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I. Separate Maintenance

The case of *Folk v. Folk*[1] dealt with a long-continued domestic dispute in which the husband sought unsuccessfully to terminate a separate maintenance decree. The litigation had begun in 1954 as a divorce suit by the wife. Although her prayer for divorce had been denied, she had been allowed separate maintenance from her husband because of his mistreatment of her. The chancellor in that action had provided that the separate maintenance payments should continue unless the wife should unreasonably reject a sincere attempt at reconciliation by the husband. The court of appeals had stricken this portion of the decree but had held that if the husband should seek to discontinue the payments in the future, the chancellor should consider his petition in the light of all of the circumstances at that time. This opinion of the court of appeals was rendered in April 1958.

Within a short time after this decision the husband began writing letters to his wife, speaking in general terms of reconciliation. Some sixteen of these letters were introduced in the present case. It did not appear, however, that the husband took any other action toward effecting a reconciliation. In November 1959 he filed the present petition to terminate the separate maintenance award on the ground that the wife had refused repeated invitations on his part to resume their marriage. The chancellor held that the proof was insufficient to show a bona fide effort at reconciliation on his part or an arbitrary refusal by the wife. The court of appeals, in a divided opinion, reversed and ordered the payments terminated within three months whether a reconciliation had occurred or not.

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1. 355 S.W.2d 634 (Tenn. 1962).

The supreme court reversed and reinstated the decree of the chancellor. The court pointed out that an action for separate maintenance is independent of the divorce statutes and lies when the husband has failed in his obligation to support his wife.[2] Such an award is not a mere temporary or interlocutory decree; it remains in force indefinitely unless there is sufficient change in the circumstances of the parties to justify a modification of the terms of the decree. Normally an unjustified refusal by the wife of a bona fide offer of reconciliation will justify termination of the award.[3] It is well settled, however, that a mere token effort at reconciliation or an offer made merely for the purpose of terminating an award or to put the other party technically at fault will not suffice.[4] Finding that the evidence did not preponderate against the chancellor's findings of fact, the supreme court held that the husband's attempts at reconciliation in the present case were not sufficient to justify a termination of the separate maintenance award.

II. DIVORCE

A. *Residence Requirement*

The one-year residence requirement in divorce cases where the cause of action arose out of state or the petitioner resided out of state[5] was considered in the case of *Snodgrass v. Snodgrass*.[6] The husband was a native of North Carolina, but since 1956 he had been employed in Oak Ridge, Tennessee. He traveled extensively in his work but maintained a residence in Oak Ridge. In the latter part of 1958 he was married in Oak Ridge; after the marriage the wife resided with her mother in Asheville, North Carolina. The husband alleged that his wife refused to come to Tennessee to live with him, and in 1960 he sued for and obtained a divorce in Tennessee. Substituted service of process was had on the wife, who did not appear or contest the action.

The wife subsequently filed the present suit to set aside the decree on the ground that the Tennessee court lacked jurisdiction to grant the divorce because of the residence requirement. She alleged that her husband had not been a bona fide resident of the state for one year prior to filing the divorce action. The trial court dismissed her suit, and the court of appeals affirmed.

2. Stephenson v. Stephenson, 201 Tenn. 253, 257, 298 S.W.2d 717, 719 (1957).
3. Cureton v. Cureton, 117 Tenn. 103, 96 S.W. 608 (1906); 27 AM. JUR. *Husband and Wife* § 410 (1940).
4. Rutledge v. Rutledge, 37 Tenn. 554, 561 (1858); Annot., 10 A.L.R.2d 466, 510 (1950).
5. TENN. CODE ANN. § 36-803 (1956).
6. 49 Tenn. App. 607, 357 S.W.2d 829 (E.S. 1961).

