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Enforceability of Foreign Decrees for Alimony or Support - Bauernschmidt v. Safe Deposit & Trust Co.

ENFORCEABILITY OF FOREIGN DECREES FOR ALIMONY OR SUPPORT

Bauernschmidt v. Safe Deposit & Trust Co.[1]

As pointed out in the previous note, this case presents the question whether Maryland will treat as alimony an award of money by a California decree, confirming a separation agreement, which was effective as an award of alimony in California, when the Maryland Courts have failed to consider such a decree rendered in Maryland as the equivalent of an award of alimony. The Maryland Court of Appeals refused to give this effect to the California decree, saying, in essence, that since Maryland refuses to give this effect to its own decrees, the full faith and credit clause of the United States Constitution does not require that a foreign decree be given more effect than a similar decree of the forum. In support of this contention the Court of Appeals relied on two earlier decisions which had refused to consider a judicially ratified separation agreement as the equivalent of an award of alimony.[2] While the decision, therefore, as indicated in the preceding note, resolved itself into a determination of the attachability of the income from a spendthrift trust under this particular type of foreign decree, there is suggested the problem of the general enforceability of foreign decrees for alimony or for support.

The relief at law seems to be fairly well determined by the United States Supreme Court holdings; and their bind-

[1] 176 Md. 351, 4 A. (2d) 712 (1939). The same case is noted in the preceding casenote on another point.

[2] Dickey v. Dickey, 154 Md. 675, 141 A. 387, 58 A. L. R. 634 (1928); Bushman v. Bushman, 157 Md. 166, 145 A. 488 (1929).

ing authority has been followed in one earlier Maryland case, as well as recognized in the opinion in the instant case. A decree in one state for the payment of a sum of money for alimony past due has been held entitled to enforcement in another state under the full faith and credit clause of the Federal constitution.[3] Later, the same protection was afforded to installments falling due after the foreign decree was rendered if such past due installments were not subject to modification under the law of the state where such decree was rendered.[4] Maryland has one decision summarizing this constitutional law and recognizing its obligation to follow it.[5] This general law under the full faith and credit clause would seem to apply to final decrees for support, or decrees ratifying consent settlements of the parties, as well as to decrees in the nature of "true alimony". The distinction between such decrees made later in the discussion of equitable enforcement would seem to be precluded as to legal enforcement, as recognized in the opinion in the instant case.[6] There remains only the question whether the Courts of Maryland (or of any state) will go further than the full faith and credit clause compels, and give voluntary recognition to past due installments, even though capable of modification, if in fact they are not modified,[7] although it has generally been held that this will not be done.

Granted general enforceability at law of a foreign final order for alimony or support, the unpaid wife, who cannot discover her former husband's assets in the forum where she catches him, might be desirous of securing recognition

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[3] Lynde v. Lynde, 181 U. S. 183, 21 S. Ct. 555, 45 L. Ed. 810 (1901).

[4] Sistare v. Sistare, 218 U. S. 1, 30 S. Ct. 682, 54 L. Ed. 905, 28 L. R. A. (N. S.) 1068, 20 Ann. Cas. 1061 (1910).

[5] Rosenberg v. Rosenberg, 152 Md. 49, 135 A. 840 (1927), allowing suit in Maryland for past due installments of alimony under a Virginia decree, and presuming (as had been done in the *Sistare* case, *supra*) that such installments were not subject to modification in absence of proof to the contrary.

[6] The Court recognized that legal enforcement might be had of the very California decree therein involved.

[7] This would seem to be the same as the problem of the possible lag between compulsory and voluntary recognition of foreign single-domicil divorces. Haddock v. Haddock, 201 U. S. 562, 28 S. Ct. 525, 50 L. Ed. 867, 5 Ann. Cas. 1 (1906). On the point raised in the text *Cf.* II BEALE, CONFLICT OF LAWS (1935) Sec. 435.2, n. 4, although the cases cited to support the text of Beale generally fail to go as far as suggested in our text above. The Restatement of Conflict of Laws, Sec. 464, states its principles in the limited terms of the *Sistare* case, *supra* n. 4; and it is generally accepted as law that if the decree is subject to modification as to past due instalments, recognition will be denied, GOODRICH, CONFLICT OF LAWS (2d ed., 1938) Sec. 135, n. 107.

in equity of her foreign order and the application of the general sanctions for contempt. At the outset, because of purely local Maryland cases, the problem divides itself into: (1) decrees for support not in the nature of alimony and (2), "true" alimony decrees. As to the first, Maryland has already denied the applicability of the contempt sentence to any but "true" alimony decrees of its own courts.[8] As indicated by the instant case, it seems unlikely that a greater credit would be accorded to a foreign decree which is not "true" alimony as the Maryland cases have defined it.

