MARRIAGE AND DIVORCE - GROSS NEGLECT OF DUTY AS A GROUND FOR DIVORCE - WIFE'S SEPARATE EMPLOYMENT CAUSING NEGLECT OF HOUSEHOLD DUTIES

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Marriage and Divorce — Gross Neglect of Duty as a Ground for Divorce — Wife's Separate Employment Causing Neglect of Household Duties — The husband, plaintiff in a divorce action, alleged that his wife's employment, against his will, caused her to become irritable, unpleasant and quarrelsome and to neglect her household tasks. Held, that the petition states a cause of action on the ground of gross neglect of duty or extreme cruelty under the Ohio statute, but that the proof fails to bear out the plaintiff's allegations. Winnard v. Winnard, 62 Ohio App. 351, 23 N. E. (2d) 977 (1939).

This case raises the interesting question whether the wife's failure or refusal to perform her household tasks may entitle the husband to a divorce either as extreme cruelty or as gross neglect of duty. It is doubtful whether the mere refusal of the wife to keep house properly would be held extreme cruelty, for such conduct would not normally induce the husband to undergo grievous mental suffering or tend to undermine his physical well-being. In Ohio,

1 In general, see 2 Schouler, Marriage, Divorce, Separation and Domestic Relations, 6th ed., 1797-1820 (1921); Madden, Persons and Domestic Relations 268-276 (1931); 19 C. J. 50 (1920).
Kansas, and Oklahoma gross neglect of duty is a ground for divorce. At first glance there would seem to be greater likelihood of bringing the wife's neglect of household duties within this ground than the ground of extreme cruelty. The term gross neglect of duty, by itself, suggests no definite meaning, and there are few well-considered cases in which the courts have undertaken to define it. One principle, however, seems well-established in a majority of the cases, namely that a simple neglect of marital duty, unaccompanied by circumstances of indignity, insult or aggravation, falls short of gross neglect of duty. Thus the question has arisen whether the wife's refusal to permit marital intercourse, in the absence of aggravating circumstances, is a gross neglect of duty, and it has been answered in the negative. The reason given for that decision is that, all the wife's marital duties being of equal import, a simple neglect of the duty to permit intercourse is not a gross neglect of duty. Simply the wife's wilful absence from home is not a gross neglect of duty. In the analogous situation where the husband has failed to support and the wife seeks a divorce on the ground of gross neglect of duty, there is good authority for denying a divorce where sufficiently aggravating circumstances are not alleged. The wife's duty to perform household services

2 Ohio Gen. Code Ann. (Page, 1938), § 11979; Kan. Gen. Stat. Ann. (1935), § 60-1501; Okla. Stat. (1931), § 665. And note that in Vermont and Massachusetts a divorce may be granted "on petition of the wife when the husband has sufficient pecuniary or physical ability to provide suitable maintenance for her and, without cause, grossly or wantonly and cruelly refuses or neglects so to do." Vt. Pub. Laws (1933), § 3116; Mass. Gen. Laws (1932), c. 208, § 1. The fact that these statutes are only partially set out in 19 C. J. 69, note 83 (a) (1920), is extremely deceptive because the editor cites Vermont and Massachusetts cases rather freely in a section that purports to deal with gross neglect of duty in general, and not with gross neglect of the duty to support.


6 The court in the McKinney case seemed to think that Leach v. Leach, 46 Kan. 724, 27 P. 131 (1890), stands for the proposition that a simple neglect of the duty to permit intercourse is a gross neglect of duty. The same questionable interpretation of the Leach case has been adopted in 2 Schoological, Marriage, Divorce, Separation and Domestic Relations, 6th ed., 1870 (1921), where the McKinney case is cited contra to the Leach case. See text of the present note, infra.

7 Hanover v. Hanover, 34 Ohio App. 483, 171 N. E. 350 (1929). As to the husband's absence from home, the holding is the same. See Porter v. Lerch, 129 Ohio St. 47, 193 N. E. 766 (1935).

8 Smith v. Smith, 22 Kan. 699 (1879); Nichols v. Nichols, 8 Ohio Dec. (Repr.) 463 (1882); Tiberghein v. Tiberghein, 8 Ohio Dec. (Repr.) 464 (1882). See also 37 Ohio Weekly L. Bull. 169 (1897), editor's note: "Mere failure to provide is not gross neglect of duty by a husband. . . . the failure to provide must be accompanied by some circumstances of indignity, or aggravation or insult." But the Oklahoma court
seems no more fundamental than her duty to permit intercourse, or the husband’s duty to support, and since in the latter cases the courts have generally required the petitioner to show that the neglect was of an aggravated nature, a similar showing would seem to be required in the case of the wife’s failure to perform household services. In the principal case it was alleged that the wife was irritable, unpleasant and quarrelsome. In the light of analogous cases that have been collected in this note it is doubtful whether these are sufficiently aggravating circumstances to constitute a gross neglect of duty. Finally, it seems plain that the fact of the wife’s employment “against her husband’s will” is not an aggravating circumstance, for the Married Women’s Acts have generally given the wife a right to contract for extra-marital services.

Oscar Freedenberg

has adopted the curious view that the husband’s failure to support “when he is able” is a gross neglect of duty. Lee v. Lee, 38 Okla. 388, 132 P. 1070 (1913); Beauchamp v. Beauchamp, 44 Okla. 634, 146 P. 30 (1914). This doctrine in Oklahoma apparently had its origin in a dictum in the Lee case, which that court borrowed from a highly questionable review of some decisions of the Ohio lower courts in 14 Cyc. 622, note 9 (1904), and which would seem to be out of harmony with the Ohio law.

8 An inherent difficulty that arises when assembling authorities on the subject of grounds for divorce from a number of states should be noted. There is an endless variety of the grounds for divorce in different jurisdictions and the meaning ascribed to any one ground in a particular jurisdiction will depend largely on what other grounds are there present. To that extent the value of any one decision or group of decisions in one state as a precedent in another state must be discounted.

9 Ohio Gen. Code Ann. (Page, 1938), § 7999: “A husband or wife may enter into any engagement or transaction with the other, or with any other person, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other.” To the same effect is Mich. Comp. Laws (1929), § 13061.

“‘There was in this country and England, during the latter part of the nineteenth century, a remarkable movement for giving the wife equal rights in all respects with the husband, which has been so far successful that it can almost be said now that the modern wife has a legal right which, fortunately for all of us, she does not exercise, to leave home in the morning and go to work, collect and keep her own wages and leave her husband to do the housework and take care of the babies.” 1 Schwuler, Marriage, Divorce, Separation and Domestic Relations, 6th ed., 5 (1921). No cases are cited.