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Divorce and Alimony; Separation Agreements; Jurisdiction of Court to Modify; Impairment of Contract; Statutory Provisions; Wolfe v. Wolfe

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Ohio, where existing parental consent abortion statutes have been clearly outlawed by their holdings. The Court in *Bellotti* indicates that certain guidelines, such as a court hearing, for determining a minor's informed consent may be acceptable, so long as they are not unduly burdensome. It appears clearly that they should be adopted so as to maximize the freedom with which doctors can proceed without threat of criminal liability.

Similarly, in Ohio, a newly-enacted statute dealing with abortions should contain provisions similar to those now effective in venereal and drug abuse statutes, to prevent a minor from disaffirming his informed consent and voiding his contract. Until these steps are taken, in Ohio, at least, the parental veto on minors who seek abortions without their parental consent may be replaced with an equally burdensome economic veto. If this is so, the spirit of the *Danforth* decision will not have been achieved.

SHARON L. LONG

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DOMESTIC RELATIONS

*Divorce and Alimony • Separation Agreements • Jurisdiction of Court
to Modify • Impairment of Contract • Statutory Provisions*

Wolfe v. Wolfe, 46 Ohio St. 2d 399, 350 N.E.2d 413 (1976).

WITH THE decision of *Wolfe v. Wolfe*¹ the Ohio Supreme Court joins the majority of American jurisdictions² which hold that where a court has the general power to modify a decree for alimony or support³ the exercise

¹ 46 Ohio St. 2d 399, 350 N.E.2d 413 (1976).

² See, e.g., *Levitt v. Levitt*, 62 Cal. 2d 477, 399 P.2d 33, 42 Cal. Rptr. 577 (1965); *Bowman v. Bowman*, 11 Ill. App. 3d 719, 298 N.E.2d 339 (1973); *Heinmuller v. Heinmuller*, 257 Md. 672, 264 A.2d 847 (1970); *Lytle v. Lytle*, 357 Mich. 676, 99 N.W.2d 377 (1959); *Berkowitz v. Berkowitz*, 55 N.J. 564, 264 A.2d 49 (1970); *Goldman v. Goldman*, 282 N.Y. 296, 26 N.E.2d 265 (1940); *Kinne v. Kinne*, 82 Wash. 2d 360, 510 P.2d 814 (1973).

³ For the purposes of modification, the Court in *Wolfe* drew the distinction between alimony as an award for the support of the spouse and the property settlement, the latter remaining beyond the power of the Court to modify. 46 Ohio St. 2d at 418, 350 N.E.2d at 425. See note 18 *infra*. The Court noted that although the legislature has failed to give a clear definition

of that power is not affected by the fact that the decree is based on an agreement⁴ entered into by the parties to the action.

Prior to their divorce, Mr. and Mrs. Wolfe executed a separation agreement under which Mrs. Wolfe was to receive \$350,000 as a final division of property and \$35,000 per year for support and maintenance, forfeitable only by her remarriage or death. In 1973 this agreement was incorporated into a divorce decree, and Mr. Wolfe commenced payments as stipulated.

Shortly thereafter, Mrs. Wolfe moved to Arizona where she became enamored of Mr. Bruce Ericson. The relationship grew intimate and Mr. Ericson shared not only Mrs. Wolfe's favors, but also her residence. Insofar as he made no monetary contribution to the relationship, he also shared the patronage of Mr. Wolfe.

Upon learning of this arrangement, Mr. Wolfe moved that he be relieved of the responsibility of further alimony payments, alleging a change in Mrs. Wolfe's marital status (thus apparently attempting to bring his action within the letter of the separation agreement).

The trial court, although not finding a common law marriage, granted the relief, apparently basing its ruling on the fact that Mrs. Wolfe was clearly enjoying all the prerogatives of the matrimonial state while avoiding legitimation of the relationship in order to preserve her alimony payments.⁵ The appellate court reversed,⁶ finding that the issuing court had failed to retain continuing jurisdiction in its divorce decree.⁷ The case was certified to the Ohio Supreme Court.

