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Divorce Decree - Duration and Termination of Liability for Support - Does the Father's Obligation to Support His Minor Children Terminate at His Death

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Therefore, it is submitted that the rule be abolished so that the prosecution may be given a chance to overcome the difficulty of proof if the proximate relationship between injury and death can be proved beyond a reasonable doubt.

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DIVORCE DECREE — DURATION AND TERMINATION OF LIABILITY FOR SUPPORT — DOES THE FATHER'S OBLIGATION TO SUPPORT HIS MINOR CHILDREN TERMINATE AT HIS DEATH? — Petitioner, divorced wife of deceased brought on action against his estate as guardian of her minor daughter seeking an order to obtain monthly support payments accruing subsequent to the death of the deceased. The grounds of the petition were that the obligations of the deceased with respect to an agreement incorporated into a divorce decree survived his death. The Supreme Court of Mississippi, four justices dissenting, *held* that such liability may be imposed against the father's estate only when the contract to support, affirmatively so provides, either by express terms or fair implication. *Lewis v. Lewis*, 125 So. 2d 286 (Miss. 1960).

At common law the father's obligation to support his offspring terminated at his death.[1] The arguments given for adhering to the common law rule are that the father has the right to disinherit his children[2] and that to permit such obligation to survive would upset the laws regulating the distribution and devolution of estates.[3] Where a divorce decree alone has made provision for support payments[4] or where a prior agreement has been incorporated into the divorce decree,[5] a few jurisdictions hold that the obligation does not survive the father's death. This minority, relying on their interpretation of the separation agreement incorporated in the divorce decree, reason that it must so provide either expressly or by necessary implication in order that the payments survive the father's death.[6]

The weight of authority today, however, is that the support

1. Guinta v. LoRe, 31 So. 2d 704 (Fla. 1947) (dissenting opinion); Carey v. Carey, 163 Tenn. 486, 43 S.W.2d 498 (1931).
2. Robinson v. Robinson, 131 W. Va. 160, 50 S.E.2d 455 (1948).
3. Carey v. Carey, 163 Tenn. 486, 43, S.W.2d 498 (1931).
4. Cooper v. Cooper's Estate, 350 Ill. App. 37, 111 N.E.2d 564 (1953).
5. Gordon v. Gordon, 195 F.2d 779 (D.C. Cir. 1952); Bowling v. Robinson, 332 S.W.2d 285 (Ky. 1960); *In re* Johnson's Estate, 185 Misc. 352, 56 N.Y.S.2d 771 (Surr. Ct. 1945).
6. See Note 5 *supra*.

obligation does not terminate at the father's death.[7] These jurisdictions hold that if the divorce decree stipulates for payments to continue until further order of the court,[8] or during the minority of the children,[9] such provisions alone will preserve the duty to support from the father's estate. Also some courts hold that such provisions will constitute a lien on the estate where statute permits.[10] The proposition that the father's duty to support does not terminate is substantiated by cases where a contract to support, similar to that found in the instant case, has been incorporated into the divorce decree.[11] It has been stated that express terms indicating that such obligations should be binding on the father's legal representatives are unnecessary,[12] and that if the contract to support was intended to terminate at death, it should have so been expressed.[13] Another argument used is that where terminating contingencies are stated the obligation will terminate only on those contingiences.[14]

In answer to the reasoning that the obligation to support terminates upon the father's death, it has been argued that such obligation does not impair the laws of descent and dirtribution anymore than other judgments[15] and that support of the children is at least as important as the right of testamentary disposition.[16]

North Dakota has not decided the specific issue involved in this discussion, but an analogy supporting the majority rule may be drawn from a recent North Dakota decision which permitted the divorced wife of the decedent to receive monthly alimony payments from her husband's estate pursuant to the divorce decree.[17]

Regardless of the approach and reasoning adopted by the courts in relation to this problem, the viewpoint that the father's obligation, with respect to the support of his children, survives his death

7. *In re* Smith's Estate, 200 Cal. 654, 254 Pac. 567 (1927); Garber v. Robitshek, 226 Minn. 398, 33 N.W.2d 30 (1948); Spencer v. Spencer, 165 Neb. 675, 87 N.W.2d 212 (1957); Guggenheimer v. Guggenheimer, 97 N.H. 399, 112 A.2d 61 (1955); Smith v. Funk, 141 Okla. 188, 284 Pac. 638 (1930); Mansfield v. Hill, 56 Ore. 40, 107 Pac. 471 (1910); Morris v. Henry, 193 Va. 631, 70 S.E.2d 417 (1952).