The distinction in Maryland between "true" alimony and other decrees for support money results from a line of several cases. The first is *Emerson v. Emerson*,[9] where the Court was faced with this problem in connection with the power of equity to modify its decree as to future instalments because of supervening circumstances. In the *Emerson* case the Court distinguished between the types of alimony decrees which equity could hand down over the objection of the defendant and those which it could not impose without consent of the defendant husband. Orders for periodical payments to extend beyond the death of the first deceasing spouse, orders for lump sum settlements, or for contributions to the wife in other forms than by regular money payments were said not to be "true" alimony and accordingly not capable of incorporation in decrees without consent; and if there were consent to insert them, such provisions might not be modified because of supervening circumstances, as might be done with "true" alimony. The next case, *Dickey v. Dickey*[10] was in reality only an affirmation of the *Emerson* holding.

In the later case of *Bushman v. Bushman*,[11] the distinction between "true" alimony and other types of judicial support orders was involved in two different connections, both with respect to the power of equity to imprison for contempt. One of these was the problem which arose in the *Emerson* case, there with respect to the power to modify, of whether consent decrees in favor of a wife constitute alimony. It was held that a consent decree for a lump sum settlement was not true alimony and, therefore, the husband could not be imprisoned for contempt for dis-

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[8] See Bushman v. Bushman, *supra*, n. 2, discussed *infra*, *circa* n. 11.
[9] 120 Md. 584, 87 A. 1033 (1913).
[10] 154 Md. 675, 141 A. 387, 58 A. L. R. 634 (1928).
[11] *Supra*, n. 2.

obedience to it. On the other point, the power to imprison for contempt was held inapplicable, also, to a portion of a decree providing separately for support of the child. This latter conclusion resulted from the fact that the Court viewed support orders for children as "debts", and therefore within the constitutional prohibition against imprisonment for debt. Subsequent cases have held that a single order combining alimony for the wife and support for the children may be enforced by contempt procedure.[12]

The United States Supreme Court has recognized that the full faith and credit clause does not accord a foreign judgment every incident given by the state of rendition,[13] and, as emphasized in the instant decision, has said the mode of enforcement is for the forum to determine.[14] Unless the Supreme Court should direct to the contrary, it would seem likely that Maryland would deny other equitable remedies to the enforcement of foreign decrees not in the nature of "true" alimony as delineated in the above Maryland cases, just as in the instant case, the Court refused to consider the special right in equity to reach a spendthrift trust for alimony on the basis that the foreign decree was not "true" alimony.[15] Whether the Supreme Court will extend full faith and credit to cover this situation is, at present, but pure conjecture. Such action seems unlikely because of the general assumption of the cases that the domain of enforcement is outside the control of the full faith and credit clause.

As to "true alimony decrees, there is no existing Maryland authority. Authority elsewhere is divided into three views, two of which are opposed to giving the wife relief, while the third supports her contention. There are some courts which take the view that, since the plaintiff may resort to law and have her redress there, she can not make out a case for equitable relief.[16] Other courts oppose giv-

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[12] Cohen v. Cohen, 174 Md. 61, 197 A. 564 (1938), noted (1938) 3 Md. L. Rev. 93; Knabe v. Knabe, 176 Md. 606, 6 A. (2d) 366 (1939), noted (1939) 3 Md. L. Rev. 367.

[13] McElmoyle v. Cohen, 13 Pet. 312, 10 L. Ed. 177 (1839); Beilman v. Pope, 138 Md. 482, 114 A. 568 (1921); Brengle v. McCellan, 7 G. & J. 434 (1836). See Hospelhorn v. General Motors, 169 Md. 564, 182 A. 442 (1935) for a statement supporting the holdings of the last two cases.

[14] *Ibid.*

[15] See the preceding casenote in this issue of the REVIEW.

[16] Grant v. Grant, 64 App. D. C. 146, 75 F. (2d) 665 (1935); Page v. Page, 189 Mass. 85, 75 N. E. 92, 4 Ann. Cas. 296 (1905); Weidman v. Weidman, 274 Mass. 118, 174 N. E. 206, 76 A. L. R. 1359 (1931); Bennett v. Bennett, 63 N. J. Eq. 306, 49 A. 501 (1901).

ing equitable relief on the basis that, while the full faith and credit clause protects the substance of the plaintiff's rights and compels recognition of foreign judgments, it has no reference at all to the method of, or remedy for, enforcement of a foreign judgment.[17] Those courts, which will give relief in equity to the plaintiff, do so, not under any compulsions of the full faith and credit clause, but rather voluntarily because of the public policy involved in compelling a husband and father to meet his alimentary duties.[18] The view which supports equitable enforcement is apparently in accord with the trend of the later cases.[19] As it is put by one annotator, the "better considered recent cases adhere to the view . . . that the courts of a state will enforce a foreign decree for alimony, or, more accurately speaking, a local judgment based on a foreign decree for alimony, by equitable remedies, as by contempt for failure to comply with the orders of the Court, as is customary in the enforcement of local decrees for alimony."[20]

