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Domestic Relations - Divorce-Statutory Requirements for Divorce Counsel

George J. Mangan

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RECENT DECISIONS

Domestic Relations—Divorce—Statutory Requirements for Divorce Counsel.—A husband brought action for divorce. The couple had an eleven-months-old child. Statute provided that "it shall be the duty of said prosecuting attorney to enter an appearance in said cause, and when in his judgment, the interest of said children or the public good so requires, he shall introduce evidence and appear at the hearing and oppose the granting of the decree of divorce." Divorce counsel was not served in the action and did not appear, but the trial court granted a divorce.

Held: judgment reversed. The provisions of the statute being mandatory, divorce counsel must appear. *McClellan* v. *McClellan,* 290 Mich. 680, 288 N.W. 306 (1939).

Twenty jurisdictions in the United States and its possessions have statutes providing for a divorce counsel, or proctor, to appear in behalf of the state in divorce actions. These jurisdictions and the duties of divorce counsel are as follows: In default divorce actions or actions where there is no bona fide defense: Colorado, Delaware, District of Columbia, Georgia, Indiana, New Jersey, Oregon, Washington and Wisconsin. In divorce actions for insanity: Idaho, Minnesota, Utah and Wyoming. Where there are minor children: Michigan and Nebraska. In all divorce actions: Kentucky, Tennessee and West Virginia. In Hawaii and Massachusetts the proctor may appear in any divorce action. In Connecticut the divorce counsel appears only in legislative divorces. 2 VERNIER, AMERICAN FAMILY LAWS 95-97.

In England by sections 5 and 7 of 23 & 24 Victoria, c. 144, made permanent by statute, 25 & 26 Vict. c. 81 (1862), if the Queen's proctor receives information concerning collusion from any person he may take such steps as the Attorney General deems necessary and expedient and prevent a decree nisi being made absolute. 6 WIS. L. REV. 258.

The Kentucky statute has been strictly construed to mean that the divorce counsel must investigate and resist all default divorces. The husband, without appearing before the court, set up a purported Alabama decree as a defense in an action against him by his wife. The court ordered the county attorney to investigate the purported decree and dismissed the wife's complaint. The court held on the plaintiff's appeal that it was the duty of the county attorney to resist all divorce actions. *Waites* v. *Waites,* 220 Ky. 251, 294 S.W. 1072 (1927).

The Oregon court reversed a decree for the plaintiff in an uncontested divorce action where the district attorney was not served as required by statute. The court held that the failure to serve the district attorney had prevented the court from obtaining jurisdiction over the state as a party defendant, as required by the statute in all uncontested divorce actions. *Smythe* v. *Smythe,* 80 Or. 150, 156 P. 785 (1916).

In an earlier Michigan case in which the facts were similar to those in the principal case the court put a different construction on the statute requiring the presence of the divorce counsel in all cases where there are minor children. Where divorce counsel was not served with notice in the action the court held in affirming a decree for the plaintiff that such a failure was a mere irregularity and did not effect the jurisdiction of the court. *Cole* v. *Cole,* 193 Mich. 655, 160 N.W. 418 (1916)

Where the endorsement of the divorce proctor was obtained on the original papers in a divorce action after the decree was rendered the Tennessee court

held this to be sufficient substantial compliance with the statute which required that all original papers in the action be endorsed by the divorce counsel before the decree could be rendered. *Taylor* v. *Taylor*, 144 Tenn. 311, 232 S.W. 445 (1921).

The Wisconsin Supreme Court in a case where amended pleadings in a divorce action were not served on the divorce counsel held that the service of the original pleadings was substantial compliance with the statute and the failure to serve the amended pleadings was not a reversible error. *Heinemann* v. *Heinemann*, 202 Wis. 639, 233 N.W. 552 (1930).

GEORGE J. MANGAN.

Domestic Relations—Infant's Contract—What Constitutes Ratification.—On a question of insolvency, a father claimed as a legal asset a sum of money due from his son. The son had promised to pay his father for the expense of his schooling. At the time, the son was still a minor. After reaching his majority, the son made several payments with the understanding that the money was to be used in the education of his sister and was also to be a repayment of his debt. The father claimed that part payment was a ratification of the contract made during his son's minority.

Held: That the promise to repay after reaching his majority followed by part payments was a ratification of the son's agreement, and the fact that such payments were made pursuant to an agreement that they would be used to educate his sister does not lessen the legal effect of the ratification of the debt. *Watzel* v. *Beardslee*, 289 Mich. 522, 286 N.W. 813 (1939).

Some states by statute require the ratification of an infant's contract to be in writing and signed by the person to be charged. Among those states are the following: Arkansas, Dig. Stat. Crawford & Moses (1921) §§ 4869, 6881; Session L. 1933, Act 251, p. 788; District of Columbia, C. 1929, T. 11, § 6; T. 14, §§ 21, 23; Kentucky, Carroll, St. 1922, §§ 470, 862; Session L. 1928, Ch. 148, p. 481, § 2; Maine, R. S. 1930, Ch. 60, § 146, Ch. 123, § 2, Ch. 165, § 2; Missouri, R. S. 1929, §§ 2971, 3484; New Jersey, Comp. St. 1910, p. 2616, § 7; p. 2813, §§ 32, 33, p. 4647, § 2; South Carolina, C. of L. 1922, C.C. §§ 5520, 5569-72; Session L. 1923, No. 66, p. 111. The District of Columbia allows ratification by conduct. C. 1929, T. 11, § 6; T. 14, §§ 21, 23. Some statutes which require written ratification make exceptions in contracts for necessaries. District of Columbia, C. 1929, T. 11, § 6; T. 14, §§ 21, 23; Maine, R. S. 1930, Cr. 60, § 146, Ch. 123, § 2, Ch. 165, § 2; South Carolina, C. of L. 1922, C.C. §§ 5520, 5569-72: Session L. 1923, No. 66, p. 11. Maine makes an exception for a promise to pay for real estate of which the infant has received the title and retains the benefit. R.S. 1930, Ch. 60, § 146, Ch. 123, § 2, Ch. 165, § 2. North and South Carolina deny students the right to ratify certain prohibited transactions, as a contract to buy liquor or a contract with the keeper of livery stable. South Carolina, C. of L. 1922, C.C. §§ 5520, 5569-72; Session L. 1923, No. 66, p. 111; North Carolina, C. 1927 §§ 5181, 5805. (All of the foregoing statute citations are from Vernier, American Family Laws, Vol. V, sec. 273).

A majority of the states are not governed by statute. In these states ratification requires a new promise. *Catlin* v. *Haddox*, 49 Conn. 492, 44 Am. Rep. 249 (1882); *Thompson* v. *Lay*, 4 Pick. 48, 16 Am. Dec. 325 (1826). An express promise is required in cases where the consideration has been used or consumed, but if the consideration is still in existence and under the control of the infant,