3] Small v. Small, 28 Neb. 843, 45 N. W. 248 (1880); Battey v. Battey, 1 R. I. 212 (1845); Bursler v. Bursler, 5 Pick. 427 (Mass., 1827); McCrocklin v. McCrocklin, 41 Ky. (2 B. Mon.) 370 (1842); McGrady v. McGrady, 48 Mo. App. 668 (1892).
[4] Fishli v. Fishli, Ky. (2 Litt.) 327 (1822); Robbins v. Robbins, 101 Ill. 416 (1882); Stevens v. Stevens, 49 Mich. 504, 13 N. W. 835 (1882).

and upon whom their support devolves;[5] the condition in life, place of residence, health, and employment of the husband, as demanding a larger or smaller sum for his own support; the condition in life, circumstances, health, place of residence, and consequent necessary expenditures of the wife;[6] the age of the parties,[7] and whatever other circumstances may address themselves to a sound judicial discretion of the court.

The most important of these matters to be considered by the courts in making the award are the rights of the parties. Since the courts have the power to change and alter the amount to be paid by the husband in the future, depending on his ability to pay and the needs of the wife, it is thought that if the wife is free to assign the amount which the court has awarded for a much smaller sum that it will be necessary for the court to increase the award in the future to enable her to proper support, esepecially if the award which has been made is barely enough to meet this need. It is also thought that the wife should be protected against poor investments and other financial hazards. Most important of all are the interests of the children. Naturally, part of the award is for their support and education and since the public is interested in having them become useful and valuable citizens, their interests should be protected above all others.

Generally, if not universally, installments of alimony which are to become due and payable in the future are non-assignable.[8] Some of the reasons advanced by the courts for holding that future installments are not assignable are (1) "that they are against public policy because the decree is personal, for the support of the wife and children, and to prevent them from becoming a burden or charge on the public"[9] and (2) "because the courts, either inherently or by statute, have the power to 'change, alter, or modify' the provisions of a divorce decree in respect of future installments of alimony".[10] Decrees for future install-

[5] Foss v. Foss, 100 Ill. 576 (1881); Lawrence v. Lawrence, 3 Paige 266 (N. Y., 1832); Call v. Call, 65 Me. 407 (1886); Halleman v. Halleman, 65 Ga. 476 (1880); McGee v. McGee, 10 Ga. 477 (1851).

[6] Bursler v. Bursler, 5 Pick. 427 (Mass., 1827); Ricketts v. Ricketts, 4 Gill 105 (Md., 1846).

[7] Schlosser v. Schlosser, 29 Ind. 488 (1868); Miller v. Miller, 6 Johns. 91 (N. Y., 1822); Ricketts, 4 Gill 105 (Md., 1846).

[8] In re Robinson, L. R. 27 Ch. D. 160 (1884); Lynde v. Lynde, 64 N. J. Eq. 736, 52 Atl. 694 (1902); Kempster v. Evans, 81 Wis. 247, 51 N. W. 327 (1892); Newman v. Frietas, 129 Cal. 283, 61 Pac. 907 (1900); Jordon v. Westerman, 62 Mich. 170, 28 N. W. 826 (1886); McConnell v. McConnell, 98 Ark. 193, 136 S. W. 931 (1911); Welles v. Brown, 226 Mich. 657, 198 N. W. 180 (1924); In re Brackett, 114 App. Div. 257, 99 N. Y. S. 802 (1906) *aff'd* 198 N. Y. 502, 81 N. E. 1160 (1907).

[9] Lynde v. Lynde, 64 N. J. Eq. 736, 52 Atl. 694 (1902); Fournier v. Clutton, 146 Mich. 298, 109 N. W. 425 (1906); Ferguson v. Ferguson, 145 Mich. 290, 108 N. W. 682 (1906).

[10] Hartigan v. Hartigan, 142 Minn. 274, 171 N. W. 925 (1919); Brandt v. Brandt, 40 Ore. 477, 67 Pac. 508 (1902); Duss v. Duss, 92 Fla. 1081, 111 So. 382 (1926); Gallant v. Gallant, 154 Miss. 832, 123 So. 883 (1929); Skinner v. Skinner, 205 Mich. 243, 171 N. W. 383 (1919).

ments do not create a vested right in the wife but are only to secure the maintenance of the wife and to permit her to exercise the right to assign, would frustrate the purpose of the law, therefore such installments cannot be enjoyed by the wife in anticipation.[11] In reaching this conclusion, the decrees of the courts, the parties themselves, and the interests of the public in general are all protected and it is a well established and sound principle of law.

