

ORIGINAL

IN THE SUPREME COURT OF OHIO

SANDRA L. JANOSEK,

Plaintiff-Appellee,

Case No. 2009-1705

v.

JAMES C. JANOSEK,

Defendant-Appellant.

On Appeal from the Cuyahoga County Court
of Appeals, Eighth Appellate District
Case Nos. 08-091882 and 08-091914

Appendix To Merit Brief of Appellant James C. Janosek

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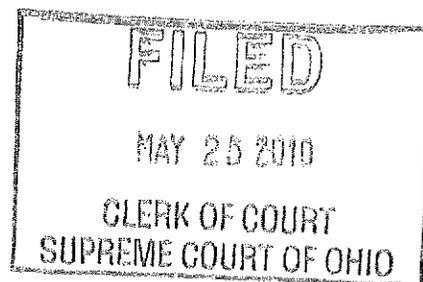
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In accordance with S.Ct.Prac.R. II(2), Appellant James C. Janosek hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered on August 6, 2009, in the case entitled Sandra L. Janosek v. James C. Janosek, Case Nos. 08-091882 and 08-091914.

The case is one of public and great general interest per Ohio Const. Art. IV, § 2(B)(2)(e) and S.Ct.Prac.R. II(1)(A)(3).

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Certificate Of Service

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Revised Notice Of Appeal Of Appellant James C. Janosek

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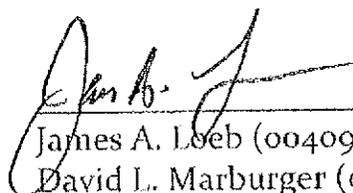
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In accordance with S.Ct.Prac.R. II(2), Appellant James C. Janosek hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered on September 2, 2009, in the case entitled Sandra L. Janosek v. James C. Janosek, Case Nos. 08-091882 and 08-091914.

The case is one of public and great general interest per Ohio Const. Art. IV, § 2(B)(2)(e) and S.Ct.Prac.R. II(1)(A)(3).



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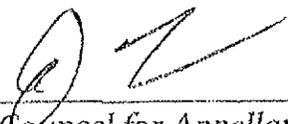
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I hereby certify that on October 13, 2009, a copy of the foregoing *Revised*
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Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 91882 and 91914

SANDRA L. JANOSEK

PLAINTIFF-APPELLEE
and CROSS-APPELLANT

vs.

JAMES C. JANOSEK, ET AL.

DEFENDANTS-APPELLANTS
and CROSS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Division of Domestic Relations
Case No. CP D-286943

BEFORE: Jones, J., Kilbane, P.J., and Stewart, J.

RELEASED: August 6, 2009

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**FILED AND JOURNALIZED
PER APP.R. 22(C)**

**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
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CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

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CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

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LARRY A. JONES, J.:

Defendant-appellant, James C. Janosek ("Husband"), appeals from various aspects of the judgment entry and decree of divorce entered by the Court of Common Pleas, Division of Domestic Relations. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND THE FACTS

Husband and plaintiff-appellee, Sandra Janosek ("Wife"), were married on May 21, 1977. Four children were born of the marriage; all of whom are now emancipated. Throughout the course of the marriage, the parties accumulated a large marital estate comprised of several businesses, several homes, and other marital assets.

On June 10, 2002, Wife filed for divorce. The court issued a temporary support order obligating Husband to pay child support of \$3,000 per month for one minor child and temporary spousal support of \$12,000 per month. The court awarded Wife interim attorneys fees and expenses of \$25,000 on January 23, 2003, and \$46,325.06 on October 23, 2003. A contested divorce trial was held for 27 days from January 7, 2005 through April 15, 2005. At the end of the trial, the judge asked both parties to prepare proposed findings of fact and conclusions of law. On May 20, 2005, Wife filed a notice of submission of proposed judgment

entry of divorce with findings of fact and conclusions of law. On May 24, 2005, Husband filed his proposed findings of fact and conclusions of law.

On June 13, 2005, the trial judge held an unscheduled attorney conference where he announced the terms of his judgment. He asked Wife's counsel to prepare the judgment entry. The judgment entry was delivered to the trial court. Wife's counsel claims to have served the proposed judgment entry by mail to Husband's counsel on June 16, 2005. On June 20, 2005, prior to the completion of the trial transcript and four days prior to Husband's deadline for responding, the trial court entered Wife's judgment entry without modification. On June 20, 2005, Husband filed a motion to strike, indicating that his counsel was never served with a copy of the proposed judgment entry. On June 22, 2005, Husband filed a motion to vacate the judgment entry and a motion to stay enforcement. On June 23 and 24, 2005, Husband filed his objections and supplemental objections to Wife's judgment entry. On July 20, 2005, the trial court denied Husband's motion to vacate and overruled Husband's objections to Wife's judgment entry.

On July 20, 2005, the trial court stayed execution of the judgment entry subject to the posting of a \$9,000,000 bond. The stay did not apply to the award of spousal support or attorneys fees. On July 26, 2005, Husband filed a notice of appeal from the judgment entry. On August 12, 2005, this Court granted

Husband's emergency motion to reduce the appeal bond and to stay further execution on property awarded to him upon the posting of a \$5,000,000 bond. On August 19, 2005, Husband posted the bond.

Husband then appealed several different issues and raised 20 assignments of error with this court in *Janosek v. Janosek*, Cuyahoga App. Nos. 86771 and 86777, 2007-Ohio-68 ("*Janosek I*"). In *Janosek I*, this court reversed and vacated the trial court judgment as to the requirement that the husband secure the wife's support with a life insurance policy, as to the valuation of business interests and golf club memberships, as to his payment of the deficiency on the sale of the marital residence, as to the purge condition of his contempt, and as to the attorneys fees award. Those issues were remanded back to the trial court, and the remainder of the judgment was affirmed.¹

The specific issues on remand after *Janosek I* involved the trial court's award of attorneys fees to Wife, the trial court's division of property in regard to the marital estate, and spousal support. The trial court held an evidentiary hearing on the attorneys fees issue. During the cross-examination of wife's

¹R.C. 3105.18(B) bars any court from deciding whether to award spousal support, or how much, until "after" the court "determines the division or disbursement of property under section 3105.171 of the Revised Code." Therefore this court did not review the initial spousal support order, explaining that "the reassessment of the marital estate includes the reconsideration of spousal support." *Janosek I*, at ¶145. This court also reversed the order requiring Husband to pay Wife approximately \$400,000.00 for her attorneys' fees and expenses and remanded the matter back to the trial court for it to consider further evidence on the issue. *Janosek I*, at ¶139.

counsel, the parties settled the attorneys fees issue by reducing the fee award from \$400,000.00 to \$50,000.00. The parties submitted an agreed judgment entry regarding the fees, which the trial court entered.

Although the trial court held a hearing to address the attorneys fees issue, it declined to hold an evidentiary hearing concerning the spousal support issue. Instead, the court ordered the parties to submit proposed findings of fact and conclusions of law based upon the previously established record. On March 6, 2008, the lower court issued a judgment entry granting, in part, Wife's motion to strike defendant's findings of fact and conclusions of law and exhibits 1-7.

On July 23, 2008, the trial court issued its decision addressing the remaining issues ("Remand Decision"). As far as spousal support is concerned, the lower court ordered Husband to pay \$3,240,000.00 in spousal support, payable at \$15,000.00 per month for 18 years until Husband is 71 years old. The 18 years are retroactive, beginning on February 7, 2005, and ending on February 7, 2023. On the same day, the court entered a separate order requiring Husband to post a \$45,000.000 cash bond to secure the spousal support obligation.²

The parties ultimately agreed to a reassessment and division of the marital estate, with each of them receiving in excess of \$11,000,000.00 in property division.³

²Bond Order, July 23, 2008.

³Remand Decision, 7/23/08, Exhibit A.

Husband filed a notice of appeal, challenging both the spousal support order and the bond order. The clerk assigned number 91882 to that appeal. The next day, August 1, 2008, the trial court entered a “nunc pro tunc” order that reduced the bond amount to \$10,000.00 but did not explain why.⁴ Husband filed a second notice of appeal challenging the second bond order. The clerk assigned number 91914 to the second appeal. On August 22, 2008, Wife filed a cross-appeal in case number 91882, also challenging the spousal support order. On October 8, 2008, this court consolidated both appeals.

ASSIGNMENTS OF ERROR

Appellant's Seven Assignments of Error

Appellant assigns seven assignments of error on appeal:

“I. The trial court erred and abused its discretion by awarding spousal support to appellee despite finding that she is self-sufficient and capable of sustaining and supporting her lifestyle without any spousal support;

“II. The trial court erred and abused its discretion by ignoring the stated purpose of the spousal support statute (to provide ‘sustenance’ and support) and by disregarding the statutory scheme devised by the General Assembly;

“III. The trial court erred and abused its discretion by not explaining how it calculated the arbitrarily chosen figure of \$15,000.00 per month for spousal support;

⁴Second Bond Order, August 1, 2008.

“IV. The trial court erred and abused its discretion by ‘double dipping’ – awarding appellee 50% of the value of appellant’s business (the value of which was determined by the profit it generates) as marital property and then counting those profits again as appellant’s income available for spousal support;

“V. The trial court erred when it determined that a company’s ‘retained earnings’ book entry on a balance sheet is the same thing as existing cash inside the company when in fact the record shows the company only had about \$126,000.00 in cash;

“VI. The trial court erred and abused its discretion by requiring appellant to continue paying spousal support well past an ordinary retirement age of 65;

“VII. The trial court erred by ordering appellant to post a cash bond.”

Cross-Appeal – Appellee’s Three Cross-Assignments of Error

In addition to appellant’s seven assignments of error, Sandra Janosek filed three cross-assignments of error in her cross-appeal. Her three cross-assignments of error are as follows:

“[I.] The trial court erred and abused its discretion by reconsidering and/or modifying the spousal support order issued on June 20, 2005;

“[II.] The trial court erred and abused its discretion by considering new evidence and arguments which are not part of the record as of June 20, 2005 and otherwise not properly before the trial court and/or this court;

“[III.] The trial court erred and abused its discretion by failing to increase the spousal support order given the fact that the appellee’s property division and payment of attorney fees was substantially reduced on remand.”

Due to the substantial interrelation between Husband’s first six assignments of error we shall address them together.

LEGAL ANALYSIS

Standard of Review

Appellate review of a trial court’s division of marital property is governed by an abuse of discretion standard. *Martin v. Martin* (1985), 18 Ohio St.3d 292, 342, 480 N.E.2d 1112. R.C. 3105.171(C)(1) mandates an equal *division of marital property, unless such would be inequitable under the circumstances*. In dividing marital assets, and in deciding whether to order an unequal award, a trial court must consider all relevant factors, including those listed in R.C. 3105.171(F). The trial court also must make written findings of fact to support its decision to divide the marital property equitably. See R.C. 3105.171(G).

A trial court enjoys wide latitude in determining the appropriateness as well as the amount of spousal support. *Bolinger v. Bolinger* (1990), 49 Ohio St.3d 120, 551 N.E.2d 157.

Award of Spousal Support

R.C. 3105.18, Award of spousal support; modification, subsection(B), provides the following:

“(B) In divorce and legal separation proceedings, upon the request of either party and after the court determines the division or disbursement of property under section 3105.171 [3105.17.1] of the Revised Code, the court of common pleas may award reasonable spousal support to either party. During the pendency of any divorce, or legal separation proceeding, the court may award reasonable temporary spousal support to either party.

“An award of spousal support may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable.

“Any award of spousal support made under this section shall terminate upon the death of either party, unless the order containing the award expressly provides otherwise.”

Husband argues that *Simoni v. Simoni* (April 3, 1995), Cuyahoga App. No. 66995, 102 Ohio App.3d 628, supports a reversal of the trial court's spousal support award in this case. However, contrary to Husband's assertions, *Simoni* is distinguishable and inapplicable to the case at bar. In *Simoni*, the parties were married in 1964 and there were no children born in the marriage. The parties in *Simoni*, 68 and 67 years old at the time of divorce, were older than the parties in this case. Furthermore, the wife in *Simoni* was working at the time of the divorce. More importantly, unlike the case at bar, the primary issue in

Simoni concerned the facts surrounding an antenuptial agreement. Finally, *Simoni* was based upon the standard of need; which is no longer the standard.

“As this court has noted previously, R.C. 3105.18, effective April 11, 1991, established a significantly different standard for awarding spousal support. The new “appropriate and reasonable” standard is broader than the old “necessary” standard. Thus, once the fourteen factors have been considered, the amount of spousal support is within the sound discretion of the trial court. See *Young v. Young* (Dec. 29, 1993), Lorain App. No. 93CA005554, unreported; see, also, *Leversee v. Leversee* (Mar. 25, 1993), Franklin App. No. 92AP-1307, unreported (1993 Opinions 1003); *Griffin v. Griffin* (Mar. 9, 1993), Franklin App. No. 92AP-1305, unreported (1993 Opinions 690); *Frye v. Frye* (Mar. 31, 1994), Franklin App. No. 93APF09-1218, unreported (1994 Opinions 1522).”

Pruden v. Pruden (June 2, 1994), Franklin App. No. 93APF10-1428.

Under R.C. 3105.18(A), spousal support is defined as payments to a spouse for sustenance and support. R.C. 3105.18(C) provides the following:

“In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

“(a) The income of the parties * * *;

“(b) The relative earning abilities of the parties;

“(c) The ages and the physical, mental, and emotional conditions of the parties;

“(d) The retirement benefits of the parties;

“(e) The duration of the marriage; * * *

“(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

“(g) The standard of living of the parties established during the marriage;

“(h) The relative extent of education of the parties;

“(i) The relative assets and liabilities of the parties * * *;

“(j) The contribution of each party to the education training, or earning ability of the other party; * * *

“(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

“(l) The tax consequences, for each party, of an award of spousal support;

“(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

“(n) Any other factor that the court expressly finds to be relevant and equitable.”

A review of the above noted statute reveals that an award of spousal support is no longer predicated on the idea of need.⁵ R.C. 3105.18, as amended

⁵This court notes that the “need” standard set forth in *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 68-69, 554 N.E.2d 83, has been statutorily replaced by an “appropriate and reasonable” standard delineated in R.C. 3105.18(C)(1). See, e.g., *McConnell v. McConnell* (Feb. 3, 2000), Cuyahoga App. No. 74974, where we stated: “After *Kunkle*, the General Assembly redefined R.C. 3105.18(C)(1) to include the *appropriate and reasonable standard*. (Emphases added.) Suggesting at least that the need factor is not the only barometer in which a trial court may be guided to award

January 1, 1991, directs courts to consider the appropriateness and reasonableness of spousal support rather than whether it is a necessity.⁶

This court has recently addressed the issue of spousal support in *Tokar v. Tokar*, Cuyahoga App. No. 89522, 2008-Ohio-6467, providing the following:

“In determining whether to grant spousal support and in determining the amount and duration of the payments, the trial court must consider the factors listed in R.C. 3105.18(C)(1)(a)-(n). *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 518 N.E.2d 1197, paragraph one of the syllabus; see, also, *Keating, supra*, at 37. Although a trial court is bound to consider these 14 factors, the award of spousal support lies within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Holcomb, supra*, at 130-131; see, also, *Moore v. Moore* (1992), 83 Ohio App.3d 75, 78, 613 N.E.2d 1097. “[I]f the court does not specifically address each factor in its order, a reviewing court will presume each factor was considered, absent evidence to the contrary.” *Carroll v. Carroll*, 5th Dist. No. 2004-CAF-05035, 2004-Ohio-6710, ¶128.”

R.C. 3105.18 sets forth the factors that the trial court must consider in determining whether spousal support *is appropriate and reasonable*, and in determining the nature, amount, terms of payment, and duration of spousal

spousal support.”

⁶This issue was also addressed in *Tomovcik v. Tomovcik* (Jan. 22, 1997), Jefferson App. No. 95 JE 22, p. 3, when the Seventh Appellate District recognized the shift in the statute’s focus. The Tenth Appellate District likewise recognized the shift in the statute’s focus when it analyzed R.C. 3105.18(C) in *Schultz v. Schultz* (1996), 110 Ohio App.3d 715, 724, 675 N.E.2d 55, providing the following: “This court takes note of the fact that need is still a consideration. However, it is only a consideration and not the test.”

support. (Emphasis added.) *Cahill v. Patronite*, Cuyahoga App. No. 82931, 2003-Ohio-6050.

The record clearly reflects that the trial court considered all 14 statutory factors. Indeed, the trial court expressly discussed every factor in detail in its July 23, 2008 Judgment Entry. Accordingly, given the trial court's consideration of the factors, including its detailed analysis, we cannot say it abused its discretion in awarding spousal support.

Accordingly, we find Husband's arguments that Wife will enjoy a lavish lifestyle without spousal support, his argument that *Simoni* applies, and his argument that Wife does not "need" spousal support to be without merit.

As previously stated, the lower court properly ordered spousal support to Wife pursuant to its extensive analysis of the R.C. 3105.18 factors. The trial court did not ignore the Wife's share of the marital estate and properly determined Husband's income. In fact, these issues were addressed in great detail in the lower court's Judgment Entry. The trial court engaged in and provided a 17-page analysis in its July 23, 2008 decision, in addition to the 10 pages devoted entirely to its findings of fact relative to the factors enumerated in R.C. 3105.18(C)(1) and the justification for Wife's spousal support award in the lower court's June 20, 2005, Judgment Entry of Divorce.

Specifically, the lower court provided the following in its July 23, 2008,

Judgment Entry:

“This court finds that the Plaintiff should be awarded spousal support of a stated duration of years, 18 years from the date of February 7, 2005 in the amount of \$15,000 per month.⁷ (Credits or debits are to be adjusted accordingly.) *The decision to award spousal support is based upon the totality of the evidence, including the demonstrated earning capacity of Mr. Janosek of between three and four million dollars annually. This court finds that Mrs. Janosek’s monthly standard of living is not less than \$15,000 per month, but that any amount in excess of that figure can be borne by her share of marital assets.*”

(Emphasis added.)

The lower court looked at the totality of the circumstances, including information from thousands of pages of documents, 27 days of trial and many hours of testimony before coming to its decision.

Moreover, we find Husband’s argument regarding the lower court’s \$15,000.00 per month in spousal support to be without merit. The lower court’s rationale behind the \$15,000.00 per month figure was proper.⁸

⁷The following information was listed in the trial court opinion, footnote number four, “Mrs. Janosek will be 71 on October 10, 2023. She will be approximately 70 ½ on February 7, 2023, when spousal support terminates. At that time, at age 70 ½, she will be obligated to commence annual draw down of her ING-IRA, currently valued between \$900,000 and \$1,000,000. * * *.”

⁸See *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 70; *Kaechle v. Kaechle* (1988), Ohio St.3d 93, 96 (all statutory factors must be considered by the trial court; the method by which the goal is achieved cannot be reduced to a mathematical formula) (emphasis added); *Manley v. Manley* (January 14, 2005), Montgomery App. No. 20426, 2005-Ohio-129; *Burner v. Burner* (Oct. 18, 2000), Summit App. No. C.A. 19903,

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Accordingly, need is no longer the standard, *Simoni* does not apply, and the lower court properly applied and analyzed the R.C. 3105.18 factors in its decision. We find no error on the part of the lower court regarding its analysis and award of spousal support to the Wife. We find no error on the part of the lower court in its spousal support award.

In addition, we find husband's "Double Dipping," retained earnings, and post retirement payment arguments to be without merit. Husband has waived his right to raise these new arguments by his failure to raise these issues at the time of trial.

Generally, if a party has knowledge of an error with sufficient time to object before the judge takes any action, that party waives any objection to the claimed error by failing to raise that issue on the record before the action is taken. *Tissue v. Tissue*, Cuyahoga App. No. 83708, 2004-Ohio-5968; *Belvedere Condominium Unit Owners Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d 274, 279, 1993-Ohio-119, 617 N.E.2d 1075; *Mark v. Mellott Mfg. Co., Inc.* (1995), 106 Ohio App.3d 571, 589, 666 N.E.2d 631; *Sagen v. Thrower* (Apr. 8, 1999), Cuyahoga App. No. 73954.

2000-Ohio-6606 (reversed trial court's decision basing spousal support on mathematical formula); *Griffith v. Griffith* (January 24, 1997), Geauga App. No. 95-G-1947 (the appropriate level of spousal support cannot be reduced to a mathematical formula; and doing so reveals that a trial court did not consider any other relevant factors, including those listed in R.C. 3105.18(C)).

Therefore, a litigant who had the opportunity to raise a claim in the trial court, but failed to do so, waives the right to raise that claim on appeal. *Id.*

Husband failed to raise these issues at the trial court level. Accordingly, he has waived the right to now raise those three issues on appeal.

Accordingly, Husbands first, second, third, fourth, fifth, and sixth assignments of error are overruled.

Husband argues in his seventh assignment of error that the lower court erred when it ordered him to post a \$45,000.00 cash bond. This assignment of error is dismissed as moot.

“A nunc pro tunc order may be issued by a trial court, as an exercise of its inherent power, to make its record speak the truth. It is used to record that which the trial court did, but which has not been recorded. *It is an order issued now, which has the same legal force and effect as if it had been issued at an earlier time, when it ought to have been issued.*” (Emphasis added.) *State v. Greulich* (1988), 61 Ohio App.3d. 22, 24.

Here, after the initial \$45,000.00 bond order was issued, the lower court issued a *new* order requiring Husband to post a new cash bond in the amount of \$10,000.00. This new order is in compliance with the statutory scheme set forth in R.C. 3121.03(C), limiting a cash bond to \$10,000.00. Accordingly, this

assignment of error has been made moot by the trial court's nunc pro tunc judgment order and is therefore dismissed as moot.

CROSS-APPEAL

In addition to appellant's seven assignments of error, Wife has proffered three assignments of error in her cross-appeal. Wife argues that the trial court erred by: (1) reconsidering the spousal support order issued on June 20, 2005; (2) considering new evidence and arguments that are not part of the record as of June 20, 2005 and; (3) failing to increase the spousal support order.

Due to the substantial interrelation in Wife's cross-appeal assignments of error, we shall address them together.

Contrary to Wife's claims, this court does indeed have jurisdiction to review spousal support in this case. This court has the right to reassess the marital estate; and reassessment of the marital estate includes the reconsideration of spousal support. This court noted as much when we remanded *Janosek I* to the lower court to resolve various remaining issues. More specifically, the reconsideration of spousal support was addressed in *Janosek I*, where we cited *Burma* for the proposition that the reassessment of the marital estate includes the reconsideration of spousal support.⁹

⁹This court provided the following in *Janosek I*, "Because of our determination that several of the marital assets were improperly valued (see Assignment of Errors 4, 5, 6, 7, 8, 17, 18, and 19), and that *the trial court must reassess its division of the*

After the Court of Appeals issues its mandate, the case returns to the trial court, “reinvesting” it with jurisdiction. *Int’l Union of Operating Engineers, Local 18 v. Dan Wannemacher Masonry Co.* (1990), 67 Ohio App.3d 672, 675.

On remand, the trial court must do what the mandate directs, which is called the mandate rule. *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3. The mandate rule restricts a trial court’s discretion on remand only as to matters actually decided by the appellate court. *Quern v. Jordan* (1979), 440 U.S. 332, 347 n.18.

Where the appellate court has declined to reach the merits of a trial court’s ruling, the trial court ordinarily is free to reconsider that ruling on remand. The mandate rule “has long been held not to require the trial court to adhere to its own previous rulings if they have not been adopted, explicitly or implicitly, by the appellate court’s judgment.” *Exxon Corp. v. United States* (1991), 931 F.2d 874, 877-878.

In the case at bar, this court never addressed the merits of the 2005 spousal support order, Therefore, the lower court was free to issue a new spousal support order, superseding the prior order.

Janosek’s marital estate, we find that the issue of spousal support is not yet ripe for review.” Spychalski v. Spychalski (1992), 80 Ohio App.3d 10, 608 N.E.2d 802. See, also, *Burma v. Burma* (Sept. 29, 1994), Cuyahoga App. No. 65052, (*the reassessment of the marital estate includes the reconsideration of spousal support.*) (Emphasis added.)

We find no abuse of discretion on the part of the lower court in its reconsideration and/or modification of the spousal support order issued on June 20, 2005.

Wife argues in her second assignment of error that the lower court erred in considering new evidence and arguments that were not part of the record as of June 20, 2005. We find the lower court's actions to be proper. After reviewing the evidence in the record we find no error on the part of the lower court in its actions.

Wife argues in her third assignment of error that the trial court's failure to increase the spousal support award was error. However, after reviewing the evidence in the case at bar, we find no error on the part of the lower court concerning the amount of spousal support awarded.

Accordingly, Wife's three cross-appeal assignments of error are overruled.

We find that the extensive evidence in the record and the significant analysis by the lower court demonstrates that it properly addressed the property division and spousal support award amounts. As previously stated, the trial court's 27 days of trial, analysis of thousands of pages of information, significant review of the evidence, and detailed analysis of the 14 statutory factors in R.C. 3105.18(C) did not constitute an abuse of discretion.

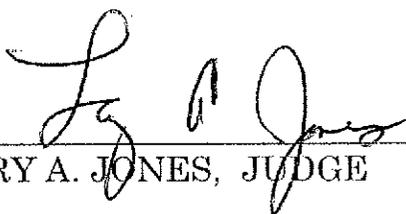
Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., CONCURS;
MELODY J. STEWART, J., CONCURS IN PART
AND DISSENTS IN PART WITH SEPARATE OPINION

MELODY J. STEWART, J., CONCURRING IN PART AND DISSENTING IN PART:

I concur with the majority opinion that the wife's cross-assignments of error are without merit. I respectfully dissent from the affirmation of the husband's appeal because the court abused its discretion both in the amount of spousal support ordered and the length of time over which it must be paid.

As the majority correctly notes, the statutory standard for awarding spousal support is based on a determination of what amount is "appropriate and reasonable." See R.C. 3105.18(C)(1). While a spouse's "need" for spousal support

is no longer part of the statutory standard, the concept of “need” is subsumed within what is appropriate and reasonable – an award of spousal support would not be appropriate if a spouse did not “need” additional support. Consequently, we have continued to analyze spousal support issues in terms of “need” when considering whether spousal support is appropriate and reasonable. See, e.g., *Brandon v. Brandon*, Cuyahoga App. No. 91453, 2009-Ohio-866 (“Further, it does not appear that the trial court assessed [the wife’s] need for support against [the husband’s] ability to pay.”); *Torres v. Torres*, Cuyahoga App. Nos. 88582 and 88660, 2007-Ohio-4443, ¶35 (“a trial court must determine whether there is a need for spousal support and, if so, the amount needed and the duration of the need”).

A division of the marital property gave the wife over \$11 million in assets. Eight million of that award was either cash or liquid assets. The court found that when the wife reaches 59½ years of age she can begin drawing from retirement accounts worth an additional \$1.1 million. Against these assets the court found that the wife had expenses of \$15,000 per month. These expenses were primarily for clothes, dining, and entertainment. The wife had no mortgage payments – as part of the division of marital property she received a \$2 million condominium in Florida and a house in Ohio.

Even with \$15,000 of monthly expenses (amounting to \$180,000 per year), the court found that the wife “can expect to earn a 4% rate of return, on safe investments, of some \$320,000 of pretax income, which, after taxes, would adequately sustain her standard of living.” In other words, the court found that the wife could maintain her lifestyle and meet her monthly expenses by living off the interest generated by her liquid assets. If the wife could sustain her standard of living by living off the interest generated by her share of the marital estate, I fail to see how spousal support for the total amount of her monthly expenses, \$15,000 per month, is appropriate and/or reasonable.

Despite making findings that appeared to show that the wife had no need for spousal support, the court awarded her spousal support because it believed that the husband’s share of the marital estate had the potential to grow significantly, while the wife’s share of the estate was mostly in liquid assets that would grow far less rapidly. The flaw with this conclusion is that the court had already considered the husband’s future income when valuing his companies for purposes of the marital estate. The wife’s appraisers used the “income approach” to value these companies. This approach uses the concept of time value of money — the income streams or cash flow the business anticipates receiving in the future are translated into their present value by taking into account their risk. By definition, the income approach to valuation took into account the projected

income of the business, and by definition, the husband's income since it was derived from the company's profits. The court necessarily factored the husband's future income into the valuation of marital assets, so in essence it awarded the wife a double recovery when it granted her spousal support based on projections of his future income. This was an abuse of discretion.

The court also abused its discretion by finding that the husband "intentionally deflated" his income by moving money into his company's retained earnings.¹⁰

The amount of a corporation's retained earnings is the cumulative net income since the corporation began minus all of the dividends that the corporation has declared since it began. In other words, retained earnings demonstrate what a company did with its profits – they are the amount of profit the company has reinvested in the business since its inception.

One of the husband's companies is a privately-held manufacturer of parts for airplanes and related technologies. It was formed in 1960, and given the age and capital-intensive nature of the company, one would expect it to report a high

¹⁰There is no legal authority for the majority's conclusion that the husband waived the right to argue the retained earnings issue on appeal because he "failed to raise these issues at the time of trial." The wife's argument that husband improperly sheltered income is not a procedural or evidentiary issue that required a contemporaneous objection at trial in order to preserve the matter for appeal under Evid.R. 103(A) – the argument was simply a theory in support of an award of spousal support.

amount of retained earnings. The company's balance sheets confirm that it traditionally carried an amount of retained earnings in a range consistent with the amount that the court thought was so excessive. For example, in 1999, the company reported retained earnings of approximately \$6 million. This was at a time well before divorce proceedings were initiated and the husband had no apparent incentive to intentionally deflate his income. In fact, retained earnings for the company fluctuated between \$5 million and \$7 million during the time period leading up to the divorce. There was no significant increase in retained earnings during the divorce proceedings, so the court abused its discretion by disregarding the historical financial data and finding that excessive retained earnings were proof that the husband intentionally deflated his income.

Finally, the court abused its discretion by forcing the husband to pay spousal support until the husband's 71st birthday, which occurs in the year 2023. This order likely requires the husband to work beyond the traditionally-recognized retirement age in order to meet the spousal support obligation. It also fails to take into account the \$1.1 million in retirement accounts that the wife will have access to in the very near future (she can access the funds without a penalty at age 59½ – in approximately two years), as well as another retirement account, currently valued at approximately \$1 million, that will mature in 2023 (at which time it presumably will have greatly increased in

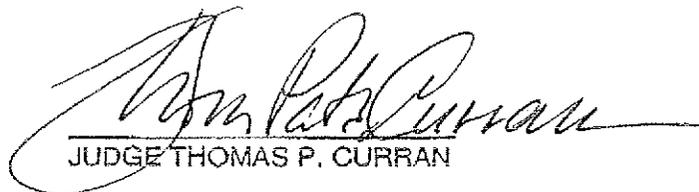
value). And as even the court seemed to concede, the wife can easily maintain her present lifestyle simply by living off the interest generated by her share of the marital estate. The order requiring the husband to pay spousal support beyond the traditional retirement age is an abuse of discretion not only because it forces him to work until he turns 71 years of age, but because the wife has not demonstrated need for support beyond that which she received as a share of the marital property.

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The appellate bond is to be released to Defendant by the Clerk of Courts immediately upon completion of the wife transfer, and Plaintiff shall immediately cooperate and sign all necessary documents to release bond to Defendant.

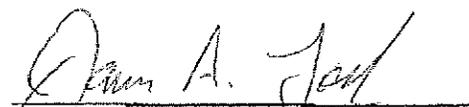
IT IS SO ORDERED



JUDGE THOMAS P. CURRAN

Judge Thomas Patrick Curran
Sitting by Assignment
Ohio Const. Art. IV, Sec. 6

APPROVED:



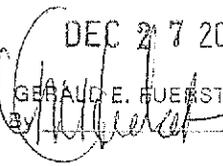
James A. Loeb (0040943)
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Cleveland, Ohio 44114-3485
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Sandra L. Janosek n/k/a
Sandra L. Hoeffler

RECEIVED FOR FILING

DEC 27 2007

GERALD E. FUERST, CLERK
By  Deputy

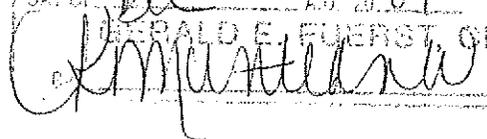
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THE STATE OF OHIO
Cuyahoga County

I, GERALD E. FUERST, CLERK OF
SS. THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRUE
AND CORRECT AND COMES FROM THE ORIGINAL
JUDGMENT FILED IN MY OFFICE.