8. Newman v. Burwell, 216 Cal. 608, 15 P.2d 511 (1932); Mansfield v. Hill, 56 Ore. 40, 107 Pac. 471 (1910).

9. Smith v. Funk, 141 Okla. 188, 284 Pac. 638 (1930).

10. Guggenheimer v. Guggenheimer, 97 N.H. 399, 112 A.2d 61 (1955); Morris v. Henry, 193 Va. 631, 70 S.E.2d 417 (1952).

11. *In re* Caldwell, 129 Cal. App. Div. 613, 119 P.2d 9 (1933); Simpson v. Simpson, 108 So. 2d 632 (Fla. App. 1959); Ramsay v. Sims, 209 Ga. 228, 71 S.E.2d 639 (1952); Silberman v. Brown, 72 N.E.2d 267 (Ohio 1946); Huffman v. Huffman, 311 Pa. 123, 166 Atl. 570 (1933).

12. Barnes v. Klug, 129 App. Div. 192, 113 N.Y. Supp. 325 (Sup. Ct. 1908).

13. Ramsay v. Sims, 209 Ga. 228, 71 S.E.2d 639 (1952).

14. Huffman v. Huffman, 311 Pa. 123, 166 Atl. 570 (1933).

15. Morris v. Henry, 193 Va. 631, 70 S.E.2d 417 (1952).

16. Newman v. Burwell, 216 Cal. 608, 15 P.2d 511 (1932).

17. Stoutland v. Stoutland's Estate, 103 N.W.2d 286 (N.D. 1960).

and which is followed by the majority of jurisdictions appears to be the most reasonable.

ROBERT P. GUST

INTOXICATING LIQUORS — LICENSES — IS A LIQUOR LICENSE PROPERTY OR A PRIVILEGE? — Plaintiff, as executor of decedent's estate, requested the Pennsylvania Liquor Control Board to transfer the decedent's liquor license in accordance with his testamentary directions.[1] The Commonwealth included the value of this right to apply for a transfer of decedent's liquor license as part of decedent's personal estate in an appraisement for inheritance tax purposes. Upon the Commonwealth's appeal from the Trial Court's decision, holding such value non-taxable, the Supreme Court of Pennsylvania, overruling a previous decision,[2] *held,* with one justice dissenting, that the value of the right to apply for a transfer of the license is a property right, subject to inclusion as an asset of the estate for inheritance tax purposes. *In re Estate of Feitz,* 167 A.2d 504 (Pa. 1961).

The general law is well settled that a liquor license is neither property nor a contract right;[3] but only a purely personal priviledge for a specific limited time.[4] Although often valuable, it is not transferrable without permission of the granting board,[5] nor does it go to the personal representative or become an asset of the holder's estate in case of death.[6] However, it may have the qualities of property,[7] or it may be placed in the category of property where the question concerns the rights of the licensee's creditors or personal representative, and then only when it has been expressly made transferrable by legislative enactment.[8]

1. Pa. Stat. Ann. tit. 47, § 4-468 (1951). "Except in cases of emergency . . . transfers of licenses may be made only at times fixed by the board. In the case of the death of a licensee, the board may transfer the license to the surviving spouse or personal representative or to a person designated by him."

2. *In re* Ryan's Estate, 375 Pa. 42, 99 A.2d 562 (1953). Here the value of the license and the value of the right to apply for a transfer thereof were not taxable.

3. State v. Alabama Alcoholic Beverage Control Board, 246 Ala. 198, 19 So. 2d 841 (1944); Owens v. Rutherford, 200 Ga. 143, 36 S.E.2d 309 (1945); Walker v. City of Clinton, 244 Ia. 1099, 59 N.W.2d 785 (1953).

4. *In re* Bay Ridge Inn,, 94 F.2d 555 (2d Cir. 1938); People v. Harrison, 256 Ill. 102, 99 N.E. 903 (1912); Fredrico v. Braaten, 181 Md. 507, 30 A.2d 776 (1943).

5. Wood v. School Dist. No. 32, 80 Neb. 722, 115 N.W. 308 (1908); United States Fidelity & Guarantee Co. v. Little, 76 N.H. 427, 83 Atl. 513 (1912); Rawlins v. Trevethan, 139 N.J.L. 226, 50 A.2d 852 (1947); Barth v. Brandy, 165 Wis. 196, 161 N.W. 766 (1917).

6. Kosco v. Hackmeister, Inc., 396 Pa. 288, 152 A.2d 673 (1959).

7. Midwest Beverage Co. v. Gates, 61 F.Supp. 688 (N.D. Ind. 1945). The use of the permit, once granted, has the elements of property irrespective of what the legislature may declare about the permit itself. Kline v. State Beverage Department of Florida, 77 So. 2d 872 (Fla. 1955); Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

8. Duncan v. Truman, 74 Ariz. 328, 248 P.2d 879 (1952); State v. Superior Court of Marion County, 233 Ind. 563, 122 N.E.2d 9 (1954).