If the award is made for a gross or lump sum, in full for all claims of alimony or any other account against the husband, the view has been taken that the wife may make an assignment thereof.[12] It should be noted at the present time that there are some jurisdictions which do not permit an assignment under any circumstances or conditions, therefore, the above rule as to assignments when the award is payable in a gross or lump sum would not hold true in those jurisdictions. In these cases the major consideration has been the general property settlement under the decree terminating the marital status, and the maintenance of the wife in the future was a minor consideration. It seems that the wife should be permitted to control and invest her part of the settlement in any manner that she deems advisable and the fact that she has been married and divorced should not be a sufficient reason for subjecting her property to continual supervision by the court or provide a reason for placing restrictions thereon. Shouldn't she be just as capable and efficient in the management of her estate as another member of her sex of equal age and education?

There is a divergence of opinion in the several states as to the power of the courts to modify provisions of a divorce decree as respects past-due installments of alimony and the validity of assignments thereof.[13] Also, the problem becomes more complex and difficult of solution. However, the general rule is that past-due installments of alimony are assignable.[14] The main reason advanced by the courts is that "installments of alimony become vested when they become due and payable and the court has no power to modify the decree as to them".[15]

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[11] Greenburg v. Greenburg, 99 N. J. Eq. 461, 133 Atl. 768 (1926); Fournier v. Clutton, 146 Mich. 657, 198 N. W. 180 (1924).

[12] Bassett v. Waters, 103 Kan. 853, 176 Pac. 663 (1918); *Contra:* Welles v. Brown, 226 Mich. 657, 198 N. W. 180 (1924).

[13] Harman v. Harman, 196 S. E. 361 (W. Va., 1938); Cederburg v. Gunstrom, 193 Minn. 421, 258 N. W. 574 (1935); Proctor v. Churchin, 273 N. Y. S. 821, 153 Misc. 121 (1934); Lynham v. Hufty, 44 App. D. C. 589 (1916); Cohen v. Cohen, 150 Cal. 99, 88 Pac. 267 (1906). *Contra:* Greensburg v. Greenburg, 99 N. J. Eq. 461, 133 Atl. 768 (1926); Fournier v. Clutton, 146 Mich. 298, 109 N. W. 425 (1906); Jordan v. Westerman, 62 Mich. 170, 28 N. W. 826 (1886); Madden, Domestic Relations (1931) 328, n. 62.

[14] Harman v. Harman, 196 S. E. 361 (W. Va., 1938); Cederburg v. Cederburg, 193 Minn. 421, 258 N. W. 574 (1935); Proctor v. Curchin, 273 N. Y. S. 821, 153 Misc. 121 (1934); Lynham v. Hufty, 44 App. D. C. 589 (1916); Cohen v. Cohen, 150 Cal. 99, 88 Pac. 267 (1906).

[15] Cummings v. Cummings, 97 Cal. App. 144, 275 Pac. 245 (1929); Caples v. Caples, 47 Fed. (2d) 225 (1931); McGregor v. McGregor, 52 Colo. 292, 122 Pac. 390 (1912); Comana v. Maron, 37 Idaho 382, 217

In other words, it is a property right which has become vested in the wife because the judgment of the court became final when the installment became due and payable, and like other judgments, is an asset in the hands of the wife that can be freely assigned. After all, *alimony is for the maintenance of the wife* and she should be entitled to make an assignment of past-due installments for *maintenance* which has been furnished or provided.

In a recent case decided by the Supreme Court of Appeals of the State of West Virginia, the court stated, "when installments of alimony accrue, the power of the court to alter, control, or cancel them terminates (no fraud appearing), and the right of the payee becomes vested. Such a vested right may be assigned".[16] An examination of the cases in the jurisdictions following the majority rule will disclose that installments "due and payable" become a "vested right"[17] or a "vested property right",[18] and are freely assignable,[19] especially when the decree is for the benefit of the wife alone, but should the same rule apply when the wife is awarded the custody of the children and part of the alimony decreed by the court is for the support and maintenance of such children? None of the cases show that the court has been confronted with this exact problem for determination but it is submitted that the interests of the children should be protected and the wife should not be permitted to make an assignment of that portion of the award to which they are entitled. However, if the award is made to the wife for her exclusive use and benefit under the decree terminating the marriage relationship, it is submitted that there are no valid reasons for refusing to permit her to make assignments of the installments which have accrued and become due and payable. To support this view it would be necessary to take into consideration the difference in the amount realized by the assignment and the amount of the installment in an action by either party for the purpose of changing or altering the amount of installments to be paid in the future, but this would only