WITNESSED BY MY HAND AND SEAL OF SAID COURT THIS
DAY OF Dec A.D. 2007

GERALD E. FUERST, Clerk
By  Deputy

Agreed
27

069525.000001, 501653330.2

TOTAL P.005

00037

Original Awards	Reduced Specific Awards	Status	Amount Due
Janoland	\$1,729,093.39	Paid	\$0.00
Westlake Residence	\$1,500,000.00	Paid	\$0.00
Westlake Guaranty	\$400,000.00	Not Paid	\$200,000.00
Bay Village Lot	\$800,000.00	Paid	\$0.00
Naples Condo	\$2,000,000.00	Paid	\$0.00
Cape Coral Lots	\$150,000.00	Not Paid	\$0.00
Golf Memberships	\$150,000.00	Paid	\$0.00
ING IRA	\$962,277.00	Paid	\$0.00
Sandra IRA	\$9,800.00	Paid	\$0.00
2002 Tax Refund	\$212,412.50	Not Paid	\$212,412.50
Circle J2	\$401,700.00	Paid	\$0.00
Circle 6J	\$140,000.00	Not Paid	\$140,000.00
Naples Bank Account	\$27,217.00	Not Paid	\$27,217.00
JKT, Inc.	\$57,500.00	Not Paid	\$57,500.00
Equalizer	\$4,000,000.00		

Original Awards	Reduced Specific Awards	Status	Amount Due
Janoland	\$1,729,093.39	Paid	\$0.00
Westlake Residence	\$1,500,000.00	Paid	\$0.00
Westlake Guaranty	\$200,000.00	Not Paid	\$200,000.00
Bay Village Lot	\$800,000.00	Paid	\$0.00
Naples Condo	\$2,000,000.00	Paid	\$0.00
Cape Coral Lots	\$0.00	Not Paid	\$0.00
Golf Memberships	\$150,000.00	Paid	\$0.00
ING IRA	\$962,277.00	Paid	\$0.00
Sandra IRA	\$9,800.00	Paid	\$0.00
2002 Tax Refund	\$212,412.50	Not Paid	\$212,412.50
Circle J2	\$401,700.00	Paid	\$0.00
Circle 6J	\$140,000.00	Not Paid	\$140,000.00
Naples Bank Account	\$27,217.00	Not Paid	\$27,217.00
JKT, Inc.	\$57,500.00	Not Paid	\$57,500.00

NEW TOTAL FOR
SPECIFIC AWARDS \$8,189,999.89

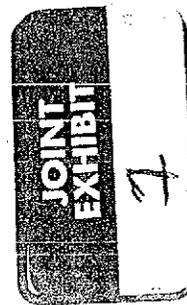
New Equalizing Payment	Remaining Equalizing Payment Due
WR Reduction	\$2,963,811.00
JJJ Reduction	(\$320,000.00)
Golf Reduction	(\$10,000.00)
	(\$46,325.00)
	(\$25,000.00)
	(\$680,000.00)
	\$0.00

NEW TOTAL FOR
EQUALIZING PAYMENT \$2,963,811.00

NEW AWARD TOTAL \$11,153,810.89

OLD AWARD TOTAL \$12,539,999.89

TOTAL AMOUNT DUE \$2,476,544.84



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STATION 7 INTEREST

TO 1st Award total

2,534,423.30
418,146.00
2,952,500.00

52,529,423.30

5000.00

FILED

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**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
CUYAHOGA COUNTY, OHIO**

CASE NO. DR—02—286943

SANDRA L. JANOSEK
Plaintiff

vs.

JAMES C. JANOSEK, et al.
Defendants

JUDGE THOMAS P. CURRAN
(On Assignment, Art. IV, Sec. 6
Ohio Constitution)

JUDGMENT ENTRY
(Findings of Fact
and
Conclusions of Law)

I. INTRODUCTION

This case is on remand from the Ohio Court of Appeals, which affirmed in part and reversed in part the findings of fact and conclusions of law handed down in a contested divorce trial. Among various errors, the appellate court determined that the plaintiff exaggerated the aggregate value of the marital property with the result that the corpus is to be reconfigured on remand. Because the marital estate was determined by the appeals court to be erroneously calculated and therefore uncertain, the trial court's rulings on spousal support were said to be "not yet ripe for [appellate] review." Specifically, the Court of Appeals observed:

{¶ 145} Because of our determination that several of the marital assets were improperly valuated *** and that the trial court must reassess its division of the Janosek's marital estate, we find that the issue of spousal support is not yet ripe for review. *Spychalski v. Spychalski* (1992), 80 Ohio App.3d 10. See, also, *Burma v. Burma* (Sept. 29, 1994), Cuyahoga App. No. 65052 (the reassessment of the marital estate includes the reconsideration of spousal support.)

Janosek v. Janosek, 2007-Ohio-68

However, by following the guidelines of the appellate court decision, the parties, on remand, have been able to stipulate that the corpus of the marital estate—for division by 2—is the sum of twenty-two million, four hundred thousand dollars (22.4 M), so that to be more specific, each party is now in receipt of 11.203 M.; and, therefore, the **issue of evaluation of the marital estate and its receipt in full has been resolved by the parties.** See Exhibit A, attached, entitled “AGREED JUDGMENT ENTRY REGARDING PROPERTY DIVISION,” filed 12-27-2007, including “Joint Exhibit 1, attached thereto.

The parties have also been able to resolve their differences regarding alleged financial misconduct on the part of Mr. Janosek, as the result of which Mrs. Janosek incurred additional attorney fees over and above what would have been incurred in the absence of financial misconduct. See **Exhibit B**, attached, entitled “AGREED JUDGMENT ENTRY SETTTLING ATTORNEY FEE/ EXPENSE DISPUTE, filed 2-8-2008. This issue was resolved by the payment of fifty thousand dollars (\$50,000) to the law firm of Stafford & Stafford, LPA.

The parties have also been able to resolve their differences over additional fees and expenses, and other issues, incurred in the recent past, as the result of various and sundry allegations and cross allegations surrounding the release of the supersedeas bond, the filing of emergency motions, motions in limine, motions for sanctions, motions for attorney fees, etc.

Noteworthy is the stipulation that except for the issue of spousal support claimed by Mrs. Janosek and the related issue of this court's jurisdiction to change in any way the decision of the previous judge on the topic of spousal support, all other issues of every nature and description are waived and released.¹ See **Exhibit C**, attached, entitled **STIPULATED NOTICE OF DISMISSAL AND JUDGMENT ENTRY**, filed May 13, 2008.

Accordingly, this court will now proceed to decide whether it has jurisdiction to determine spousal support vel non, and, if so, whether it should (if at all) grant spousal support and the amount and duration thereof.

II. JURISDICTION

In spite of the finding by the Court of Appeals that the value of the marital estate was inflated by the Plaintiff in her presentation of the evidence, and also the agreement of the parties to a reduced amount, in the face of that appellate decision, the plaintiff insists that this court, as a trial court, is without jurisdiction to reconsider and reevaluate the existence and amount of spousal support. The Plaintiff ignores the plain language of both the statutory law and the case law surrounding the relationship between the division of property under R.C. 3105.171 and the award of spousal support under R.C. 3105.18(C)(1)(a). The relevant statutory provisions in juxtaposition are as follows:

3105.171(C)(3): The court shall provide for an equitable division of marital property under this section **prior to making any award of spousal support to either spouse under section 3105.18 of the Revised Code and without regard to any spousal support so awarded.** (Emphasis in bold added.)

¹ The "Judgment Entry of Divorce [etc.] filed June 20, 2005, affirmed in part and reversed in part by the Court of Appeals, provided for lifetime spousal support for Mrs. Janosek in the amount of \$22,000 per month effective February 7, 2005.

3105.18C)(1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors: a) **The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;** (Emphasis in bold.)

The Plaintiff has not cited any case law for the proposition that this successor trial judge is without jurisdiction to freshly evaluate, as a court of equity, the matter of awarding spousal support. Given the fact that the parties themselves have not only reached an agreement as to the value of the marital estate, but have accomplished a distribution to their joint satisfaction, this court believes it is duty-bound to apply de novo the legal principles precedent to awarding spousal support, without regard to the award set forth by the previous trial judge. Furthermore, this court has concluded that the differential between the former valuation of 28 million dollars versus the now-agreed-upon 24 million dollars is significant, if not profound, notwithstanding that the estate value has been trimmed by “only” 14.3%.

In addition to the proposition that this court is without jurisdiction to modify or otherwise alter the previous trial judge’s award of spousal support, the plaintiff contends that this court may not, on remand, take judicial notice of wife’s earning capacity from her share of the marital estate—being eleven + million dollars.² On the other hand, the husband does not challenge the wife’s standard of living @ \$20,000/month, insisting that the standard is easily attainable within the resources at her disposal. It appears to this court that each side of this dispute is at opposite poles. The Plaintiff, in spite of the trimming of the marital estate by some four million dollars, contends that she should be receiving \$ 22,000 per month for the life of

² This is contra to the explicit language of (C)(1)(a) of R.C. 3105.18

either party.³ The defendant, on the other hand, would have the size of the marital estate not only paramount to the decision making process, but the trump card denying altogether any amount whatsoever for spousal support.

This court has determined that it has jurisdiction to decide fresh and anew the matter of spousal support. Furthermore, given the stipulation of the parties as to the value of the marital estate, and the resolution of numerous ancillary and collateral issues, there is very little, if any real dispute surrounding the evidence relevant to the statutory factors behind the determination of spousal support. For example, Mr. Janosek fairly concedes that Mrs. Janosek's standard of living is high, even though he claims that she has exaggerated the total sum.

III. FACTORS IN DETERMINING SPOUSAL SUPPORT

Ohio Revised Code Section 3105.18 entitled: Awarding Spousal Support—Modification of Spousal Support—provides as follows:

(C)(1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, **the court shall consider all of the following factors:**

- (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;

³ This was the ruling of the previous trial judge. The amount was subject to earlier termination on stated grounds

- (e) The duration of the marriage;
- (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
- (g) The standard of living of the parties established during the marriage;
- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
- (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
- (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;
- (l) The tax consequences, for each party, of an award of spousal support;
- (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
- (n) Any other factor that the court expressly finds to be relevant and equitable.

IV. FINDINGS OF FACT

A. Income of the Parties From All Sources, Including Marital Property Divided and Disbursed.

This court finds that Mr. Janosek, in an effort to mislead the court, intentionally deflated his income, whereas his typical personal annual income from his business pursuits should be calculated at four million dollars per year. Furthermore, there is credible evidence that Mr. Janosek has the ability to manipulate the balance sheets of his several corporations, so as to minimize his annual income. For example, the retained earnings of Welded Ring Products for 2003 was listed at 7.3 million dollars. In any event, this court finds that the Defendant's

interest in Welded Ring Products, Welded Ring Properties, JJJ. Inc., and Wheel Tech Systems, LLC has and will continue to provide substantial annual income, whereas Mrs. Janosek's sole source of income since the 1970s has been Mr. Janosek. That Mr. Janosek has demonstrated financial misconduct is evident from the fact that the parties, by agreement, have attributed fifty thousand dollars in attorneys' fees to that conduct. This is not a matter of punishing Mr. Janosek, in futuro, by awarding spousal support. On the contrary, the matter of financial misconduct is relevant for the proposition that Mr. Janosek can be expected to earn approximately four million dollars per year, based upon the history of his true earning capacity.

This court finds that Mrs. Janosek's award of 11.203 million dollars, being her share of the marital estate, includes some eight million dollars in liquid assets, which, if invested at 3% per annum, at available conservative rates, would produce pre-tax income of some \$240,000 per annum. This court further finds that, according to exhibits submitted by Defendant, the Plaintiff can expect to earn a 4% rate of return, on safe investments, of some \$320,000 of pre-tax income, which, after taxes, would adequately sustain her standard of living. In addition, in 4 to 5 years, when Mrs. Janosek reaches 59½ years of age, she can draw down her retirement accounts of approximately 1.1 million dollars. Also, Mrs. Janosek owns a 2 million dollar condominium in Naples, Florida, in addition to her Rocky River permanent residence. The condominium could be converted to an income-producing asset, if necessary.

Considering the income of the parties from all sources, this court notes that Mr. Janosek has also retained his ½ share of the marital estate—this in addition to his expected earnings from profitable enterprises.

B. The Relative Earning Abilities of the Parties.

Both Mr. and Mrs. Janosek are college graduates from the University of Dayton. However, the relative earning capacity of the parties is asymmetrical. Whereas, Mr. Janosek, the President and CEO of Welded Ring Products, owns a controlling interest in this company and its related entities, demonstrates an annual personal income of not less than three million dollars, (and more probably four million dollars) Mrs. Janosek has not been employed outside the home since the 1970s, having been occupied raising their four children and tending to other family matters. While it is probable that Mrs. Janosek is capable of returning to the workforce and earning a decent living, her extraordinary wealth militates against this likelihood, in favor of volunteer work, a calling that she has pursued from time to time.

C. The Ages and the Physical, Mental, and Emotional Conditions of the Parties.

The Plaintiff will be 56 this fall (b. 10-10-1952). The Defendant will be 57 this fall (11-20-1951). At the time the divorce was granted on June 20, 2005, Plaintiff was 52 years of age and the Defendant was 53 years of age. Both parties are in good health.

D. The Retirement Benefits of the Parties.

Mrs. Janosek, as part of the division of the property, has received Mr. Janosek's retirement account with ING in the amount of \$962, 277, and her own IRA account in the amount of \$9,800, amounts projected to be in excess of one million dollars when she reaches 59 ½. Although Mr. Janosek has no retirement accounts per se, he does own 93.01% of all shares of corporate stock in Welded Ring Products. Note that this company had retained earnings of 7+ million dollars in 2003.

E. The Duration of the Marriage.

The duration of the marriage, in accordance with R.C. 3105.171(A)(2) was from May 21, 1977 until January 7, 2005, a period of 27+ years

F. Minor Children and Outside Employment.

All four children are emancipated.

G. The Standard of Living Established During the Marriage.

There is no dispute that that the parties established an extraordinary standard of living. The Defendant describes the standard as "affluent, ***[including] a variety of luxuries." (Proposed Findings of Defendant, etc. at page 19.) The Plaintiff uses the adjectives "opulent, lavish and high life style," in describing the standard of living. (Proposed Findings of Plaintiff, etc. at page 10). Here are some examples: million dollar homes, vacation property, collector cars, several country clubs (five in number, amounting to ¾ of a million dollars), finest of hotels, dining, travel, fine jewelry, extravagant gun collection, a yacht, and a variety of chattels

valued well into six figures. According to Mrs. Janosek, her budgeted standard of living amounts to \$22,000 per month. Although this court finds her standard to be less than the amount claimed, the Defendant insists that, with her retained wealth, she is easily able to maintain her standard of living.

H. The Relative Extent of Education of the Parties.

Both parties have bachelor degrees from the University of Dayton. If nothing else, the education of the parties, and their intelligence, should serve both of them well, given the extent of their individual wealth.

I. The Relative Assets and Liabilities of the Parties, Including but not Limited to any Court-Ordered Payments by the Parties;

Each party has over eleven million dollars in assets, following the division and receipt of the marital estate. (See Exhibit A, attached, including Joint Exhibit 1.). Mrs. Janosek has been receiving spousal support of \$22,000 per month. Much of her share of the marital estate, as described earlier, is liquid, meaning income-producing assets. Also, Mrs. Janosek's division of the marital property includes a \$2 million dollar condominium free and clear of a mortgage. On the other hand, Mr. Janosek's share includes profitable business ventures producing handsome annual income, substantially greater than the passive annual income to be realized by Mrs. Janosek. Nevertheless, in order for Mr. Janosek to maintain his profitable enterprises, this court infers that he is obliged to expend active efforts to run the business ventures. Neither party has significant liabilities. On balance, this court finds that Mrs. Janosek is entitled to spousal support for a period of time.

J. The Contribution of each Party to the Education, Training, or Earning Ability of the Other Party, Including, but not Limited to, any Party's Contribution to the Acquisition of a Professional Degree of the other Party;

On this statutory topic, the parties are essentially in balance.

K. The Time and Expense Necessary for the Spouse who is Seeking Spousal Support to Acquire Education, Training, or Job Experience so that the Spouse will be Qualified to Obtain Appropriate Employment, Provided the Education, Training, or Job Experience, and Employment is, in Fact, Sought;

In her proposed findings of fact, Mrs. Janosek indicates she has no plans to further her education and training. This court infers that because she has adequate wealth to maintain her standard of living, there is no need for her to seek gainful employment. Although she has been absent from the workforce for over two decades successfully raising four children with her husband, one need not necessarily conclude that her earning capacity is "severely limited," as she contends in her brief. Given the totality of circumstances, this statutory factor is not relevant to the ultimate decision of this court.

L. The Tax Consequences, for each Party, of an Award of Spousal Support;

This court takes into account that Mr. Janosek is in the highest tax bracket, and that the award of spousal support is tax deductible for him, and income taxable to Mrs. Janosek.

M. The Lost Income Production Capacity of Either Party that Resulted from that Party's Marital Responsibilities;

By agreement of the parties, tacit or otherwise, Mr. Janosek was the sole economic provider for the family, and Mrs. Janosek, for some twenty-five years, was the stay-at-home person handling the affairs of the household and attending to the duties of a homemaker and mother. Without question, Mrs. Janosek's marital responsibilities have truncated her income production capacity. Given her share of the marital estate, however, it appears unlikely that she could have exceeded her current wealth by spending a lifetime in the workforce. This statutory factor has minimal application.

N. Any Other Factor that the Court Expressly Finds to be Relevant and Equitable.

The parties, having agreed on the value of the marital estate, and also on the division of the particular assets, this court has concluded that the **demonstrated annual earning capacity** of Mr. Janosek, from corporate enterprises that he has directly owned over the years, **and that have prospered during the long period of the marriage**, is substantially greater than the annual passive earning capacity of Mrs. Janosek from her share of the marital estate. Under these circumstances, this imbalance favors the consideration of spousal support for Mrs. Janosek.

V. CONCLUSIONS OF LAW—

THE DECISION TO AWARD SPOUSAL SUPPORT.

The duty of this court, in accordance with R.C. 3105.18(C)(1), is to determine whether the award of spousal support, under the totality of circumstances, would be “reasonable and appropriate.” The fact that Mrs. Janosek is able to meet a handsome standard of living on her share alone of the marital estate is not necessarily determinative. As noted by the Defendant in his proposed findings of fact, no mathematical formula dictates whether to award spousal support, and, if so, how much. *Kunkle v. Kunkle*, (1990), 51, Ohio St.3d 64, 70.

The challenging decision for this court, is to determine whether Mrs. Janosek should be required to earmark, for day to day expenses, the investment income from her share of the marital estate, with the result that the corpus may not grow in value, whereas Mr. Janosek’s share of the marital estate has a demonstrative potential to grow substantially, perhaps exponentially. Also, his historical annual active-income-earning-capacity, at three to four million dollars, is ten times, plus or minus, the passive-income-earning-capacity of Mrs. Janosek. Nevertheless, any award to Mrs. Janosek should be tempered by the realization that Mr. Janosek’s annual income is the product of active labor, whereas Mrs. Janosek’s income is essentially passive—being the product of investments. This court is sensitive to the decision of *Simoni v. Simoni*, (1995, 8th Dist.), 102 Ohio App.3d 628, noting: “sustenance alimony is based on need.” But the statute mentions both “sustenance” and “support.” The two are separate. Also, the Eighth District has specifically recognized growth-potential for the spousal share of the marital estate as a factor to be considered in determining whether to award spousal

support. See Southworth v. Southworth, 1998 Ohio App. LEXIS 6239, opinion by Patton, P.J. **Need is no longer the standard.** See Pruden v. Pruden, 1994 Ohio App. LEXIS 2623 (10th Dist.). According to the Eleventh District Court of Appeals, Ohio appellate courts have consistently refused to require the party receiving spousal support to invest his or her portion of the marital property division in order to reduce the need for spousal support. Fulmer v. Fulmer, 2000 Ohio App. LEXIS 1940 (11th Dist. 2000), citing a host of cases, including Pruden.

This court finds that the Plaintiff should be awarded spousal support for a stated duration of years, 18 years from the date of February 7, 2005 in the amount of \$15,000 per month.⁴ (Credits or debits are to be adjusted accordingly.) The decision to award spousal support is based upon the totality of the evidence, including the demonstrated earning capacity of Mr. Janosek of between three and four million dollars annually. This court finds that Mrs. Janosek's monthly standard of living is not less than \$15,000 per month, but that any amount in excess of that figure can be borne by her share of marital assets. Spousal support shall not extend beyond the eighteen year period but shall be subject to further order of court as to amount within that term. Spousal support shall be subject to earlier termination upon the death of either party or upon Defendant's remarriage or cohabitation under circumstances tantamount to marriage.

⁴ Mrs. Janosek will be 71 on October 10, 2023. She will be about 70 ½ on February 7, 2023, when spousal support terminates. At that time, at age 70 ½, she will be obligated to commence annual draw down of her ING-IRA, currently valued between 900,000 and 1,000,000. See Joint Exhibit 1, attached to Court Exhibit A, attached to this opinion.

VI. ORDERS

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant shall pay spousal support to Plaintiff in the amount of \$15,300 (inclusive of processing charge) for eighteen years commencing February 7, 2005. Spousal support shall not be subject to further order of court as to duration but only as to amount within that term. Spousal support shall be subject to earlier termination upon the death of either party or upon Plaintiff's remarriage or cohabitation.

Spousal support shall be paid through the **Ohio Child Support Payment Central (OCSPC), P.O. Box 182372, Columbus, Ohio 43218-2372**. Any payments not made through OCSPC shall not be considered as payment of support. Said support shall be secured by means of an Order to Post Bond.

Cash payments may be made at the Cuyahoga County Treasurer's Office, County Administration Building, 1st Floor – Cashier, 1219 Ontario Street, Cleveland, Ohio 44113. All payments shall include the following: Obligor's name, Social Security Number, SETS case number, and Domestic Relations Court case number. Checks and money orders must be payable to Ohio Child Support Payment Central.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Obligor immediately notify C.S.E.A., in writing, of any change in employment (including self-employment), receipt of additional income/monies or termination of benefits. Obligor shall include a description of the nature of the employment and the name, business address and telephone number of any employer. Obligor shall immediately notify C.S.E.A. of any change in the status of an account from which support is being deducted or the opening of a new account with any financial institution, and account number(s).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all parties comply with the request of C.S.E.A. or the Court to provide a copy of his/her health insurance benefits, federal income tax return from the previous year, all pay stubs within the preceding six (6) months, all other records evidencing the receipt of any other salary, wages, or compensation within the preceding six (6) months. Said records include but are not limited to: proof of unemployment status, financial institution accounts and any benefits (i.e. unemployment, sub-

pay, sick-leave, Worker's Compensation, severance pay, retirement, disability, or annuities, Social Security and Veteran's Administration).

Either party's failure to provide any earnings/benefits information pursuant to this order, or failure to comply with the foregoing order of notification shall be considered contempt of court, punishable by a fine and/or jail sentence. Attorney fees and court costs may then be assessed against the party held in contempt.

The following information is provided for the use of the Cuyahoga Support Enforcement Agency in accordance with §3111.01 et seq., §3123.01 et seq., §3119.01 et seq., and §3121.01 et seq. of the Ohio Revised Code:

OBLIGEE: NAME: SANDRA L. JANOSEK
RESIDENCE ADDRESS: 9 ASTOR PLACE, LAKE RD.
ROCKY RIVER, OH 44116
SOCIAL SECURITY #: 286-52-8967
DATE OF BIRTH: 10-10-1952

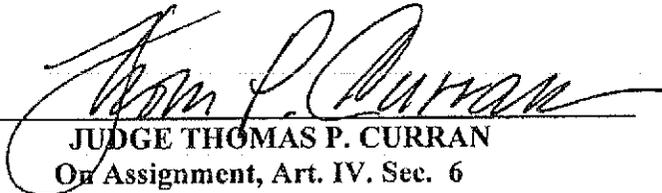
OBLIGOR: NAME: JAMES C. JANOSEK
RESIDENCE ADDRESS: 2189 WEST 114TH STREET
CLEVELAND, OH 44102
SOCIAL SECURITY #: 277-52-5140
DATE OF BIRTH: 11-20-1951

EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE FROM THE COURT. IF YOU ARE THE OBLIGOR UNDER THE CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS YOU MAY BE FINED UP TO \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND OFFENSE, AND \$500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER AND YOU WILLFULLY FAIL TO MAKE THE REQUIRED NOTIFICATIONS YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECTED TO FINES UP TO \$1,000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

IF YOU ARE AN OBLIGOR AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST

YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

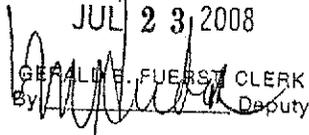
IT IS SO ORDERED.



JUDGE THOMAS P. CURRAN
On Assignment, Art. IV, Sec. 6
Ohio Constitution

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By  Deputy

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IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

DR02286943
49233698

SANDRA L. JANOSEK,
nka SANDRA L. HOEFFLER.

Plaintiff,

vs.

JAMES C. JANOSEK,

Defendant.

CASE NO. DR-02-286943

JUDGE THOMAS PATRICK CURRAN

AGREED JUDGMENT ENTRY
REGARDING PROPERTY DIVISION

This matter is before the Court upon the parties' in-court agreement and resolution of all property division issues. On Friday, December, 14, 2007, the parties read into the record the resolution of all property division issues in this case including, without limitation, all property division issues mandated by the remand of this case from the Court of Appeals.

The parties submitted into evidence Joint Exhibit 1 (copy attached hereto), detailing the resolution of all property division issues. The handwritten interlineations thereto reflect that Defendant shall pay to Plaintiff the sum of Two Million, Nine Hundred Fifty Two Thousand Dollars (\$2,952,000), which includes statutory interest of \$418,146.

This amount shall be paid on or before December 31, 2007, via wire transfer to Plaintiff's account. The wiring instructions have been provided to Defendant's counsel.

Upon completion of the wire transfer, the entire property division in this case is satisfied. All outstanding motions regarding property division filed by either party presently pending are denied as resolved.

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The appellate bond is to be released to Defendant by the Clerk of Courts immediately upon completion of the wife transfer, and Plaintiff shall immediately cooperate and sign all necessary documents to release bond to Defendant.

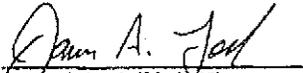
IT IS SO ORDERED



JUDGE THOMAS P. CURRAN

Judge Thomas Patrick Curran
Sitting by Assignment
Ohio Const. Art. IV, Sec. 6

APPROVED:



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James C. Janosek


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 Attorneys for Plaintiff
 Sandra L. Janosek n/w/a
 Sandra L. Hoeffler

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 Deputy

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TOTAL P.006

Original Award	Amount
Janeland	\$1,729,093.39
Westlake Residence	\$1,500,000.00
Westlake Guaranty	\$400,000.00
Bay Village Lot	\$300,000.00
Naples Condo	\$2,000,000.00
Cape Coral Lots	\$150,000.00
Golf Memberships	\$150,000.00
ING IRA	\$982,277.00
Sandra IRA	\$9,000.00
2002 Tax Refund	\$212,412.50
Circle J2	\$401,700.00
Circle 6J	\$140,000.00
Naples Bank Account	\$27,217.00
JKT, Inc.	\$57,500.00
Equinizer	\$4,000,000.00

Original Award	Amount
Janeland	\$1,729,093.39
Westlake Residence	\$1,500,000.00
Westlake Guaranty	\$200,000.00
Bay Village Lot	\$300,000.00
Naples Condo	\$2,000,000.00
Cape Coral Lots	\$0.00
Golf Memberships	\$150,000.00
ING IRA	\$982,277.00
Sandra IRA	\$9,000.00
2002 Tax Refund	\$212,412.50
Circle J2	\$401,700.00
Circle 6J	\$140,000.00
Naples Bank Account	\$27,217.00
JKT, Inc.	\$57,500.00
NEW TOTAL FOR SPECIFIC AWARDS	\$8,189,999.89

Original Award	Amount
Paid	\$0.00
Paid	\$0.00
Not Paid	\$200,000.00
Paid	\$0.00
Paid	\$0.00
Not Paid	\$0.00
Paid	\$0.00
Paid	\$0.00
Paid	\$0.00
Not Paid	\$212,412.50
Paid	\$0.00
Not Paid	\$140,000.00
Not Paid	\$27,217.00
Not Paid	\$57,500.00
AMOUNT DUE FOR SPECIFIC AWARDS	\$637,129.50

Amount	Amount
WR Reduction	\$4,000,000.00
JJ Reduction	(\$375,000.00)
Golf Reduction	(\$80,000.00)
NEW TOTAL FOR EQUALIZING PAYMENT	\$2,863,811.00
NEW AWARD TOTAL	\$11,153,810.89

Amount	Amount
Fees	\$2,863,811.00
Greenwald	(\$320,000.00)
Interim Fees	(\$46,325.00)
Interim Fees	(\$25,000.00)
Contempt Purge	(\$880,000.00)
March 2005 Order (not Inv)	\$0.00
Judgment Lien Executed	(\$10,844.88)
Judgment Lien Executed	(\$20,228.80)
AMOUNT DUE FOR EQUALIZING PAYMENT	\$1,842,412.34

OLD AWARD TOTAL \$12,539,999.89

TOTAL AMOUNT DUE \$2,476,644.84

JOINT EXHIBIT
7

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STATUTORY INTEREST

Rounded Award total

2,529,423.30
+ 500,000

3,029,423.30
2,534,423.30
418,146.00

2,952,277.30
2,952,000.

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

SANDRA L. JANOSEK, nka SANDRA L. HOEFFLER,)	CASE NO. DR-02-286943
Plaintiff,)	JUDGE THOMAS PATRICK CURRAN
vs.)	<u>AGREED JUDGMENT ENTRY</u>
JAMES C. JANOSEK,)	<u>SETTLING ATTORNEY FEE/</u>
Defendant.)	<u>EXPENSE DISPUTE</u>

DR02286943
49952124

This matter is before the Court upon this Court's Order dated December 27, 2007 that Plaintiff's Attorney Vincent Stafford by January 25, 2008 prepare a list of attorney fees/expenses, which he believes are attributable to Defendant's financial misconduct during the course of the matter as mandated by the Eighth District Court of Appeals decision released January 11, 2007.

The parties have reached a settlement and have agreed that the amount appropriate to satisfy this mandate is Fifty Thousand Dollars (\$50,000). This amount satisfies all issues related to the attorney fee/expense dispute including, attorney fees/expenses, expert fees/expenses, costs, and any other expenses related to Plaintiff's prosecution of Defendant's alleged financial misconduct during the course of this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant James C. Janosek shall pay Stafford & Stafford Co., LPA, the sum of Fifty Thousand (\$50,000) to settle the attorney fee/expense dispute on or before February 29, 2008.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the payment of Fifty Thousand (\$50,000) fully satisfies the attorney fee/expense dispute, including attorney fees/expenses, expert fees/expenses, costs, and any other expenses related to Plaintiff's



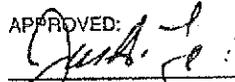
prosecution of Defendant's alleged financial misconduct during the course of the trial of this matter.

IT IS SO ORDERED.

2-8-08


JUDGE THOMAS PATRICK CURRAN

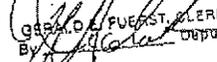
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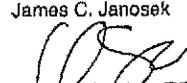

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Attorneys for Plaintiff
Sandra L. Janosek n/k/a
Sandra L. Hoeffler

501639664



IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
CUYAHOGA COUNTY, OHIO

SANDRA L. HOEFFLER)	CASE NO.: DR-02-286943
)	
Plaintiff)	JUDGE THOMAS PATRICK CURRAN
)	
v.)	
)	<u>STIPULATED NOTICE OF DISMISSAL</u>
)	<u>AND JUDGMENT ENTRY</u>
JAMES C. JANOSEK, et al.,)	
)	
Defendants)	
)	
)	

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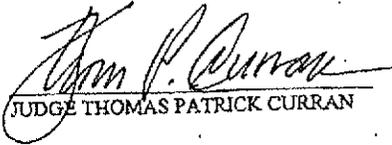
The parties, Sandra L. Hoefler and James C. Janosek, by and through their authorized counsel, hereby stipulate that all pending motions related to the release of the Supersedeas Bond and Attorney Fees and Sanctions, of the parties are hereby dismissed with prejudice. The Motions that are dismissed are the following: Defendant's Emergency Motion to Show Cause filed on February 7, 2008 (#257036); Defendant's Motion for Attorney Fees and Costs and Bond Fees filed on February 7, 2008 (#257037); Plaintiff's Motion to Dismiss Defendant's February 7, 2008 Emergency Motion to Show Cause, filed on April 28, 2008 (#260987); Plaintiff's Motion in Limine to Preclude the Defendant from Calling any Witnesses or Presenting any Evidence in Support of His February 7, 2008 Emergency Motion, filed on April 28, 2008 (#260988); Plaintiff's Motion for Sanctions, filed on April 28, 2008 (#260989); Plaintiff's Motion for Attorney Fees, filed on April 28, 2008 (#260990); Plaintiff's Motion to for Sanctions, filed on May 2, 2008 (#261211); and Plaintiff's Motion for Attorney Fees, filed on May 2, 2008 (#261212).



Any and all matters relating to the issues pending before the Court (except those arguments relating to the determination of spousal support and whether this Court has jurisdiction to decide any issues relating to spousal support on remand) are waived and released. Each party to pay their own attorney fees and litigation expenses incurred in this matter. The costs of this matter shall be paid by the Defendant, James C. Janosek, for which judgment is rendered and execution may issue.

IT IS SO ORDERED.

DATE: 5-9-08

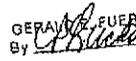

 JUDGE THOMAS PATRICK CURRAN

APPROVED BY


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MAY 13 2008

GERALD E. FUERST, CLERK
 By  Deputy


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COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

FILED

2010 MAR 11 A 8:50

SANDRA L. JANOSEK

: Case No: DR02 286943

Plaintiff

:

Judge: THOMAS PATRICK CURRAN

- vs -

:

JAMES C. JANOSEK

: **MAGISTRATE'S DECISION**

Defendant

This matter came on for hearing on February 23, 2010, before Magistrate Timothy R. Brown upon Defendant's Motion To Stay Withholding Order #267215. Appearances were made by C. Lynne Day (Attorney For Plaintiff) and James A. Loeb (Attorney For Defendant).

The Magistrate finds that service upon said motion(s) was duly and properly made; that notice containing the date and time of this proceeding was mailed to counsel of record or, if unrepresented, to the parties themselves; and that the fact of such mailing was journalized in the *Domestic Relations Hearing Journal* maintained by the Clerk of Courts and is evidenced by a notation on the Docket.