Justice William B. Brown wrote the opinion for the majority stating the issue as "whether the Court of Common Pleas has power to modify the terms of a decree of divorce previously issued by it which relates to an allowance of 'alimony'."⁸

of alimony, case law supports the distinction. *Id.* at 411, 350 N.E.2d at 421. *See, e.g., Fickel v. Granger*, 83 Ohio St. 101, 106, 93 N.E. 527, 528 (1910) ("Alimony is an allowance for support . . . based upon the obligation, growing out of the marriage relation that the husband must support the wife . . ."). *Accord, Hunt v. Hunt*, 169 Ohio St. 276, 159 N.E.2d 430 (1959); *Lape v. Lape*, 99 Ohio St. 143, 124 N.E. 51 (1918); *Fahrer v. Fahrer*, 36 Ohio App. 2d 208, 304 N.E.2d 411 (1973), all citing *Fickel* for the same proposition.

⁴ For a discussion of the general desirability and efficacy of separation agreements, see Clark, *Separation Agreements*, 28 ROCKY MT. L. REV. 149, 320 (1955-56).

⁵ 46 Ohio St. 2d at 401, 350 N.E.2d at 415-16.

⁶ *Wolfe v. Wolfe*, No. 74AP-192 (Franklin County Ct. App. Nov. 12, 1974).

⁷ Thus adhering to the rule that the award may be modified if the power is reserved in the decree. *Hunt v. Hunt*, 169 Ohio St. 276, 159 N.E.2d 430 (1959); *Newman v. Newman*, 161 Ohio St. 247, 118 N.E.2d 649 (1954); *Law v. Law*, 64 Ohio St. 369, 60 N.E. 560 (1901) (by implication).

⁸ 46 Ohio St. 2d 399, 401, 350 N.E.2d 413, 416.

At first blush this formulation of the issue appears to be overly broad. The facts do indeed show that the power of the court to modify a divorce decree is at issue, however, this particular decree was based upon and incorporated a separation agreement. Yet, the court spoke in terms of modification of divorce decrees in general, insofar as they relate to alimony payments. No reference is made to the agreement in the statement of the issue, however, and a survey of the relevant Ohio case law shows justification for Justice Brown's sweeping language.

*Law v. Law*⁹ has long stood for the rule that when alimony is fixed by agreement of the parties, in the absence of fraud, misrepresentation, or mistake, the court lacks power to modify the alimony award in the absence of express reservation of jurisdiction in the divorce decree. This rule remained substantially unchanged¹⁰ until the decision of *Hunt v. Hunt*.¹¹ There the court was faced with a situation where alimony payments were fixed by agreement of the parties and incorporated in the decree, without provision for termination or reservation of jurisdiction. The wife subsequently remarried a man fully capable of providing for her support. Upon the former husband's motion to modify the award the court stated:

It is almost universally accepted that where there has been a divorce granted for the husband's aggression, he must continue to provide support for the wife, and for that purpose an award of alimony is usually made. Where, however, a former wife remarries a man capable of supporting her, the theory of obligation of the former husband to continue her support is not tenable since the wife has a new husband charged with that duty. In fact, *it seems rather obnoxious to a sense of decency to require that a wife be supported by both her present husband and former husband or husbands.*¹² (emphasis added.)

Thus, public policy demanded a further refinement of the rule to provide for such situations. A 1971 appellate decision¹³ bears witness to the evolution of the rule: "In the absence of fraud, mistake or misrepresentation, *the remarriage of the appellee*, or the court reserving jurisdiction with respect to alimony, the court does not have jurisdiction to modify the divorce decree as to alimony."¹⁴ (emphasis added.)

To be distinguished from this rule, which appears to be the pigeon hole

⁹ 64 Ohio St. 369, 60 N.E. 560 (1901).

¹⁰ See *Mozden v. Mozden*, 162 Ohio St. 169, 122 N.E.2d 295 (1954) (extending the rule to oral agreements).

¹¹ 169 Ohio St. 276, 159 N.E.2d 430 (1959).