Pretermitting any question of res adjudicata because not relied upon by the defendant, the court of appeals held the evidence sufficient to show that the husband had established his domicile in Tennessee long before filing the divorce suit. He had voted in Tennessee in 1958 and in 1960, and since 1956 he had received his mail at his Tennessee address. He apparently resided with his wife at Asheville for short periods, but these brief stays did not cause him to lose his Tennessee domicile. Since the one-year residence requirement was held to be satisfied the husband was entitled in his divorce action to rely upon alleged misconduct of his wife which took place in another state.[7]

The purpose of the residence requirement is to prevent Tennessee from becoming a center for foreign divorce cases.[8] The present holding seems consistent with that purpose. "Residence" as used in the statute has been equated to "domicile,"[9] and under the facts stated in the opinion it seems clear that the husband had established his domicile in Tennessee, possibly as early as 1956, and in all events no later than 1958.

B. *Pleading*

In the *Snodgrass* case another ground for attack upon the divorce proceedings was alleged deficiency in the divorce bill. The suit apparently had been predicated upon mental cruelty, and the Tennessee cases have held that allegations of cruelty must be specific as to time and place.[10] Nevertheless, no more is required than to give the defendant to a divorce bill notice of the charges required to be answered.[11] This is particularly true where a course of conduct over a long period of time is involved as a basis for the action; a date and place for each act need not be alleged in the pleading.[12] The husband in the present case charged persistent and unjustified denial of marital relations, general indifference, and refusal of the wife to make a home for him. From the language quoted in the opinion, these charges were clearly stated; and since the divorce action had been uncontested, the court of appeals evidenced a natural reluctance to set aside a final judgment in a later independent proceeding, when any

7. Carter v. Carter, 113 Tenn. 509, 512, 82 S.W. 309 (1904).

8. Carter v. Carter, *supra* note 7.

9. Brown v. Brown, 150 Tenn. 89, 261 S.W. 959 (1923); Tyborowski v. Tyborowski, 28 Tenn. App. 583, 192 S.W.2d 231 (M.S. 1945).

10. Loy v. Loy, 25 Tenn. App. 99, 151 S.W.2d 178 (E.S. 1941); Stargel v. Stargel, 21 Tenn. App. 193, 107 S.W.2d 520 (M.S. 1937).

11. Brown v. Brown, 159 Tenn. 551, 553, 20 S.W.2d 1037 (1929).

12. Garvey v. Garvey, 29 Tenn. App. 291, 203 S.W.2d 912 (En Banc 1946).

question of inadequate pleading could have been made in the divorce case itself.[13]

C. *Attorneys' Fees*

In the *Folk* separate maintenance case discussed above,[14] the attorneys for the wife, having been successful in the supreme court in having the decree of the court of appeals reversed and the decree of the chancellor reinstated, sought an allowance in the supreme court for additional fees for services rendered in both appellate courts. The supreme court, however, in a supplemental opinion[15] remanded this question to the chancellor, stating that since the entire cause had been remanded to the chancery court, that was the proper forum for the fixing of fees. The court pointed out a number of factors to be considered in connection with the fees, including the ability of the defendant to pay and the separate estate and means of the wife, in addition to the actual services rendered.

In the *Snodgrass* case,[16] which was not a divorce action but a suit by a divorced wife against her former husband attacking the validity of the divorce, attorneys' fees to the complainant were denied inasmuch as her suit was dismissed on its merits. This holding seems proper since, in view of the decision sustaining the validity of the divorce, there was no relationship between complainant and her former husband which would obligate him to pay her counsel fees.[17] Presumably, had she upset the divorce decree and reinstated a marital relationship, her counsel fees for this service would be deemed a necessary item for which the husband would be obligated.