THE MAGISTRATE MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This is here on Defendant's Motion To Stay Withholding Order #267215. The parties hereby divided over twenty-two million in marital assets and because there is an appeal pending in the Supreme Court of Ohio determining whether the spousal support amount should be somewhere between \$0.00 and \$22,000.00 per month and the Defendant has already allegedly paid over \$1,000,000.00 in spousal support pending the outcome of this appeal, the CSEA shall hereby receive, hold and not disburse any spousal support monies pending the outcome of this appeal, subject to further order of this Court.

THE MAGISTRATE'S DECISION IS TO ORDER:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: the CSEA shall hereby receive, hold and not disburse any spousal support monies pending the outcome of this appeal, subject to further order of this Court.

Costs adjudged against Defendant.


MAGISTRATE TIMOTHY R. BROWN

Counsel and parties will take notice that under the provisions of Rules 75 and 53 of the Ohio Rules of Civil Procedure, this matter will be held fourteen (14) days from the date on which this decision is filed. If no objections to this decision are filed prior to said date, the preceding decision will be adopted by the Court, subject to Civil Rule 53(D)(4)(c).

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THIS MAGISTRATE'S DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THE FINDING OR CONCLUSION AS REQUIRED BY CIVIL RULE 53(D)(3)(b).

CERTIFICATE OF SERVICE

Copies of the foregoing Magistrate's Decision were mailed by the Clerk of Courts by ordinary U.S. mail to the following parties or their counsel of record:

C. LYNNE DAY, ATTORNEY FOR Plaintiff
VILLAGE STATION
401 SOUTH STREET
CHARDON, OH 44024-0000

JAMES A. LOEB, ATTORNEY FOR Defendant
3200 NATIONAL CITY CENTER
1900 E. NINTH STREET
CLEVELAND, OH 44114-0000

Copies were mailed by the Clerk of Court on _____.

DEPUTY CLERK OF COURT

ACTS

OF

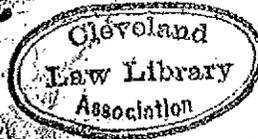
A GENERAL NATURE,

ENACTED, REVISED AND ORDERED TO BE REPRINTED,

AT THE FIRST SESSION

22203.

OF THE



TWENTY-NINTH GENERAL ASSEMBLY

OF THE

STATE OF OHIO.

VOL. XXIX.

PUBLISHED BY AUTHORITY.

COLUMBUS:

PRINTED BY OLMSTED & BAILHACHE:

1831.

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purpose of satisfying such minister or justice of the peace, that such certificate was actually signed by the parent or guardian for the purpose aforesaid.

Sec. 11. That any fine or forfeiture arising to the county in consequence of the breach of this act, shall be recovered by an action of debt, or by indolment, with costs of suit, in any court of record having cognizance of the same.

Sec. 12. That the law regulating marriages, passed February sixteenth, one thousand eight hundred and ten; and the act amending the said act, passed January eleventh, one thousand eight hundred and twenty-two; be, and the same are hereby repealed.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 6th, 1824.

AN ACT concerning Divorce and Alimony.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That the supreme court shall have the sole cognizance of granting divorces where either of the parties had a former wife or husband living, at the time of solemnizing the second marriage, or where either of the parties shall be willfully absent from the other three years, or in case of adultery, or where either of the parties is actually impotent at the time of the marriage, or in case of extreme cruelty, or where either party has been, or shall hereafter be, sentenced to imprisonment in the penitentiary, and is actually imprisoned therein, for any infraction of the criminal laws of this State: *Provided*, Application shall be made for a divorce during the time of imprisonment aforesaid.

Sec. 2. That in all cases where divorces shall be applied for, the complainant shall file his or her petition in the office of the clerk of the supreme court, three months before the sitting of the said court, and shall also serve the adverse party with a copy of said petition, within one month after filing the same in the office aforesaid, unless the party is not resident in the county, in which case public notice shall be given in one of the newspapers of the State, for three months; which petition shall state the true cause of complaint; whereupon, if the party complained of reside within the county, a summons shall issue, requiring the party to appear before the judges of the said court, and answer the allegation of said petition; which answer shall be received without oath: and if the party complained of shall not appear, or appearing shall deny the fact or facts stated in the said petition,

Supreme court to grant divorce, and for what causes

Petition to be filed three months before session of court

A copy of petition to be served, or notice given

A summons to issue

Counsel to be assigned

Court to decree marriage dissolved, and for what causes

Provises

Proof of cohabitation and reputation allowed as to marriage

Divorce for husband's aggression, woman restored to lands; if for wife's, court may order part

With may be barred of dower

Wife allowed alimony

the court shall thereupon proceed to hear and determine the same: and it shall be the duty of the court to assign counsel to either party, when they are not of sufficient ability to pay an adequate compensation; and such counsel or attorney shall not charge or receive any compensation for such services.

Sec. 3. That if upon trial, it shall appear by disinterested testimony to the satisfaction of the court, that the party complained against, had a husband or wife of a former marriage living, or was guilty of adultery, willful absence, extreme cruelty, or where either party has been, or shall hereafter be sentenced to imprisonment in the penitentiary, and shall be actually imprisoned therein for any infraction of the criminal laws of this State, or shall have been impotent at the time of marriage; then, in any such case, the court may proceed, by sentence or decree, in the same court, to pronounce the marriage between the parties dissolved, and both of them freed from the obligation of the same: *Provided*, That the confession of neither of the parties shall be received as testimony: *Provided, always*, That the dissolution of such marriage shall in no wise affect the legitimacy of the children thereof; and the court shall take such order for the distribution, care and maintenance of the children of such marriage, (if any there be,) as shall appear just and reasonable, and the circumstances of the parties may require: *Provided, however*, That the court, in their discretion, and where the evidence shall justify such decree, may grant alimony, and a divorce from bed and board, or either, instead of a dissolution of the marriage contract.

Sec. 4. That in all cases where an application is made for a divorce, under the provisions of this act, proof of cohabitation and reputation of the marriage of the parties may, at the discretion of the court, be taken and received by the court as sufficient evidence of such marriage, any law, usage or custom to the contrary notwithstanding.

Sec. 5. That when a divorce shall be decreed in case of the aggression of the husband, the woman shall be restored to all her lands and tenements, and be allowed out of the husband's real and personal estate, such share as the court shall think reasonable, having regard to the personal property that came to him by marriage and his estate at the time of the divorce; but if the divorce shall arise from the aggression of the wife, the court may order to her, restoration of the whole or part of the lands, tenements and hereditaments; (as to them shall appear to be just and right,) and also such share of the husband's personal property as may appear reasonable, all circumstances considered.

Sec. 6. That when the cause of divorce shall arise from the aggression of the wife, she shall be barred of her right of dower, whether there be issue or not.

Sec. 7. That the said court shall have power to grant alimony to the wife for her sustenance during the pendency of a pe-

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lition, filed for any of the causes aforesaid; and in all the cases aforesaid, where she may file a petition of alimony alone, with- out the prayer for the dissolution of the bonds of matrimony.

Sec. 8. That all applications for a divorce, under this act, shall be made within the county where the parties lived, at the time of their separation or application. Petition to be filed where parties lived

Sec. 9. That this act shall take effect and be in force from and after the first day of June next; and the act concerning divorce and alimony, passed January eleventh, one thousand eight hundred and twenty-two, be, and the same is hereby re- pealed. Effect Repeat

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 7, 1824.

AN ACT to amend the act, entitled "An act concerning divorce and alimony."

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That all applications for a divorce, under the provisions of the act to which this is an amendment, shall be made within the county where the complainant actually resides at the time of making such application; and the supreme court shall hear and determine the same, whether the marriage took place, or the cause of divorce occurred, within this State, or elsewhere: Application to be made in county where complainant resides Court to hear applications for causes occurring out of this State *Provided,* The petitioner shall be a bona fide resident of the county where such application is made, and at least two years a resident of the State, next before the filing of his or her petition in the clerk's office of said court.

Sec. 2. That the eighth section of the act to which this is an amendment, be, and the same is hereby repealed.

EDWARD KING,
Speaker of the House of Representatives.
SAMUEL WHEELER,
Speaker of the Senate.

December 31, 1827.

AN ACT for the maintenance and support of illegitimate children.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That on complaint made to any justice of the peace in this State, by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, accusing Warrant may be sue when unmar- ried woman has been delivered of, or is pregnant with, bastard child

Although lands descend to him who is heir, at the intestate's death, this descent may be defeated, at any time afterward, by the birth of a nearer heir, who will immediately take the estate. *Dunn v. Evans et al.*, 7 Ohio Rep. (part 1) 169. Persons who hold title under the first heir are entitled, it seems, to the profits of the land, while the title of such heir and their own, under him, subsist. *Id. Ib.*

The county auditor's certificate of a sale of land for taxes, upon the death of the holder, passes to his heir at law. The heir, therefore, and not the administrator, can make a valid assignment of the certificate and estate. *Rice v. White*, 8 Ohio Rep. 216.

Where lands in the Virginia military district were located and surveyed by the ancestor and patented to the heirs, it was held that the heirs took the lands by descent; and, therefore, subject to the payment of the debts of the ancestor, in like manner, and to the same extent, as if the patent issued to the ancestor. *Lessee of Bond v. Sweavrogen*, 1 Ohio Rep. 395.

A perfect equity in land (as where one holds a final certificate which entitles him to a patent from the United States), passes to his heirs by descent. *Lessee of Avery v. Dufrees et al.*, 9 Ohio Rep. 145.

Under the grant by Connecticut, to the sufferers by fire, the original sufferer being dead at the time of the grant, the share for his loss passed to his heirs by purchase and not by descent. *Lessee of Thompson's heirs v. Gotham*, 9 Ohio Rep. 170.

There is no law in Ohio whereby one takes the whole estate by survivorship, as in joint tenancy. Where there is a devise or conveyance to husband and wife and their heirs, they hold as tenants in common. And upon the death of either, the moiety of the decedent descends to his or her heirs, and they become tenants in common with the survivor. *Sergeant v. Steinberger et al.*, 2 Ohio Rep. 306; *Wilson et al. v. Fleming et al.*, 13 Ohio Rep. 68. See also *Green v. Graham*, 5 Ohio Rep. 264. So in a limitation by will to A. B. and C. and to the survivors, to hold as joint tenants, and not as tenants in common upon trusts, the grantee takes, at law, an estate for life during the life of the survivors or survivor, leaving the remainder in fee to descend to the heir. *Miles v. Fisher*, 10 Ohio Rep. 1.

Land directed by a will to be sold and converted into money, is treated as personal estate. *Rerguson v. Stuart's ex'rs*, 14 Ohio Rep. 140.

When A. furnishes to B. money to be invested in land, which is so invested, B. taking the title in himself; the title thus acquired is held in trust for A. And upon the death of B., without the execution of the trust, the title will descend to his heirs incumbered with the trust estate. *Williams et al. v. Van Truyl et al.*, 2 Ohio St. Rep. 336.

CHAPTER 37.

DIVORCE AND ALIMONY.

SECTION

1. Divorce, for what causes obtained.
2. Divorce in another state, a cause for divorce here.
3. The petition, summons and notice.
4. Answer, hearing and decree.
5. Admissions of parties.
6. Evidence of marriage.
7. Divorce and alimony in favor of the wife.
8. Application for divorce; where made.

SECTION

9. Alimony during pendency of petition.
10. Petition for alimony alone;
11. —Proceedings thereon.
12. Residence.
13. Change of venue.
14. Injunction against husband.
15. Testimony and depositions.
16. Appeal.
17. Repealing clause.—Saving, etc.

An Act concerning divorce and alimony.

[Passed March 11, 1853. 51 vol. Stat. 377.]

(1.) SECTION I. *Be it enacted by the General Assembly of the State of Ohio*, That the several courts of common pleas in this state, shall have the cognizance of granting divorces, for the following causes: 1. Where either of the parties had a former wife or husband living, at the time of solemnizing the second marriage; 2. Where either of

Divorce, for what causes obtained.

¹ This provision renders such second marriage absolutely void, not voidable merely. The fact of a prior marriage may be one of doubt; and hence this provision permits

parties shall have been willfully absent from the other three years;¹ 3. Adultery;² 4. Impotency; 5. Extreme cruelty;³ 6. Fraudulent contract;⁴ 7. Gross neglect of duty; 8. Habitual drunkenness for three years;⁵ 9. Where either party has been or shall hereafter be sentenced to imprisonment and actually imprisoned in the penitentiary of this state, or state prison of any other state or territory of the United States, or the District of Columbia, for any violation of the laws of the United States; or where either party has been or shall hereafter be sentenced to imprisonment and actually imprisoned in the penitentiary in this state, for any violation of the criminal laws of this state, or in the penitentiary or state prison of any of the United States, or either of the territories thereof, or the District of Columbia, for any crime or offense against the laws of either of said states or territories, or of the District of Columbia: Provided, such crime or offense against the laws of such state, territory, or District of Columbia, be of the same character or grade as is or may be by the laws of this state punished by imprison-

parties to have the subject judicially investigated and determined. Another object of this provision was, probably, to give alimony to the second wife of a man who had a former wife living. Besides, to render such second marriage valid, or voidable only, until decree of divorce, would require distinct and positive legislation. The seventh section of the crimes act, relating to bigamy, does not change the void character of such second marriage. *Smith v. Smith*, 5 Ohio St. Rep. 32.

Marriages contracted by male persons under the age of eighteen and female persons under fourteen are invalid, unless confirmed by cohabitation after arriving at those ages respectively. Such a marriage, not thus confirmed, does not subject a party to punishment for bigamy for contracting a subsequent marriage while the first husband or wife is living. *Shaffer v. The State*, 20 Ohio Rep. 1.

¹An agreement to live separate will not lay the foundation for a divorce for willful absence. *Wright's Rep.* 636, 469, 284, 354, 475, 643. See *Wright* 719. When the husband sends his wife away under pretense that he is unwell, and then leaves the country, and continues absent more than three years, the wife will, on her application, be divorced. *Wright's Rep.* 147, 211. But if a wife refuse to support a drunken husband, or longer to cohabit with him, in consequence of which he leaves her, the absence is not willful on his part, to entitle her to a divorce for that cause. *Wright's Rep.* 210.

Where a man left his wife with a scanty supply, and went off for months to labor on the canal, and when he returned, found that his wife had gone to her friends with the little furniture she had, it was held not sufficient to decree a divorce, on account of her willful absence, without proof that he went for her, desired her return, or informed her that he had returned. *Wright's Rep.* 455.

Willful absence will not be presumed against circumstances tending to show the separation by the procurement of the party alleging it. *Wright's Rep.* 469.

If the husband, having left his wife two months, return, and make efforts to live with her, which have failed from any cause, he can not be regarded as willfully absent from her. *Wright's Rep.* 639.

Where the husband leaves his wife, intending to return, but afterward determines to continue away, he will be considered as willfully absent from the time he resolved not to return. *Wright's Rep.* 224.

²A divorce will not be granted, if the applicant is living in adultery. *Mattox v. Mattox*, 2 Ohio Rep. 234. The name of the person with whom adultery has been committed must be set forth in the petition (*Wright's Rep.* 98, 284, 636), if known, and if unknown, the excuse must be alleged (*Wright's Rep.* 302, 210), and the proof must conform to the allegations. *Wright's Rep.* 210. The place should also be stated. *Wright's Rep.* 643. Record of a conviction for polygamy is not proof of adultery. *Wright's Rep.* 128. But it may be proved by circumstantial evidence. *Wright's Rep.* 148, 158, 161, 212, 514.

³If the cause of alleged complaint has been previously reconciled and forgiven, or the parties afterward live together, a divorce will not be decreed. *Wright's Rep.* 284, 763. Extreme cruelty is personal violence, and the acts should be stated in the petition. *Wright's Rep.* 563. Words, merely, will not make out the case. *Wright's Rep.* 212.

⁴As where a pregnant woman induces a stranger to believe her virtuous, etc., and deceive him into marriage. *Wright's Rep.* 630.

⁵In *Scott v. Scott*, 6 Ohio Rep. 534, it was held in 1834 that the act of the legislature then in force (Curwen 141), making habitual drunkenness for three years cause of divorce, did not apply to cases that occurred before its passage.

onment in the penitentiary; and provided also, that all applications for divorce under the ninth clause of this section, shall be made during the imprisonment of the adverse party.

(2.) Sec. II. That in addition to the causes of divorce already declared in this act, the several courts of common pleas of this state shall have power to grant a divorce in favor of a party applying for the same, whenever it shall be made to appear that the husband or wife of such party has obtained a decree of divorce in any of the courts of any other state, by virtue of which the party who shall have obtained such decree, shall have been released from the obligation of the marriage contract, while the same remains binding upon the other party.

Divorce in another state a cause for divorce here.

(3.) Sec. III. That in all cases where a divorce shall be applied for, the complainant shall file his or her petition in the office of the clerk of the court of common pleas of the proper county, which petition shall state the true cause of complaint,² and if the adverse party is a resident of the county in which the petition is filed, the clerk of said court shall issue a summons directed to the sheriff of the county, which, together with a copy of the petition, shall be served on the adverse party at least six weeks before the hearing of the case; but if the defendant is not a resident of such county, then notice of the pendency of said petition, containing the substance and prayer thereof, shall be given by publication in some newspaper of general circulation in the county in which the case is pending, for the term of six consecutive weeks, and in such a case a summons and copy of the petition shall forthwith, on the filing of the petition, be deposited in the post office, directed to the defendant at his or her place of residence, unless it shall be made to appear to the court, by affidavit or otherwise, that such residence is unknown to the applicant, and could not with reasonable diligence be ascertained by him or her; or if the defendant shall reside in any other county of this state, the applicant may, at his or her election, give notice by service of a summons³ and a copy of the petition, at least six weeks before the hearing of

As amended and took effect April 15, 1857; 54 v. Stat. 131. The petition, summons and notice.

¹ The present constitution (art. II, sec. 32), prohibits the general assembly from granting divorces. Under the former constitution the general assembly assumed the power to grant divorces, but in *Bingham v. Miller*, 17 Ohio Rep. 445, it was held that divorces are the subject of judicial, and not of legislative, action. That the former constitution conferred upon the legislature no power to grant them, but to avoid the consequences which would result from declaring all those void which had previously been granted by the legislature, rendering illegitimate the issue of second marriages, the court pronounced them valid.

² In *Lattier v. Lattier*, 5 Ohio Rep. 538, some rules of practice in divorce cases under the laws, as they then existed, were laid down, from which it seems that under the present statute the petition should show: That the petitioner, at the time of filing the petition, is an actual resident of, or that the cause of the complaint arose or took place in the county where the petition is filed (sec. 3 of this Chapter); that he or she has been a resident of the state at least one year next before the filing of his or her petition (sec. 8 of this Chapter); the time and place of the marriage, and the names and ages of the children, if any; a brief statement of the true cause of the complaint; and if adultery be the cause, a statement of the time and place of the offense, and the person with whom, if known, and if unknown, that excuse for the omission should be stated. If alimony be sought for, the petition should set out, as near as may be, the kind and amount of the personal property, and describe the real estate of the defendant. If the petition is filed by the wife, it might be well for it to state what amount and kind of property she brought to the husband at the marriage, and give a description of her lands not previously disposed of. Sec. 7 of this Chapter.

Loughery v. Loughery et al., 15 Ohio Rep. 404, was a bill in chancery, filed against the husband and a third person, by the wife in her own name, in which she sought, in addition to a divorce and alimony, also to have the alimony made a charge upon certain land alleged in the bill to have been conveyed by her husband and herself to such third party, without consideration, to prevent her from enforcing her demands against her husband; and it was doubted whether it was a case of that character which courts of equity will permit a married woman to prosecute in her own name or by some friend, where her rights are adverse to her husband, and where such proceedings are necessary for the ends of justice. But the case went off without settling the doubt. How far sec. 28 of the code would affect such a case might be a question of interest.

³ Under the act of 1824, which provided that when the defendant did not reside in the county where the application was made, then "public notice shall be given in one

said case, and said case may be heard and decided at any time after the expiration of six weeks from the service of notice either by service of summons or after the first publication in some newspaper, as provided in this section.¹

Answer, hearing
and decree.

(4.) SEC. IV. The party by such summons shall be required to appear and answer said petition, which answer shall be received without oath; and if the party complained of shall not appear, or, appearing, shall admit or deny the allegations in said petition, the court shall thereupon proceed to hear and determine the same; and if, upon hearing any or all of the charges in said petition (to be confined to the causes enumerated in the first section of this act), it shall, by disinterested testimony, be proved to the satisfaction of said court, the court may proceed to pronounce the marriage contract dissolved, and both of the parties released from the obligations of the same;² Provided, that the dissolution of such marriage shall in no wise affect the legitimacy of the children thereof; and the court shall make such order for the disposition, care, and maintenance of the children of such marriage, if any there be, as shall be just and reasonable.³

Admissions of
parties.

(5.) SEC. V. That upon the hearing of petitions for divorce, the court may permit proofs of the admissions of the parties to be received in evidence, carefully excluding such as they shall find reason to believe have been obtained by connivance, fraud, coercion, or other improper means.

Evidence of mar-
riage.

(6.) SEC. VI. That in all cases where an application is made for divorce, under the provisions of this act, proof of cohabitation, and reputation of the marriage of the parties⁴ shall be admitted, and at the discretion of the court or jury trying the cause, may be received as sufficient evidence of such marriage, any law, usage or custom to the contrary notwithstanding.

Divorce and ali-
mony in favor of
the wife.

(7.) SEC. VII. That where a divorce shall be granted, by reason of the aggression of the husband, the wife shall be restored to all her lands, tenements and hereditaments, not previously disposed of, and to her maiden name if she so desires, and shall be allowed such alimony out of her husband's real and personal property, as the court shall think reasonable, having due regard to the property which came to him by marriage, and the value of his real and personal estate, at the time of said divorce, which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or installments, as the court may deem just and equita-

of the newspapers in the state, for three months," it was held that service of summons was not sufficient, but that public notice in the newspaper was indispensable. *Harter v. Harter*, 5 Ohio Rep. 318.

¹ After a petition has been amended there should be new service or notice, and the appearance and waiver, by counsel, will not, it seems, be received. Wright's Rep. 643.

² The plaintiff's general character may, in a divorce case, be inquired into; that of the defendant can not be. Evidence of particular facts not in issue, are inadmissible. Wright's Rep. 283, 632.

³ Where the evidence fails, the cause may, under certain circumstances, be continued; and the court will, in a proper case, then give leave to amend, and enjoin the husband from interfering with the children or property in the possession of the wife, pending the suit. Wright's Rep. 128. After hearing, the petition may be dismissed without prejudice. Wright's Rep. 469.

⁴ That is, the parties to the suit in which the marriage contract is sought to be dissolved. But reputation and cohabitation are, it seems, inadmissible to prove a collateral marriage, by one of the parties, to another person. Wright's Rep. 156. *Haupt v. Haupt*, 5 Ohio Rep. 539. The case was for divorce on the ground that the defendant had a former wife living at his intermarriage with the petitioner, and the evidence of reputation and cohabitation, which was refused, was offered to prove the former marriage.

ble;¹ and if the wife survive her husband, she shall also be entitled to her right of dower in the real estate of her husband, not allowed to her as alimony, of which he was seized at any time during the coverture and to which she had not relinquished her right of dower; but if the divorce shall arise by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband shall be seized at the time of the filing of the petition for divorce, or which he may thereafter acquire, whether there be issue or not, and the court shall order to her, restoration of the whole of her lands, tenements or hereditaments not previously disposed of, and also such share of the husband's real or personal property, or both, as to such court may appear just and reasonable.

(8.) SEC. VIII. That all applications for divorce, or for alimony, under the provisions of this act, shall be made in the county where the complainant *bona fide* resides at the time of making such application, or in the county where the cause of complaint arose or took place; and the court shall hear and determine the same, whether the marriage took place or the cause of divorce occurred within the state or elsewhere: Provided, the petitioner shall be a resident of the state at least one year next before the filing of his or her petition in the clerk's office of said court.

Application for divorce, where made.

(9.) SEC. IX. That the said court, while in session, or any judge thereof, during vacation, upon sufficient notice to the opposite party, shall have power to grant alimony to the wife for her sustentance during the pendency of a petition for divorce or alimony alone, filed for any of the causes aforesaid.²

As amended and took effect April 15, 1857; 54 v. 131. Alimony during pendency of petition.

(10.) SEC. X. That the wife may file her petition as aforesaid in the court of common pleas, for alimony alone,³ or in case a petition for divorce

As amended and took effect April 15, 1857; 54 v. 131. Petition for alimony alone;

¹ As to alimony, see Wright's Rep. 514, 632, 66, 491, 129, 454. The supreme court decreed a dissolution of the bands of matrimony and a gross sum to the wife, and also, *other sums every three months*, during the joint lives of the parties, as alimony. Such decree is valid; and if it were erroneous, could not be questioned in resisting a sale upon execution under it. Such decree may be enforced by an execution for each installment as it becomes due, or for all installments due when the execution issues. *Piatt v. Piatt*, 9 Ohio Rep. 37. Wright's Rep. 66.

A decree for alimony to be paid in installments does not operate as a lien upon the real estate of the defendant, unless made a charge thereon by the decree itself. *Olin v. Hungerford et al.*, 10 Ohio Rep. 269. And in *Hamlin v. Bevans*, 7 Ohio Rep. (part 1), 161, a decree for alimony rendered on the hearing of a petition for divorce which made no claim to any specific tract of land, nor asked for alimony to be decreed, by way of annuity, upon the real estate of the husband, in general terms, was postponed to judgments rendered during the pendency of the petition, and before the decree for alimony was made a charge upon the land; the court holding that in such case the pendency of the petition did not, before the alimony was fastened, by decree, upon specific property, make it operate as a lien; and that the question of priorities was left under the general law regulating decrees and judgments, in that respect.

In *Sample v. Boss' adm'r*, 16 Ohio Rep. 419, it was held that an injunction could not be issued by the court of common pleas to restrain an execution of the supreme court on the circuit upon a decree for alimony. The remedy was by application to the supreme court, on the return of execution.

² This power of the court is invoked by motion, and upon affidavits of the marriage, the separation, the ground of the application, showing not only the condition of the wife and the children in her custody, but also the defendant's circumstances and condition in life. Wright's Rep. 104, 249, 308. And the allowance may be large enough to enable her to carry on the suit, as well as to subsist upon, during its pendency. Wright's Rep. 120.

In a proper case, the court will also grant to the wife the custody of the children and the possession and use of the household furniture during the pendency of the petition; and also enjoin the defendant from disturbing her in the possession of either. Wright's Rep. 308.

³ The petition should state, as near as may be, the kind and amount of the defendant's personal property, and describe his real estate. *Lattier v. Lattier*, 5 Ohio Rep. 539.

shall have been filed by the husband, she may file her cross-petition for alimony, with or without the prayer for the dissolution of the marriage contract; which petition or cross-petition for alimony may be for the following causes, to-wit: First, adultery; second, gross neglect of duty; third, abandonment of the wife without good cause; fourth, where there is a separation in consequence of ill treatment on the part of the husband, whether the wife be maintained by the husband or not; fifth, habitual drunkenness; and, sixth, confinement in the penitentiary of Ohio, or in the penitentiary or state prison of any of the United States, or either of the territories thereof, or the District of Columbia, for any crime or offense of the same character or grade as is or may be by the laws of this state, punished with imprisonment in the penitentiary, in which case the application shall be made while the husband is so confined.

Proceedings
thereon.

(11.) SEC. XI. The proceedings on said petition for alimony alone shall in all respects be conducted as in applications for divorce, under the provisions of this act, and the said court shall, upon satisfactory proof of any or all of the charges in said petition, make such order for the disposition, care, and maintenance of the children of such marriage, if any there be, as shall be just and reasonable, and restore to the wife all her lands, tenements, and hereditaments not previously disposed of, and shall give judgment in her favor for such alimony out of her husband's real and personal property as may be just and equitable, to be allowed to her in real or personal property, or both, or in moneys payable either in gross or in installments; and the court shall also, by their said judgment, vest in her the right and power to acquire, hold, manage and dispose of property, money, and choses in action, and to bring and maintain suits in her own behalf, free from the control or interference of her said husband; or the same may be vested in trustees for her use and benefit.

Residence.

(12.) SEC. XII. That when the wife shall file her petition under the provisions of this act, praying for a divorce from her husband, or for alimony alone, the residence of her husband shall not be so construed as to preclude her from the provisions of this act.

Change of venue.

(13.) SEC. XIII. A change of venue shall be allowed by any court in which any petition for divorce or alimony may be filed for the hearing and determination of the same, upon the petitioner making application therefor, and making an affidavit that in his or her behalf a fair and impartial hearing and determination can not be had before the court in which the petition is filed, and in case of such change of venue, the cause shall be removed to any county of the same judicial district for hearing and determination.

Injunction
against husband.

(14.) SEC. XIV. That any married woman may file her petition in the court of common pleas setting forth that her husband, from habitual intemperance or any other cause, is about to waste and squander the property, legal or equitable, money, credits and choses in action, to which she is entitled in her own right, or any part thereof, or is proceeding fraudulently to convert the same, or any part thereof, to his own use, for the purpose of placing the same beyond her reach, and depriving her of the benefit thereof, and the court, upon the hearing of the case, may enjoin the husband from disposing of or otherwise interfering with such property, moneys, credits, and choses in action, and may appoint a receiver to manage and control the same for the benefit of the wife, and may also make such other order in the premises as they may deem just and proper; and upon the filing of such petition, a provisional injunction may be allowed as in other cases; and such petition shall be filed in the county where said petitioner resides, and the husband of said petitioner shall be made a party defendant to said petition,

in the same manner as is provided for by the second section of this act in the case of a petition for divorce.

(15.) SEC. XV. In all applications for divorce, or for alimony alone, and in cases where the petition is filed under the fourteenth section of the act to which this is amendatory, when the witnesses shall reside in the county where the application is made, or the petition filed, they shall, unless in case of inability, be examined in open court, but if they shall reside out of the county, or be unable to attend court, their deposition may be taken as in other cases; but when the adverse party shall not reside within the county in which the petition is pending, or in an adjoining county, or shall have no attorney of record residing in such county, or in an adjoining county, notice of the time and place of taking depositions shall be given by publication in some newspaper of general circulation, in the county where the case is pending, for three consecutive weeks prior thereto, and a copy of such notice shall, at or before the first publication thereof, be deposited in the post office, and directed to the defendant, at his or her place of residence, when such residence is known to the petitioner, or can with reasonable diligence be ascertained by him or her.

As amended and took effect April 15, 1857; 54 v. 131. Testimony and depositions.

(16.) SEC. XVI. That in case of petition for divorce, or petition for alimony alone, no appeal shall be allowed from any judgment or order of the court of common pleas to the district court.

Appeal.

(17.) SEC. XVII.² In all cases under this act in which the court of common pleas shall dismiss the petition, except on the final hearing of the case on its merits in cases in which the court shall give judgment in favor of the wife for alimony alone, without granting a divorce, in cases under section fourteen of said act and in cases where judgment is rendered for both divorce and alimony, either party may appeal from any final judgment or order, to the district court as in other cases: Provided, that in cases under sections one and two of this act and fourteen of the act to which this is amendatory, and in all other cases under this act, when the wife shall appeal, she shall not be required to give bond; provided, also, that in cases where judgment is rendered for both divorce and alimony, the appeal shall apply only to so much of the judgment as relates to the alimony.

As amended and took effect April 15, 1857; 54 v. 131. Same.

(18.) SEC. XVIII. That the act entitled "an act concerning divorce and alimony," passed March 6, A. D. 1840," and an act entitled "an act to amend an act concerning divorce and alimony," passed March 29, 1841, and an act entitled "an act to amend the act concerning divorce and alimony," passed March 6, A. D. 1840, which was passed March 13, A. D. 1843, and an act entitled "an act to amend the act concerning divorce and alimony," passed March 6, 1840, which was passed March 2, A. D. 1846, and also an act entitled "an act authoriz-

Repealing clause.

Swan, 291.

39 v. Stat. 41.

41 v. Stat. 94.

44 v. Stat. 115.

49 v. Stat. 102.

Saving, etc.

¹See that part of note 2 under section (3) taken from *Laughery v. Laughery et al.*, 15 Ohio Rep. 404.

²The original section 17 read as follows: "That in cases arising under the eleventh section of this act, either party may appeal from any final judgment or order of the court of common pleas, to the district court, as in other cases; but when such appeal is taken by the petitioner, she shall not be required to give bond."

With this original section in the act, it was held that it did not seem to permit an appeal in cases of petition for divorce and alimony, or for alimony alone; that the original section 17 was intended to permit appeals in cases arising under the fourteenth instead of the eleventh section of the act. *Tappan v. Tappan*, 6 Ohio St. Rep. 64. In this same case it was further held, that the district court has no jurisdiction to review, on petition in error, the proceedings of the court of common pleas, in cases of divorce and alimony; that the decree of the court of common pleas, in such a case, is not, by the laws of this state, subject to judicial revision.

It had been previously held, in *Boscom v. Boscom*, 7 Ohio Rep., pt. 2d, 125, that a bill of review would not lie to a decree granting a divorce and alimony. At that time no right of appeal could exist in such cases, for the supreme court had the sole jurisdiction of the subject matter. In *Laughery v. Laughery et al.*, 15 Ohio Rep. 404, it was held, that a case for divorce, or for divorce and alimony, could not be appealed from the court of common pleas to the supreme court. But if, in such case, a third person was made defendant, such defendant might appeal so much of the case as affected his interest.

ing the granting of alimony," passed March 24, 1851, be and the same are hereby repealed: Provided, that all cases of divorce or alimony now existing under the provisions of the acts aforesaid, are hereby expressly reserved and protected; but in all cases now pending or hereafter commenced under said acts, the proceedings shall be conducted according to the provisions of this act.¹

CHAPTER 38.

DOWER.