Where there are local statutes involved giving equitable remedies for enforcement of alimony decrees, a (similar) division of authority exists in construing their effect. Those courts, which in the absence of statute, refuse to give equitable relief, refuse also to give relief where there is a statute.[21] The basis of their action is the view that local statutes applying equitable remedies apply only to decrees of local courts. In other words, they hold that the legislature was not intending to enact a conflict of laws rule when it passed the statute, but rather it was concerned with local policy.[22] Those courts, which give voice to equitable enforcement in the absence of a statute, generally do so when a statute exists. Their position is that these statutes do not, unless they specifically so state, contract the courts' observance of the public wel-

[17] Bullock v. Bullock, 52 N. J. Eq. 561, 30 A. 676, 27 L. R. A. 213, 46 Am. St. Rep. 528 (1894); see also Lynde v. Lynde, *supra*, n. 3; *Contra*, Fanchier v. Gammill, 148 Miss. 723, 114 So. 813 (1927).

[18] Ostrander v. Ostrander, 190 Minn. 547, 252 N. W. 449 (1934); Creager v. Superior Ct., 126 Cal. App. 280, 14 P. (2d) 552 (1932); Fanchier v. Gammill, supra, n. 17; Shibley v. Shibley, 181 Wash. 166, 42 P. (2d) 446, 97 A. L. R. 1191 (1935).

[19] See 109 A. L. R. 653; and Note, *Alimony After Foreign Decrees of Divorce* (1940) 53 Harv. L. Rev. 1180.

[20] *Ibid.;* Bruton v. Tearle, 7 Cal. (2d) 48, 59 P. (2d) 953, 106 A. L. R. 580 (1936); German v. German, 122 Conn. 155, 188 A. 429 (1936); Cousineau v. Cousineau, 155 Ore. 184, 63 P. (2d) 897, 109 A. L. R. 643 (1936).

[21] Notes 16, 17, *supra;* also Wood v. Wood, 7 Misc. 579, 28 N. Y. S. 154 (1894); Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890, 19 L. R. A. (N. S.) 245, 129 Am. St. Rep. 477 (1908).

[22] *Ibid.*

fare of the state in the development of conflict of laws rules; but rather that they are only declaratory of the law as to local practice.[23] Also, some of these courts adopt as their basis of support the view that these statutes, unless they are expressly to the contrary, enumerate a conflict of laws rule as well as state a local policy.[24]

In the absence of authority in Maryland, one can only speculate as to the reaction of the courts to the above possible courses of action. In handling the related problem of the attempt of a wife to secure alimony for the first time in a new and independent proceeding in Maryland after an absolute divorce obtained elsewhere without alimony having been asked for or given in the foreign proceeding,[25] the Court of Appeals, in *Staub v. Staub*,[26] chose the technical and conservative course of refusing relief on the theory that the basis for alimony (the relation of husband and wife) was not present (having been destroyed by the foreign decree). At the time, there was out-of-state authority to support this course,[27] but, there was equally as good authority to support the granting of relief on the theory that the wife, never having had her day in Court on the alimony claim, should get it in the forum where she could reach her former husband.[28] The *Staub* case, accordingly, might be taken as indicative of a conservative approach to the instant problem, or even as authority that Maryland could not have a new equity proceeding for alimony after a foreign decree for divorce accompanied by a grant of alimony. Such latter argument, however, would seem unsound because the wife would not be asking (as in the *Staub* case) for equitable relief dependent solely on the obligation of the husband, as husband; but, she would be asking for equitable relief on an obligation established by the foreign decree. Whatever view is accepted here, the reasoning of the *Staub* case could not apply to a foreign decree for alimony without divorce, or for alimony accompanying a

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[23] *Supra*, n. 18.

[24] *Ibid.*

[25] If alimony had been asked for in the foreign court and been refused it would be res judicata in the forum. See GOODRICH, CONFLICT OF LAWS, (2nd Ed., 1938) Sec. 135, N. 111.

[26] Staub v. Staub, 170 Md. 202, 183 A. 605 (1931), noted (1937) 50 Harv. L. Rev. 526.

[27] McCoy v. McCoy, 191 Iowa 973, 183 N. W. 377 (1921); GOODRICH, *op. cit. supra*, n. 25, Secs. 366-369.