D. *Support of Children*

In a carefully considered opinion, the court of appeals held that a provision in a divorce decree for periodic support and future education of a child does not survive the death of the father unless there is language in the decree expressly or impliedly providing for such survival.[18] This holding is consistent with earlier Tennessee cases on the subject.[19] In the present case the father had been ordered to make monthly payments to the mother for support of a minor child and to provide a college education upon the child's graduation from

13. Stephenson v. Stephenson, 41 Tenn. App. 659, 298 S.W.2d 36 (E.S. 1956).
14. 355 S.W.2d 634 (Tenn. 1962).
15. 357 S.W.2d 828 (Tenn. 1962).
16. 357 S.W.2d 829 (Tenn. App. E.S. 1961).
17. 17 AM. JUR. *Divorce and Separation* § 639 (1957).
18. *In re* Estate of Kerby, 49 Tenn. App. 329, 354 S.W.2d 814 (M.S. 1961).
19. Brandon v. Brandon, 175 Tenn. 463, 135 S.W.2d 929 (1940) (alimony); *In re* Moore's Estate, 34 Tenn. App. 131, 234 S.W.2d 847 (W.S. 1949) (child support).

high school. At the time of the divorce the child was two years of age. The father had been in ill health and died less than three years after the divorce decree was entered. The court of appeals, reversing the probate court, disallowed a claim against the father's estate for future support and education of the child. There would be no doubt of the power of a divorce court to make future support a charge upon the father's estate,[20] but nothing in the decree evidenced such an intention in this case.

In the case of *Snodgrass v. Snodgrass*,[21] a divorced wife brought a separate action against her former husband seeking to set aside the divorce decree for lack of jurisdiction in the Tennessee courts. The trial court in dismissing her suit declined to enter an order against the father for future support of the child of the parties. On appeal this action was affirmed, in view of the statutory provisions which retain questions of future custody and support before the divorce court.[22] It was pointed out that the court which rendered the divorce decree here sustained would therefore have full jurisdiction to pass upon any question of future support.

E. *Custody of Children*

In the case of *State ex rel. Seldon v. York*,[23] the Tennessee courts were once again called upon to consider the modification of a custody award made in another state. That such jurisdiction exists is no longer an open question when the child has been brought into Tennessee and when a sufficient change in circumstances is shown.[24] In the present case sufficient change in circumstances was proved. The parents were divorced in San Antonio, Texas, where both resided. Weekly visitation privileges were given the father. Within a few months, however, the mother remarried and moved with her new husband and the child to Tennessee. The father filed the present habeas corpus proceedings seeking to establish visitation privileges consistent with the distance between his home and that of the child. Overruling a plea to its jurisdiction, the trial court modified the Texas decree so as to allow the father to have the child with him in Texas a part of each summer and to visit her in Tennessee at certain times. The court of appeals found this decree consistent with the welfare of the child and affirmed.

A long and very bitter custody dispute was considered in *Terry v.*

20. *In re* Moore's Estate, 34 Tenn. App. 131, 234 S.W.2d 847 (W.S. 1949).
21. 357 S.W.2d 829 (Tenn. App. E.S. 1961).
22. TENN. CODE ANN. § 36-828 (1956).
23. 360 S.W.2d 931 (Tenn. App. M.S. 1962).
24. Kenner v. Kenner, 139 Tenn. 211, 201 S.W. 779 (1917); State *ex rel.* Sprague v. Bucher, 38 Tenn. App. 40, 270 S.W.2d 565 (W.S. 1953).

Terry.[25] In previous divorce proceedings custody of two children had been given to the mother with certain visitation rights in the father. The father's visits, however, apparently created extreme friction and perpetuated the hostility which had long existed between the two parents. Both parents were found to be fit persons to have custody of the children, but personal and religious differences between the two parents rendered impossible an amicable solution to the custody problem. Upon a petition by the father to modify the custody provisions of the divorce decree, the chancellor awarded the father custody of one of the children, reduced the support payments required of the father accordingly, and fixed visitation rights in the mother with the child whose custody was given to the father. Because of her apparent prejudice against him, the father was instructed not to visit the child remaining with the mother. The court of appeals affirmed the decree of the chancellor as being for the best interest of all concerned under the circumstances shown.

25. 361 S.W.2d 500 (Tenn. App. W.S. 1960).