SECTION	SECTION
1. Of what estates widow to be endowed.—May remain in mansion house one year, unless, etc.—Proviso.	11. When lands situate in several counties, where and how to proceed, and how dower assigned.
2. What jointure bars dower.—When widow may elect to take dower, instead of jointure.	12. On decree of dower, sheriff to assign, and how.—Return of assignment and record and effect thereof, and writ of seizure thereon.
3. Wife's inheritance can not be affected by act of husband.	13. Minor heir may have action, if dower is collusively assigned.
4. Effect of defective conveyance, in lieu of dower.	14. When dower to be assigned, as of rents and profits.
5. If evicted from jointure, to be endowed.	15. Waste forfeits dower.
6. A wife dwelling with her adulterer, barred of dower, unless, etc.	16. All prior laws repealed.
7. Husband giving up lands by covin or default, the wife may recover dower.	17. Sheriff may administer the oath to the commissioners who assign dower.
8. When lands are unincumbered, the heir may assign dower, and how.	18. Widow entitled to one third of rents during pendency of petition;
9. Petition in chancery for dower; parties thereto; statement and decree.	19. —Exclusive of certain improvements.
10. Incumbrances may be shown by cross bill.	20. When defendants to pay costs.

An Act relating to dower.

[Passed January 28, 1823 [1824]. Took effect June 1, 1823 [1824]. 29 vol. Stat. 249.]

As amended and (1.) SECTION I. That the widow² of any person dying shall be endowed³ of

¹The sections as amended by act of April 15, 1857, have been inserted in their proper places in this Chapter. That amendatory act contained, also, the following provisions as to cases then pending:

That original sections three, nine, ten, fifteen and seventeen, of said act, be and the same are hereby repealed. This act shall take effect on the passage thereof, and shall apply as well to cases now pending, and to cases where an original or cross-petition for alimony has been heretofore filed, and ruled against the petitioner and the case removed in good faith, by appeal or by filing a transcript in the district court to effect an appeal, and remains undecided, as to cases hereafter to be commenced.

NOTE.—Articles of separation by husband and wife, through the medium of a trustee, for the separate support and maintenance of the wife, and where the separation takes place, are not void as against public policy. *Bottle v. Wilson*, 14 Ohio Rep. 257.

²A woman, having a husband living at the time of her second marriage, is not entitled to dower in the real estate of her second husband; the second marriage being absolutely void, notwithstanding the provisions of the first section of the act relating to divorce, and the seventh section of the crimes act relating to bigamy. *Smith v. Smith*, 5 Ohio St. Rep. 32.

³The right to be endowed is not assignable. It may be relinquished to him who has the next estate of inheritance in the land out of which it is to be carved, but can not be transferred to a third person. When the dower is assigned, then the widow may sell and convey it, but not before. Per Hitchcock, J., *Moller's adm'r v. Woodman et al.*, 14 Ohio Rep. 518.

Where a judgment debtor and his wife convey land, subject to the judgment, the grantee can not set up the dower, as an independent estate, against a purchaser under the judgment, when the latter files a petition against him and the heirs and widow of

one full and equal third part of all the lands, tenements and real estate¹ of which her husband was seized as an estate of inheritance at any time during the coverture,² and all lands, tenements and real estate of which her hus-

took effect March 27, 1858; 55 v Stat. 24.

the judgment debtor, to quiet the title. In such case, the dower estate is *in action* only, and was not intended to pass, nor did the deed of the judgment debtor and his wife pass the right of dower, as a separate substantive estate, if no lands were conveyed by the deed; for, the law will not permit the alienation of such possible contingent interests. A decree was, therefore, taken, to quiet the title, against all the defendants, except the widow. *Douglass v. McCoy et al.*, 5 Ohio Rep. 522.

1 Shares in railroad companies are personal and not real estate, and are not subject to dower. *Johns v. Johns et al.*, 1 Ohio St. Rep. 350.

2 The right of dower must always attach, subject to all the equities that may exist against the title of the husband at the time it attaches. The right arises upon the title of the husband alone, and can not be higher or more extensive than that title. If the legal title be in the husband, and the equitable title in another at the time of the marriage, no right of dower attaches as against such equitable title. Therefore, where, before marriage with the claimant of dower, the husband, for considerations, partly good and partly valuable, had agreed to convey certain lands to his son, who paid the valuable consideration and took possession, and after the marriage the conveyance was actually made, no right of dower attached as against the equity of the son. The conveyance, when made, related to the title as it stood when the contract for the conveyance was made. *Firestone v. Firestone*, 2 Ohio St. Rep. 415.

Lands were purchased by partners, and paid for out of the partnership funds, and were used exclusively for carrying on the business of the partnership, under articles stipulating for the sale of the whole partnership property, for the payment of debts. One of the partners died, greatly indebted to the partnership, which was insolvent. It was held that his widow was not entitled to dower. *Greene v. The surviving partners of Greene et al.*, 1 Ohio Rep. 535.

So, where partners manifest an intention to hold lands as partnership stock, and buy and sell it as such, dower can not be claimed therein, to the prejudice of partnership creditors. *Sumner v. Hampson et al.*, 8 Ohio Rep. 328.

If the husband be intrusted with the property of another, sell it, and vest the avails in real estate, in his own name, his widow will not be entitled to dower therein; as the husband had, really, no interest in the land. *Derush et al. v. Brown et al.*, 8 Ohio Rep. 412.

Wild uncultivated lands are, and, it is said, always have been, subject to dower in Ohio. *Allen v. McCoy et al.*, 8 Ohio Rep. 418.

A widow is not entitled to dower in grounds set apart by her husband for public uses; such as lands between two streets, given by her husband for a market house. *Grayson et al. v. City of Cincinnati*, 3 Ohio Rep. 24.

The wife, it is said, by joining in a mortgage, bars herself of dower in express terms, so far as the mortgagee and his assigns, and all persons claiming under them, are concerned. *St. Clair v. Morris*, 9 Ohio Rep. 15.

If the wife joins in a mortgage, and the premises are sold by the administrator of the husband (or, it is said, by decree under the mortgage), the right of dower is extinguished, and passes to the purchaser, although the debt, secured by the mortgage, is extinguished by the sale. *Id.*

Where the seller of a tract of land, having a lien for the purchase money, obtains a judgment therefor, at law, against the administrator of the buyer, upon which the land is sold to a third person, for a sum sufficient to pay the whole amount of the purchase money, the lien does not pass to such third person, so as to enable him to set it up against the dower estate of the widow of the deceased buyer; but such lien is extinguished by the sale, and the widow is entitled to dower. If the estate of such deceased buyer had proved insolvent, the seller of the land might, it is said, have enforced his lien against the widow's right of dower, and that in such case, the widow should be made party. *McArthur v. Porter et al.*, 1 Ohio Rep. 99.

Where land is mortgaged by husband and wife to secure the payment of a debt, and the same land is subsequently sold under a judgment against the husband, at the suit of a stranger to the mortgage, the wife is not divested of her dower, as against the purchaser at such sale, though the court may have ordered the purchase money, in part, to be applied to the payment of the mortgage debt. *Taylor v. Fowler*, 18 Ohio Rep. 567.

If A., his wife not joining, execute a mortgage of lands to B., with power in the mortgage to C. to sell the property to pay the mortgage debt, if default be made, and A. and wife afterward, and before the execution of such power, make a deed of such premises to D., with proper release of dower, the purchaser at a judicial sale of said premises, under proceedings subsequently instituted by parties holding under the original mortgage and the power therein contained, against A. and D., takes all the title of A. and D., and holds the property discharged of dower. *Carter v. Walker*, 2 Ohio St. Rep. 339.

A mortgagor in possession, being seized of the legal title to the mortgaged premises until condition broken, and even then, as against all persons, except the mort-

REVISED STATUTES
AND
OTHER ACTS OF A GENERAL NATURE
OF THE
STATE OF OHIO,

IN FORCE JANUARY 1, 1880.

EDITED AND ANNOTATED BY
M. A. DAUGHERTY, JOHN S. BRASEE,
GEORGE B. OKEY,

Commissioners to Revise and Consolidate the Statutes.

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CHAPTER 6.

DIVORCE AND ALIMONY.

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SEC. 5689. Courts of common pleas may grant divorces for the following causes:

For what cause divorce may be granted.

1. That either party had a husband or wife living at the time of the marriage from which the divorce is sought.
2. Willful absence of either party from the other for three years.
3. Adultery.
4. Impotency.
5. Extreme cruelty.
6. Fraudulent contract.
7. Any gross neglect of duty.
8. Habitual drunkenness for three years.
9. The imprisonment of either party in a penitentiary under sentence thereto; but the petition for divorce under this clause shall be filed during the imprisonment of the adverse party.

10. The procurement of a divorce without this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while the same remain binding upon the other party. [51 v. 377, §§ 1, 2.]

S. & C. 509, 511.

SEC. 5690. The plaintiff, except in an action for alimony alone, shall have been a resident of the state at least one year before filing the petition; all actions for divorce, or for alimony, shall be brought in the county where the plaintiff has a bona fide residence at the time of filing the petition, or in the county where the cause of action arose; and the court shall hear and determine the same, whether the marriage took place, or the cause of divorce occurred, within or without the state. [70 v. 258, § 8.]

Residence of plaintiff; where petition to be filed.

SEC. 5691. When a wife files her petition for a divorce, or for alimony, the residence of her husband shall not be so construed as to preclude her from the provisions of this chapter. [51 v. 377, § 12.]

Residence of wife not to be affected by that of husband.
S. & C. 514.

- 2-5689. A petition for divorce should contain the following allegations:—
1. That the plaintiff, at the time of filing the petition, is an actual resident of the county where it is filed.
 2. That he or she had a *bona fide* residence in the state at least one year before this application.
 3. The time and place of marriage, and the names and ages of the children, if any.
 4. A specific brief statement of the cause of praying for divorce.
 5. If alimony be sought for, the petition should set out, as near as may be, the kind and amount of the personal property, and describe the real estate of the defendant. *Lattier v. Mattier*, 5 O. 535.
 6. A divorce will not be granted where the applicant is living in adultery. *Mattox v. Mattox*, 2 O. 233.
 7. A decree of divorce, although obtained by fraud and false testimony, can not be set aside in an action for that purpose commenced at a subsequent term. *Parish v. Parish*, 9 O. S. 534.
 8. The district court has no jurisdiction to review on error the proceedings of the court of common pleas in cases of divorce and alimony. *Tappan v. Tappan*, 6 O. S. 64.

Service when defendant resident of the state.

SEC. 5692. When the defendant is a resident of this state, the clerk shall issue a summons, directed to the sheriff of the county in which he or she resides, or is found, which, together with a copy of the petition, shall be served on the defendant at least six weeks before the hearing of the cause. [54 v. 131, § 3; 70 v. 258, § 8.]

S. & C. 511.

Notice when defendant's residence unknown.

SEC. 5693. When the defendant is not a resident of this state, or his residence is unknown, notice of the pendency of the action must be given by publication, as in other cases; and unless it be made to appear to the court, by affidavit or otherwise, that his residence is unknown to the plaintiff, and could not, with reasonable diligence, be ascertained, a summons, and a copy of the petition, shall forthwith, on the filing of the petition, be deposited in the post-office, directed to the defendant at his place of residence. [54 v. 131, § 3.]

S. & C. 511.

When cause may be heard.

SEC. 5694. The cause may be heard and decided at any time after the expiration of six weeks from the service of summons, or the first publication of notice. [54 v. 131, § 3.]

S. & C. 511.

Answer, hearing, and judgment.

SEC. 5695. If the defendant fail to appear, or, having appeared, admit or deny in his answer the allegations in the petition, the court shall thereupon proceed to hear and determine the cause; and if, upon the hearing, any of the causes for divorce charged in the petition be proven to the satisfaction of the court, it may pronounce the marriage contract dissolved, and both of the parties released from the obligations thereof. [51 v. 377, § 4.]

S. & C. 512.

Divorce not to affect legitimacy of children.

SEC. 5696. The granting of the divorce, and the dissolution of the marriage, shall in no wise affect the legitimacy of the children of the parties thereto; and the court shall make such order for the disposition, care, and maintenance of the children, if there are any, as is just and reasonable. [51 v. 377, § 4.]

S. & C. 512.

Competency and effect of testimony and admissions of the parties.

SEC. 5697. Pleadings under this chapter need not be verified; and a divorce, or a judgment for alimony, shall not be granted upon the testimony or admission of a party unsupported by other testimony, nor shall any admission be received in evidence which the court has reason to believe has been obtained by fraud, connivance, coercion, or other improper means. [51 v. 377, §§ 4, 5.]

S. & C. 512.

Evidence of marriage.

SEC. 5698. Proof of cohabitation, and reputation of the marriage of the parties, shall be competent testimony to prove such marriage, and may be, within the discretion of the court, sufficient evidence thereof. [51 v. 377, § 6.]

S. & C. 512.

Rights of widow when divorce granted for aggression of husband.

SEC. 5699. When a divorce is granted by reason of the aggression of the husband, the wife shall, by force of the judgment of divorce, be restored to all her lands, tenements, and hereditaments, not previously disposed of, and, if she so desire, the court shall restore to her any name she had before such marriage; she shall be allowed such alimony out of her husband's real and personal property as the court deems reasonable, having due regard to the property which came to him by marriage,

§ 5699. When a divorce is granted on the petition of a woman, on the ground that the defendant had another wife living at the time of the marriage annulled by the decree, the court may decree reasonable alimony to the plaintiff. *Vanvalley v. Vanvalley*, 19 O. S. 588.
Real property of the husband may be decreed to the wife in fee. *Broadwell v. Broadwell*, 21 O. S. 657.

In granting alimony a court may, in a proper case, look to what the husband has in expectancy, as well as that which he has in possession; and where the defendant had procured an alimony in another state, the court may take into consideration property acquired by the husband by inheritance since the date of the divorce. *Cox v. Cox*, 20 O. S. 459.

When alimony is decreed in installments, the decree may be enforced for each installment as it becomes due, or any number of installments due when the execution issues may be included in it. *Piatt v. Piatt*, 9 O. 37.

When the court of common pleas, in rendering a decree for divorce, decrees the custody, care, and control of the minor children of the marriage to one of the parties, the jurisdiction of that court over the subject of the custody of the children continues; and, on proper application, its orders in respect thereto may be modified, whenever the character and circumstances of the

and the value of his real and personal estate at the time of the divorce, which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable, either in gross or installments, as the court deems just and equitable; and if the wife survive her husband, she shall also be entitled to her right of dower in the real estate of her husband not allowed to her as alimony, of which he was seized at any time during the coverture, and to which she had not relinquished her right of dower. [51 v. 377, § 7.]

S. & C. 512.

Sec. 5700. When the divorce is granted by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband is seized at the time of filing the petition for divorce, or which he thereafter acquires, whether there is issue or not; and the effect of the judgment of divorce shall be to restore to her the whole of her lands, tenements, or hereditaments not previously disposed of, and the court shall adjudge to her such share of the husband's real or personal property, or both, as it deems just and reasonable. [51 v. 377, § 7.]

Rights of the wife when divorce granted upon her own aggression.

S. & C. 512.

Sec. 5701. The court, or a judge thereof in vacation, may, on notice to the opposite party of the time and place of the application, grant alimony to the wife for her sustentance and expenses during the suit, and an allowance to her for the support of minor children dependent upon the husband for support, and not provided for by him, during the pendency of an action for divorce, or for alimony alone; when an appeal is taken by either party to the district court, that court, or a judge thereof in vacation, may grant like alimony and support during the pendency of the appeal, upon like notice; any person or corporation having possession or control of, or claiming any interest in, any property, real or personal, of the husband, out of which the wife seeks alimony, may be made a party defendant when it is made to appear to the court, or a judge in vacation, that a husband is about to so dispose of or encumber his property, or any part thereof, as to defeat the wife in obtaining alimony, such court or judge may allow an injunction to prevent the same, with or without bond, at discretion; and the wife may sell and assign the order for alimony or allowance, after the same is made. [72 v. 145, § 9.]

Application for alimony pending the suit.

Sec. 5702. When the wife files her petition for divorce or alimony,

either of the case may require; but a probate court, while such decree remains in force, can not interfere between the parties to the decree, legally interfere with the custody so decreed, either by letters *corpus* or by letters of guardianship. *Hoffman v. Hoffman*, 16 O. S. 427.
A petition for divorce and alimony specially describes certain real estate of the husband, and asks with equities of the wife, and asking an injunction to prevent alienation *pendente lite*, and also equitable relief, and the decree therein is such as that from it it may be found that the court acted on those equities, and favorably thereto, the proceeding operates as a *lis pendens*, and the decree for alimony and settling equities will be a lien on the lands, preferable to that of a mortgage who had actual notice of the pendency of the action for divorce and alimony, and whose mortgage was executed and recorded pending the action. *Tollerton v. Williard*, 30 O. S. 677.

5700. The provision of this section that the wife shall be barred of dower when the divorce is granted by reason of her aggression, does not apply to divorces in another state, but only to those decreed by the courts of this state, in pursuance of the statute. *Mansfield v. McIntyre*, 10 O. S. 227.

5701. Where a wife is living separate and apart from her husband, and, in an action against him for divorce and alimony, has obtained a decree fixing the amount of alimony to be paid by the husband for her sustentance during the pendency of her petition, and the husband is not in default in respect to the payment of the alimony so allotted, he is not liable for necessaries subsequently furnished at her request during the pendency of the petition. *Hare v. Gibson*, 32 O. S. 116.

Persons dealing with the wife under these circumstances do so at their peril, and are chargeable with knowledge of the allotment and payment of the alimony; and the adequacy of the alimony decreed in the case can not be collaterally drawn in question, especially by a stranger to the suit. *Id.*

A third person who was made a defendant in an action for divorce and alimony, upon the ground that he had property of the husband which ought to be charged with alimony, can appeal from the judgment of the case as affected his interest. *Laughery v. Laughery*, 15 O. S. 404.

5702. A foreign decree of divorce against a wife having a domicile in this state, though valid, will not operate here beyond the dissolution of the marriage, and where a husband deserted his

Cause for which alimony allowed.

the husband may file a cross-petition for divorce, upon either cause mentioned in section *fifty-six hundred and eighty-nine*; the wife may file her petition for alimony alone, or, if a petition for divorce has been filed by the husband, she may file her cross-petition for alimony, with or without a prayer for the dissolution of the marriage contract; and such petition or cross-petition for alimony may be for the following causes:

1. Adultery.
2. Any gross neglect of duty.
3. Abandonment of the wife without good cause.
4. That there is a separation in consequence of ill treatment on the part of the husband, whether the wife is maintained by the husband or not.
5. Habitual drunkenness.

S. & C. 513.

6. Sentence to and imprisonment in a penitentiary; in which case the application must be made while the husband is so confined. [54 v. 131, § 10.]

Proceedings on petition for alimony alone.

SEC. 5703. The court shall, upon satisfactory proof of any or all of the charges in the petition, make such order for the disposition, care, and maintenance of the children of such marriage, if there are any, as is just and reasonable, and give judgment in favor of the wife for such alimony out of her husband's real and personal property as is just and equitable, which may be allowed to her in real or personal property, or both, or in money, payable either in gross or in installments; and the effect of such judgment shall be to restore to the wife all her lands, tenements, and hereditaments not previously disposed of, and to vest in her the right and power to acquire, hold, manage, and dispose of property, money, and choses in action, and to bring and maintain suits in her own behalf, free from the control or interference of her husband, unless the court, for good cause, vest such property or powers in trustees, for her use and benefit. [51 v. 377, § 11.]

S. & C. 514.

Change of venue.

SEC. 5704. Upon application of a party, and his or her affidavit that a fair and impartial hearing and determination can not be had before the court in which a petition for divorce or alimony is filed, a change of venue shall be allowed, and the cause removed to any county of the same judicial district for hearing and determination. [51 v. 377, § 13.]

S. & C. 514.

Injunction against husband from disposing of property, etc.

SEC. 5705. A married woman may file her petition in the court of common pleas, setting forth that her husband, from habitual intemperance, or any other cause, is about to waste and squander the property, legal or equitable, money, credits, or choses in action, to which she is entitled in her own right, or any part thereof, or is proceeding, or about to proceed, fraudulently to convert the same, or any part thereof, to his own use, for the purpose of placing the same beyond her reach, and depriving her of the benefit thereof, and the court may enjoin the husband from disposing of, or otherwise interfering with, such property, money, credits, or choses in action, and may appoint a receiver to manage and control the same for the benefit of the wife, and may also make such other order in the premises as it deems just and proper; upon the filing of the petition, a provisional injunction may be allowed as in other cases, with or without bond, at discretion; and such peti-

wife in this state, where both parties had been domiciled, and procured a divorce in another state, in a proceeding in which the court had no jurisdiction of the person, except by constructive service, and of which proceeding the wife had no actual notice: Held, that the domicile of the wife remained unaffected by the desertion of the husband, and that the decree of divorce was no defense to her petition for alimony. *Cox v. Cox*, 19-O. S. 592.

§ 5705. See note to section 5699.

§§ 5706-5710.

tion shall be filed in the county where the petitioner resides, and the husband made a party defendant in the same manner as in the case of a petition for a divorce. [51 v. 377, § 14.] S. & C. 514.

Sec. 5706. No appeal shall be allowed from any judgment or order of the court of common pleas under this chapter, except from an order dismissing the petition without final hearing, or from a final order of judgment granting or refusing alimony, or in cases under section fifty seven hundred and five; when judgment is rendered for both divorce and alimony, the appeal shall apply only to so much of the judgment as relates to the alimony; and when an appeal is taken by the wife, she shall not be required to give bond. [54 v. 131, § 17.] Appeal.
S. & C. 515.

CHAPTER 7.

DOWER.

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5707. How heir may assign dower.
5708. Petition for dower by widow.
5709. Incumbrances may be presented by cross-petition.
5710. Proceedings when land situated in different counties.
5711. Proceedings in case of death of plaintiff before assignment.
5712. Appointment of commissioners to assign dower; duty of sheriff.
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SECTION
5717. Minor heir not to be prejudiced by collusive assignment of dower.
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5719. When widow may elect to be endowed out of proceeds of sale.
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Sec. 5707. When the lands of a deceased person are not incumbered by mortgage, or by judgment obtained against such decedent in his lifetime, the heir, or other person having the next immediate estate of inheritance, may assign to the widow her dower therein by writing, under his hand and seal, particularly describing the same, which, if accepted by the widow, shall be a good assignment in law. [29 v. 249, § 8.] How heir may assign dower.
S. & C. 520.

Sec. 5708. A widow may file her petition for dower in the court of common pleas or superior court, against the heir, or other person having the next immediate estate of inheritance, or any other estate or interest therein, setting forth the right thereto, and describing the tracts of land of which she claims to be endowed; and the court, on the hearing, shall render such judgment as to it appears just and consistent with the rights of all the parties interested therein. [63 v. 33, § 9.] Petition for dower by widow.
S. & S. 310.

Sec. 5709. When the rights of a lessee or lien-holder are shown to the court, by cross-petition filed before judgment, such rights and liens shall be regarded by the court, and no inequality shall be allowed, or any injustice done, to any such lessee or lien-holder. [29 v. 249, § 6.] Incumbrances may be presented by cross-petition.
S. & C. 520.

Sec. 5710. When the lands lie in several counties, the petition must be filed in the county in which the principal messuage of the deceased is situate; and the court of such county shall have complete jurisdiction, and may order the whole dower of such widow to be assigned in any one or more of such counties, and out of any one or more of such tracts of land, if the same may be done without prejudice to the rights of any person claiming title to or holding a lien on such land. [29 v. 249, § 11.] Proceedings when land situated in different counties.
S. & C. 520.

PAGE'S
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OHIO GENERAL CODE
ANNOTATED

CONTAINING

ALL LAWS OF A GENERAL AND PERMANENT NATURE IN FORCE
AT THE DATE OF PUBLICATION, WITH NOTES OF DECISIONS
CONSTRUING THE STATUTES

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panied and followed by cohabitation as husband and wife, the parties being treated and reputed as husband and wife in the community in which they lived, is a good common law marriage, and the children of such marriage are legitimate and can inherit: *Umberhower v. Labus*, 85 O. S. 238, 97 N. E. 832 [affirming *Umberhower v. Umberhower*, 12 O. C. C. (N.S.) 289, 21 O. C. D. 317].

A mutual agreement, entered into in good faith between competent parties, to contract the relation of husband and wife, followed by cohabitation as such, constitutes a valid marriage, even if the agreement was not made in the presence of witnesses: *Umberhower v. Labus*, 85 O. S. 238, 97 N. E. 832 [affirming *Umberhower v. Umberhower*, 12 O. C. C. (N.S.) 289, 21 O. C. D. 317].

Cohabitation and acknowledgment of the marriage relation by a man and woman, but without statutory marriage, do not, in Ohio, constitute a valid marriage on which an indictment for bigamy can be founded: *Bates v. State*, 9 O. C. C. (N.S.) 273, 19 O. C. D. 189 [reversing *State v. Bates*, 4 O. N. P. (N.S.) 502, 17 O. D. (N.P.) 301].

Where the wife is not a party, she is not rendered incompetent as a witness to prove the marriage contract by G. C. § 11495: *Umberhower v. Umberhower*, 12 O. C. C. (N.S.) 289, 21 O. C. D. 317 [affirmed in *Umberhower v. Labus*, 85 O. S. 238].

Marriage can be proved by parol: *Lipen v. Lipen*, 7 Dec. Rep. 141, 1 Bull. 164.

If parties agree to live together as husband and wife, and follow that by present cohabitation, it constitutes a common law marriage, even though prior relations were illicit: *Dirion v. Brewer*, 20 O. App. 298, 151 N. E. 818.

In common law marriage words *de praesenti* need not be spoken by both; the expression by one and acquiescence by the other is sufficient. The expression "now we are man and wife" by the husband construed as a declaration of marriage and not as an opinion of legal effect: *Howard v. Bank*, 21 O. App. 74, 152 N. E. 784.

Common law marriage. Article by Robert Black of the Cincinnati bar. 2 *Cin. L. Rev.* 113.

SEC. 11990. Divorce for aggression of husband. When a divorce is granted because of the husband's aggression, the court shall, if the wife so desires, restore to her any name she had before such marriage and allow such alimony out of her husband's property as it deems reasonable, having due regard to property which came to him by marriage and the value of his real and personal estate at the time of the divorce.

HISTORY.—R. S. § 5699; 91 v. 348; 90 v. 30; 51 v. 377, § 7; S. & C. 512; 114 v. 329. (478). *Ed. 1-1-32.*

Alimony, G.C. § 11991.

Comparative legislation

Restoration of maiden name:

- Ill. Smith-Hurd Rev. Stat. 1933, ch. 40, § 17.
- Ind. Burns' Stat. 1933, § 3-1225.
- Ky. Carroll's Stat. 1936, § 2122.
- Mass. Gen. Laws 1932, ch. 208, § 23.
- Mich. Comp. Laws 1929, § 12737.
- Wash. Remington's Comp. Stat. 1922, § 994.
- W.Va. Code 1937, § 4721.

FORM: Decree for divorce and alimony. Bates § 1381F-18.

References to Page's Digest and Ohio Jurisprudence

Effect and consequences of divorce: *PAGE* Divorce §§ 65, 67, 68, 102, Dower § 53; *O-JUR* Crops § 19, Curtesy § 19, Divorce § 65, Dower § 11, Property § 13.
 Permanent alimony: *PAGE* Divorce §§ 91 et seq., 110 et seq.; *O-JUR* Divorce § 73 et seq.

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See note, G.C. § 11991, citing *Polleggrino v. Pellegrino*.

For the history of G. C. §§ 11990 to 11992, see *Albert v. Albert*, 7 O. App. 156, 28 O. C. A. 226, 29 O. C. D. 271; see, also, *Lape v. Lape*, 62 Bull. 398 [reversed, *Lape v. Lape*, 28 O. C. A. 108, 30 O. C. D. 94, which was affirmed, *Lape v. Lape*, 99 O. S. 143]; *Bail v. Bail*, 47 O. App. 547, 192 N. E. 364, 40 O. L. R. 407.

A decree of divorce in a foreign state does not bar dower in lands lying in this state: *Mansfield v. McIntyre*, 10 O. 27.

A divorce in another state for ill treatment and two years' habitual drunkenness of the husband, is a divorce for the aggression of the husband under this section, although our statute requires three years' drunkenness: *McGill v. Doming*, 44 O. S. 645, 11 N. E. 118.

In a divorce proceeding, a wife who is not the aggressor is said to be a ward of the court: *Lape v. Lape*, 99 O. S. 143, 124 N. E. 51, 6 A. L. R. 187 [affirming *Lape v. Lape*, 28 O. C. A. 108, 30 O. C. D. 94, which reversed *Lape v. Lape*, 62 Bull. 398].

If a divorce is granted to the wife for the husband's aggression, and she is ordered to convey to him realty standing in her name for which he has paid the purchase price, and alimony is awarded to her, she can not, after accepting alimony, attack such decree of conveyance collaterally in a suit in which she seeks partition of such realty: *Sanborn v. Sanborn*, 106 O. S. 641, 140 N. E. 407.

Decree appropriating husband's realty to payment of alimony, entered in one county, may be made lien on realty of defendant in another county: *Reed v. Reed*, 121 O. S. 183, 167 N. E. 684.

If a conveyance is made in obedience to a decree of court, the intention of the grantor is immaterial: *Clough v. Long*, 8 O. App. 420, 28 O. C. A. 423, 30 O. C. D. 185, 63 Bull. 205 (Ed.).

While the duty to allow alimony to the wife is mandatory under the provisions of G. C. §§ 11990 and 11991, yet those sections require the trial court to allow only such alimony as is reasonable and to make the same payable in such manner as is equitable: *McGinnis v. McGinnis*, 9 O. App. 81, 29 O. C. A. 538.

When divorce is granted for aggression of husband, it is error to bar wife of dower: *Kundert v. Kundert*, 21 O. App. 342, 156 N. E. 237.

This section does not confer upon trial court power to require wife to purchase husband's property, or to require her to convey her real estate to husband: *Gucciardo v. Gucciardo*, 5 O.L.A. 597.

When a decree of divorce is granted to a party the decree itself operates to bar the party for whose aggression the divorce is granted of dower in real estate of the successful party: *Kehr v. Kehr*, 14 O.L.A. 475.

Where a divorce is granted to the husband for the wife's aggression, the wife is entitled, as a matter of absolute right, to money accumulated by her before her marriage and retained by her in her individual bank account after marriage, upon the settlement of property rights: *Cullen v. Cullen*, 17 O.L.A. 693.

The trial court may take into consideration the probable future earnings of defendant in determining the amount of alimony: *Burchard v. Burchard*, 25 O.L.A. 380.

A court decreeing divorce to wife and awarding husband an interest in wife's real estate, exceeded its power in barring wife of dower in husband's property: *Budai v. Budai*, 38 O. App. 79, 175 N. E. 624, 34 O.L.R. 84.

Trial court was unauthorized to modify wife's rights in property in wife's name, where wife had been granted divorce for husband's aggression: *Diehl v. Diehl*, 46 O. App. 188, 188 N. E. 310, 39 O.L.R. 320.

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In an action for divorce and alimony, testimony regarding the amount or value of property owned by the defendant previous to the time of the divorce, is admissible for the purpose of obtaining a complete picture of the married life of the parties, although its exclusion may not constitute prejudicial error, as an alimony award can be based only on the value of the real and personal estate of the defendant at the time of the divorce: *Rahn v. Rahn*, 48 O.App. 179, 1 O.O. 173, 192 N.E. 798.

In an action for divorce, alimony and custody of children, in which the court awards divorce and alimony and decrees custody of a child to the wife, and awards a sum of money payable in installments for the support of the wife as well as the child, there is an implied reservation of jurisdiction in the court to modify its decree, not only for custody of the child during minority, but also to modify the amount to be paid for its support: *Heckert v. Heckert*, 57 O.App. 421, 11 O.O. 115, 14 N.E.(2d) 428.

In the absence of a motion to make it more definite and certain, a petition for divorce and alimony will authorize an order allowing alimony pendente lite where it alleges extreme cruelty on the part of the husband, specifying that he failed to resent insults offered to her by another in his presence, and gross neglect of duty, specifying failure to provide her suitable clothing: *Thomas v. Thomas*, 18 O. C. C. (N.S.) 368, 33 O. C. D. 99.

Under G. C. § 11990, money due for wages is property out of which alimony may be allowed: *Howe v. Howe*, 21 O. N. P. (N.S.) 324, 29 O. D. (N.P.) 413.

A woman, believing her first husband dead, remarried. After her second marriage she learned that her first husband was alive. She then, without getting a divorce from her first husband, sued for divorce from her second husband on the grounds of cruelty and gross neglect of duty, and asked for alimony pendente lite. Such second marriage was an absolute nullity; she is not, and never was, the wife of the defendant, and so she is not entitled to alimony pendente lite in an action against him for divorce: *Fultz v. Fultz*, 9 O. N. P. (N.S.) 593, 21 O. D. (N.P.) 159.

SEC. 11991. Alimony in such cases. Such alimony may be allowed in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or instalments, as the court deems equitable.

HISTORY.—R. S. § 5699; 91 v. 348; 90 v. 30; 51 v. 377, § 7; S. & C. 512; 114 v. 320 (478). Ed. 1-1-22.

Cross-references to related sections

Dower is barred by divorce, G.C. § 10502-1.
Foreign divorce, G.C. § 11979.
Injunction against husband to prevent disposing of his property, G.C. § 11996.

