Divorce: The Effect of a Prior Divorce Judgement on a Subsequent Action for Alimony and Support

Harold A. Dall

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A natural consequence is the effect of a *sine qua non* ("but for") cause, tempered by popular reason and judicial discretion.

Whether the court will elect to restrict itself by even this most liberal, organized whole requires a decision embracing it.

**Howard E. Quitz**

Divorce—The Effect of a Prior Divorce Judgment on a Subsequent Action for Alimony and Support—In 1946 plaintiff wife procured a valid absolute divorce in Connecticut, which was her domicile at the time, against her non-resident spouse upon constructive service. Subsequently, she brought an action in California to obtain alimony and support, at which time, she conceded that the "*in personam*" provisions of the Connecticut decree were invalid because of lack of jurisdiction over her spouse. The former husband made a general appearance in the California action, and appealed from the judgement in favor of the plaintiff. *Held:* Reversed. The application for alimony is a collateral proceeding or episode within the action for divorce, authorized for a particular purpose, but dependent for its maintenance upon the existence of the action. After the judgment granting the divorce the plaintiff was no longer the wife of the defendant, and he no longer owed her any marital duty. From that time she could enforce against him no obligation not imposed by the court at the time of the judgment. *Dimon v. Dimon,* 254 P.2d 528 (Cal.1953).

The courts are divided on the question as to whether a wife's suit for alimony, subsequent to a valid foreign divorce decree, may be maintained. Local rules on that question depend, in the first instance, upon whether such a divorce is thought to be divisible or indivisible in regard to its effect upon the marital status of either spouse on the one hand, and upon the wife's right to alimony on the other.¹

There is a line of cases which support the view that a wife may obtain alimony from her former husband, notwithstanding a valid existing *ex parte* divorce decree in a jurisdiction in which the husband did not appear or reside.² These decisions point out that it was impossible for the wife to recover an allowance for support at the time of the divorce decree because the court lacked personal jurisdiction over the husband. If the question of support could not be litigated.

¹ See Note, 28 A.L.R. 2d 1378.
² Stephanson v. Stephanson, 54 Ohio App. 239, 6 N.E. 1005 (1936); Darnell v. Darnell, 212 Ill. App. 601 (1918); Miller v. Miller, 186 Okla. 566, 99 P. 2d 515 (1940); Nelson v. Nelson, 71 S.D. 342, 24 N.W. 2d 327 (1946); Pawley v. Pawley, Fla. 46 So. 2d 464 (1950); Searles v. Searles, 140 Minn. 385, 168 N.W. 133 (1918).
after dissolution of the marriage, the wife would be forever denied her day in court, and the husband would be allowed to escape the obligations incurred by his marriage merely by moving to another state.

Contrary to the above view a substantial number of courts hold that the valid *ex parte* divorce decree automatically terminates the wife's right to alimony as an incident of the marriage relationship. These courts rejected the wife's arguments that she could not obtain alimony in the divorce forum for want of jurisdiction, that the question of alimony therefore was not adjudicated, and that she was therefore entitled to an adjudication in a court in which she could obtain jurisdiction of the defendant. They stated they were bound by precedent, which rested on the general ground that:

"... alimony is an incident of the marriage relation; that it can only be allowed where the marriage relation exists; that it may be allowed as a part of the decree of divorce; that the severance of the marriage relation by absolute decree without alimony terminates the right of alimony."  

The Wisconsin Court has not ruled on the issue as to whether a valid *ex parte* divorce decree obtained by a wife in a sister state will preclude her from suing her former spouse in Wisconsin for alimony or support. However, the indications are that the court would sustain the right of the wife to maintain such an action in one form or the other. In an early case in which the husband obtained the out of state divorce solely upon service by publication and the wife sued to have the divorce set aside, it was held that such divorce was not a bar to a subsequent action for divorce by the wife in Wisconsin. A concurring opinion by Taylor, J., pointed out that if the *ex parte* divorce destroyed the marital status as to the husband, it equally destroyed such status as to the wife. However, since there was property in Wisconsin owned by the husband at the time of the divorce, in which the wife had an inchoate interest, which had not been secured to her by the divorce, no other adequate provision having been made for her as to alimony, a court of equity of Wisconsin might, upon the ground of such foreign divorce, entertain an action for alimony payable out of such property.