[28] Toncray v. Toncray, 123 Tenn. 476, 131 S. W. 977, 39 L. R. A. (N. S.) 1106, Ann. Cas. 1912 C, 284 (1910); GOODRICH, *loc. cit. supra*, n. 27.

partial divorce, for in such cases, the marital relation would not be dissolved by the foreign decree.

It might be argued that the Maryland constitutional provision against imprisonment for debt precludes local enforcement by new decree in equity plus contempt sanctions (either by voluntary judicial action, or under some new statute) because the foreign decree already has been held to be no more than a "debt of record" for the purpose of obtaining a law judgment in enforcement thereof.[29] This problem is simply one of terminology and is easily resolved if sound policy should call for local enforcement in equity. A purely local decree for alimony is treated as a law judgment (debt of record) so as to be the basis for execution, as well as subjecting the defendant to imprisonment for contempt because of failure to pay. Also, by the same Court of Appeals which called it no debt for purposes of applying contempt sanctions, the alimony decree has been called a *debt* for purposes of application of the law of conveyances in fraud of creditors.[30] It might be mentioned, also, that even though the Court of Appeals should deem the Maryland constitutional provision applicable, it would have to give way to the federal constitutional provision should full faith and credit be extended to equitable as well as legal enforcement of foreign decrees.[31]

Another argument against a new equitable decree in Maryland to enforce the foreign decree might be that the new decree would be in essence only a decree for alimony, and that there would be no procedure for obtaining such decree. This would rest on the argument that equity's powers to grant alimony are purely statutory and do not include such a procedure for relief based on a foreign decree. The answer to this argument is two fold. First, the statutory given powers of equity to grant alimony are merely declaratory of certain powers of the equity courts, and not necessarily exclusive of others, the equity courts in Maryland having exercised the general power to grant alimony prior to the statute.[32] Secondly, this par-

[29] See the *Rosenberg* case, *supra*, n. 5 and the *Sistare* case, *supra*, n. 4.

[30] Levin v. Levin, 161 Md. 451, 171 A. 77 (1933).

[31] No Supreme Court authority goes that far as yet. *Cf.* Cook, *The Powers of Courts of Equity* (1915) 15 Col. L. Rev., 37, 106, 228; Cook, *The Powers of Congress Under The Full Faith and Credit Clause* (1919) 28 Yale L. J. 421; Lorenzen, *Application of Full Faith and Credit Clause to Equitable Decrees for the Conveyance of Foreign Land* (1925) 34 Yale L. J. 591; Lorenzen, *Enforcement of American Judgments Abroad* (1919) 29 Yale L. J. 188.

[32] MARSHALL & MAY, THE DIVORCE COURT—MARYLAND (1932) 97,

ticular right of equity to give such relief has already been recognized as existent in a number of equity courts elsewhere without statutory authority.[33]

At best, the whole problem, like most others, resolves itself into one on which the courts can find an argument to support their position whichever view they may choose to take. Therefore, it is submitted that their choice should be governed by a determination of the wisdom (as a matter of sound social policy) of extending or denying the equitable sanctions in favor of a wife trying to collect alimony from a husband seeking sanctuary in a forum other than that which rendered her original decree for alimony. The trend of authority, as indicated earlier,[34] is toward extending the sanctions of equity to the enforcement of awards of alimony of sister states. This may occur either by judicial decision under the inherent powers of equity or by statutory enunciation of such policy. It is not inconceivable that the full faith and credit clause protection will be so extended either by Supreme Court interpretation or by Congressional direction.[35]

Whatever the basis which the courts may use in upholding equitable enforcement, it is obviously more preferable than the view which is opposed to allowing resort to equity. There are really two important factors involved. There is the public policy implicit in the duty of a husband to support his wife. There is also the question of saving the state from the possible burden of having to undertake the support of indigent wives; wives who would otherwise not be indigent if the husband were compelled to meet his duties. The long arm of equity is a greater insurance to the wife and the public and a more caustic reminder to the errant husband than are the law courts. Modern conceptions of interstate comity would seem to call for full recognition in equity of a foreign decree for alimony. And, the public policy involved should be sufficient reason to support the modern tendencies of the cases to give real understanding to the pristine meaning of the words "*full* faith and credit."[36]

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[33] Cousineau v. Cousineau, 155 Ore. 184, 63 P. (2d) 897, 109 A. L. R. 643 (1936), noted (1937) 16 Ore. L. Rev. 288; Cummings v. Cummings, 97 Cal. App. 144, 275 P. 245 (1929); German v. German, 122 Conn. 155, 188 A. 429 (1936). See *supra*, n. 18.

[34] *Supra circa* n. 19.

[35] See articles cited, *supra* n. 31, and Wigmore, *Execution of Foreign Judgments* (1926) 21 Ill. L. Rev. 1; Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law* (1935) 33 Mich. L. Rev. 1128.

[36] *Ibid.*