¹² *Id.* at 282, 159 N.E.2d at 434.

¹³ *McClain v. McClain*, 26 Ohio App. 2d 10, 268 N.E.2d 294 (1971).

¹⁴ *Id.* at 11, 268 N.E.2d at 295. (emphasis added).

into which *Wolfe* could have been neatly placed, are other rules governing modification of divorce decrees in general.

First, when the award of alimony actually originates with the judge and not with an agreement, the courts have consistently recognized the power of the court to modify the award upon a showing of changed circumstances.¹⁵

Second, even when the decree is based upon an agreement, the court may modify the alimony provision if it has expressly reserved jurisdiction.¹⁶

Third, with regard to child support, it is well established that public policy requires that the court retain jurisdiction even though the provisions originated with an agreement.¹⁷

Fourth, if it is clear on the face of the agreement that the provisions relate to a division of property, they are not modifiable.¹⁸

Clearly then, the law was neatly compartmentalized with regard to alimony, and it may be said that the sole impediment to the courts' continuing jurisdiction to modify the alimony award was the situation where the decree incorporated an agreement and failed to expressly reserve jurisdiction. Therefore, as the Court in *Wolfe* answers affirmatively the larger issue of the power to modify alimony awards in general, it removes the remaining obstacle.

Before arriving at its resolution, the Court felt that the problem deserved some historical perspective. Hence, much of the majority opinion¹⁹ attempts to trace the evolution of divorce law from its earliest manifestations in the Mosaic Code and Roman Law through English Common and Canon Law,

¹⁵ *McDaniel v. Rucker*, 150 Ohio St. 261, 80 N.E.2d 849 (1948); *Smedley v. State*, 95 Ohio St. 141, 115 N.E. 1022 (1916); *Pretzinger v. Pretzinger*, 45 Ohio St. 452, 15 N.E. 471 (1887); *Olney v. Watts*, 43 Ohio St. 499, 3 N.E. 354 (1885); *Heckert v. Heckert*, 57 Ohio App. 421, 14 N.E.2d 428 (1936); *Sager v. Sager*, 5 Ohio App. 489 (1916).

¹⁶ See cases cited note 7 *supra*.

¹⁷ *Peters v. Peters*, 14 Ohio St. 2d 268, 237 N.E.2d 902 (1968); *Hunt v. Hunt*, 169 Ohio St. 276, 159 N.E.2d 430 (1959); *Seitz v. Seitz*, 156 Ohio St. 516, 103 N.E.2d 741 (1952); *Corbett v. Corbett*, 123 Ohio St. 76, 174 N.E. 10 (1930); *Bulloch v. Bulloch*, 21 Ohio App. 2d 76, 255 N.E.2d 299 (1969).

¹⁸ *Dailey v. Dailey*, 171 Ohio St. 133, 167 N.E.2d 906 (1960); *Hunt v. Hunt*, 169 Ohio St. 276, 159 N.E.2d 430 (1959) (by implication); *Clelland v. Clelland*, 46 Ohio App. 546, 166 N.E.2d 428 (1959); *Clough v. Long*, 8 Ohio App. 420 (1918); *Aultman v. Aultman*, 83 Ohio L. Abs. 543, 167 N.E.2d 377 (Ct. App. 1960). The justification for this rule appears to be a desire to attain a final and conclusive determination of the property rights of the parties. Clark, *Separation Agreements*, *supra* note 4, at 339. See also Comment, *Marriage and Divorce, Power of the Court to Modify Decree for Alimony*, 39 MICH. L. REV. 120 (1940). The *Wolfe* Court noted that the syllabi of *Mozden v. Mozden*, *supra* note 10, *Newman v. Newman*, *supra* note 7, and *Law v. Law*, *supra* note 7, fail to reflect this distinction. 46 Ohio St. 2d at 418, 350 N.E.2d at 425.