Comparative legislation

Alimony:

- Cal. Deering's Civil Code 1937, § 137.
- Fla. Comp. Gen. Laws 1927, § 4986 et seq.
- Ill. Smith-Hurd Rev. Stat. 1933, ch. 40, §§ 16, 19 et seq.
- Ind. Burns' Stat. 1932, §§ 3-1217, 3-1218.
- Iowa Code 1931, §§ 10481, 10491.
- Ky. Carroll's Stat. 1936, §§ 2121, 2122.
- La. Dart's Civil Code 1932, arts. 160, 230 et seq.
- Mass. Gen. Laws 1932, ch. 208, § 34 et seq.
- Mich. Comp. Laws 1929, §§ 12745 et seq., 12770 et seq.
- Miss. Hemingway's Code 1927, § 1483.
- Mo. Rev. Stat. 1929, §§ 1355, 1358.
- N.Y. Civil Prac. Act, § 1169 et seq.
- N.Car. Code 1931, § 1665 et seq.
- Penna. Purdon's Stat. 1936, title 23, § 45 et seq.
- Tenn. Williams' Ann. Code, § 8446.
- W.Va. Code 1937, § 4715.

Permanent alimony: **PAGE** Divorce §§ 91 et seq., 110 et seq.; **OUR** Divorce §§ 73 et seq., 88 et seq., 92 et seq., 127 et seq., Dower §§ 111, 113, Wills § 188.

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24. Limitations and dormancy
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26. Review

See notes, G.C. § 11990, citing *Rahn v. Rahn* and *Heckert v. Heckert*.

1. Nature

For history of this section see *Ball v. Ball*, 47 O.App. 547, 192 N.E. 364, 40 O.L.R. 407.

An action to seize property of a nonresident in divorce and alimony proceedings is substantially an action in rem: *Benner v. Benner*, 63 O. S. 220, 53 N. E. 569; *Young v. Young*, 10 O. App. 351, 29 O. C. A. 524 [motion to certify record overruled, *Young v. Young*, 16 O. L. R. 61, 63 Bull. 184].

A proceeding for the allowance of alimony is statutory; and does not invoke equity power: *DeWitt v. DeWitt*, 67 O. S. 340, 66 N. E. 136; *Marleau v. Marleau*, 95 O. S. 162, 115 N. E. 464; *West v. West*, 100 O. S. 33, 124 N. E. 888; *Durham v. Durham*, 104 O. S. 7, 135 N. E. 280; *Thiessen v. Moore*, 105 O. S. 401, 137 N. E. 906, 20 O. L. R. 166 [affirming in part and reversing in part, *Thiessen v. Moore*, 14 O. App. 460].

A divorced wife's claim, under a decree for alimony, is only that of a judgment creditor against which homestead exemption obtains: *Cooper v. Cooper*, 24 O. S. 488.

A decree for money for alimony is not a debt within the constitutional provision which forbids imprisonment for debt: *State ex rel. Cook v. Cook*, 66 O. S. 566, 64 N. E. 567, 53 L. R. A. 625.

Alimony is said to be in the nature of a partition of property between husband and wife: *Cook v. Cook*, 66 O. S. 566, 64 N. E. 567, 53 L. R. A. 625.

A decree for alimony does not become dormant by failure to issue execution within five years: *Lemert v. Lemert*, 72 O. S. 364, 74 N. E. 194, 106 Am. St. 621; *Peeke v. Fitzpatrick*, 74 O. S. 396, 78 N. E. 519.

A money decree for alimony is not barred by bankruptcy: *Lemert v. Lemert*, 72 O. S. 364, 74 N. E. 194, 106 Am. St. 621.

Alimony is not due and payable as a debt, damages or penalty, but is an award by the court upon considerations of equity and public policy, and is founded upon the obligation which grows out of the marriage relation that the husband must sup-

port his wife, which obligation continues after legal separation without her fault: *Fickel v. Granger*, 83 O. S. 101, 33 N. E. 527, 32 L. R. A. (N.S.) 270.

Alimony can not, either before or after payment thereof, be subjected to the payment of debts which existed prior to the allowance thereof: *Fickel v. Granger*, 83 O. S. 101, 33 N. E. 527, 32 L. R. A. (N.S.) 270.

A divorce and alimony case is not within the statute requiring cases to be tried in order: *McClatchy v. McClatchy*, 19 O. C. C. 201, 10 O. C. D. 262.

Alimony is an allowance to a wife from the estate of her husband for her support, and upon her remarriage its payment becomes inconsistent and incompatible with accepted ideas regarding the institution of marriage: *Baker v. Baker*, 4 O. App. 170, 21 O. C. C. (N.S.) 590, 25 O. C. D. 243, 60 Bull. 25 (Ed.) [for opinion fixing alimony in this case, see *Baker v. Baker*, 2 O. App. 321, 18 O. C. C. (N.S.) 302, 24 O. C. D. 376].

A decree for alimony is distinguished from an ordinary judgment in that it is regulated by statute and calls for sound discretion by the court in fitting the judgment as to the amount, time and manner of payment to the facts of the case in hand: *Baker v. Baker*, 4 O. App. 170, 21 O. C. C. (N.S.) 590, 25 O. C. D. 243, 60 Bull. 25 (Ed.) [for opinion fixing alimony in this case, see *Baker v. Baker*, 2 O. App. 321, 18 O. C. C. (N.S.) 302, 24 O. C. D. 376].

Alimony is an allowance for the support of the wife: *Sager v. Sager*, 5 O. App. 489, 26 O. C. C. (N.S.) 522, 27 O. C. D. 559.

If property is conveyed to a wife in fee simple in payment of alimony, the husband can not recover such property upon her death: *Clough v. Long*, 8 O. App. 420, 28 O. C. A. 423, 30 O. C. D. 185, 63 Bull. 205 (Ed.).

Calling an allowance for the support of minor children, "alimony," in a motion for an order to increase it does not change its nature: *Monahan v. Monahan*, 14 O. App. 116.

In wife's action for alimony based on husband's misconduct which caused separation, general denial raised direct issue of misconduct, ill treatment, neglect of duty, and extreme cruelty, as if they had been specifically pleaded: *Pickler v. Pickler*, 46 O.App. 82, 187 N.E. 749, 39 O.L.R. 269.

In a suit for alimony only, alimony comprehends an allowance for the purpose of maintenance and means of support during separation and not a division of property: *Daily v. Daily*, 48 O.App. 83, 1 O.O. 121, 192 N.E. 237, 40 O.L.R. 395.

Where a general adjudication for alimony is made it will be presumed to be regularly made and will not be presumed to be void unless the illegality is made apparent from the record: *Converse v. Converse*, 13 O.L.A. 455.

Where divorce decree, granting divorce to husband for wife's aggression, incorporates a property settlement by the terms of which the husband is to pay taxes, assessments, and mortgage installments on property held in their joint names, such payments do not constitute alimony: *Traylor v. Traylor*, 14 O.L.A. 536.

Whenever money or property is set off to a wife or a husband because of the aggression of the other, the same is classed as alimony: *Reed v. Reed*, 20 O.L.A. 491.

In a decree for alimony proper, the jurisdiction of the court which awards it is said to be continuous; and such decree is said to be subject to modification, while if it is mere judgment for the payment of money, its rendition exhausts the powers of the court which entered such decree: *Fenn v. Fenn*, 23 O. C. C. (N.S.) 205, 34 O. C. D. 215.

It is said that the obligation of a husband to support his wife continues after the divorce, and this obligation is ordinarily enforced by a decree for alimony: *Daniels v. Daniels*, 17 O. N. P. (N.S.) 605, 26 O. D. (N.P.) 575.

Alimony is not property in the broad sense in which the term is used. It is property set aside for the specific purpose of supporting and maintaining the wife. It can not be applied toward the payment of the debts of the wife which were incurred before the decree for alimony was entered; and it is not an asset in equity which may be reached by her former creditors: *Daniels v. Daniels*, 17 O. N. P. (N.S.) 605, 26 O. D. (N.P.) 575.

2. When granted

Alimony may be decreed a wife as against a bigamist: *Vanvalley v. Vanvalley*, 19 O. S. 588.

An action for alimony may be maintained, although an ex parte foreign divorce had been granted: *Woods v. Waddle*, 44 O. S. 449, 8 N. E. 297.

Where a wife obtains a divorce from her husband in this state without a decree for alimony, he being personally served with process, she can not thereafter maintain a separate action against him for alimony: *Weidman v. Weidman*, 57 O. S. 101, 48 N. E. 506.

Where the parties are about forty years of age, in good health, have no children, have lived together three years, and the wife has property of the value of two thousand three hundred dollars and is in receipt of a salary of ninety-eight dollars per month for ten months of the year, and the husband has no property and receives a salary of one hundred dollars per month, a judgment refusing the wife alimony, other than three hundred dollars already paid her as temporary alimony and fifty dollars to be paid as an attorney fee to her counsel, will not be reversed: *McGinnis v. McGinnis*, 9 O. App. 81, 29 O. C. A. 588.

When a divorce is granted to the wife, the court may award alimony, although there is no claim therefor; and it is not necessary that the petitioner aver, or the proof show, that the husband has property: *Downing v. Downing*, 18 O. App. 223 [reversing 24 O. N. P. (N.S.) 241].

In a divorce action, where the petition contains a prayer for general relief, the court may settle the rights of the parties respecting alimony: *Ball v. Ball*, 47 O.App. 547, 192 N.E. 364, 40 O.L.R. 497.

Court may award alimony in divorce proceedings although not prayed for: *Borst v. Borst*, 14 O.L.A. 525.

A wife, living separate and apart from her husband and not supported by him, has a right to bring an action for alimony, but such action must be brought against the husband during his lifetime; under no circumstances can she bring an original action for alimony against the heirs or the estate of her deceased husband: *Ebert v. Ebert*, 15 O.L.A. 245.

A delay of twenty-four years after a husband has secured a divorce in another state, before applying for alimony, during all of which time the husband was the owner of real estate situated in the county which might have been subjected to the payment of alimony and during which time the wife has remarried, makes a claim for alimony stale, and the courts will not enforce it: *Morgan v. Wakelin*, 24 O. C. C. (N.S.) 68, 34 O. C. D. 487 [affirmed, *Morgan v. Wakelin*, 72 O. S. 656].

The court will make an allowance to a wife out of the property of her husband although the trial court finds that she is not entitled to a divorce, but that the husband is entitled to a divorce by reason of a gross neglect of duty, if the wife has contributed substantial services for a period of ten years and has borne five children: *McColgan v. McColgan*, 19 O. N. P. (N.S.) 254.

3. Agreement of parties

Under a prayer for general relief the court may settle the rights of the parties as to alimony and carry out any agreement concerning the same the court deems just: *Julier v. Julier*, 62 O. S. 90, 56 N. E. 661, 78 Am. St. 697.

When, upon granting a divorce, a decree for alimony, rendered by a court having jurisdiction,

In pursuance of an order the wife to be of dower in land; the wife fails to do as such release: N. E. 661, 78 Am. St. 697.

The act of the husband that she will settle their property will dismiss a suit brought in violation of her prosecution of husband, and obtain for which enforcement enjoined unless under such contract: O. S. 510, 140 N. E. 100.

Where an ante-nuptial agreement between husband and wife as to interest in the property of the marriage, such gross neglect granted a divorce the antenuptial contract reasonable alimony: 399, 30 O. C. A. 497.

A judgment for wife and minor child alimony action in the parties, the court may modify the same in the income of the wife, but condition and ear may not be further modified: *Blank v. Blank*, 19 N.E.(2d) 868.

Where the court agreement a part of the property of the husband by the wife, it may be applied as a part of the entry: *Borst v. Borst*, 20 O. C. D. 185.

The most that a court can do in an agreement is that would be evident in a divorce, but articles of separation of the judgment awarded: 14 O.L.A. 525.

When articles of agreement are presented to the trial court in a divorce, the court may confirm the agreement as to the parties: *Borst v. Borst*, 20 O. C. D. 185.

The court may grant a divorce by agreement approved by the parties agreed to a decree: *Nicholson v. Nicholson*, 14 O. C. D. 203.

A judgment for the wife, to which she is not awarded, is not a bar to a subsequent action for alimony, relieving the wife from assuming the custody of an orphan as a condition of the wife: *Frick v. Frick*, 14 O. C. D. 203.

If a suit for alimony is brought between husband and wife, which the husband has agreed to a trustee and charge the court attorney of the expenses incurred in the word "fees" regarded as referring to fees, entered into a trust and her attorney, *Dolle v. Roberts*, 397 [affirmed, *Wakelin v. Wakelin*, 72 O. S. 427].

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a broad sense in property set aside partitioning and maintenance toward the children which were in alimony was entered; which may be Daniels v. Daniels, (N.P.) 575.

life as against a husband, 19 O. S. 538.

maintained, alimony had been granted, 149, 8 N. E. 297, from her husband for alimony, he refused, she can not sue against him, 57 O. S. 101,

ten years of age, have lived together, has property of hundred dollars ninety-eight dollars of the year, and receives a salary. A judgment return three hundred dollars alimony and attorney fee to her, McGinnis v. McGinnis, 88.

the wife, the court there is no claim that the petition against husband has property, App. 223 [reverses]

petition contains court may settle alimony; Ball 4, 40 O.L.R. 407, divorce proceedings, v. Borst, 14

apart from her husband, has a right but such action cannot during his life can she bring against the heirs of husband: Ebert v.

after a husband's estate, before which time the estate situated in state subjected to alimony which time aim for alimony case is: Morgan 34 O. C. D. 487, S. 656].

as to a wife out through the trial led to a divorce, to a divorce by if the wife has for a period of time: McColgan

if the court may to alimony and the same the 62 O. S. 90, 56

and a decree for jurisdiction,

In pursuance of an agreement between the parties, orders the wife to execute a release of her right of dower in lands of the husband, the decree, if the wife fails to perform the same, will operate as such release: Julier v. Julier, 62 O. S. 90, 56 N. E. 667, 78 Am. St. 697.

The act of the wife in assuring the husband that she will perform a prior contract, which settles their property rights on separation, and will dismiss a suit for alimony which she has brought in violation of such contract, followed by her prosecution of such suit in the absence of her husband, and obtaining a decree therein, is fraud, for which enforcement of such judgment will be enjoined unless she restores property received under such contract: McEntire v. McEntire, 107 O. S. 510, 140 N. E. 328.

Where an antenuptial contract provided that if husband and wife should cease to live together as husband and wife she should not have any interest in the property owned by him at the time of the marriage, and the husband was guilty of such gross neglect which resulted in the wife being granted a divorce from him she is not barred by the antenuptial contract from being awarded reasonable alimony: Kennedy v. Kennedy, 11 O. App. 399, 30 O. C. A. 497.

A judgment for alimony for the support of the wife and minor child entered in a divorce and alimony action in accordance with agreement of the parties, the court retaining jurisdiction to modify the same only in the event of reduction in the income of the husband, and having once modified same "because of the changed financial condition and earning capacity" of the husband, may not be further modified on the same state of facts: Blank v. Blank, 55 O.App. 388, 9 O.O. 96, 9 N.E.2d) 868.

Where the court did not make a separation agreement a part of its judgment, a payment made by the husband before the entry is made can not be applied as a payment of the alimony decreed by the entry: Borst v. Borst, 14 O.L.A. 525.

The most that can be said for a separation agreement is that under proper proceedings it would be evidential and probably of great probative force, but the mere existence alone of the articles of separation can not set aside or modify the judgment awarding alimony: Borst v. Borst, 14 O.L.A. 525.

When articles of separation are presented to the trial court in a divorce or alimony proceeding he may confirm the agreement of the parties if the agreement appears to be just and reasonable: Borst v. Borst, 20 O.L.A. 184.

The court may correct its journal entry granting a divorce by including therein a separation agreement approved by the court and which the parties agreed should be made a part of the decree: Nicholson v. Nicholson, 20 O.L.A. 561.

A judgment for a monthly sum as alimony to the wife, to whose custody a child has been awarded, is not affected by an agreement of the parties, relieving the husband of the alimony, he assuming the custody of the child, which he put in an orphan asylum, whence it was reclaimed by the wife: Fricke v. Fricke, 13 O. C. C. 433, 10 O. C. D. 203.

If a suit for alimony is compromised by an agreement between the husband and the wife by which the husband is to convey certain property to a trustee and the trustee is to "pay and discharge the court costs and the fees due to the attorney of the wife for services rendered and expenses incurred by him" in an action for alimony, the word "fees" in a trust instrument will not be regarded as referring in any way to an agreement as to fees, entered into between the cestui que trust and her attorney prior to the creation of the trust and without the knowledge of the grantor: Dolle v. Roberts, 14 O. C. C. (N.S.) 337, 23 O. C. D. 397 [affirmed, without opinion, Dolle v. Roberts, 90 O. S. 427].

For an action for breach of a guaranty alleged to be contained in a contract for alimony, see Hackenberg v. Hackenberg, 17 O. C. C. (N.S.) 456, 32 O. C. D. 223 [affirmed, without opinion, Hackenberg v. Hackenberg, 88 O. S. 567].

It is no defense to a prosecution under G. C. § 13008 that the accused entered into a contract with his wife after she had obtained a divorce and the custody of the minor children, for his misconduct by which she agreed to furnish the children with proper support; and that after she became unable to support them, (the accused offered to support them if she would surrender the custody of such children to him, which she refused to do: Moore v. State, 18 O. C. C. (N.S.) 482, 24 O. C. D. 487.

In an action to terminate an allowance of alimony it is error for a court to refuse to allow evidence tending to show that the allowance named in the decree was fixed by agreement, and that this was brought to the knowledge of the court at the time the decree was granted: Marklein v. Marklein, 29 O. C. A. 232, 35 O. C. D. 520.

Parties in cases of divorce, separation and alimony may negotiate and contract as to a division of their property, and the validity and fairness of such contracts are measured by the same standards as other contracts: Address v. Address, 7 O. N. P. 283, 9 O. D. (N.P.) 559.

Agreement as to alimony is not unlawful, but should be submitted to the court, and is not binding if it dissents. It is the court's duty to scrutinize it and see that the wife is not imposed upon. But the wife may abide by the contract instead of the court's allowance, if she chooses: Brown v. Brown, 7 O. N. P. 605, 5 O. D. (N.P.) 568.

Where a decree for alimony is an adoption of an agreement between the parties, it is not the judgment of the court based upon evidence, but it is simply the agreement of the parties carried into the decree; it is final and may not be modified by the court thereafter: Sargent v. Sargent, 8 O. N. P. 233, 11 O. D. (N.P.) 218.

Where the evidence shows that the wife was not deceived as to the value of her husband's estate, a settlement made, in an action for divorce, will not be set aside after his death: Sturdevant v. Sturdevant, 11 O. N. P. (N.S.) 412, 24 O. D. (N.P.) 97.

An agreement whereby the husband was to pay two thousand dollars in full of alimony and withhold evidence of adultery charged by him in a cross-petition being affirmed by the wife after she became sole, by divorce, and payment having been made, is binding and payment of part under a decree for a weekly amount is a valid consideration for reducing the amount, and plaintiff can not impeach the decree as fraudulent in suppressing evidence: Neely v. Neely, 9 Dec. Rep. 201, 11 Bull. 191.

For modification of consent decree, see 20, herein.

4. What may be decreed as alimony

Real property may be decreed a wife as alimony in fee: Broadwell v. Broadwell, 21 O. S. 657.

A growing crop, the annual result of agricultural labor, sown by a husband on his land pending a suit for divorce and alimony, brought by his wife, passes by a decree which gives the land to the wife as alimony, although such crop is not in terms described or referred to in the decree: Herron v. Herron, 47 O. S. 544, 25 N. E. 420, 21 Am. St. 854, 9 L. R. A. 667.

An estate in remainder in real and personal property, which remainder is vested as to interest, though contingent as to amount, may be decreed to the wife as alimony: MinYoung v. MinYoung, 47 O. S. 501, 25 N. E. 168.

Where a decree for divorce is granted to a wife on account of the aggression of her husband, an allowance of alimony may be based on future personal earnings or wages of the husband. In such a case the court is not necessarily limited to a consideration of property in possession of the husband at time of decree: Lape v. Lape, 99 O. S. 143, 124

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N. E. 51, 6 A. L. R. 187 [affirming *Lape v. Lape*, 28 O. C. A. 108, 30 O. C. D. 94, which reversed *Lape v. Lape*, 62 Bull. 398].

It is not prejudicial error for the trial court in an action for divorce and alimony to refuse to allow evidence offered by the plaintiff that the defendant, by reason of his habits, is likely to dissipate the remainder of his property: *Rahn v. Rahn*, 48 O.App. 179, 1 O.O. 173, 192 N.E. 798.

In an action for divorce and alimony, testimony regarding the amount or value of property owned by the defendant previous to the time of the divorce, is admissible for the purpose of obtaining a complete picture of the married life of the parties, although its exclusion may not constitute prejudicial error, as an alimony award can be based only on the value of the real and personal estate of the defendant at the time of the divorce: *Rahn v. Rahn*, 48 O.App. 179, 1 O.O. 173, 192 N.E. 798.

The right of a divorced wife to alimony does not constitute her a creditor of the insured husband and, the beneficiaries of the insurance policy not being "dependents" of the insured or persons expressly to be protected by G.C. § 9394, the award of the property in the insurance policy as alimony is not in conflict with that section: *Foulks v. Foulks*, 49 O.App. 291, 3 O.O. 207, 197 N.E. 201.

It is not necessary as a prerequisite to awarding alimony to a wife that the court find that the husband has property, real or personal, where there is any source from which future installments may be paid: *Pellegrino v. Pellegrino*, 7 O.O. 106 (App.).

An award of permanent alimony consisting of an equity in real estate worth about twenty-five hundred dollars was held not an excessive award: *Raish v. Raish*, 13 O.L.A. 62.

Where a wife is granted a divorce it is the mandatory duty of the court to allow alimony, but the amount of it is within the judicial discretion of the trial court; the fact that the husband is out of employment, and all other facts in the case, including the source from which real estate came, should be considered in fixing alimony: *Stuart v. Stuart*, 15 O.L.A. 535.

Alimony, where granted to a wife on the aggression of her husband, may include both an allowance for maintenance, which must be paid, although the husband possesses an estate, and also a share of the estate where one has been accumulated by their joint efforts during their married life: *Madden v. Madden*, 5 O. N. P. (N.S.) 593, 18 O. D. (N.P.) 167 [reversed, *Madden v. Madden*, 11 O. C. C. (N.S.) 238, 21 O. C. D. 30, which was affirmed, *Madden v. Madden*, 83 O. S. 506; for opinion on motion in common pleas court, see *Madden v. Madden*, 18 O. D. (N.P.) 161, 4 O. L. R. 579].

If a husband has no estate in possession, but he has a vested remainder, the court may make an allowance to the wife based on the present value of such remainder; and such allowance may be made a lien upon the husband's interest in such realty: *McColgan v. McColgan*, 19 O. N. P. (N.S.) 254.

In making an allowance to the wife in case of divorce, the personal property may be divided in gross, the household goods being awarded to the wife and the farming implements to the husband: *McColgan v. McColgan*, 19 O. N. P. (N.S.) 254.

Under G. C. § 11991, alimony may be decreed to be payable either in gross or in installments out of money derived from the business, trade or occupation of the former husband: *Howe v. Howe*, 21 O. N. P. (N.S.) 324, 29 O. D. (N.P.) 413.

In a proceeding for alimony a bank may be enjoined from paying a deposit to a nonresident husband, who is served only by publication; and it may be ordered to pay such deposit to the wife, as alimony. Such payment is a defense in an action against the bank by the husband: *Pennington v. Bank*, 243 U. S. 269, 61 L. Ed. 713, 37 S. Ct. 282, L. R. A. 1917F, 1159 [affirming *Pennington v. Bank*, 92 O. S. 517].

5. Installments

When alimony is decreed in installments, execution may be had for the installments as they become due: *Piatt v. Piatt*, 9 O. 37; see, also, *Breen v. Breen*, 14 O. N. P. (N.S.) 219, 31 O. D. (N.P.) 612.

Final alimony may be in the shape of an annuity or periodical installments, and with or without a sum in gross also: *Piatt v. Piatt*, 9 O. 37.

Even if a decree for alimony only payable in installments does not limit such payment to the duration of coverture, the law so limits it; and installments which fall due after the death of the husband can not be recovered: *Lockwood v. Krum*, 34 O. S. 1; *Graff v. Graff*, 99 O. S. 448, 125 N. E. 72, 16 O. L. R. 513 [reversing *Graff v. Graff*, 6 O. App. 260, 27 O. C. A. 445, 29 O. C. D. 504].

A decree for alimony, payable in installments, in a suit for alimony alone, in one state, will not support an action as on a final judgment for a fixed sum in another state: *Gilbert v. Gilbert*, 83 O. S. 265, 94 N. E. 421, 35 L. R. A. (N.S.) 521.

If a married woman has obtained a decree for alimony payable in installments in a court of Ohio, and subsequently her husband brings suit for divorce in South Dakota, she may appear in court and contest such suit without submitting to the court for its consideration the order and decree of the Ohio court awarding temporary alimony; and if she did not do so she may subsequently recover in action in Ohio, the amount of the unpaid installments under the original decree of the Ohio court with interest: *Gilbert v. Gilbert*, 90 O. S. 417, 108 N. E. 1121.

A decree for alimony may provide that it be made in weekly payments of specified sums: *Lape v. Lape*, 99 O. S. 143, 124 N. E. 51, 6 A. L. R. 187 [affirming *Lape v. Lape*, 28 O. C. A. 108, 30 O. C. D. 94, which reversed *Lape v. Lape*, 62 Bull. 398].

Where, upon the granting of a divorce to the wife for aggressions of the husband's real and equitable division of the husband's real and personal estate made and the portion retained by the husband is ordered to be "held and owned by him, free and clear from the inchoate dower estate" of the wife, and the wife is further awarded, as alimony, one hundred dollars per month, payments to continue so long as she remains unmarried, in the absence of contract or statutory provision to the contrary, such decree with respect to the installment alimony payments will be held not to embrace periods beyond the death of the husband: *Snouffer v. Snouffer*, 132 O.S. 617, 9 O.O. 14, 9 N.E.(2d) 621.

An order for alimony payable in installments, over which the court reserves the right of modification, will not support an action for a modification, the remedy being a modification of the order by reducing it to one for the payment of a lump sum: *Meister v. Day*, 20 O. App. 224, 151 N. E. 786.

Where a wife, having previously obtained an alimony decree only, payable in installments, brings suit in the same court to obtain a lump sum judgment, service by publication upon her nonresident husband will not give the court jurisdiction to grant a personal judgment against such defendant: *Whitaker v. Whitaker*, 52 O.App. 223, 6 O.O. 316, 3 N.E.(2d) 667.

Where there is a continuing order to pay alimony in monthly installments with the reservation in the court of the right to reduce the sum specified in the event the court be convinced that the defendant no longer is able to meet the stipulated monthly installments, the court retains a continuing jurisdiction not to modify but to enforce such contracts carried into and made a part of the final decree, in which decree it is ordered that the respective parties perform in manner and form as by the terms of their contract they agree to perform. A provision in the final decree that judgment be entered for the monthly installments for which execution is awarded is simply an alternative and an additional remedy provided the plain-

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tiff and not an exclusive remedy: Fullerton v. Fullerton, 14 O.L.A. 472.

Where a wife obtains a decree for divorce, with an order that the husband pay to her alimony in a stipulated sum per month until the gross amount allowed has been paid, the judgment for alimony can not be defeated or a commitment to jail for failure to pay avoided by the subsequent marriage of the defendant to another woman, and the setting up by him of the claim that all his meager salary is required to support his new family: Hoffman v. Hoffman, 8 O. C. C. (N.S.) 550, 18 O. C. D. 658.

An action may be brought on a foreign decree which awards alimony payable in installments, if execution has subsequently been awarded therefor by such foreign court: Woodward v. Woodward, 16 O. App. 12 [motion to certify record overruled, Woodward v. Woodward, 20 O. L. R. 319].

6. Transfer to defeat alimony

An injunction may be granted pending the trial of an action for divorce and alimony to prevent alienation of certain real estate of the husband charged with certain equities in favor of the wife: Tolerton v. Williard, 30 O. S. 579.

Property conveyed away by defendant to defeat any future allowance of alimony, and property conveyed away in trust to satisfy alimony, if any shall be allowed, may be described in the petition and relief given. It is not a misjoinder to ask enforcement of the trust in a divorce and alimony case, for, by G. C. §§ 11992 and 11996, any interest of the defendant in property may be set up. If the property is described, injunction is not necessary, for the suit is *lis pendens*: Fletcher v. Fletcher, 15 O. C. C. 271, 7 O. C. D. 605.

Where a wife deeded property to her husband for a consideration of one dollar, and he sells it for half its value in anticipation of an alimony suit, her dower at present value and also alimony to the extent of the deficiency will be charged against the purchasers. They are chargeable with notice: Tate v. Tate, 19 O. C. C. 532, 10 O. C. D. 321.

A mortgage given by a husband to secure a pretended indebtedness, but, in fact, without consideration and for the sole purpose of defeating alimony, will be set aside against her claim therefor, where no rights of innocence of third parties intervene: Chittenden v. Chittenden, 22 O. C. C. 498, 12 O. C. D. 526.

A wife may maintain an action against persons who conspire with her husband to defraud her of her dower in an equitable estate, although she had not recovered a judgment for alimony, at the time of such fraudulent conveyance: Iddings v. Whitacre, 1 O. App. 223, 19 O. C. C. (N.S.) 336, 24 O. C. D. 427.

If a restraining order has issued in a proceeding for alimony, enjoining the defendant from disposing of certain realty or from encumbering it, it is a violation of such restraining order for him to confess judgment in an action brought against him by one to whom he is indebted: Loan & Building Co. v. Concrete Co., 6 O. App. 43, 28 O. C. A. 399, 30 O. C. D. 226.

A decree for alimony in a divorce case, transferring property of the husband to the wife, is operative as against the defendant, and those who participate with him in a fraudulent conveyance after the filing of the petition but before actual service of summons, and against their grantees with constructive notice and not for value, after such fraudulent conveyance has been set aside by a court of equity: Hamilton v. Rudy, 4 O. N. P. (N.S.) 427, 17 O. D. (N.P.) 179.

7. Jurisdiction

A divorce, alimony and custody of a child having been decreed to a woman, her removal from the state and subsequent marriage, pending an appeal to the district court as to alimony, will not deprive the latter court of power to decree alimony: King v. King, 38 O. S. 370.

A court has jurisdiction to make allowance of alimony against a nonresident defendant if the property is within the jurisdiction of the court: Benner v. Benner, 63 O. S. 220, 58 N. E. 569 [followed, Transit Co. v. Beeman, 81 O. S. 509; Pennington v. Bank, 92 O. S. 517, which affirmed, without opinion, court of appeals, which affirmed, Pennington v. Bank, 11 O. N. P. (N.S.) 620, 22 O. D. (N.P.) 32, and was affirmed, Pennington v. Bank, 243 U. S. 269]; Young v. Young, 10 O. App. 351, 29 O. C. A. 524 [motion to certify record overruled, Young v. Young, 16 O. L. R. 61, 63 Bull. 184]; Pennington v. Bank, 11 O. N. P. (N.S.) 620, 22 O. D. (N.P.) 32 [affirmed by court of appeals, which was affirmed, without opinion, Pennington v. Bank, 92 O. S. 517, which was affirmed, Pennington v. Bank, 243 U. S. 269].

If a suit for alimony is appealed from the court of common pleas to the court of appeals, and no objection to the right of the appellant to appeal such case is made until after a final decree is rendered, and a motion for a new trial is overruled, the defeated party can not be heard on a motion to dismiss such appeal, even though he contends that the court of appeals has no jurisdiction in the alimony under Art. IV, § 6 of the constitution of Ohio: Cadwell v. Cadwell, 93 O. S. 23, 112 N. E. 148 [affirming Cadwell v. Cadwell, 17 O. C. C. (N.S.) 528, 25 O. C. D. 53].

A judgment which a court has jurisdiction to render presumes a finding by the court of all things necessary and sufficient to support such judgment, in the absence of a record to the contrary: Bly v. Smith, 94 O. S. 110, 113 N. E. 659.

The jurisdiction of a court in an action of divorce, alimony and the custody of minor children, when once regularly attached, is a continuing jurisdiction over the subject matter and the parties: Addams v. State, ex rel., 104 O. S. 475, 135 N. E. 667.

Where a decree allowing alimony was appealed to the circuit court and a decree in the latter court was remanded for execution, its jurisdiction is not continuing, but a later application on new facts to modify the decree must be in the common pleas and not in the circuit court: Meissner v. Meissner, 11 O. C. C. 1, 5 O. C. D. 305.

A decree for alimony in a lump sum is subject to the control of the court; and it may be modified in view of changed conditions, even after the term at which such decree was rendered: Sager v. Sager, 5 O. App. 489, 26 O. C. C. (N.S.) 522, 27 O. C. D. 559.

If a court has jurisdiction to commit for contempt, for refusing to comply with a decree which orders the payment of alimony in gross, and it is claimed that error intervenes, habeas corpus will not lie as a means of reviewing such decree. If such decree can be reversed, this must be done by proceedings in error: In re Whallon, 6 O. App. 80, 26 O. C. C. (N.S.) 167.

While as a general rule the jurisdiction of a court in alimony proceedings is a continuing jurisdiction, it does not necessarily follow that every decree in alimony may be open to change or modification, and that the court may not by its decree, or the parties by their agreement, when the same has been judicially sanctioned by a decree of the court, completely foreclose any right to a future revision or change thereof: Clough v. Long, 8 O. App. 420, 28 O. C. A. 423, 30 O. C. D. 185, 63 Bull. 205 (Ed.).

When a gross sum is allowed as and for alimony, and full payment thereof has been made, such allowance is generally recognized as a final adjudication of the rights of the parties, and the court's jurisdiction is at an end: Clough v. Long, 8 O. App. 420, 28 O. C. A. 423, 30 O. C. D. 185, 63 Bull. 205 (Ed.).