In a more recent decision, also involving an out of state divorce by the husband, the court made reference to the concurring opinion in the *Cook* case, and stated that:

"It would seem that in this state a wife situated as was the

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4 McCoy v. McCoy, 191 Iowa 973, 183 N.W. 377 (1921).
5 Cook v. Cook, 56 Wis. 195, 14 N.W. 33 (1882).
6 Ibid.
first wife might bring an action for alimony even though the husband had no real estate or other property within it. Else a man worth a million dollars in personal property might leave the state, take all his property with him, go to Nevada and get a judgment of divorce after staying there sixty days and thus throw his wife and the burden of her support upon the public."

In the Ische case,8 handed down just two months before the decision of the United States Supreme Court in the Estin case,9 the Wisconsin Court held valid an out of state divorce by the husband, but retained jurisdiction of the cause as an original action for alimony and support moneys. Since the wife alone appealed from a decree granting her a monthly sum as maintenance, the question as to whether the Nevada divorce precluded the court below from entertaining an original action for alimony, was not raised in the Supreme Court of Wisconsin. It was held that the trial court had acquired jurisdiction by the wife's commencement of an action to procure a divorce from bed and board and the husband's personal appearance therein. The award of alimony, was a proper exercise of jurisdiction under the particular facts and circumstances of the case.

It would appear from these decisions that the Wisconsin court, when faced with the issue, will sustain the right of the wife to maintain such an action in equity.10 This position is further substantiated by the fact that these Wisconsin cases were all decided before the Estin case,11 the broad language of which has convinced many legal authorities that the United States Supreme Court is of the opinion that a wife cannot be deprived of any "in personam" rights without having the issue properly litigated. The court said:

"The fact that the marital capacity has changed does not mean that every legal incident of the marriage was necessarily affected."12

If the Wisconsin Court should decide to entertain an action for alimony subsequent to a valid ex parte divorce, another question would logically present itself. Of what avail would such a decree be to the wife if the former husband's real property was in another state or the husband had removed his personal property to a sister state? It may be pointed out that judgments and decrees of one state have, under the constitutional full faith and credit provision,13 no operative force of their own in another state until judicial action has been taken thereon and their enforcement in such other state has been

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7Price v. Ruggles, 244 Wis. 187, 11 N.W. 2d 513 (1943).
8Ische v. Ische, 252 Wis. 250, 31 N.W. 2d 607 (1948).
9Estin v. Estin, 334 U.S. 541 (1948).
1028 A.L.R. 2d 1401.
11Supra, note 9.
12Supra, note 9.
13U.S. Const. Art. IV, §1.
sanctioned by the judgment or decree of the courts of such state. As a result the wife would have to take her Wisconsin judgment to the state in which her former spouse has property. Permitting the wife to establish a decree of one forum as a decree of a forum in another jurisdiction and so making available enforcement remedies of the latter is a comparatively recent development. The lead in this field was taken by California. While there is a split of authority among the states at present, the decided trend of the more recent cases is to the effect that a decree for alimony represents more than a debt. Its basis is said to be the natural obligation of the husband to support his wife and children, which is a matter of public concern whether the obligation is first judicially declared in the state of the forum or elsewhere. The urgency for its effective enforcement is equally as great in one state as in the other. Therefore, it should be enforced by the same remedies as are applicable to domestic decrees for alimony, such as contempt, sequestration, receivership, injunction, or imposition of an equitable lien.

With the conflict that exists among the several states as to divorce jurisdiction and procedure, it is an uncertain task to advise a client as to what his property rights will be after he has obtained a valid ex parte divorce. Unless uniformity among the states can be obtained by legislation, ex parte divorces should be avoided where substantial property rights may be involved, unless there are other cogent reasons for the divorce that outweigh the property problem.

Harold A. Dall

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15 18 A.L.R. 2d 867.