¹⁹ 46 Ohio St. 2d at 402-14, 350 N.E.2d at 416-23.

culminating with the present Ohio statutory provisions.²⁰ The most significant conclusion that the Court drew from the discussion was that alimony was generally awarded to the wife to offset the harshness of early property laws which, regarding the husband and wife as one, relegated all that the wife brought into the marriage to the husband. As these conditions no longer obtain, a new unifying principle must be sought to justify such awards.

The Court noted²¹ that the governing Ohio statute dealing with alimony expressly enumerates eleven factors²² germane to the determination by the Court whether alimony in any given case should be awarded, and found that the list bears little relation to the necessity of sustenance. However, the provisions of the statute could be deemed to be "quite pertinent to considerations of the distribution of marital assets and liabilities—the property settlement."²³ Only after fixing this type of alimony, *i.e.* the property division, is the court "statutorily authorized to consider whether an additional amount is needed for sustenance and for what period will such necessity persist."²⁴

Thus, when anachronistic notions of property law are cast aside, the only principle that can support an award of alimony after severance of the marital relation, is that it is indeed needed to sustain the spouse. On its face, the principle seems tautologous in its simplicity until it is juxtaposed with the attitude of automatic alimony often found in both the lay world and the courts. Its impact is then clear. The court in its discretion may make an initial determination that such an award is needed by the spouse. Insofar as such needs are subject to change, the court must have, in the interest of justice, the power to determine that the award bears continual relation to need. Hence, "Such authentication and supervision is accomplished through the continuing jurisdiction of the court."²⁵

This premise, that alimony awarded for the support of the spouse is

²⁰ OHIO REV. CODE ANN. ch. 3105 (Page Supp. 1975).

²¹ 46 Ohio St. 2d at 414, 350 N.E.2d at 423.

²² OHIO REV. CODE ANN. §3105. 18(B) (Page Supp. 1975) lists the following considerations:

- (1) The relative earning abilities of the parties;
- (2) The ages, and the physical and emotional conditions of the parties;
- (3) The retirement benefits of the parties;
- (4) The expectancies and inheritances of the parties;
- (5) The duration of the marriage;
- (6) The extent to which it would be inappropriate for a party, be he custodian of a minor child of the marriage, to seek employment outside the home;
- (7) The standard of living the parties established during the marriage;
- (8) The relative extent of education of the parties;
- (9) The relative assets and liabilities of the parties;
- (10) The property brought to the marriage by either party;
- (11) The contribution of a spouse as a homemaker.

²³ 46 Ohio St. 2d at 414, 350 N.E.2d at 423.

²⁴ *Id.*

based on need and that in the interest of justice the court must have the continuing power to review such need, answers the larger question asked by Justice Brown and entails the particulars of the facts as stated. The syllabus of the court necessarily follows:

Where, upon granting a divorce a court awards alimony to a wife, pursuant to an agreement of the parties, to be paid until the condition subsequent of remarriage or death of the wife, and such award is for her sustenance and support and independent of any award arising by adjustment of the property rights of the parties, reservation of jurisdiction to modify the award will be implied in the decree.²⁶

Hence, for the purpose of modifiability, there is no longer any distinction to be drawn in Ohio between alimony awards which originate with the judge or with an agreement.

How, then, did this distinction arise, and how and why did the court decide to nullify it? It appears that the consistent basis in Ohio for the continuance of the nonmodifiability rule was that to do otherwise would impair the obligations of contracts.²⁷ Such a rule had not presented a problem to other jurisdictions when confronted with a similar situation. Those courts usually held that the agreement is merely advisory²⁸ to the court or that the agreement merges²⁹ with the decree and thereafter any question of modifiability is addressed to the decree itself, without reference to the agreement. Why the Ohio courts had insisted on a different approach is not clear, but the rule was not without its detractors.³⁰

In any event, the *Wolfe* Court found what it felt was clear authority

²⁶ *Id.* at 399, 350 N.E.2d 413 (1976).