Real estate decreed in fee simple as an allowance in gross for alimony is final in so far as it relates to such property, and the court has no jurisdiction to modify or change such a decree at

a subsequent term: *Clough v. Long*, 8 O. App. 420, 28 O. C. A. 423, 30 O. C. D. 185, 63 Bull. 295 (Ed.).

A decree for alimony is a decree in personam and can not be based upon constructive service: *Stephenson v. Stephenson*, 54 O.App. 239, 6 O.O. 559, 6 N.E.(2d) 1005.

When, in a wife's action for divorce, it is impossible to have personal service on the husband, her right to alimony continues until adjudicated notwithstanding the fact that the parties are no longer man and wife: *Stephenson v. Stephenson*, 54 O.App. 239, 6 O.O. 559, 6 N.E.(2d) 1005.

When the wife filed her action for divorce, it was impossible to have personal service on the husband as he could not be found, and constructive service under the statute had to be resorted to in said action, it was legally impossible to obtain a decree in her favor for alimony: *Stephenson v. Stephenson*, 54 O.App. 239, 6 O.O. 559, 6 N.E.(2d) 1005.

The appointment of a guardian for a husband after the rendition of an alimony award creating a lien on all his property, does not transfer jurisdiction over the husband's property to the probate court so as to prevent a sale on execution by order of the common pleas court: *Zinn v. Zinn*, 17 O.L.A. 508.

The fact that there was no prayer for alimony does not deprive the trial court of making an award; alimony is an incident in a divorce action: *Borst v. Borst*, 20 O.L.A. 184.

Plaintiff, having been decreed a divorce, can not thereafter by supplemental petition make defendant's employer a party and seek to enjoin him from making payments of salary to the defendant husband: *Robertson v. Robertson*, 22 O.L.A. 26.

If a court of competent jurisdiction renders a decree for alimony which is payable in installments, an action to recover for overdue installments may be brought in another state, in which the defendant can be served personally; and the fact that the court which rendered such decree for alimony has power to modify such decree in the future does not prevent recovery for such installments: *Lawton v. VanBenschoten*, 27 O. C. D. 79.

Alimony can not be granted upon service by publication where defendant is a nonresident of this state, although he has property within the state: *Massey v. Stimmel*, 15 O. C. C. 439, 8 O. C. D. 237.

A judgment for alimony in another state having jurisdiction of the subject matter, may be sued on in this state, and a proceeding in attachment to enforce the collection of the judgment sustained: *Waterhouse v. Waterhouse*, 6 O. N. P. 108, 8 O. D. (N.P.) 73.

A court which is exercising jurisdiction in divorce and alimony has no general equitable jurisdiction; and its powers are only those which are conferred upon it by statute: *Stewart v. Stewart*, 20 O. N. P. (N.S.) 273, 28 O. D. (N.P.) 173 [affirmed, *Black v. Stewart*, 28 O. C. A. 433; for former opinion in same case, see *Stewart v. Stewart*, 20 O. N. P. (N.S.) 184].

If a decree for alimony, payable at certain intervals for plaintiff's support, includes an allowance of attorney fees in a specified amount, an action may be brought in a sister state to recover on such decree for the amount of the attorney fees, although no recovery could be had for overdue installments of alimony: *Weis v. Weis*, 20 O. N. P. (N.S.) 593, 29 O. D. (N.P.) 71.

8. Lis pendens

The doctrine of *lis pendens* has appropriate and special application in an action for divorce and alimony, especially where the property directly involved and claimed is specifically described in the pleadings: *Cook v. Mozer*, 108 O. S. 30, 140 N. E. 590 [approving and following *Tolerton v. Williard*, 30 O. S. 579].

A petition for alimony describing the land and asking a lien on it, is *lis pendens*, preventing third persons acquiring hostile interests: *John v. John*, 12 O. C. C. 328, 5 O. C. D. 535.

If a restraining order is issued in a proceeding for alimony enjoining the defendant from disposing of certain realty or encumbering it, the proceeding for alimony becomes *lis pendens*, and a subsequent decree for alimony which is made a lien upon such realty, dates from such restraining order, and it has priority over a judgment which becomes a lien on such realty after such restraining order and before the rendition of such decree: *Loan & Building Co. v. Concrete Co.*, 6 O. App. 43, 28 O. C. A. 399, 30 O. C. D. 226.

A suit for divorce and alimony restraining the transfer of property, which was dismissed, but at a later term, upon motion for rehearing, filed at the same term, reheard, and judgment prayed for granted, was *lis pendens* from time of dismissal to filing of motion for rehearing: *Green v. Green*, 3 O. C. C. (N.S.) 441, 13 O. C. D. 323.

9. Defenses

A decree for divorce, obtained by the husband in another state, in which there was no jurisdiction of the person of the wife except by constructive service, is no defense to a petition by the wife for alimony: *Cox v. Cox*, 19 O. S. 502.

A divorce granted in another state without personal jurisdiction of the wife, who was a citizen of this state and served by publication, can not affect her rights in his property here: *Doerr v. Forsythe*, 50 O. S. 726, 35 N. E. 1055, 40 Am. St. 703.

Judgment for wife in alimony action was held to bar husband's subsequent action for divorce based on extreme cruelty and neglect of duty committed before decision of alimony case: *Picker v. Picker*, 46 O.App. 82, 137 N.E. 749, 39 O.L.R. 269.

Where the wife obtains a decree of divorce in an action based upon constructive service such decree does not bar her right to have the question of alimony litigated in a subsequent action: *Stephenson v. Stephenson*, 54 O.App. 239, 6 O.O. 559, 6 N.E.(2d) 1005.

A defendant in divorce and alimony suit, who is ordered to deliver, on a fixed day, certain personal property awarded as alimony, is not in contempt of court for failure to comply therewith where the property was seized on execution the day following that fixed for delivery: *Studebaker v. Studebaker*, 19 O.L.A. 61.

In a proceeding in contempt for failure to pay alimony as decreed, the burden of showing inability to pay is on the defendant: *In re Whallon*, 6 O. App. 80, 26 O. C. C. (N.S.) 167.

10. Decree

The court may, in decreeing the wife alimony, take into consideration property acquired by the husband by inheritance since the date of an ex parte foreign divorce: *Cox v. Cox*, 20 O. S. 439 [for an earlier opinion, see *Cox v. Cox*, 19 O. S. 502].

Interest will not be allowed on arrears of alimony if the wife has violated the order of the court and taken the child in disobedience of the order of the court, and her husband has not known of the place to which she has gone; but interest will be allowed only from the entry of the decree in the supreme court: *James v. Tower*, 87 O. S. 462, 102 N. E. 1125.

In fixing alimony, in cases where there are no children and the probabilities are that the lives of the parties will diverge, the preferable form of permanent alimony is a lump sum, having in mind the fact that the wife can not be divested of her inchoate right of dower in the real estate owned by her husband during the coverture: *Baker v. Baker*, 2 O. App. 321, 18 O. C. C. (N.S.) 302, 24 O. C. D. 376 [for later decree modifying decree for alimony, see *Baker v. Baker*, 4 O. App. 170, 21 O. C. C. (N.S.) 590, 25 O. C. D. 243, 60 Bull. 25 (Ed.)].

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ute and calls for sound discretion by the court in fitting the judgment as to the amount, time and manner of payment to the facts of the case in hand: *Baker v. Baker*, 4 O. App. 170, 21 O. C. C. (N.S.) 590, 25 O. C. D. 243, 60 Bull. 25 (Ed.) [for opinion fixing alimony in this case, see *Baker v. Baker*, 2 O. App. 227, 18 O. C. C. (N.S.) 302, 24 O. C. D. 376].

The court may determine every interest defendant had in any property, or that of other parties to the suit who claim an interest in it, and take it into account in the allowance of alimony: *Fletcher v. Fletcher*, 15 O. C. C. 271, 8 O. C. D. 271.

"Expectancy," as applied to property which may be considered in determining a husband's ability to pay alimony, does not include the mere possibility of accession by inheritance from his living parents: *Davis v. Davis*, 12 O. C. C. (N.S.) 29, 21 O. C. D. 136.

The earning capacity of a married woman will be considered in determining the proper amount of alimony, especially if the husband is a man of small means: *Carr v. Carr*, 18 O. C. C. (N.S.) 124, 32 O. C. D. 630.

11. Effect of decree

Dower is barred by divorce, G.C. § 10502-1.

A judgment in a suit for alimony alone does not divest a wife of her dower rights: *State ex rel. Hoffman v. Markey*, 17 O.L.A. 444.

Homestead rights of wife remain until divorce, but no longer: *Ditney v. Ellifritz*, 8 O. C. C. 278, 4 O. C. D. 465.

A decree for divorce and alimony, granted to the wife for the aggressions of her husband, which provided that there should be allowed to her "as and for alimony, out of the plaintiff's (the husband) real property, according to the statute in such case made and provided," certain real estate therein described, passes to the wife all the title which the husband had in the premises: *Gallagher v. Fleury*, 26 O. S. 590.

A decree in a divorce proceeding which provides that a certain quantity of land should be surveyed and set off to the wife as alimony from a tract of land owned by the husband, does not, per se, vest in the wife title to any particular portion of the tract referred to; in order to have such effect the particular portion must be determined by survey: *Telephone & Telegraph Co. v. Graham*, 2 O. N. P. (N.S.) 302, 14 O. D. (N.P.) 723.

12. —Lien on realty

Formerly alimony in installments was not a lien on real estate unless charged thereon in the decree: *Olin v. Hungerford*, 10 O. 268.

Alimony charged on real estate under a petition for divorce in general terms is a lien only from the rendition of the decree, and is postponed to judgments rendered pending the suit: *Hamlin's Lessee v. Bevans*, 7 O. (pt. 1) 161.

Where in an action for divorce and alimony there has been an injunction pendente lite to prevent alienation, a decree for alimony made a lien upon the premises is superior to the lien of a mortgagee who had actual notice of the proceedings and whose mortgage was executed and recorded, pending those proceedings: *Tolerton v. Williard*, 30 O. S. 573.

A vested remainder, contingent only in amount, may be charged with a lien for alimony: *Min-Young v. MinYoung*, 47 O. S. 501, 25 N. E. 168; see, also, *McColgan v. McColgan*, 19 O. N. P. (N.S.) 254.

In an action by the wife for divorce and alimony, a decree for alimony in money, payable in gross, will operate per se as a lien upon the lands of the husband in the county where it is rendered, and may be enforced by levy of execution upon such lands, when they have been conveyed by the husband after the rendition: *Conrad v. Everich*, 50 O. S. 476, 35 N. E. 58, 40 Am. St. 679 [affirming *Everich v. Conrad*, 4 O. C. C. 231, 2 O. C. D. 517].

An award of alimony in gross is in legal effect a judgment collectable by execution and operating per se as a lien on all the real estate of the defendant in the county: *Coffman v. Finney*, 65 O. S. 61, 51 N. E. 155, 55 L. R. A. 794.

A decree for plaintiff, upon a petition which alleges that plaintiff has legal title, and also seeks a division of property as alimony, has priority over a cognovit judgment which is entered after such suit has been filed, but before such decree has been rendered: *Cook v. Mozer*, 108 O. S. 30, 140 N. E. 590.

For enforcement of judgments, including alimony, against one who had disappeared before the death of his ancestor, but had not been absent seven years at the death of such ancestor, see *Young v. Young*, 10 O. App. 351, 29 O. C. A. 524 [motion to certify record overruled, *Young v. Young*, 16 O. L. R. 61, 63 Bull. 184].

A lump sum may be awarded to be a lien upon any lands of the husband, and the decree does not become dormant for want of execution within five years: *Webster v. Dennis*, 4 O. C. C. 313, 2 O. C. D. 566.

A decree for alimony in gross is superior to the lien of a mortgage executed before the term of court at which the decree was rendered, but not recorded until after the first day of the term: *John v. John*, 12 O. C. C. 328, 5 O. C. D. 535.

If a petition for alimony has been filed seeking to charge the alimony upon specific property, a creditor of the defendant can not obtain a lien which will be prior to such decree of alimony when entered: *Tripplehorn v. Cambron*, 15 O. L. R. 76, 62 Bull. 262 [appeal dismissed on question of jurisdiction, *Tripplehorn v. Cambron*, 250 Fed. 605].

A decree for alimony, rendered in an action brought within four months before bankruptcy proceedings were instituted against the defendant, and made a lien upon specific realty, has priority over general creditors, without reference to the time at which the defendant became bankrupt: *Tripplehorn v. Cambron*, 15 O. L. R. 76, 62 Bull. 262 [appeal dismissed on question of jurisdiction, *Tripplehorn v. Cambron*, 250 Fed. 605].

Real estate in another county (not part of a tract in this county) can not be declared by the decree subject to a lien for alimony, and if the decree does so, and a sale is had thereunder, the sale can not be sustained as an execution sale: *Wilmot v. Cole*, 10 Dec. Rep. 777, 23 Bull. 339.

13. —Support of children

The obligation to provide reasonably for the support of his minor child until the latter is in a condition to provide for its own support, is not impaired by a decree which divorces the wife a vinculo on account of the husband's misconduct, and gives her the custody, care and nurture of the child, and allows her a sum of money as alimony, but with no provision for the child's support: *Pretzinger v. Pretzinger*, 45 O. S. 452, 15 N. E. 471, 4 Am. St. 542.

The mother may recover a reasonable compensation from the father for necessities furnished by her to the child after such decree, and may maintain an original action for such compensation against the father in a court other than that in which the divorce was granted: *Pretzinger v. Pretzinger*, 45 O. S. 452, 15 N. E. 471, 4 Am. St. 542.

A judgment for a monthly sum as alimony to the wife to whose custody a child had been awarded, is not affected by an agreement of the parties relieving the husband of the alimony, he assuming the custody of the child, which he put in an orphan asylum, whence it was reclaimed by the wife: *Fricke v. Fricke*, 13 O. C. C. 433, 10 O. C. D. 203.

In a proceeding for divorce and for the custody of minor children, the court of common pleas has jurisdiction to order the father to pay to the clerk of the court a certain sum each month, "which

said money shall be kept intact by said clerk of court for the future use and benefit of said minor children, until further order of this court;" and if the father of such children refuses to make such payments, and he is committed to jail for contempt, he can not be discharged on habeas corpus because of lack of jurisdiction: *Rhynard v. Gardner*, 7 O. App. 262, 28 O. C. A. 194, 30 O. C. D. 175.

In a divorce and alimony proceeding, an allowance of a specific sum of money per week for the maintenance of minor children having been granted, the court has power to make such modification of the order as the necessity of the case demands, regardless of the form of the motion by which the necessity is brought to the court's attention: *Monahan v. Monahan*, 14 O. App. 116.

An allowance for support of minor child may be changed because of subsequent conditions, even though the parties originally agreed upon the amount of such support: *Connolly v. Connolly*, 16 O. App. 92.

Where a wife procures a decree for alimony alone with order for weekly allowance for minor child until the child became a certain age, and later is granted a divorce in another state, the court rendering the alimony decree may thereafter entertain a motion by the wife for a judgment on the alimony decree although such decree did not contain the reservation "until further order of the court." Upon such motion being made, the court should first rule upon objection to its jurisdiction and then give defendant an opportunity to present a defense: *Whitaker v. Whitaker*, 19 O.L.A. 25.

A police judge has authority to grant decree for support and place delinquent husband under bond, notwithstanding decree for alimony: *State v. Schuman*, 7 O. N. P. 619, 8 O. D. (N.P.) 703.

Failure to ask for or obtain alimony in a divorce suit will not bar the wife from a subsequent suit for an allowance for support of children: *Cordes v. Cordes*, 37 Bull. 225, 8 O. D. (N.P.) 670.

14. —Necessaries

Where the husband pays alimony pendente lite, he can not be charged with necessaries subsequently furnished during the pendency of the petition: *Hare v. Gibson*, 32 O. S. 33; see *Coffman v. Finney*, 65 O. S. 61, 61 N. E. 155, 55 L. R. A. 794; *Sherer v. Price*, 3 O. C. C. 107, 2 O. C. D. 61.

Third persons can not question the adequacy of the allowance of alimony pendente lite collaterally, even though they have furnished necessaries to the wife: *Hare v. Gibson*, 32 O. S. 33.

15. —Collateral attack

In an action by a wife for alimony, the court may approve a contract between the husband and wife adjusting such alimony. A consent decree thus rendered may be set aside for fraud, but it can not be attacked collaterally: *Sponseller v. Sponseller*, 110 O. S. 395, 144 N. E. 48.

If a consent decree is entered in an alimony suit by which the wife agrees to resume marital relations with her husband, and he agrees to convey certain property to her, he can not attack such decree collaterally: *Sponseller v. Sponseller*, 110 O. S. 395, 144 N. E. 48.

If defendant, in a suit upon a prior decree of alimony rendered in Ohio, contends that plaintiff voluntarily submitted her rights under such decree to a court of another state, in which defendant had brought an action for divorce, and plaintiff denies such allegation, an issue of fact is presented, which should be determined upon the evidence. If defendant voluntarily submitted such claim, it is merged in the decree of the foreign court; but if not, plaintiff is entitled to recover the overdue installments: *Gilbert v. Gilbert*, 90 O. S. 417, 108 N. E. 1121 [for earlier opinion, see *Gilbert v. Gilbert*, 83 O. S. 265].

16. Enforcement of decree

An order for the payment of alimony in a lump sum may be sued on in the same manner as a judg-

ment for money only: *Meister v. Day*, 20 O. App. 224, 151 N. E. 786.

A separation agreement entered into between husband and wife, without mistake, misrepresentation or coercion and made part of a divorce decree, will be recognized in a subsequent proceeding to enforce delinquent payments of alimony: *Campbell v. Campbell*, 23 O.L.A. 609.

The statutes do not authorize the seizure of property of a nonresident husband to enforce payment of alimony: *Miesse v. Miesse*, 7 O. N. P. 531, 5 O. D. (N.P.) 561.

After the wife's death, her unpaid judgment for alimony may be enforced and collected by her administrator, although her second husband, as her sole heir, will receive it: *Sharp v. Sharp*, 7 O. N. P. 538, 5 O. D. (N.P.) 562.

17. —Injunction

In allowing alimony, the court does not exercise general equity powers, but is controlled by the statute, and is authorized to exercise such powers as that expressly gives, and such as is necessary to make effective its orders and decrees thus made, such as injunction to maintain the status quo and prevent action by defendant, which may tend to render nugatory a decree favoring plaintiff: *DeWitt v. DeWitt*, 67 O. S. 340, 66 N. E. 136.

Where, in action for divorce and alimony there has been an injunction pendente lite to prevent alienation, a decree for alimony made a lien upon the premises, is superior to the lien of a mortgagee who had actual notice of the proceedings and whose mortgage was executed and recorded, pending those proceedings: *Tolerton v. Williard*, 30 O. S. 579.

In an action in the nature of a creditor's bill, to enforce collection of a judgment for alimony obtained by the wife against the husband, a court of equity has power before enforcing such judgment to make a conditional decree requiring the wife to make restitution of property obtained in lieu of alimony theretofore agreed upon with her husband; or, if restitution be not made, to enjoin the collection of the judgment for alimony upon the cross-petition of the husband: *McEntire v. McEntire*, 107 O. S. 510, 140 N. E. 328 [distinguishing *DeWitt v. Dewitt*, 67 O. S. 340].

An injunction will not be granted when it is unconscionable to grant the same, even though a legal right is about to be violated; and where the legal right arises out of a decree of court, rendered by mistake, an injunction is properly refused: *Parsons v. Pail Co.*, 6 O. C. C. (N.S.) 116, 17 O. C. D. 162 [affirmed, without report, *Parsons v. Pail Co.*, 74 O. S. 464].

If a husband abandons his wife and gets his property into his son's name by means of fraudulent attachments on bogus debts, chancery will not hold it an advancement, but will enjoin conveying and appoint a receiver to collect the income and pay alimony unless it is secured: *Questel v. Questel*, W. 492.

18. —Contempt

Pendency of a petition to modify an allowance of alimony will not protect the party from contempt proceedings for not paying it: *Fricke v. Fricke*, 18 O. C. C. 433, 10 O. C. D. 203.

A final money decree for alimony is not a debt within the purview of the constitutional inhibition against imprisonment for debt, but is such an order as that, under favor of G. C. § 11137, punishment as for a contempt may follow a willful failure to comply with it: *Cook v. Cook*, 66 O. S. 566, 64 N. E. 567, 53 L. R. A. 625; *Kaderabek v. Kaderabek*, 3 O. C. C. 419, 2 O. C. D. 236; *Effinger v. State*, 11 O. C. C. 389, 5 O. C. D. 403; *State v. Schuman*, 7 O. N. P. 619, 8 O. D. (N.P.) 703, 38 Bull. 271.

In a proceeding in contempt against a party who has refused to comply with a money decree for alimony, it is not essential that the complaint allege that the party is able to pay the money:

Cook v. Cook, 66 O. S. 566.

A judgment in contempt finding a party to comply with the decree for alimony in a proceeding: 94 O. S. 110, 133 O. S. 110.

In a proceeding does not comply with the decree to pay alimony the party to show that it complies with the Smith, 94 O. S. 110.

Although a court refuses to pay alimony to pay alimony, yet when of such alimony a proceeding and the whole sum is is invalid: *Lubb* 10 O. C. D. 508.

A decree for alimony for a debt; and to enforce such a decree by imprisonment I, \$15 of the cost; that no person is any civil action: 26 O. C. C. (N.S.).

A complaint against a husband of alimony against because it contains ant was able to be presumed that the defendant adjudged against C. (N.S.) 522, 23 O. S. 110.

Discretion is refused to punish alimony, the plaintiff child of the party court, so as to prohibit it, as allowed *MacKenzie*, 17 O. S. 441, without 89 O. S. 441.

Contempt lies for stallments: *Myers* (N.P.) 217; *Schuman* O. D. (N.P.) 503.

Contempt for enforced by attachment v. *Stewart*, 10 v. Hand, 11 Dec.

19. Modification of

Modification of granted upon motion: *Moister v. E*

Where the husband dollars, and whose custody is of one hundred alimony, and a dollars in trust for she becomes twenty fifty against the O. App. 518, 152 N.

In an application for alimony it is of such order that the evidence supports a predicate for *Pellegrino*, 7 O.O.

Changed conditions to modification parties could not at time of decree:

A court is with modify, to reopen a former decree v

Cook v. Cook, 66 O. S. 566, 64 N. E. 567, 58 L. R. A. 625.

A judgment in an action for alimony, or a judgment finding a party guilty of contempt for failure to comply with the order of the court in such judgment for alimony, can not be attacked collaterally in a proceeding in habeas corpus: Bly v. Smith, 94 O. S. 110, 113 N. E. 659.

In a proceeding in contempt against one who does not comply with a decree ordering him to pay alimony the burden of proof is upon such party to show that he is not financially able to comply with the terms of such decree: Bly v. Smith, 94 O. S. 110, 113 N. E. 659.

Although a court has power to imprison one who refuses to pay alimony which he has been ordered to pay, yet where there is added to the amount of such alimony a fine and the cost of the contempt proceeding and the defendant is committed until the whole sum is paid, the order of imprisonment is invalid: Lubbering v. State, 19 O. C. C. 658, 10 O. C. D. 508.

A decree for alimony in gross is not a judgment for a debt; and the inherent power of the court to enforce such decree by proceeding in contempt, and by imprisonment, is not taken away by Art. I, § 15 of the constitution of Ohio, which provides that no person shall be imprisoned for debt in any civil action: In re Whallon, 6 O. App. 80, 26 O. C. C. (N.S.) 167.

A complaint filed in a contempt proceeding against a husband who is in default for payment of alimony against him, is not insufficient in law because it contains no allegation that the defendant was able to pay alimony, but it will be presumed that the court heard evidence and found that the defendant was able to pay the amounts adjudged against him: Galley v. Galley, 13 O. C. C. (N.S.) 522, 23 O. C. D. 161.

Discretion is not abused where the trial court refuses to punish a defendant for failure to pay alimony, the plaintiff herself, having removed a child of the parties beyond the jurisdiction of the court, so as to prevent the defendant from visiting it, as allowed by the court: Mackenzie v. Mackenzie, 17 O. C. C. (N.S.) 494, 32 O. C. D. 249 [affirmed, without opinion, Mackenzie v. Mackenzie, 89 O. S. 441].

Contempt lies for nonpayment of alimony in installments: Myers v. Myers, 3 O. N. P. 162, 4 O. D. (N.P.) 217; Schuman v. State, 6 O. N. P. 244, 7 O. D. (N.P.) 503.

Contempt for refusal to pay alimony may be enforced by attachment against husband: Stewart v. Stewart, 10 Dec. Rep. 662, 23 Bull. 38; Hand v. Hand, 11 Dec. Rep. 202, 25 Bull. 214.

19. Modification of decree

Modification of an order for alimony may be granted upon motion or by petition for that purpose: Meister v. Day, 20 O. App. 224, 151 N. E. 786.

Where the husband is worth six hundred thousand dollars, and has a daughter five years of age, whose custody is awarded the mother, an allowance of one hundred and fifty thousand dollars as alimony, and an additional sum of fifty thousand dollars in trust for the benefit of the child until she becomes twenty-five years of age, is not manifestly against the evidence: Owens v. Owens, 20 O. App. 518, 152 N. E. 767.

In an application to modify a continuing order for alimony it is always necessary for modification of such order that the application set out and the evidence substantiate a changed condition as a predicate for such modification: Pellegrino v. Pellegrino, 7 O.O. 106 (App.).

Changed conditions necessary to entitle defendant to modification of alimony must be such that parties could not have reasonably contemplated at time of decree: Borst v. Borst, 14 O.L.A. 525.

A court is without jurisdiction, on a motion to modify, to reopen an alimony decree and modify a former decree where such former decree was a

final determination of the rights of the parties, and there is nothing within the entry to indicate a purpose of the court to maintain a continuing jurisdiction of the parties or subject matter: Blake v. Blake, 20 O.L.A. 3.

An allegation, by a divorced wife in a proceeding to modify an alimony decree, that her son, an adult, is in an institution for feeble-minded and dependent upon her for support, does not state a ground for modification, as such adult son is not a legal charge on either parent: Blake v. Blake, 20 O.L.A. 3.

The trial court, in a divorce and alimony action, has continuing jurisdiction to increase or decrease monthly alimony allowance and support for children, where parties have made no agreement as to amount, and court entries contain the phrase "until further order of court": Bucher v. Bucher, 24 O.L.A. 447.

The change in the circumstances of the petitioner, which will warrant a modification of the original decree for alimony, must be of so material a character as to make necessary a modification of the original decree to suit the altered condition of the parties: Conant v. Conant, 16 O. N. P. (N.S.) 72, 26 O. D. (N.P.) 57.

The loss by the wife of the aid of her son because of his prospective marriage does not constitute a change of circumstances warranting a modification of the decree for alimony, since it must be presumed that the court in granting the decree had in mind the probability that the young man would marry in due time: Conant v. Conant, 16 O. N. P. (N.S.) 72, 26 O. D. (N.P.) 57.

A suit to modify a decree for alimony as being excessive is demurrable, if it does not show the amount and value of defendant's property at the date of such decree: Moore v. Jackson, 1 Dayton Term Rep. (Iddings), 2.

To reduce alimony, changed conditions of the parties or property must be shown by the petition, and a petition is demurrable which merely avers that the plaintiff (original defendant) is out of employment—that the valuation of his property as agreed on at the time was excessive and that he must depend on his rents for support: Reid v. Dayton, 1 Dayton Term Rep. (Iddings), 104.

20. —Consent decrees

After a suit for divorce and alimony has been finally determined by the court granting the divorce, additional alimony can not be allowed where the reasons for such allowance existed at the time of the judgment: Petersine v. Thomas, 28 O. S. 596; Miessner v. Miessner, 11 O. C. C. 1, 5 O. C. D. 305.

Where alimony has been granted in installments to a divorced wife, her remarriage to a man financially able, and who does, in fact, support the wife, would be prima facie good cause for modifying a former decree, so as to reduce the amount: Olney v. Watts, 43 O. S. 499, 3 N. E. 354.

If a former decree for alimony was in the nature of a permanent division of the husband's property by consent, the decree merely affirming the agreement, this may be a defense to a demand to change the allowance: Olney v. Watts, 43 O. S. 499, 3 N. E. 354.

Whether the court has power to modify a decree for alimony rendered upon evidence in an adversary proceeding, see Olney v. Watts, 43 O. S. 499, 3 N. E. 354.

Where a divorce is decreed to the wife for the aggression of the husband and alimony is adjudged to her by agreement of the parties, the terms of the decree as to alimony are not subject, in the absence of fraud or mistake, to modification upon a petition filed by the former husband after the term at which the original decree was made: Law v. Law, 64 O. S. 369, 60 N. E. 560 [reversing Law v. Law, 15 O. C. C. 409, 8 O. C. D. 314, 39 Bull. 38].

A contract between husband and wife for a division of their property and alimony, can not,

after being approved by the court and carried into the decree, be modified thereafter on account of a change of circumstances, such as the death of the wife, if no power to modify such decree is reserved: *Hassaurek v. Markbreit*, 68 O. S. 554, 67 N. E. 1066.

See, also, *Petersine v. Thomas*, 28 O. S. 596; *Julier v. Julier*, 62 O. S. 90, 56 N. E. 661, 78 Am. St. 697; *Law v. Law*, 64 O. S. 369, 60 N. E. 560.

A court does not lose jurisdiction of a suit for alimony by reason of the fact that the parties entered into an agreement by which the plaintiff withdraws all charges, and the defendant agrees that a consent decree for a specified amount of alimony may be entered: *Sponseller v. Sponseller*, 110 O. S. 395, 144 N. E. 48.

If a consent decree for alimony has been obtained by fraud, such decree may be vacated at the same term or vacated or modified thereafter: *Sponseller v. Sponseller*, 110 O. S. 395, 144 N. E. 48.

A decree of alimony which embodies the agreement of the parties can not be modified because of a change of conditions: *Connolly v. Connolly*, 16 O. App. 92.

An allowance for support of minor child may be changed because of subsequent conditions, even though the parties originally agreed upon the amount of such support: *Connolly v. Connolly*, 16 O. App. 92.

If a contract for division of property, in a suit for divorce, separation and alimony, provides for a fair, reasonable and permanent division of the husband's property, and is adopted as a basis of the court's order, it will bind the parties and preclude a subsequent inquiry because of husband's changed circumstances: *Andress v. Andress*, 7 O. N. P. 283, 9 O. D. (N.P.) 559.

21. —Other decrees—division of property

Where alimony is decreed in a gross sum, payable in installments running through a series of years, it will be regarded as ordered in contemplation of the wife remaining single and dependent upon her husband for support, and as such is subject to modification upon her remarriage: *Baker v. Baker*, 4 O. App. 170, 21 O. C. C. (N.S.) 590, 25 O. C. D. 243, 60 Bull. 25 (Ed.) [for opinion fixing alimony in this case, see *Baker v. Baker*, 2 O. App. 321, 18 O. C. C. (N.S.) 302, 24 O. C. D. 376].

Where there is property which has been acquired by the joint efforts of the husband and wife, no division of the property will be made where divorce is granted to the husband and he had only a life estate in the property: *Kehr v. Kehr*, 14 O.L.A. 475.

Where a divorce is granted to the husband because of the wife's wilful absence without just cause, she is not entitled to alimony, but may be granted a division of property: *Lerch v. Lerch*, 16 O.L.A. 375.

Where alimony was awarded in a sum total, but in partial payments running through over eighteen months, dower being released in part consideration thereof, and the wife died when about half was paid, the decree will not be modified so as to cancel the balance, for the amount was an absolute judgment, and, moreover, was also a contract and was reasonable: *Meissner v. Bergman*, 11 O. C. C. 509, 5 O. C. D. 225.

If the evidence in a proceeding brought by a married woman for alimony shows that the parties have been married about forty years, by her labor and by the earnings of the children, together with his own services the husband has saved about twenty thousand dollars, and the trial court has allowed sixty dollars a month as alimony, which it has subsequently reduced to fifty dollars a month, the reviewing court will modify such order, and will order that such property be divided in a just and equitable manner between husband and wife, unless the parties themselves agree upon some division: *Fronriter v. Fronriter*, 26 O. C. C.

(N.S.) 313, 27 O. C. D. 552 [motion to certify record overruled].

A change of conditions may justify a reduction in the amount of alimony, although it may not justify the termination thereof: *Bruner v. Bruner*, 29 O. C. A. 74, 30 O. C. D. 548 [motion to certify record overruled, *Bruner v. Bruner*, 17 O. L. R. 4, 64 Bull. 111].

Modification of alimony may be allowed where evidence shows changed conditions, and it is immaterial whether the application for reduction was made in the form of a motion or petition: *Bruner v. Bruner*, 29 O. C. A. 74, 30 O. C. D. 548 [motion to certify record overruled, *Bruner v. Bruner*, 17 O. L. R. 4, 64 Bull. 111].

22. —Maintenance

If an order for alimony payable in certain amounts at certain intervals is modified thereafter by releasing the husband from payment of further sums, the court loses jurisdiction, and can not thereafter entertain a motion to modify the later decree by ordering further payments: *Garver v. Garver*, 102 O. S. 443, 133 N. E. 551.

The fact that, subsequent to the date at which a decree for alimony was rendered, the husband's earning capacity had increased and he had inherited a large amount of property, is such a change of the condition of the parties that the court which rendered the decree for alimony may increase the amount thereof, even if such decree was for a gross sum: *Sager v. Sager*, 5 O. App. 489, 26 O. C. C. (N.S.) 522, 27 O. C. D. 539.

Where the amount of alimony pendente lite has been determined by the court, the husband can not be held liable in excess of that amount: *Sherer v. Price*, 3 O. C. C. 107, 2 O. C. D. 61.

