Michigan Law Review

Volume 32 | Issue 5

1934

DIVORCE - ALIMONY - MODIFICATION OF DECREE - IMPAIRMENT OF OBLIGATION OF CONTRACTS

DIVORCE — ALIMONY — MODIFICATION OF DECREE — IMPAIRMENT OF OBLIGATION OF CONTRACTS — A decree of divorce, following the terms of a prior agreement between the parties, ordered the defendant husband to assign to the plaintiff an insurance policy and pay her $105 per month as long as she remained unmarried. Later, the court upon the defendant's petition reduced the monthly allowance to $90, finding that the defendant's earnings had been diminished and that his remarriage had precipitated new family obligations and debts. Upon appeal of both parties, *held*, that the court had the power to modify the decree to conform to the changed conditions of the parties, and this modification did not impair the obligation of the contract on which the decree had been based. *Eddy v. Eddy*, 264 Mich. 328, 249 N. W. 868 (1933).

In cases of absolute divorce there is generally held to be no power in the court to modify the alimony awarded by the decree unless such power is given by statute or reserved in the decree.[1] Most States, however, have statutes giving the court power to modify alimony decrees,[2] and the court in the instant case based its decision on such legislation.[3] Where such statutory power exists the usual holding is that it may be exercised even though the decree embodied an agreement of the parties.[4] The technical argument offered in support of this view is that the agreement when incorporated into the decree merges therein, and since it loses its contractual nature it is subject to modification.[5] A more persuasive contention is that since the court is not in the first instance obligated to employ the agreement in its decree, the mere fact that it does so because it looks upon the agreement as evidence of a satisfactory adjustment between the parties at the time should not prevent the court from taking account of a subsequent change in conditions.[6] The contrary result is reached in a few jurisdictions on the theory that when the court employs the agreement of the parties in the decree it ratifies the prior contract, and on ordinary contract principles the decree cannot be modified without the consent of the parties.[7] The plaintiff in the princi-

[1] MADDEN, DOMESTIC RELATIONS 328 (1931); Sampson v. Sampson, 16 R. I. 456, 16 Atl. 711, 3 L. R. A. 349 (1889); Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890, 19 L. R. A. (N. S.) 245, 129 Am. St. Rep. 477 (1908). But see Hart v. Hart, (Wash. 1933) 24 Pac. (2d) 620, in which the court held that where the alimony provisions of a decree are not for the support of the wife exclusively but for the benefit of a minor child or children, the court has jurisdiction to modify the decree even though the statutory period for the modification of the decree has expired and there is no reservation in the decree of the power to modify. For other decisions supporting this view see the cases collected in L. R. A. 1917F 729.

[2] MADDEN, DOMESTIC RELATIONS 328, 329 (1931).

[3] Mich. Comp. Laws (1929), sec. 12748.

[4] Morgan v. Morgan, 211 Ala. 7, 99 So. 185 (1924); Maginnis v. Maginnis, 323 Ill. 113, 153 N. E. 654 (1926); Wilson v. Caswell, 272 Mass. 297, 172 N. E. 251 (1930), noted in 44 HARV. L. REV. 127 (1930).

[5] Kunker v. Kunker, 230 App. Div. 641, 246 N. Y. S. 118 (1930); Herrick v. Herrick, 319 Ill. 146, 149 N. E. 820 (1925); Maginnis v. Maginnis, 323 Ill. 113, 153 N. E. 654 (1926).

[6] Warren v. Warren, 116 Minn. 458, 133 N. W. 1009 (1912); Pryor v. Pryor, 88 Ark. 302, 114 S. W. 700, 129 Am. St. Rep. 102 (1908); Herrick v. Herrick, 319 Ill. 146, 149 N. E. 820 (1925).

[7] Henderson v. Henderson, 37 Ore. 141, 60 Pac. 597, 48 L. R. A. 766, 82 Am. St. Rep. 741 (1900); Dickey v. Dickey, 154 Md. 675, 141 Atl. 387, 58 A. L. R.

pal case pressed this line of argument still further by the unusual contention that the modification violated the constitutional provision against impairment of obligation of contracts. Such reasoning is founded on the premise that alimony agreements are a matter of uncontrolled private contract between the parties. Yet it is a matter of legal tradition that the State, as a third party, is interested in the husband's common law duty to support his wife and children. And since this public interest is thought to survive a marital dissolution, alimony is regarded as a statutory substitute for the common law obligation.[8] If this policy argument is sound, then the intention of the parties as evidenced by their private agreement is immaterial and the court may reject it or accept and subsequently modify it at its discretion. At all events the alimony decree should be flexible.[9] It follows that since the decree and not the private agreement obligated the defendant in the principal case, the subsequent modification of the decree did not impair any contractual obligation between the parties.

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634 (1928); Law v. Law, 64 Ohio St. 369, 60 N. E. 560 (1901); Moore v. Crutchfield, 136 Va. 20, 116 S. E. 482 (1923).

[8] 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS, 6th ed., secs. 1796, 1797 (1921).

[9] See 6 N. Y. UNIV. L. REV. 295 (1929).