²⁷ Those cases which adopted this theory spoke generally of the spouse as having given up certain property rights in consideration for the terms of the agreement. *E.g.*, *Law v. Law*, 64 Ohio St. 369, 376, 60 N.E. 560, 561 (1901) ("The concluding terms of the decree against the wife, assented to by her, and precluding further assertions by her of any interest in the husband's estate are in law, as they purport to be, in consideration of the antecedent provision as to alimony."); *Tullis v. Tullis*, 138 Ohio St. 187, 191, 34 N.E.2d 212, 215 (1941) ("She waived and surrendered all permanent right to support . . . and every possible right which she might have in any present or future property or estate of her husband and discharged him from every claim of every kind whatsoever except as provided by the contract.") To a similar effect is the dissenting opinion of Justice Corrigan in *Wolfe*, expressing the view that the parties are obligated by the terms of the agreement. 46 Ohio St. 2d at 424, 350 N.E.2d at 428.

²⁸ *E.g.*, *Mark v. Mark*, 248 Minn. 446, 80 N.W.2d 621 (1957); *Wallace v. Wallace*, 74 N.H. 256, 67 A. 586 (1907); *Callister v. Callister*, 1 Utah 2d 34, 261 P.2d 944 (1953).

²⁹ *E.g.*, *Worthington v. Worthington*, 224 Ala. 237, 139 So. 334 (1934); *Hough v. Hough*, 26 Cal. 2d 650, 160 P.2d 15 (1945); *Lilley v. Lilley*, 125 Conn. 339, 5 A.2d 849 (1939).

³⁰ *See, e.g.*, *Tullis v. Tullis*, 138 Ohio St. 187, 200, 34 N.E.2d 212, 219 (Zimmerman, J., dissenting); Comment, *Modifiability of Alimony and Support Decrees in Ohio*, 36 U. CIN. L. REV. 487, 495 (1967), where the writer suggests that imprisonment for contempt of a decree based on an agreement may constitute unconstitutional imprisonment for debt. *But see* *Holloway v. Holloway*, 130 Ohio St. 214, 198 N.E. 579 (1935) (alimony provisions are not property debts within the meaning of the prohibition against imprisonment for debts).

for a merger theory in it's own backyard, specifically *Holloway v. Holloway*³¹ and *Robrock v. Robrock*.³² Both of these cases were contempt proceedings, brought to enforce the provisions of separation agreements with regard to alimony payments and child support, respectively. In both cases the agreements were said to merge into the decree and that the decree superseded the agreement. However, because they were contempt proceedings, the language in the cases regarding a merger theory was taken as dictum and inapplicable in modification actions. In *Wolfe* the Court specifically extends the rule to modification proceedings, stating: "Inasmuch as decretal provision for 'alimony' is not a contractual obligation, there is no basis for considering the decree inviolable and unassailable; contract rights are not impaired by future modification of decretal alimony provisions."³³

Again, with the contract problem dispelled, the artificial distinction between judge-made decrees and those based upon agreement is no longer tenable. The court can then look back to what it views as the *raison d'être* for all such awards—fairness and need. The *Wolfe* Court notes:

It is self-evident that a separation agreement, which purports to set a fair level of alimony for sustenance, as well as divide and distribute the property of the parties and settle their affairs, is not necessarily continually fair and equitable thereafter.³⁴

It requires little imagination to see that the above statement comports well with reality. A couple divorces and the judge incorporates into the decree their separation agreement providing for what appears to be an equitable level of support for the wife. Later, inflationary pressures severely affect the purchasing power of that award. A physical disability manifests itself rendering the former wife incapable of self-support. Meanwhile, the husband has flourished, fully content to continue the agreed payments with ever-cheapening dollars. In effect, the agreement has served to insulate him from his duty to provide for the support of his former spouse. Or, to vary the facts, the agreement provides a generous award of support to a wife fully capable of supporting herself. The husband later falls upon hard times and is hard-pressed to meet his payments. Is he to be driven to bankruptcy to preserve a rule of dubious genesis? These are the problems that the *Wolfe* court addresses when it notes that, "The holding in this case, that a court has continuing jurisdiction over alimony sustenance awards, is to assure that such awards are continually just."³⁵

³¹ 130 Ohio St. 214, 198 N.E. 579 (1935).