A judgment for alimony does not become void upon the subsequent rendition of a decree of divorce between the same parties, but in a different court: *Lambert v. Cleveland*, 19 O. C. C. (N.S.) 240, 32 O. C. D. 445 [affirmed, without opinion, *Lambert v. Cleveland*, 83 O. S. 612].

A decree for alimony providing for a certain sum payable weekly and which does not provide that such payments shall be made "until the further order of the court," is not subject to modification, as it is valid when made, unless changed conditions on the part of either or both parties justify such modification: *Lape v. Lape*, 28 O. C. A. 108, 30 O. C. D. 94 [reversing *Lape v. Lape*, 62 Bull. 393, and affirmed, *Lape v. Lape*, 99 O. S. 193].

A decree for alimony, payable in installments, rendered by a court which retains continuing jurisdiction is not a judgment to which full faith and credit must be given: *Weis v. Weis*, 20 O. N. P. (N.S.) 593, 29 O. D. (N.P.) 71.

See, also, *Gilbert v. Gilbert*, 83 O. S. 265, 94 N. E. 421, 35 L. R. A. (N.S.) 521.

23. —Division of property and maintenance

Where the petition was for alimony alone and the allowance which was granted contained a provision for payment in monthly installments, with a reservation in the decree of the right of either party, in the event of changed circumstances, to apply to the court for a modification or termination thereof, an application by the husband for a termination of the allowance will be granted, where it appears that, subsequent to the making of the allowance, she obtained a divorce and married another man who is abundantly able to support her in her former state: *Madden v. Madden*, 11 O. C. C. (N.S.) 233, 21 O. C. D. 30 [reversing *Madden v. Madden*, 5 O. N. P. (N.S.) 593, 18 O. D. (N.P.) 167, and affirmed, without opinion, *Madden v. Madden*, 83 O. S. 506; for opinion on motion, see *Madden v. Madden*, 18 O. D. (N.P.) 161, 4 O. L. R. 579].

Where a woman married another man, who is abundantly able to support her in her former state, and in such a case evidence offered at the hearing for alimony, which tended to prove assistance by the wife in acquiring the property, will be regarded

as presented the allowance ever increased in the judgment (N.S.) 238, *Madden v. Madden*, 5 O. S. 506 and affirmed, 83 O. S. 506 pleas court, 161, 4 O. L. R. 579.

A court alimony suit entered without basis upon the facts of the case (N.P.) 161, see *Madden v. Madden* (N.P.) 167, 11 O. C. C. affirmed, without opinion, 11 O. S. 506.

24. Limitation

Where a wife for an equitable division of her personal estate is free and clear of the wife's alimony, on to continue the absence of the contract stallment embrace per *Snouffer v. Snouffer*, 7 (2d) 621.

A money dormant be thereon for 72 O. S. 366, *ing Lemert v. O. C. D. 253*, N. E. 519.

A decree February 2 estate in the title and in 1903: *Peck v. Peck*, 519.

Where a first husband son who husband can maintain a claim thenance due Howard, 2 O. C. D. 3.

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as presented only for the purpose of increasing the allowance, and it will be presumed that whatever increase the evidence warranted was merged in the judgment: *Madden v. Madden*, 11 O. C. C. (N.S.) 238, 21 O. C. D. 30 [reversing *Madden v. Madden*, 5 O. N. P. (N.S.) 593, 18 O. D. (N.P.) 167, and affirmed, without opinion, *Madden v. Madden*, 83 O. S. 506; for opinion on motion in common pleas court, see *Madden v. Madden*, 18 O. D. (N.P.) 161, 4 O. L. R. 579].

A court has jurisdiction to modify a decree for alimony subsequent to the term at which it was entered where the petition for modification is based upon a changed condition in the circumstances of the wife: *Madden v. Madden*, 18 O. D. (N.P.) 161, 4 O. L. R. 579 [for hearing on merits, see *Madden v. Madden*, 5 O. N. P. (N.S.) 593, 18 O. D. (N.P.) 167, which was reversed, *Madden v. Madden*, 11 O. C. C. (N.S.) 238, 21 O. C. D. 30, which was affirmed, without opinion, *Madden v. Madden*, 83 O. S. 506].

24. Limitations and dormancy

Where, upon the granting of a divorce to the wife for aggressions of the husband, there is an equitable division of the husband's real and personal estate made, and the portion retained by the husband is ordered to be "held and owned by him, free and clear from the inchoate dower estate" of the wife, and the wife is further awarded, as alimony, one hundred dollars per month, payments to continue so long as she remains unmarried, in the absence of contract or statutory provision to the contrary, such decree with respect to the installment alimony payments will be held not to embrace periods beyond the death of the husband: *Snouffer v. Snouffer*, 132 O.S. 617, 9 O.O. 14, 9 N.E. (2d) 621.

A money decree for alimony does not become dormant because of the failure to issue execution thereon for more than five years: *Lemert v. Lemert*, 72 O. S. 364, 74 N. E. 194, 106 Am. St. 621 [affirming *Lemert v. Lemert*, 2 O. C. C. (N.S.) 233, 15 O. C. D. 253]; *Peeke v. Fitzpatrick*, 74 O. S. 396, 78 N. E. 519.

A decree for alimony in a gross sum entered February 23, 1892, and made a lien upon real estate in the county, is not barred by the statute of limitations set up by one who acquired the title and interest of the husband on November 19, 1903: *Peeke v. Fitzpatrick*, 74 O. S. 396, 78 N. E. 519.

Where a divorced woman remarries and her first husband contributes to the support of her son who remains in her custody, the second husband can not, after a lapse of five years or more, maintain an action against the first husband on a claim then for the first time asserted for a balance due for the boy's maintenance: *Gebert v. Howard*, 2 O. App. 131, 19 O. C. C. (N.S.) 398, 25 O. C. D. 329.

Where a wife obtains an order for alimony payable in installments in an action for alimony only in this state and thereafter takes up her residence in another state and subsequently petitions a court of general jurisdiction for and obtains a decree of absolute divorce in that state, if she fails to ask for permanent alimony in such proceeding or fails to bring to the attention of that court the orders theretofore procured in this state, she will be deemed to have waived her claims thereto and therefor and will be forever barred from asserting any claims for alimony thereafter in this state and forever barred from maintaining any action in this state to recover past due and unpaid installments that accrued on the original installment order prior to the divorce decree: *Whitaker v. Whitaker*, 52 O.App. 224, 6 O.O. 316, 3 N.E.(2d) 667.

It is not necessary as a prerequisite to awarding alimony to a wife that the court find that the husband has property, real or personal, where there is any source from which future installments may be paid: *Pellegrino v. Pellegrino*, 7 O.O. 106 (App.).

Allowance by way of alimony and for support of minor children does not, unless so provided,

run beyond lifetime of one against or by whom the charge has been personally fixed: *Wright v. Fishbaugh*, 13 O.L.A. 619.

Where a wife obtains a decree for divorce, with an order that the husband pay to her alimony in a stipulated sum per month until the gross amount allowed has been paid, the judgment for alimony can not be defeated or a commitment to jail for failure to pay, avoided by the subsequent marriage of the defendant to another woman and the setting up by him of the claim that all his meager salary is required to support his new family: *Hoffman v. Hoffman*, 8 O. C. C. (N.S.) 550, 18 O. C. D. 658.

A judgment or lien for alimony is a continuing and subsisting claim against the husband; it does not become dormant, is not affected by proceedings in bankruptcy, and injunction will not lie to prevent its enforcement: *Lemert v. Lemert*, 2 O. C. C. (N.S.) 233, 15 O. C. D. 253 [affirmed, *Lemert v. Lemert*, 72 O. S. 364].

25. Satisfaction

A discharge in bankruptcy does not work a satisfaction of a decree for alimony: *Lemert v. Lemert*, 72 O. S. 364, 74 N. E. 194, 106 Am. St. 621 [affirming *Lemert v. Lemert*, 2 O. C. C. (N.S.) 233, 15 O. C. D. 253].

Where a decree of divorce has been pronounced in favor of a wife for the aggressions of the husband, and she has been allowed alimony, and the husband appeals the cause to the circuit court, and, pending appeal, both parties die, the cause survives in favor of the personal representatives of the deceased plaintiff and against the personal representatives of the deceased defendant: *Coffman v. Finney*, 65 O. S. 61, 61 N. E. 155, 55 L. R. A. 794.

Where it is sought by execution to enforce payment of a balance due under a decree for alimony granted by the probate court, the common pleas court has jurisdiction to entertain an action by the defendant to enjoin sale of his property on the ground that the judgment entered against him upon which the execution is based has been fully satisfied: *Betz v. Betz*, 4 O. App. 264, 23 O. C. C. (N.S.) 9.

26. Review

A decree for alimony, payable in installments, is not a final judgment: *Myers v. Myers*, 3 O. N. P. 162, 4 O. D. (N.P.) 217.

Where the court erroneously modifies a decree fixing alimony, thereby fixing a less amount than in the original decree, the wife is not estopped from prosecuting error by accepting the amount awarded by such erroneous decree: *Law v. Law*, 64 O. S. 369, 60 N. E. 560 [reversing *Law v. Law*, 15 O. C. C. 409, 8 O. C. D. 314, 39 Bull. 38].

An order of the common pleas court making a division of property between husband and wife is an order for alimony, and as such is appealable: *Popp v. Popp*, 85 O. S. 470, 98 N. E. 1131.

After a court of insolvency has granted a decree of divorce, and overruled a motion to set aside such decree, neither the insolvency court nor the circuit court has jurisdiction to entertain an application by the adversary party for alimony filed thereafter in such case: *Boling v. Boling*, 91 O. S. 390, 110 N. E. 1055.

A judgment in an action for alimony, or a judgment finding a party guilty of contempt for failure to comply with the order of the court in such judgment for alimony, can not be attacked collaterally in a proceeding in habeas corpus: *Bly v. Smith*, 94 O. S. 110, 113 N. E. 659.

Upon an appeal from a decree for alimony from the court of common pleas to the court of appeals, all the issues of fact on which the rights of the parties depend with reference to alimony are reopened for trial, although a divorce was granted in the court below, and such divorce can not be affected by such appeal: *Baker v. Baker*, 2 O. App. 321, 18 O. C. C. (N.S.) 302, 24 O. C. D. 376

[for later decree modifying decree for alimony, see Baker v. Baker, 4 O. App. 170, 21 O. C. C. (N.S.) 690, 25 O. C. D. 243, 60 Bull. 25 (Ed.)].

If the trial court has rendered a decree of divorce and has awarded alimony and the husband against whom such alimony has been awarded prosecutes error to such a decree of alimony, the decree of divorce, while conclusive as to the present status of the parties, is not conclusive in the error proceeding to the decree of alimony as to the fact of the marriage of the parties: Pappalardo v. Pappalardo, 6 O. App. 291, 28 O. C. A. 449, 30 O. C. D. 285.

After a decree grants alimony to the wife, but reserves the determination of the amount for a subsequent hearing, the time within which error may be prosecuted does not run until the date of the entry which fixes such amount: Rowe v. Rowe, 16 O. App. 180.

A reviewing court can not fix the amount to be awarded as alimony; it should decide whether the amount allowed is against the weight of the evidence: Owens v. Owens, 20 O. App. 518, 152 N. E. 767.

In an action for alimony alone in which alimony is awarded, and a divorce decree entered on defendant's cross-petition is then reversed on error proceedings because the evidence fails to establish grounds for divorce, the judgment awarding alimony must also be reversed since it was awarded on the theory of permanent alimony based on the fact that a divorce had been granted: Welte v. Welte, 50 O. App. 484, 4 O. O. 193, 198 N.E. 603.

An alimony decree awarding wife sixty dollars per month and five dollars per month for arrearages, to be paid by husband earning approximately two hundred dollars per month, is not so excessive as to be ground for reversal: Converse v. Converse, 13 O.L.A. 195.

If a bill of exceptions does not show what evidence as to defendant's property was offered at the original hearing, it will be presumed that the court had before it sufficient evidence as to the amount of such property; and that it made its award in compliance with the law: Lape v. Lape, 28 O. C. A. 108, 30 O. C. D. 94 [reversing Lape v. Lape, 62 Bull. 398, and affirmed on different grounds, Lape v. Lape, 99 O. S. 143]; Bruner v. Bruner, 29 O. C. A. 74, 30 O. C. D. 548 [motion to certify record overruled, Bruner v. Bruner, 17 O. L. R. 4, 64 Bull. 111].

SEC. 11992. Husband's alimony. When it appears to the court that the husband is the owner of little or no property and the wife is the owner of lands or personal estate, or both, the court may adjudge to the husband such share of her real or personal property, or both, or may decree to him such sum of money out of her estate, payable in gross or by installments, as it deems just, having due regard to all the circumstances of the parties. (R. S. Sec. 5699.)

HISTORY.—R. S. § 5699; 91 v. 348; 90 v. 30; 51 v. 377, § 7; S. & C. 512.

Dower is barred by divorce, G.C. § 10502-1.

Comparative legislation

Alimony for husband:

- Cal. Deering's Civil Code 1937, § 137.
- Ill. Smith-Hurd Rev. Stat. 1933, ch. 40, § 19.
- Mass. Gen. Laws 1932, ch. 208, § 34.
- Penna. Furdon's Stat. 1936, title 23, § 45.

Allowance to husband: PAGE Divorce § 105; O-JUR Divorce § 75.

General Code § 11992, which authorizes the court to decree to the husband a part of the wife's property or money out of her estate if it appears that

the husband is the owner of little or no property and the wife owns property, is not limited to cases in which a divorce is granted to the husband, but such allowance may be made to a husband who has brought an action for divorce and alimony although the court has refused to grant a divorce: Albert v. Albert, 7 O. App. 156, 28 O. C. A. 225, 29 O. C. D. 271.

General Code § 11990, which bars a divorced wife from interest in her husband's property only when the divorce is granted for her aggression, does not limit G. C. § 11992, which provides that an allowance may be made to the husband of the wife's property if the wife owns property and the husband owns little or none: Albert v. Albert, 7 O. App. 156, 28 O. C. A. 225, 29 O. C. D. 271.

General Code §§ 11992, 11993 are the only provisions wherein any allowance can be made to the husband when the divorce is granted to him. This allowance is by way of alimony and none other: Nelson v. Nelson, 14 O.L.A. 510.

Where a husband is dying of consumption and the wife is strong and healthy, with property accumulated for the most part by their joint exertions worth five thousand dollars, the court will award him alimony, in this case six hundred dollars, and thirty dollars per month for four years, should he live that length of time: McIntire v. McIntire, 16 O. C. C. (N.S.) 502, 31 O. C. D. 667.

A husband may be granted alimony out of the estate of the wife, which she is squandering, to secure a part thereof to the children: Bingham v. Bingham, 8 O. D. (N.P.) 692, 39 Bull. 37.

Alimony will not be allowed a husband out of his wife's estate when the divorce is granted to her and he has not shown that his money or labor has enhanced its value and that it has cost him something to live with her: Lidy v. Lidy, 8 O. D. (N.P.) 693, 35 Bull. 353.

SEC. 11993. Divorce for aggression of wife. When the divorce is granted by reason of the aggression of the wife, the court may adjudge to her such share of the husband's real or personal property, or both, as it deems just; or the husband shall be allowed such alimony out of the real and personal property of the wife as the court deems reasonable, having due regard to the property which came to the wife by marriage, and the value of her real and personal estate at the time of the divorce. Such alimony may be allowed to him in real or personal property, or both, or by decreeing to him such sums of money payable either in gross or by instalments, as the court deems equitable.

HISTORY.—R. S. § 5700; 90 v. 30; 51 v. 377, § 7; S. & C. 512; 114 v. 320 (478), § 2. ER. 1-1-32.

Appeal, G.C. § 12002.
Foreign divorce, G.C. § 11979, note 17.

References to Page's Digest and Ohio Jurisprudence

- Allowance when divorce for wife's aggression: PAGE Divorce § 103; O-JUR Courtesy § 19, Divorce §§ 65, 74, 81, 84.
- Allowance to husband: PAGE Divorce § 105; O-JUR Divorce § 75.
- Judgment or decree: PAGE Divorce § 110 et seq.; O-JUR Divorce § 100 et seq.
- Dower: PAGE Dower § 53; O-JUR Dower § 114.

ANNOTATIONS

1. When allowance made on divorce
2. Divorce obtained by fraud
3. Divorce without jurisdiction of wife
4. Foreign divorce

1. When allow

Where a d a husband or wife, and the signed to the out an order while so in necessities, s mer husband, this behalf, u by him to pay that they shot ton v. Fulton, 720, 29 L. R. 4 512, 3 O. C. D. 423, 12 O. C Douglas v. Dc

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1. When allowance made on divorce

Where a divorce, a vinculo, has been granted to a husband on account of the aggression of the wife, and the minor children of the parties assigned to the custody of the divorced wife, without an order respecting their maintenance, and while so in her custody she furnished to them necessaries, she can not recover against her former husband, their father, for her expenditures in this behalf, in the absence of proof of a promise by him to pay for such necessaries, or of a request that they should be furnished to the children: *Fulton v. Fulton*, 52 O. S. 229, 39 N. E. 729, 49 Am. St. 720, 29 L. R. A. 678; *Christoff v. Christoff*, 6 O. C. C. 512, 3 O. C. D. 562; *Douglass v. Douglass*, 22 O. C. C. 423, 12 O. C. D. 439 [affirmed, without report, *Douglas v. Douglas*, 45 Bull. 378].

Where a husband is entitled to a divorce because of the wife's aggression, and an agreement as to the division of the property is reached which agreement is carried into the decree, there is imposed upon the husband and his estate, in case of his death before hers a valid obligation which is binding according to the terms of the decree: *Hassaurek v. Markbreit*, 68 O. S. 554, 67 N. E. 1966.

Alimony can not be subjected to the debts of the wife which existed prior to the allowance thereof, whether such alimony has been paid to her or remains unpaid: *Fickel v. Granger*, 83 O. S. 101, 93 N. E. 527, 32 L. R. A. (N.S.) 270.

One who has not taken appeal or error from an order requiring him to pay alimony in certain amounts, upon certain dates, to his wife, who is the aggressor, and who has paid such installments for more than six years, can not, in a proceeding in contempt, attack the jurisdiction of the court to make the original order, based on the evidence at the original hearing: *Hefebower v. Hefebower*, 102 O. S. 674, 133 N. E. 455 [reversing *Hefebower v. Hefebower*, 30 O. C. A. 545, 35 O. C. D. 432; adhered to on rehearing, *Hefebower v. Hefebower*, 103 O. S. 680].

Divorced wife of employe held not entitled to death benefits under certificate issued by railroad company's relief association, though claimant was designated in certificate as "my wife M. W.": *Fitzgibbon v. Walcutt*, 126 O.S. 450, 185 N.E. 837.

A decree of divorce granted a husband upon the ground of impotency of his wife, after they have lived together in cordial and affectionate relation for sixteen years and after she had become insane, can not be said to be based upon the wife's aggression or fault, and does not absolve him from liability to support her: *Knestrick v. Knestrick*, 1 O. App. 285, 20 O. C. C. (N.S.) 570, 24 O. C. D. 195.

When, in prior actions in another jurisdiction in this state, the courts have held in suits between the same parties for divorce and alimony, that the separation of the parties was caused by the fault of the wife, but that she had not been guilty of wilful absence for three years, nor of gross neglect of duty, nor extreme cruelty, and have adjudged that the husband should make a fixed monthly payment for the support of the children, but refused an allowance of alimony to the wife, such adjudications are final and conclusive as to conditions then existing, but do not preclude an allowance of alimony on grounds subsequently arising: *Cadwell v. Cadwell*, 2 O. App. 278, 20 O. C. C. (N.S.) 433, 25 O. C. D. 53 [affirmed, *Cadwell v. Cadwell*, 93 O. S. 23; for former opinion in same case, see *Cadwell v. Cadwell*, 17 O. C. C. (N.S.) 528, 32 O. C. D. 266].

Where divorce had been granted for wife's aggression, the court, after vacating the judgment, could on proper hearing modify the finding as to division of property, but could not grant her alimony (G. C. § 11993): *Kristo v. Kristo*, 23 O. App. 29, 154 N. E. 59.

Where husband was granted divorce for wife's aggression, his failure to pay taxes and assessments on realty as directed was not failure to pay "alimony" for which he could be committed as for

contempt: *Traylor v. Traylor*, 46 O.App. 87, 187 N.E. 722, 39 O.L.R. 247.

A court which granted the husband a divorce because of the wife's aggression could enforce an order that the wife convey the home to the husband by a decree which would act as a conveyance: *Ball v. Ball*, 47 O.App. 547, 192 N.E. 364, 40 O.L.R. 407.

General Code § 11993, authorizing division of property, does not authorize an allowance in installments under the guise of a division of property, in the absence of evidence that the husband possesses property: *Riebel v. Riebel*, 15 O.L.A. 233.

Where a husband procures a divorce for the wife's aggression, she is barred of dower, whether or not the decree of court mentioned such bar, and whether or not there was personal service: *Ebert v. Ebert*, 15 O.L.A. 245.

Where a divorce is granted to the husband because of the wife's wilful absence without just cause, she is not entitled to alimony, but may be granted a division of property: *Lerch v. Lerch*, 16 O.L.A. 375.

Allowance stands upon a different footing from one made in case where the divorce is granted on the husband's aggression, and the character of the allowance in the former case is not changed by the fact that in the decree it is designated as "alimony": *Kelso v. Lovejoy*, 9 O. C. C. (N.S.) 539, 19 O. C. D. 597 [affirmed, without report, *Lovejoy v. Kelso*, 76 O. S. 598].

A creditor of wife may garnishee the husband and subject money due on the allowance to the wife, to the payment of his claim in the same way he could garnishee any other debtor of the wife: *Kelso v. Lovejoy*, 9 O. C. C. (N.S.) 539, 19 O. C. D. 597 [affirmed, without report, *Lovejoy v. Kelso*, 76 O. S. 598].

A wife may be granted a share of her husband's estate although in the same proceeding the husband has been granted a divorce from her on her aggression: *Mathers v. Mathers*, 15 O. C. C. (N.S.) 413, 31 O. C. D. 110 [affirmed, without opinion, *Mathers v. Mathers*, 88 O. S. 554, 555].

A money judgment rendered in a divorce and alimony case, payable in installments, made a lien on the husband's property and with express provision for execution, rendered in favor of the wife, though the divorce is granted to the husband, will be sustained as a division of property between the parties under this section: *Webster v. Miller*, 18 O. C. C. (N.S.) 272, 27 O. C. D. 632 [affirmed, without opinion, *Webster v. Miller*, 83 O. S. 473].

Where a divorce is decreed a husband because of the aggression of the wife, the further jurisdiction of the court in respect to the property rights of the parties is determined by this section; and where in such case the decree provides for a monthly payment of "alimony" by the husband extending through a term of years, such payments, although called alimony in the entry, are in fact not alimony, but property of the husband adjudged to the wife, and are not subject to modification: *Fenn v. Fenn*, 23 O. C. C. (N.S.) 205, 34 O. C. D. 215.

Where a decree of divorce is granted upon the aggression of the wife, the fact that the allowance which is made to her is referred to in the decree as alimony does not change its character from an allowance made to her out of his estate, and so much thereof as remains unpaid at his death becomes a charge against his estate: *Moore v. Trust & Safe Deposit Co.*, 18 O. N. P. (N.S.) 175 [citing *Fiesler v. Fiesler*, 83 O. S. 200; *Kelso v. Lovejoy*, 9 O. C. C. (N.S.) 539, 19 O. C. D. 597; affirmed, without opinion, *Lovejoy v. Kelso*, 76 O. S. 598].

It is competent and within the discretion of the court in granting a divorce to the husband for the adultery of the wife, the wife being in default for answer, cross-petition or demurrer, to order the husband to pay to the wife a certain sum per

week for a certain period, such payments to cease should the wife remarry during such period. In such case a finding by the court that the husband was the owner of real estate or personal property was not a necessary prerequisite to support the allowance: *Rouse v. Rouse*, 46 Bull. 126.

Where a divorce is granted to the husband for the wife's aggression, the allowance to her of a portion of his property under G. C. § 11993 is not alimony—as where a monthly sum is allowed her for a certain number of years and also for attorney fees without reference to her cross-petition for alimony—and no appeal lies: *Mayer v. Mayer*, 1 Dayton Term Rep. (Hddings) 57.

Alimony was allowed an adulteress where there was hope of reclamation and the property was earned by the parties jointly: *Dalley v. Dailey*, W. 514.

2. Divorce obtained by fraud

If a husband, by fraud and false testimony, obtains a decree of divorce for the wife's alleged aggression, and the decree bars the wife of alimony, dower and all other interest in her husband's property, by reason of the finding as to her aggression thus made, the decree is conclusive as to the dissolution of the marriage relation, but if the court which made such decree did not have jurisdiction of the wife, she may afterwards have such decree opened for a new hearing as far as her property rights are concerned: *Bay v. Bay*, 85 O. S. 417, 98 N. E. 109.

3. Divorce without jurisdiction of wife

A decree of divorce granted to a husband by an Ohio court, which was without jurisdiction over the wife or over certain property standing in the name of the husband does not determine the right of the wife to either alimony or dower in said property: *Bank v. Belford*, 14 O. C. C. (N.S.) 24, 22 O. C. D. 574.

4. Foreign divorce

The provision of this section that the wife shall be barred of dower when the divorce is granted by reason of her aggression does not apply to divorces in another state, but only to those decreed by the courts of this state in pursuance of the statute: *Mansfield v. McIntyre*, 10 O. 27.

A divorce granted to husband in another state on service by publication does not affect the wife's property rights here: *Doerr v. Forsythe*, 50 O. S. 726, 35 N. E. 1055, 40 Am. St. 703.

Foreign divorce, G.C. § 11979, note 17.

SEC. 11994. Alimony and allowance pendente lite. On notice to the opposite party of the time and place of the application, the court, or a judge thereof, in vacation, may grant alimony to either of the parties for his or her sustenance and expenses during the suit, and allowances for the support of minor children dependent upon either party for support and not provided for by such party during the pendency of the action for divorce, or alimony alone. When an appeal is taken by either party to the court of appeals, that court, or a judge thereof in vacation, may grant like alimony and support during the pendency of the appeal, upon like notice.

HISTORY.—S. & C. 513; R. S. § 5701; 72 v. 145, § 9; 83 v. 60, 62; 91 v. 348; 103 v. 405 (428).

Comparative legislation

Alimony pendente lite:

- Cal. Deering's Civil Code 1937, § 137.
- Ill. Smith-Hurd Rev. Stat. 1933, ch. 40, § 16.
- Ind. Burns' Stat. 1933, § 3-1216.
- Ky. Carroll's Civil Code 1938, § 424.

- Mass. Gen. Laws 1932, ch. 208, § 17.
- Mich. Comp. Laws 1929, § 12737.
- N.Y. Civil Prac. Act, § 1169.
- Penna. Purdon's Stat. 1936, title 23, § 46.
- W.Va. Code 1937, § 4713.

FORM: Order allowing; counsel fees. Bates § 1331F-19; Order for alimony. § 1331F-20.

ENTRY: Order for alimony pendente lite. Wild No. 561.

Alimony pendente lite: ~~PAGE~~ Divorce § 80 et seq.; O-JUR Divorce § 70 et seq.

ANNOTATIONS

1. When alimony pendente lite allowed
2. Alimony to husband
3. Enforcement
4. Review

1. When alimony pendente lite allowed

Where a wife, living separate and apart from her husband, and in an action against him for divorce and alimony, has obtained a decree fixing the amount of alimony to be paid by the husband for her sustenance during the pendency of her petition, and the husband is not in default in respect to the payment of the alimony allotted, he is not liable for necessities subsequently furnished at her request during the pendency of the petition: *Hare v. Gibson*, 32 O. S. 33.

Pending an appeal as to permanent alimony, an allowance of temporary alimony by a common pleas judge as a judge of the district court, does not bar another allowance by him pending the appeal: *King v. King*, 38 O. S. 370.

A judgment rendered for permanent alimony in a suit brought by a wife and which was fully satisfied, does not bar an application by the wife for alimony pendente lite in a suit for divorce brought later by the husband. Absence of the husband from the hearing of such motion does not render the allowance reversible, where the attorney for the husband had notice, and the amount allowed was not excessive: *Norton v. Norton*, 111 O. S. 262, 145 N. E. 253.

The allowance for legal expenses in a divorce case is within the discretion of the court; and, in the absence of an abuse of discretion, the action of the court will not be reviewed on error: *Drach v. Drach*, 17 O. App. 299.

The court may make an allowance of alimony pendente lite to the wife on a proper application therefor and notice, where her petition states a cause of action for divorce and alimony, if the court is satisfied that the action is being prosecuted in good faith, though proof of the truth of the allegations in the petition need not be made, that the husband is able to pay such allowance, and that the wife has no means of her own to pay for sustenance and expenses: *Adkins v. Adkins*, 15 O. C. C. (N.S.) 161, 23 O. C. D. 592.

In the absence of a motion to make it more definite and certain, a petition for divorce and alimony will authorize an order allowing alimony pendente lite where it alleges extreme cruelty on the part of the husband, specifying that he failed to resent insults offered to her by another in his presence, and gross neglect of duty, specifying failure to provide her suitable clothing: *Thomas v. Thomas*, 18 O. C. C. (N.S.) 363, 33 O. C. D. 99.

An allowance of attorney fees and for support of a child pendente lite, although the merits of the case was not before the trial judge will not be reversed: *Cullen v. Cullen*, 24 O. C. C. (N.S.) 566, 35 O. C. D. 1.

The attorney for a woman who brings a proceeding for alimony has no power to apply to the court for an allowance for her support and reasonable attorney fees: *Black v. Stewart*, 28 O. C. A. 433, 30 O. C. D. 277 [affirming *Stewart v. Stewart*, 20 O. N. P. (N.S.) 273, 28 O. D. (N.P.) 173; for a former opinion in same case, see *Stewart v. Stewart*, 20 O. N. P. (N.S.) 184].

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A woman who married the second time, believing that her first husband was dead, is never the legal wife of the man whom she thus marries, if the first husband is, in fact, then alive; and in a divorce suit against her second husband she can not have alimony pendente lite: *Fultz v. Fultz*, 9 O. N. P. (N.S.) 593, 21 O. D. (N.P.) 159.

The amount may be large enough for the wife's subsistence and to pay her counsel fees and expenses of divorce suit: *Dorsey v. Goodenow*, W. 120.

2. Alimony to husband

A husband may be allowed alimony pendente lite where he is old and without means of support, and the wife has a small income from real estate: *State v. Kirves*, 1 Dayton Term Rep. (Hidings) 10.

3. Enforcement

An order to pay alimony pendente lite is not within the clause of the constitution forbidding imprisonment for debt, excepting cases for fraud. Where it appears that the defendant has, since the making of such order, been in such financial condition that he might easily have complied therewith, and, when summoned before the court on motion to commit, still resisted the order to pay, it was held not error to order him to pay charges or to be committed in jail for five days: *Kaderabek v. Kaderabek*, 3 O. C. C. 419, 2 O. C. D. 236.

If alimony pendente lite was allowed in a proceeding for divorce, and all installments of such alimony are paid up to the time that an order is made transferring the case to another county for trial, and installments are not paid after such order is made, the court to which such case is transferred should entertain proceedings in contempt to compel the payment of such installments of alimony, and not the court from which such case was transferred: *Mills v. Mills*, 24 O. C. C. (N.S.) 133, 34 O. C. D. 517.

If it appear that the husband has made reasonable and diligent efforts to comply with the order to pay temporary alimony, and is not at fault for his failure to do so, he will not be held in contempt, although his obligation under the order continues: *Borror v. Borror*, 17 O. D. (N.P.) 147, 4 O. L. R. 531.

4. Review

This section provides for the allowance of alimony by the court of appeals when an appeal is taken from the trial court to that court, but the word "appeal" as therein used applies only to those causes in which a hearing de novo is had in the reviewing court: *Rockhold v. Rockhold*, 11 O.L.A. 399.

General Code § 11994, providing for alimony and allowance pendente lite to be granted by the court of appeals on appeal, does not authorize the court of appeals to allow temporary alimony or expenses and support where the case is in that court on proceedings in error: *Riebel v. Riebel*, 15 O.L.A. 254.

No appeal lies from a pendente allowance. The allowance and its amount are discretionary: *Taylor v. Taylor*, 25 O. S. 71; *Brachle v. Brachle*, 8 Dec. Rep. 345, 7 Bull. 135.

An order that a husband pay the wife an allowance pendente lite is a final order, reviewable on error: *King v. King*, 38 O. S. 370.

If the wife is entirely in the wrong, the allowance of the alimony pendente lite will be reversed: *Finn v. Finn*, 20 O. C. C. 701, 6 O. C. D. 4.

An award of alimony pendente lite is in the discretion of the court wherein the action is pending, and where there has been no abuse of discretion no appeal lies to the higher courts: *Myers v. Myers*, 22 O. C. C. (N.S.) 218, 33 O. C. D. 529.

SEC. 11995. Parties defendant. A person or corporation having possession or control of or

claiming an interest in property, real or personal, of the party out of which another seeks alimony, may be made a party defendant. (R. S. Sec. 5701.)

HISTORY.—R. S. § 5701; 91 v. 348; 83 v. 60, 62; 72 v. 145, § 9; S. & C. 513.

Parties: ~~Page~~ Divorce § 40; o-JUR Divorce § 93.