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Pac. 597 (1923); Caffrey v. Caffrey, 4 Fed. (2d) 952 (1925); Roberts v. Roberts, 174 Ga. 645, 163 S. E. 735 (1932); Craig v. Craig, 163 Ill. 176, 45 N. E. 153 (1896); Delbridge v. Sears, 179 Iowa 526, 160 N. W. 218 (1916); Kell v. Kell, 179 Iowa 647, 161 N. W. 634 (1917); Armstrong v. Armstrong, 117 Oh. St. 558, 160 N. E. 34 (1927); Nelson v. Nelson, 282 Mo. 412, 221 S. W. 1066 (1920); Campbell v. Campbell, 28 Okla. 838, 115 Pac. 1111 (1911); Phillips v. Kepler, 47 App. D. C. 384 (1918); Harris v. Harris, 259 N. Y. 334, 182 N. E. 7 (1932); Parkinson v. Parkinson, 222 App. Div. 838, 226 N. Y. S. 454 (1928); Procter v. Churchin, 273 N. Y. S. 821, 153 Misc. 121 (1934); Gilbert v. Hayward, 37 R. I. 303, 92 Atl. 625 (1914); Myers v. Myers, 62 Utah 90, 218 Pac. 123 (1923); Harris v. Harris, 71 Wash. 307, 128 Pac. 673 (1912); Beers v. Beers, 74 Wash. 458, 133 Pac. 605 (1913); Phillips v. Phillips, 165 Wash. 616, 6 Pac. (2d) 61 (1931); Cotter v. Cotter, 225 Fed. 471 (1915); Rinkenberger v. Rinkenberger, 99 Cal. App. 45, 277 Pac. 1096 (1929).

[16] Harman v. Harman, 196 S. E. 361 (W. Va., 1938).

[17] Supra, n. 15.

[18] Supra, n. 15.

[19] Supra, n. 14.

constitute one of the many matters to be considered by the court in determining whether the amount which is to be paid in the future should be changed.

In a few jurisdictions the courts have held that installments of alimony which are past-due and payable are not assignable.[20] In these jurisdictions "a wife's claim for alimony is considered as a purely personal right, and not in any sense a property right—a right in its nature not susceptible of either assignment or enjoyment by her in anticipation",[21] and "the court has full control of the subject of alimony after a decree awarding it, and the parties are not at liberty to contract away the right of the court in the exercise of its statutory perogative to control and regulate the payment of alimony after judgment of divorce".[22] Under these decisions, the wife does not have a vested interest in the alimony until it is paid over to her and since the alimony that should be awarded in such cases is a matter which concerns the parties, the children, and in some degree, the public, these interests would be placed in constant jeopardy if the wife could, at her pleasure, assign such decree. It is true in all jurisdictions that the husband can go into court and upon showing that the amount which he is paying is in excess of the amount necessary to satisfy the wife's needs, or that the financial position of the husband has been changed or altered so that the amount which he is paying is unjust and unreasonable, have the future installments modified; therefore it seems that this would provide sufficient supervision by the court to protect the interests of the parties and especially those of the husband.

In conclusion, it is submitted that the courts have reached the proper result in decreeing that future installments of alimony are non-assignable; the better rule relating to the lump sum award or settlement would be to permit the wife to make an assignment thereof if she so desired, and the majority rule, holding that past-due installments can be assigned, should be followed in all jurisdictions.

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ADMINISTRATIVE CONTROL OF INSURANCE IN KENTUCKY

Regulation of business by governmental agencies is an accepted fact in the United States today. Administrative boards, both state and federal, are at present engaged in the regulation of all sorts and types of business enterprise. It has long ceased to be a question of whether there is a right to exercise this form of control; it is rather, how far may the government go in its regulation, and what form may this regulation take? There are several factors which have given rise to this new type of control, namely, the lack of time and technique of

[20] Greenburg v. Greenburg, 99 N. J. Eq. 461, 133 Atl. 768 (1926); Fournier v. Clutton, 146 Mich. 298, 109 N. W. 425 (1906); Welles v. Brown, 226 Mich. 657, 198 N. W. 180 (1924); Duss v. Duss, 92 Fla. 1081, 111 So. 382 (1926).

[21] Supra, n. 20.

[22] Supra, n. 20.