³² 167 Ohio St. 479, 150 N.E.2d 421 (1958).

³³ 46 Ohio St. 2d at 418, 350 N.E.2d at 425 (1976).

³⁴ *Id.*

³⁵ *Id.* at 419, 350 N.E.2d at 426.

One may well contend that if such anomalies arise, it is properly the function of the legislature to resolve them. However, recent legislative history shows that the lawmakers have not chosen to deal with the problem. The Divorce Reform Act of 1974³⁶ provided for, *inter alia*, dissolution of marriage—divorce by agreement. In a proceeding for dissolution of marriage, the parties attach to their petition an agreement settling all matters of property division, child support, and alimony.³⁷ The parties then appear before the judge and acknowledge their satisfaction with the terms of the agreement, and if the judge approves of the agreement, he is authorized to dissolve the marriage.³⁸ As originally enacted, the section that granted this power also authorized that, "The court has full power to enforce its decree and retains jurisdiction to modify all matters of custody, child support, visitation and *periodic alimony payments*."³⁹ At that time, one writer was of the opinion that: "The rule of *Newman v. Newman*, that periodic alimony payments ordered in accordance with an agreement are not subject to later modification was overridden by the Act, at least in dissolution actions."⁴⁰

However, less than one year later, the section was amended,⁴¹ and the words "periodic alimony payments" were deleted. Thus, the initiative towards alimony award reform was thrust back upon the court. At a time when divorce rates are at unprecedented levels and women in the United States are more self-sufficient than their nineteenth century counterparts, the *Wolfe* Court decided to seize the moment.

As noted earlier, the Court drew a distinction between those provisions of an agreement which stipulate periodic support payments and those provisions pertaining to the property settlement.⁴² The former are now deemed to be modifiable, the latter non-modifiable. This points up the problem of separability.⁴³ In the *Wolfe* case the provisions were clear on the face of the agreement. However, the situation could arise in which the terms are not drawn as neatly. In such a case, the general rule in other jurisdictions ap-

³⁶ 135 Ohio Laws 603 (pt. II) (1974).

³⁷ OHIO REV. CODE ANN. §3105.63 (Page Supp. 1975).

³⁸ *Id.* §3105.65(A).

³⁹ 135 Ohio Laws 603, 616 (pt. II) (1974) §3105.65(B).

⁴⁰ Norris, *Divorce Reform, Ohio Style*, 47 OHIO BAR 1031, 1037. Rep. Norris was the chief sponsor of The Divorce Reform Act of 1974.

⁴¹ OHIO REV. CODE ANN. §3105.65(B) (Page Supp. 1975), *amending* §3105.65(B), 135 Ohio Laws (pt. II) 603, 616 (1974).

⁴² See note 3 *supra*.

⁴³ Because of this problem the ruling is prospectively applied to decrees incorporating agreements entered after the date of the decision. 46 Ohio St. 2d at 421-22, 350 N.E.2d at 427. But query, why not give retroactive application of the rule in those cases where although the agreement is entered into before the date of judgment, the provisions of support and property settlement are clearly severable? Such effect would not appear to be inconsistent with the decision.

pears to be that the determination of modifiability is contingent upon whether the terms of the agreement pertinent to support and property division are severable and distinct. If severable, the terms relating to support are modifiable, but if integrated, the entire award remains nonmodifiable.⁴⁴

Based upon the foregoing and the assumption that the attitude of the Ohio Courts will reflect this general rule, would not the perceptive attorney attempt to conceal an inordinately large amount under the protective cover of a provision of the separation agreement labelled "property division"? Or could the skilled draftsman so ably confuse and intermingle the provisions as to render the entire agreement permanently enforceable? In answer, this first assumes a particularly dull, generous, or guilt-ridden husband who would consent to such a formulation. Secondly, in an action for divorce, the judge can accept or reject the agreement at his discretion.⁴⁵ Similarly, in a dissolution of marriage action, the agreement must also meet with the approval of the judge.⁴⁶ Thus to accomplish this feat, the attorney must surmount a good deal of judicial discretion (assuming further that crowded dockets do not force a rubber-stamp attitude upon the courts).

