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Divorce - Death of Party - Alimony Terminating on Death

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RECENT CASES

DIVORCE — DEATH OF PARTY — ALIMONY TERMINATING ON DEATH. — A decree of divorce awarded plaintiff \$50 monthly alimony to be paid by her ex-husband "until remarriage of said plaintiff or her death." Plaintiff's former husband predeceased her. Plaintiff filed a claim for \$10,234 against his estate, this amount representing the commuted value of the alimony payments she would have received had the monthly payments continued during her full life expectancy. The Supreme Court of North Dakota held that the claim for a lump sum award could not be granted under the terms of the decree, but that plaintiff was entitled to receive the sum of \$50 monthly from the assets of the estate until death or remarriage. *Stoutland v. Stoutland's Estate*, 103 N.W.2d 286 (N.D. 1960).

The disallowance of a lump sum payment is supported by respectable precedent which notes the difficulty of estimating contingencies such as remarriage by a table of probabilities.¹ Somewhat more difficulty is encountered in appraising the order, making continued alimony a charge of the husband's estate. It is the general rule that in the absence of an agreement between the parties or a statute providing otherwise, the obligation to make periodic payments of alimony terminates upon the husband's death where the decree is silent as to the duration of the payments.² However, a split of authority exists where a decree of divorce uses language such as that found in the instant case. In some jurisdictions alimony always terminates at the husband's death unless the contrary is specifically and unmistakably stated in the decree.³ The courts reason that since the duty of support ceases at the husband's death, the obligation to pay alimony—which is merely a formalized legal substitute for the original duty of support—must also terminate.⁴ In such jurisdiction it has been held that expressions in the divorce decrees as "until her death or remarriage,"⁵ "so long as she shall live,"⁶ and "during her lifetime,"⁷ are not specific enough and have no legal effect.

Other jurisdictions permit alimony to continue after the death of the divorced husband if the decree so provides.⁸ The courts have construed the expressions such as, "during her natural life,"⁹ "until modified by the court,"¹⁰ and "until she remarries,"¹¹ as indicating that the alimony payments were to survive the husband's death.

1. *Slater v. Mexican National Railroad Company*, 194 U.S. 120, 128 (1904); *Wides v. Wides*, 300 Ky. 344, 188 S.W.2d 471, 475 (1945).

2. *Borton v. Borton*, 230 Ala. 630, 162 So. 529 (1935); *Platt v. Davies*, 82 Ohio App. 182, 77 N.E.2d 486 (1947).

3. *Johnson v. Every*, 93 So.2d 390 (Fla. 1957); *Wilson v. Hinman*, 182 N.Y. 408, 75 N.E. 236 (1905); *Murphy v. Shelton*, 183 Wash. 180, 48 P.2d 247 (1935). Cf. *Robinson v. Robinson*, 50 S.E.2d 455 (W.Va. 1948).

4. *Roberts v. Higgins*, 122 Cal. App. 170, 9 P.2d 517 (1932); *Snouffer v. Snouffer*, 132 Ohio St. 617, 9 N.E.2d 621 (1937).

5. *Foster v. Foster*, 195 Va. 102, 77 S.E.2d 471 (1953).

6. *Wilson v. Hinman*, 182 N.Y. 408, 75 N.E. 236 (1905).

7. *In re Porter's Estate*, 137 N.Y.S.2d 271 (Surr. Ct. 1954).

8. *Garber v. Robitshek*, 226 Minn. 398, 33 N.W.2d 30 (1948).

9. *Parker v. Parker*, 193 Cal. 478, 225 Pac. 447 (1924); *Ramsay v. Sims*, 209 Ga. 228, 71 S.E.2d 639 (1952).

10. *Ex parte Hart*, 94 Cal. 254, 29 Pac. 774 (1892).

11. *In Re Mesmer's Estate*, 94 Cal. App. 97, 270 Pac. 732 (1928); *Storey v. Storey*, 125 Ill. 608, 18 N.E. 329 (1888).

Today, an absolute divorce may cut off a wife's dowery interest,¹² or her homestead right.¹³ For this reason a number of jurisdictions allow alimony to be used as compensation to the wife for the loss of property interest.¹⁴ Where the wife obtains a property settlement at the time of divorce, alimony terminates at the death of the husband.¹⁵

In summary it may be said that although the courts state as a principle that there must be strict compliance with the statutes in alimony decrees, a good measure of discretion is given the courts by North Dakota statute.¹⁶

Provisions should be made in the divorce decree awarding the wife her equitable share of the family property and in some cases alimony should be granted to the wife for the duration of her life. However, it is better to provide for a property settlement at the time of the divorce and award alimony to the wife, only if she is in need of support, such alimony terminating at the husband's death.

F C. ROHRICH

OFFICERS — RIGHTS, POWERS, DUTIES, AND LIABILITIES — OCCUPANCY OF OFFICE BY DE FACTO OFFICER — EFFECT ON COMPENSATION OF DE JURE OFFICER. — In an election dispute between plaintiff, the incumbent highway surveyor, and his election opponent, the opponent was appointed by the town council to replace the plaintiff. State law provided that plaintiff should continue in office for an additional two years or until a successor was duly elected and qualified.¹ Plaintiff did not acquiesce in the opponent's appointment and was reinstated after bringing quo warranto proceedings, but the town council refused his claim for compensation for the time he was out of office. The Rhode Island Supreme Court, in a case of first impression, held that payment of the salary to the de facto surveyor did not discharge the town from its liability to the de jure officer for the period during which he was excluded from office. *LaBelle v. Hazard*, 160 A.2d 723 (R. I. 1960).

The common law and majority rule in this country is that if a public body pays to a de facto officer² compensation to which the holder of an office is entitled, it is not bound to pay such compensation again to the de jure officer when he succeeds in having his right to the office judicially established.³

12. *Gum v. Gum*, 122 Va. 32, 94 S.E. 177 (1917).

13. N.D. Rev. Code § 14-0525 (1943).

14. *Sickey v. Sickey*, 329 Mich. 51, 44 N.W.2d 867 (1950); *Tyson v. Tyson*, 283 Mich. 192, 277 N.W. 882 (1938).

15. *Borton v. Borton*, 230 Ala. 630, 162 So. 529 (1935). See *Johnson v. Johnson*, 57 Kan. 343, 46 Pac. 700 (1896) "Alimony and a division of the property of the parties is essentially a different thing."

16. N.D. Rev. Code § 14-0524 (1943) "When a divorce is granted, the court shall make such equitable distribution of the real and personal property of the parties as may seem just and proper, and may compel either of the parties to provide for the maintenance of the children of the marriage, and to make such suitable allowances to the other party for support during life or for a shorter period as to the circumstances of the parties respectively. The court from time to time may modify its orders in these respects."

1. Public Laws of Rhode Island, 1948, c. 1998.

2. The rule applies only to officers and not to employees. For distinction between the two see *Francis v. Iowa Employment Security Commission*, 250 Iowa 1300, 98 N.W.2d 733 (1959); *Mootz v. Belyea*, 60 N.D. 741, 236 N.W. 358 (1931).

3. *Peru v. State*, 210 Ind. 668, 199 N.E. 151 (1935); *Brown v. Tama County*, 122 Iowa 745, 98 N.W. 562 (1904); *Saline County v. Anderson*, 20 Kan. 298, 27 Am.Rep. 171 (1878); *Bowlin v. Franklin County*, 152 Miss. 534, 120 So. 453 (1929); *Hallowell v. Buffalo County*, 101 Neb. 250, 162 N.W. 650 (1917).