The clear implication of the *Wolfe* decision appears to be that separation agreements are to be favored by the courts for what they are, tools to be used in the efficient and amicable resolution of the divorce process. They are not to be regarded as sacrosanct repositories of vested rights.

CONCLUSION

Although the Court in *Wolfe* addressed itself to a narrow issue in the law of domestic relations, the rule in question had the potential for extreme harshness. In such a case it is incumbent upon the court to re-examine the foundation of the rule in the light of present societal needs, and to determine if its continued existence is fully warranted in the face of such harsh results. Here, the Court found that the non-modifiability rule was essentially a result of the misapplication of contract principles. When seen in the proper light of the real justification for alimony, necessity, the rule became untenable. In this sense, the opinion is clearly laudable.

However, weighing the same considerations, one may well consider whether, in the light of present day social and sexual mores, there exists adequate justification to deprive Mrs. Wolfe of her entire alimony award

⁴⁴ See, e.g., *Constantin v. Constantin*, 274 Ala. 374, 149 So. 2d 262 (1963); *Rasmussen v. Rasmussen*, 275 Cal. App. 2d 443, 79 Cal. Rptr. 842 (1969); *Lasprogato v. Lasprogato*, 127 Conn. 510, 18 A.2d 353 (1941); *Stromsen v. Stromsen*, 344 Ill. App. 530, 101 N.E.2d 742 (1951); *Lytle v. Lytle*, 357 Mich. 676, 99 N.W.2d 377 (1959); *Scanlon v. Scanlon*, 60 N.M. 43, 287 P.2d 238 (1955); *Kinne v. Kinne*, 82 Wash. 2d 360, 510 P.2d 814 (1973).

⁴⁵ OHIO REV. CODE ANN. §3105.18(A) (Page Supp. 1975).

⁴⁶ OHIO REV. CODE ANN. §3105.65(B) (Page Supp. 1975).

because of her post-divorce life style. As the court noted,⁴⁷ the question of the effect of post-divorce unchastity on an award of alimony is essentially one of first impression in Ohio. The courts are divided on the subject elsewhere, although it appears that the better rule is that it is just one circumstance to be considered on motion to modify.⁴⁸ This appears to be the approach adopted by the *Wolfe* Court.

In *Wolfe*, perhaps the more equitable approach would have been to diminish the award by such amounts as are expended in the support of Mrs. Wolfe's paramour, on the simple recognition that such amounts are not based on real need. However, the Court found that it was not an abuse of discretion for the trial court, in the light of all the circumstances, to terminate the award completely; but it added an implicit caveat, that abuse of discretion was not presented as an issue on appeal.⁴⁹ Thus, a number of "might have beens" haunt the opinion and may provide grist for other cases attacking that very issue.

Undoubtedly, few men care to stand idly by and watch the fruits of their labors being used to patronize an illicit relationship between their former spouse and her paramour, and the courts should hear such complaints. On the other hand, alimony, where truly needed, should not amount to a figurative dead hand control of the ex-wife's virtue. No wife should be expected to hasten to a convent upon severance of the marital ties. It is hoped that in future cases the courts will keep such thoughts in mind, and look to all the circumstances to avoid harsh results.

JOHN J. LAVIN

⁴⁷ 46 Ohio St. 2d at 420, 350 N.E.2d at 426.

⁴⁸ See, e.g., *Gotthelf v. Gotthelf*, 38 Ariz. 369, 300 P. 186 (1931); *Coggins v. Coggins*, 289 Ky. 570, 159 S.W.2d 4 (1942); *Lindbloom v. Lindbloom*, 180 Minn. 33, 230 N.W. 117 (1930); *Suozzo v. Suozzo*, 16 N.J. Misc. 475, 1 A.2d 930 (Ch. 1938).

⁴⁹ 46 Ohio St. 2d at 421, 350 N.E.2d at 427.