In an action for alimony, with constructive service only upon the defendant husband, but actual service upon a corporation in which the husband owns stock, said stock may be allowed the wife as alimony and an order made upon the corporation, ordering it to transfer the certificates of stock to her, if in its possession, and providing that in the event of its inability to transfer them to her that the decree of the court should operate as such transfer so as to vest in her the title thereto: *Transit Co. v. Beeman*, 14 O. C. C. (N.S.) 112, 21 O. C. D. 500 [affirmed in memorandum opinion, *Transit Co. v. Beeman*, 81 O. S. 509; on authority of *Benner v. Benner*, 63 O. S. 220].

An attempt to frustrate an order of court and defeat its judgment for alimony through the organization by the defendant of a corporation and transfer to it of the business enterprises being carried on by him, after the court had intimated to counsel that a decree for alimony would be allowed to plaintiff and an equal division of the property ordered, but before a decree carrying into effect the intention of the court had been entered, constitutes fraud and deceit: *Daniels v. Daniels*, 17 O. N. P. (N.S.) 605, 26 O. D. (N.P.) 575.

SEC. 11996. Injunction. When it is made to appear to the court, or a judge in vacation, that a party is about to dispose of or encumber property, or any part thereof, so as to defeat the other party in obtaining alimony, such court or judge may allow an injunction to prevent this, with or without bond, at discretion. A party may sell and assign the order for alimony or allowance, after it is made. (R. S. Sec. 5701.)

HISTORY.—R. S. § 5701; 91 v. 348; 83 v. 60, 62; 72 v. 145, § 9; S. & C. 513.

FORM: Petition by wife against husband to prevent squandering her property. Bates § 1637F-3.

References to Page's Digest and Ohio Jurisprudence

Preservation of status quo in pending suit: ~~Page~~ Divorce §§ 99 et seq., 129, Injunction § 32; o-JUR Divorce § 110, Equity § 87, Injunctions §§ 88, 221.

Sale or assignment of judgment: o-JUR Divorce § 108, Judgments § 96.

ANNOTATIONS

If a petition for divorce and alimony by the wife, specially describes certain real estate of the husband, charging it with equities of the wife, and asking an injunction to prevent alienation pendente lite, and also equitable relief, and the decree therein is such as that from it, it may be found that the court acted on those equities and favorably thereto, the proceeding operates as a lis pendens, and the decree for alimony and settling equities will be a lien on the lands, preferable to that of a mortgagee who had actual notice of the proceedings for divorce and alimony, and whose mortgage was executed and recorded, pending those proceedings: *Tolerton v. Willard*, 30 O. S. 579.

An action by a wife against a nonresident husband, seeking to apply the proceeds of his realty, which is situated in this state, to her support, is a proceeding in rem, and the court may grant a preliminary injunction to prevent him from transferring the property, pending the suit; and after

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REVISED CODE

Title XXXI

DOMESTIC RELATIONS-CHILDREN

TO BE SUBMITTED TO THE

Senate

AND

House of Representatives

BAKER, HORTON & WATKINSON
1956 UNION SQUARE BLDG.
CLEVELAND 14, OHIO

Prepared by the Bureau of Code Revision in compliance with section 76-6 of the General Code, and in conformity with the plan approved by the General Assembly for the order, classification, and arrangement of the laws of Ohio.

FEB 3 1958

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REVISED CODE

TITLE XXXI. DOMESTIC RELATIONS—CHILDREN

Chapter

- 3101. Marriage.
- 3103. Husband and Wife.
- 3105. Divorce and Alimony.
- 3107. Adoption.
- 3109. Infants.
- 3111. Bastardy.
- 3113. Neglect and Abandonment of Dependents.
- 3115. Support of Dependents.

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Sec. 3103.06 (8002-6). Contracts affecting marriage.

A husband and wife cannot, by any contract with each other, alter their legal relations, except that they may agree to an immediate separation *** and make provisions for the support of either of them and their children during the separation.

Sec. 3103.07 (8002-7). Property.

A married person may take, hold, and dispose of property, real or personal, the same as if unmarried.

Sec. 3103.08 (8002-8). Responsibility.

Neither husband nor wife, as such, is answerable for the acts of the other.

CHAPTER 3105. DIVORCE AND ALIMONY.

<i>Revised Code Numbers</i>	<i>General Code Numbers</i>	<i>Titles</i>
3105.01	8003-1	Grounds for Divorce.
3105.02	8003-2	Prohibition.
3105.03	8003-3	Place Where Action Shall Be Brought.
3105.04	8003-4	Residence of Wife.
3105.05	8003-6	Service on Residents.
3105.06	8003-7	Notice to Nonresidents.
3105.07	8003-8	Foreign Defendants.
3105.08	8003-9	Investigation.
3105.09	8003-10	Hearing.
3105.10	8003-11	Answer, Hearing, and Judgment.
3105.11	8003-12	Testimony.
3105.12	8003-13	Evidence of Marriage.
3105.13	8003-14	Legitimacy of Children.
3105.14	8003-15	Allowance Pendente Lite.
3105.15	8003-16	Delay of Decree.
3105.16	8003-17	Restoration of Name.
3105.17	8003-18	Grounds for Alimony.
3105.18	8003-19	Alimony.
3105.19	8003-20	Parties Defendant.
3105.20	8003-21	Injunction and Equity Powers.
3105.21	8003-22	Children.
3105.99	8003-23	Penalty.

Sec. 3105.01 (8003-1). Grounds for divorce.

The court of common pleas may grant divorces for the following causes:

- (A) *** *Either* party had a husband or wife living at the time of the marriage from which the divorce is sought;
- (B) Willful absence of the adverse party for one year;
- (C) Adultery;
- (D) Impotency;

- (E) Extreme cruelty;
- (F) Fraudulent contract;
- (G) Any gross neglect of duty;
- (H) Habitual drunkenness;
- (I) Imprisonment of the adverse party in a state or federal penal institution under sentence thereto at the time of filing the petition;
- (J) *** Procurement of a divorce without this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while such obligations remain binding upon the other party ***.

Sec. 3105.02 (8003-2). Prohibition.

No person shall advertise, print, publish, distribute, or circulate a circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice, or cause such to be done, with *the* intent to procure or aid in procuring divorces, either in this state or elsewhere. This section *** does not apply to the printing or publishing of a notice or advertisement authorized by law.

Sec. 3105.03 (8003-3). Place where action shall be brought.

Except in an action for alimony alone, the plaintiff shall have been a resident of the state at least one year immediately before filing the petition. Actions for divorce or for alimony shall be brought in the county of which the plaintiff is and has been *** a bona fide resident for at least ninety days immediately preceding the filing of the petition, or in the county where the cause of action arose. The court of *common pleas* shall hear and determine the case, whether the marriage took place, or the cause of divorce occurred, within or without the state.

Sec. 3105.04 (8003-4). Residence of wife.

When a wife files a petition for *** divorce *** or for alimony, the residence of her husband *** does not preclude her from the provisions of sections *** 3105.01 to 3105.21, inclusive, of the *** Revised Code.

Sec. 3105.05 (8003-6). Service on residents.

When the defendant *in an action for divorce or for alimony* is a resident of this state, the clerk of the court of *common pleas* shall issue a summons *** directed to the sheriff of the county in which *** such defendant resides or is found, which *** together with a copy of the petition shall be served on him at least six weeks before the hearing of the cause.

Sec. 3105.06 (8003-7). Notice to nonresidents.

If the defendant *in an action for divorce or for alimony* is not a resident of this state, is a resident of this state but personal service cannot be served upon him, or his residence is unknown, notice of the pendency of the action must be given by publication as provided by sections *** 2703.14 to 2703.27, inclusive, of the *** Revised Code. Unless it is made to appear to the court of *common pleas*, by affidavit or otherwise, that his residence

is unknown to the plaintiff * diligence it cannot be ascertained forthwith on the filing of it, known place of residence.

Sec. 3105.7 (8003-8). F

In all actions for divorce, ant is the subject of a foreign plaintiff must state *** such marriage, in the petition ***. *Wh of common pleas* shall forthwith petition to a consular representative States.

Sec. 3105.08 (8003-9).

On the filing of a petition *mon pleas* may, and in cases years of age involved *** shall character, family relations, worth of the parties to the act made available to either party quest not less than five days l The court, on its own motion any point in the state to appear

Sec. 3105.09 (8003-10).

An action for divorce or until after the expiration of six first publication of notice.

Sec. 3105.10 (8003-11).

The court of *common pleas* charged in the petition *** and court, pronounce the marriage released from *** their obligations Upon the granting of a divorce of such judgment, each party estate situated within this state during coverture.

"Dower" as used in this section *** 2103.02 of the Revised Code

Sec. 3105.11 (8003-12).

A judgment for divorce testimony or admissions of a mission shall be received which believe was obtained by fraud, coercion The parties, notwithstanding

Sections *** 3105.01 to 3105.21,
to the same extent that any other wit-

of marriage.

ation of the marriage of the parties
in marriage, and within the discre-
tion of the court.

of children.

the dissolution of the marriage shall not
affect the rights of the parties.

pendente lite.

at the time and place of the applica-
tion thereof *** in vacation, may
be granted for his sustenance and expenses
and for the support of minor children of
the dependency of the action for divorce,
taken by either party ***; the court
in vacation, may grant like alimony
and expenses, upon like notice.

decree.

to a decree of divorce, is ordered
the custody of a child *** who is not in his
possession *** hearing the cause ***
until the husband *** secures the
support of such child, to the

tion of name.

of the court of common pleas shall, if the
party had before the marriage. ***

for alimony.

to file a petition for divorce or for
to file a cross-petition for divorce or
the court may grant alimony on a peti-
tion causes:

cause;

in the absence of *** ill-treatment by the ad-

of a party in a state or federal penal
institution at the time of filing the petition.

Sec. 3105.18 (8003-19). Alimony.

The court of common pleas may allow alimony as it deems reasonable
to either party, having due regard to property which came to either by
their marriage, the earning capacity of either, and the value of real and
personal estate of either at the time of the decree.

*** Such alimony may be allowed in real or personal property, or
both, or by decreeing a sum of money, payable either in gross or by in-
stallments, as the court deems equitable.

Sec. 3105.19 (8003-20). Parties defendant.

A person or corporation having possession of, *** control of, or
claiming an interest in property, real or personal, out of which another
seeks alimony, may be made a party defendant.

Sec. 3105.20 (8003-21). Injunction and equity powers.

When it is made to appear to the court of common pleas, or a judge
in vacation, that a party is about to dispose of or encumber property, or
any part thereof, so as to defeat the other party in obtaining alimony,
the court or judge may allow an injunction, with or without bond, to pre-
vent such action ***. A party may sell and assign the order for alimony
or allowance, after it is made. In any matter concerning domestic rela-
tions, the court *** shall not be deemed to be deprived of its full equity
powers and jurisdiction.

Sec. 3105.21 (8003-22). Children.

Upon satisfactory proof of any of the charges in the petition for
divorce or for alimony, the court of common pleas shall make such order
for the disposition, care, and maintenance of the children *** of the mar-
riage, as is just, and in accordance with section *** 3109.04 of the ***
Revised Code.

Sec. 3105.99 (8003-23). Penalty.

(A) Whoever violates section *** 3105.02 of the *** Revised Code
shall be fined not less than twenty-five nor more than five hundred dollars
or imprisoned not more than six months, or both.

CHAPTER 3107.

ADOPTION.

Revised Code Numbers	General Code Numbers	Titles
3107.01	8004-1	Definitions.
3107.02	8004-2	Persons Who May Adopt.
3107.03	8004-3	Petition for Adoption.
3107.04	8004-4	Hearing; Next Friend; Notice.
3107.05	8004-5	Investigation by Next Friend; Costs.
3107.06	8004-6	Consent.
3107.07	8004-7	Readoption.
3107.08	8004-8	Approval or Disapproval of Placement; Jurisdiction.

THE STATE OF OHIO

VOLUME CXXXV

LEGISLATIVE ACTS

(EXCEPTING APPROPRIATION ACTS)

PASSED

AND

JOINT RESOLUTIONS

ADOPTED

BY THE

ONE HUNDRED AND TENTH GENERAL ASSEMBLY
OF OHIO

At Its Second Regular Session

JANUARY 2, 1974 TO DECEMBER 10, 1974, INCLUSIVE

Issued by

TED W. BROWN

Secretary of State

The National Graphics Corporation
Columbus, Ohio 43216
1975



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1956 UNION COMMERCE BLDG.
CLEVELAND, OHIO 44115

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Appendix 12

Columbus,
A. D. 1974.

AN ACT

State.

30, 1974.

To amend sections 2301.03, 3101.04, 3101.05, 3105.01, 3105.03, 3105.10, 3105.17, 3105.18, 3109.04, and 3109.05, to enact sections 3105.091, 3105.21, 3105.61, 3105.62, 3105.63, 3105.64, and 3105.65, and to repeal section 3103.02 of the Revised Code relative to marriage and divorce.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2301.03, 3101.04, 3101.05, 3105.01, 3105.03, 3105.10, 3105.17, 3105.18, 3109.04, and 3109.05 be amended, and sections 3105.091, 3105.21, 3105.61, 3105.62, 3105.63, 3105.64, and 3105.65 of the Revised Code be enacted to read as follows:

Sec. 2301.03. (A) In Franklin county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1953, and January 5, 1969, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Franklin county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under sections 2151.01 to 2151.61 and section 2151.99 of the Revised Code, all bastardy cases over which the juvenile court has jurisdiction, and all divorce, alimony, and annulment cases shall be assigned to such judges. In addition to his regular duties, the judge who is senior in point of service shall serve on the children services board, the county advisory board, and shall be the administrator of the domestic relations court, its subdivisions and departments.

(B) In Hamilton county, the judge of the court of common pleas, whose term begins on January 1, 1957, and successors, and the judge of the court of common pleas, whose term begins on February 14, 1967, and successors, shall be the juvenile judges as provided in sections 2151.01 to 2151.61 and SECTION 2151.99 of

00108

(D) UPON THE GRANTING OF A JUDGMENT FOR ALIMONY, WHEN BY THE FORCE OF THE JUDGMENT REAL ESTATE IS GRANTED TO ONE PARTY, THE OTHER PARTY IS BARRED OF ALL RIGHT OF DOWER IN THE REAL ESTATE AND THE COURT MAY PROVIDE THAT EACH PARTY SHALL BE BARRED OF ALL RIGHTS OF DOWER IN THE REAL ESTATE ACQUIRED BY EITHER PARTY AT ANY TIME SUBSEQUENT TO THE JUDGMENT.

"Dower" as used in this section has the meaning set forth in section 2103.02 of the Revised Code.

Sec. 3105.17. Either party to the marriage may file a [petition] COMPLAINT for divorce or for alimony, and when filed the other may file a [cross-petition] COUNTERCLAIM for divorce or for alimony. The court of common pleas may grant alimony on a [petition] COMPLAINT or [cross-petition] COUNTERCLAIM, REGARDLESS OF WHETHER THE PARTIES ARE LIVING SEPARATELY AT THE TIME THE COMPLAINT OR COUNTERCLAIM IS FILED, for the following causes:

- (A) Adultery;
- (B) Any gross neglect of duty;
- (C) Abandonment without good cause;
- (D) [A separation is consequence of ill-treatment] ILL-TREATMENT by the adverse party;
- (E) Habitual drunkenness;
- (F) Imprisonment of the adverse party in a state or federal penal institution under sentence thereto at the time of filing the petition.

Sec. 3105.18. [The] (A) IN A DIVORCE, DISSOLUTION OF MARRIAGE, OR ALIMONY PROCEEDINGS, THE court of common pleas may allow alimony as it deems reasonable to either party [; having due regard to property which came to either by their marriage; the earning capacity of either; and the value of real and personal estate of either at the time of the decree].

[Such] THE alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court deems equitable.

(B) IN DETERMINING WHETHER ALIMONY IS NECESSARY, AND IN DETERMINING THE NATURE, AMOUNT, AND MANNER OF PAYMENT OF ALIMONY, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING:

- (1) THE RELATIVE EARNING ABILITIES OF THE PARTIES;
- (2) THE AGES, AND THE PHYSICAL AND EMOTIONAL CONDITIONS OF THE PARTIES;
- (3) THE RETIREMENT BENEFITS OF THE PARTIES;

(4) THE E PARTIES;

(5) THE D

(6) THE E PRIATE FOR A OF A MINOR CH

(7) THE S TABLISHED DU

(8) THE R PARTIES;

(9) THE R PARTIES;

(10) THE BY EITHER PAI

(11) THE MAKER.

(C) IN AN FOR ALIMONY CODE, ANY C MENTS OF MON IS SUBJECT TO CHANGED CIRC

Sec. 3105.21 THE CAUSES I MENT, OR AL SHALL MAKE AND MAINTEN RIAGE, AS IS CORDANCE WIT

(B) UPON IN THE COMPL FOR THE DISI ANY DEPENDE CHILD'S BEST I TION 3109.04 OI

Sec. 3105.61 GRANT A DISS

Sec. 3105.62 FOR DISSOLUT RESIDENT OF DIATELY BEFO DISSOLUTION C PROPER COUN SUANT TO CIV PROCESS, BOTI

(4) THE EXPECTANCIES AND INHERITANCES OF THE PARTIES;

(5) THE DURATION OF THE MARRIAGE;

(6) THE EXTENT TO WHICH IT WOULD BE INAPPROPRIATE FOR A PARTY, BECAUSE HE WILL BE CUSTODIAN OF A MINOR CHILD OF THE MARRIAGE, TO SEEK EMPLOYMENT OUTSIDE THE HOME;

(7) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE;

(8) THE RELATIVE EXTENT OF EDUCATION OF THE PARTIES;

(9) THE RELATIVE ASSETS AND LIABILITIES OF THE PARTIES;

(10) THE PROPERTY BROUGHT TO THE MARRIAGE BY EITHER PARTY;

(11) THE CONTRIBUTION OF A SPOUSE AS HOME-MAKER.

(C) IN AN ACTION BROUGHT SOLELY FOR AN ORDER FOR ALIMONY UNDER SECTION 3105.17 OF THE REVISED CODE, ANY CONTINUING ORDER FOR PERIODIC PAYMENTS OF MONEY ENTERED PURSUANT TO THIS SECTION IS SUBJECT TO FURTHER ORDER OF THE COURT UPON CHANGED CIRCUMSTANCES OF EITHER PARTY.

Sec. 3105.21. (A) UPON SATISFACTORY PROOF OF THE CAUSES IN THE COMPLAINT FOR DIVORCE, ANNULMENT, OR ALIMONY, THE COURT OF COMMON PLEAS SHALL MAKE AN ORDER FOR THE DISPOSITION, CARE, AND MAINTENANCE OF THE CHILDREN OF THE MARRIAGE, AS IS IN THEIR BEST INTERESTS, AND IN ACCORDANCE WITH SECTION 3109.04 OF THE REVISED CODE.

(B) UPON THE FAILURE OF PROOF OF THE CAUSES IN THE COMPLAINT, THE COURT MAY MAKE THE ORDER FOR THE DISPOSITION, CARE, AND MAINTENANCE OF ANY DEPENDENT CHILD OF THE MARRIAGE AS IS IN THE CHILD'S BEST INTEREST, AND IN ACCORDANCE WITH SECTION 3109.04 OF THE REVISED CODE.

Sec. 3105.61. THE COURT OF COMMON PLEAS MAY GRANT A DISSOLUTION OF MARRIAGE.

Sec. 3105.62. ONE OF THE SPOUSES IN AN ACTION FOR DISSOLUTION OF MARRIAGE SHALL HAVE BEEN A RESIDENT OF THE STATE AT LEAST SIX MONTHS IMMEDIATELY BEFORE FILING THE PETITION. ACTIONS FOR DISSOLUTION OF MARRIAGE SHALL BE BROUGHT IN THE PROPER COUNTY FOR COMMENCEMENT OF ACTIONS PURSUANT TO CIVIL RULES. FOR PURPOSES OF SERVICE OF PROCESS, BOTH PARTIES IN AN ACTION FOR DISSOLUTION

AMENDED HOUSE BILL NO. 358

Act Effective Date: 5-2-86
 Date Passed: 1-14-86
 Date Approved by Governor: 1-31-86
 Date Filed: 1-31-86
 File Number: 127
 Chief Sponsor: BOSTER

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Editor's Note: An LSC Analysis is printed at the end of this bill.

To amend sections 3105.18, 3105.63, and 3105.65 of the Revised Code to permit the modification of the amount or terms of alimony decreed in a divorce or dissolution of marriage action only if the parties consent in specified manners.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3105.18, 3105.63, and 3105.65 of the Revised Code be amended to read as follows:

3105.18 Allowance of alimony; factors determining nature, amount and manner of payment; continuing jurisdiction; modification [Eff. 5-2-86]

(A) In a divorce, dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony as it ~~deems~~ **CONSIDERS** reasonable to either party.

The alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court ~~deems~~ **CONSIDERS** equitable.

(B) In determining whether alimony is necessary, and in determining the nature, amount, and manner of payment of alimony, the court shall consider all relevant factors, including, **BUT NOT LIMITED TO, THE FOLLOWING:**

- (1) The relative earning abilities of the parties;
- (2) The ages, and the physical and emotional conditions of the parties;
- (3) The retirement benefits of the parties;
- (4) The expectancies and inheritances of the parties;
- (5) The duration of the marriage;
- (6) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home;
- (7) The standard of living of the parties established during the marriage;
- (8) The relative extent of education of the parties;
- (9) The relative assets and liabilities of the parties;
- (10) The property brought to the marriage by either party;
- (11) The contribution of a spouse as homemaker.

(C) In an action brought solely for an order for alimony under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(D) IF A CONTINUING ORDER FOR PERIODIC PAYMENTS OF MONEY AS ALIMONY IS ENTERED IN A

DIVORCE OR DISSOLUTION OF MARRIAGE ACTION THAT IS DETERMINED ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT, THE COURT THAT ENTERS THE DECREE OF DIVORCE OR DISSOLUTION OF MARRIAGE DOES NOT HAVE JURISDICTION TO MODIFY THE AMOUNT OR TERMS OF THE ALIMONY UNLESS THE COURT DETERMINES THAT THE CIRCUMSTANCES OF EITHER PARTY HAVE CHANGED AND UNLESS ONE OF THE FOLLOWING APPLIES:

(1) IN THE CASE OF A DIVORCE, THE DECREE OR A SEPARATION AGREEMENT OF THE PARTIES TO THE DIVORCE THAT IS INCORPORATED INTO THE DECREE CONTAINS A PROVISION SPECIFICALLY AUTHORIZING THE COURT TO MODIFY THE AMOUNT OR TERMS OF ALIMONY;

(2) IN THE CASE OF A DISSOLUTION OF MARRIAGE, THE SEPARATION AGREEMENT THAT IS APPROVED BY THE COURT AND INCORPORATED INTO THE DECREE CONTAINS A PROVISION SPECIFICALLY AUTHORIZING THE COURT TO MODIFY THE AMOUNT OR TERMS OF ALIMONY.

3105.63 Petition for dissolution; separation agreement [Eff. 5-2-86]

A petition for dissolution of marriage shall be signed by both spouses, and shall have attached and incorporated a separation agreement agreed to by both spouses. The separation agreement shall provide for a division of all property; alimony; ~~and;~~ if there are minor children of the marriage, for custody of minor children, child support, and visitation rights; **AND, IF THE SPOUSES SO DESIRE, AN AUTHORIZATION TO THE COURT TO MODIFY THE AMOUNT OR TERMS OF ALIMONY PROVIDED IN THE SEPARATION AGREEMENT.** An amended separation agreement may be filed at any time prior to or during the hearing on the petition for dissolution of marriage. Upon receipt of a petition for dissolution of marriage, the court may cause an investigation to be made pursuant to ~~civil rules~~ **THE CIVIL RULES.**

3105.65 Dismissal of petition or approval of agreement and grant of dissolution; effect of decree; continuing jurisdiction; modification of alimony [Eff. 5-2-86]

(A) If, at the time of the hearing, either spouse is not satisfied with the separation agreement, or does not wish a dissolution of the marriage, the court shall dismiss the petition and refuse to validate the proposed separation agreement.

(B) If, upon review of the testimony of both spouses, and of the report of the investigator pursuant to **THE CIVIL RULES**, the court approves the separation agreement and any amendments ~~thereto~~ **TO IT** agreed upon by the parties, it shall grant a decree of dissolution of marriage ~~incorporating~~ **THAT INCORPORATES** the separation agreement. A decree of dissolution of marriage has the same effect upon the property rights of the parties, including rights of dower and inheritance, as a decree of divorce. The court has full power to enforce its decree, and retains jurisdiction to modify all matters of custody, child support, and visitation, **AND, ONLY IN ACCORDANCE WITH DIVISION (D)(2) OF SECTION 3105.18 OF THE REVISED CODE, HAS AUTHORITY TO MODIFY THE AMOUNT OR TERMS OF ALIMONY.**

SECTION 2. That existing sections 3105.18, 3105.63, and 3105.65 of the Revised Code are hereby repealed.

SECTION 3. The amendments to sections 3105.18, 3105.63, and 3105.65 of the Revised Code made by Section 1 of this act do not affect divorces or dissolutions of marriage that were determined prior to the effective date of this act, and do not affect awards of alimony or, when authorized by statutory or common law of this state, modifications of awards of alimony in such divorces or dissolutions of marriage.

LSC Analysis of Am. H.B. 358

(As Reported by H. Civil & Commercial Law)

Editor's Note: The following analysis, by the staff of Ohio's Legislative Service Commission, is printed to assist subscribers. CAUTION: because bills are subject to possible floor amendments and conference committee changes following preparation of the analyses, the text of an analysis may not reflect all of the provisions of the Bill as signed into law.

Summary:

Permits the modification of the amount and terms of alimony decreed in a dissolution of marriage case.

Provides for the modification of the amount and terms of alimony in a divorce or dissolution of marriage case if the parties consent to the modification in specified manners.

CONTENT AND OPERATION

I. Existing law

Current section 3105.18 of the Revised Code allows courts to order *alimony* in a divorce, dissolution of marriage, or alimony proceeding. Alimony can be in the form of a division of real or personal property, a lump-sum monetary payment, or periodic monetary payments (commonly called and referred to below as "periodic sustenance" alimony). Courts can award alimony as they consider reasonable to either party, but only after considering all relevant factors (including matters set forth in the statute).

When alimony is ordered in an *alimony proceeding* and is in the form of periodic payments, the court involved can *modify* the order upon changed circumstances of either party (sec. 3105.18(C)). Although section 3105.18 does *not* specifically authorize the modification of alimony awarded in a *divorce* case, it has been judicially recognized that courts have continuing jurisdiction to modify "periodic sustenance" alimony they awarded in a divorce case, even if an award of alimony is associated with a settlement agreement of parties incorporated into a divorce decree; changed circumstances commonly is the basis for a modification, and separation agreements incorporated into divorce decrees may expressly authorize modifications. See, *Wolfe v. Wolfe*, 46 Ohio St. 2d 399 (1976).

In a *dissolution of marriage* action, the parties must submit a *separation agreement* to the court that, among other things, must provide for alimony (sec. 3105.63). If approved by the court, it is incorporated into the decree of dissolution of marriage (sec. 3105.65). The court involved has continuing jurisdiction to modify matters of custody, child support, and visitation covered by the agreement (sec. 3105.65), but, unless the agreement expressly so permits (see COMMENT), the court *does not* have continuing jurisdiction to modify alimony agreed to in the agreement and incorporated into the decree of dissolution of marriage. See, *McClain v. McClain*, 15 Ohio St. 3d 289 (1984).

II. Changes proposed by the bill

The bill specifically would permit a modification of alimony in a divorce or dissolution of marriage case that is determined on or after the bill's effective date (secs. 3105.18(D) and 3105.65(B)). The modification could be of the amount or the terms of alimony (secs. 3105.18(D), 3105.63, and 3105.65(B)).

However, a modification would be permitted only if an "authorization" exists as follows (sec. 3105.18(D)):

(A) In a divorce, either the decree itself or a separation agreement incorporated into it would have to contain a provision specifically authorizing the court to modify the amount or terms of alimony;

(B) In a dissolution of marriage, the separation agreement approved by the court and incorporated into the decree would have to contain an authorization in order for the court to modify the

amount or terms of alimony. In this regard, the bill would amend section 3105.63 to specifically authorize parties to a dissolution of marriage case to include a modification of alimony provision in their separation agreement if they wish to so authorize the court.

The bill would specify that its proposed modification of alimony provisions do not affect the following (Section 3):

(A) Divorces or dissolutions of marriage that were determined *prior* to the bill's effective date;

(B) Awards of alimony or, when authorized by Ohio statutory or case law, modifications of alimony in divorces or dissolutions of marriage that were determined prior to the bill's effective date.

COMMENT

According to testimony before the House Civil and Commercial Law Committee, some Ohio courts will *not* modify alimony agreed to in a separation agreement involved in a dissolution of marriage case *even if* the parties have expressly provided in the agreement that the alimony is modifiable by a court. The courts have concluded that the Revised Code does not grant them continuing jurisdiction over the alimony and that only the General Assembly can confer jurisdiction upon the courts, not the parties to a proceeding.

AMENDED HOUSE BILL No. 408

Act Effective Date:	5-2-86
Date Passed:	1-15-86
Date Approved by Governor:	1-31-86
Date Filed:	1-31-86
File Number:	128
Chief Sponsor:	COLONNA

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

To amend section 122.36 of the Revised Code to prohibit the disclosure to the public of trade secrets and other financial and commercial information received by the Ohio Technology Transfer Organization.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 122.36 of the Revised Code be amended to read as follows:

122.36 Trade secrets protected [Eff. 5-2-86]

(A) Any materials or data submitted, made, or received by the director of development, the industrial technology and enterprise advisory board, and the controlling board, to the extent that the material or data consists of trade secrets, commercial or financial information regarding projects is not deemed to be public information or public documents and shall not be open to public inspection.

(B) ANY MATERIALS OR DATA SUBMITTED, MADE AVAILABLE TO, OR RECEIVED BY OHIO TECHNOLOGY TRANSFER AGENTS OR THE DEPARTMENT OF DEVELOPMENT IN CONNECTION WITH THE ACTIVITIES OF THE OHIO TECHNOLOGY TRANSFER ORGANIZATION, OR ANY INFORMATION TAKEN FROM SUCH MATERIALS OR DATA FOR ANY PURPOSE, TO THE EXTENT THAT THE MATERIALS OR DATA CONSIST OF TRADE SECRETS OR OTHER PROPRIETARY INFORMATION, ARE NOT PUBLIC INFORMATION OR PUBLIC DOCU-

officer employed by the agency who has had crisis intervention training, if any of the peace officers employed by the agency who have had crisis intervention training is reasonably available.

(B) WHEN A PERSON IS CHARGED WITH A VIOLATION OF SECTION 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, OR 2907.12 OF THE REVISED CODE AND THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE PERSON OR A COURT DISCOVERS THAT THE PERSON ARRESTED OR A PERSON WHOM THE PERSON ARRESTED CAUSED TO ENGAGE IN SEXUAL ACTIVITY HAS A COMMUNICABLE DISEASE, THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE PERSON OR THE COURT IMMEDIATELY SHALL NOTIFY THE VICTIM OF THE NATURE OF THE DISEASE.

(C) As used in this section, "crisis intervention training" has the same meaning as in section 109.71 of the Revised Code.

SECTION 2. That existing sections 2151.14 and 2907.30 of the Revised Code are hereby repealed.

AMENDED SUBSTITUTE HOUSE BILL NO. 509

Act Effective Date: 9-17-86
Date Passed: 5-22-86
Date Approved by Governor: 6-18-86
Date Filed: 6-18-86
File Number: 251
Chief Sponsor: HARTLEY

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Section Effective Date(s): This Act contains provisions which take effect on dates different from the effective date of the Act itself. See Act section(s) 3 and 6.

Editor's Note: An LSC Analysis is printed at the end of this bill.

To amend sections 145.56, 742.47, 2151.23, 2301.35, 2301.351, 2301.36, 2301.37, 2301.372, 2301.38, 2301.39, 2329.66, 2705.05, 3105.18, 3105.21, 3109.05, 3111.13, 3113.04, 3113.21, 3113.31, 3115.22, 3307.71, 3309.66, 3770.07, 4123.67, 5505.22, and 5747.121, to enact sections 2301.353, 2705.031, 3113.211, 3113.212, 3113.213, 3113.214, and 5101.311, and to repeal section 2301.371 of the Revised Code to conform the existing child support enforcement withholding mechanism to certain mandates of the federal Child Support Enforcement Amendments of 1984, to make other changes to the existing child and spousal support enforcement procedures, and to amend section 2301.35 of the Revised Code, effective June 6, 1988.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 145.56, 742.47, 2151.23, 2301.35, 2301.351, 2301.36, 2301.37, 2301.372, 2301.38, 2301.39, 2329.66, 2705.05, 3105.18, 3105.21, 3109.05, 3111.13, 3113.04, 3113.21, 3113.31, 3115.22, 3307.71, 3309.66, 3770.07, 4123.67, 5505.22, and 5747.121 be amended and sections 2301.353, 2705.031,

3113.211, 3113.212, 3113.213, 3113.214, and 5101.311 of the Revised Code be enacted to read as follows:

145.56 Taxation of allowances; exemption from execution or garnishment [Eff. 12-1-86]

The right of a person to a pension, an annuity, or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under sections 145.01 to 145.57 ~~145.58~~ of the Revised Code, or of any municipal retirement system established subject to such sections, under the laws of this state or any charter, the various funds created by sections 145.01 to ~~145.57~~ 145.58 of the Revised Code, or under such municipal retirement system, and all moneys and investments and income thereof, are hereby exempt from any state tax, except the tax imposed by section 5747.02 of the Revised Code, and any county, municipal, or other local tax, and, except as provided in section SECTIONS 145.57 AND 3113.21 of the Revised Code, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other process of law, and shall be unassignable except as specifically provided in such sections 145.01 TO 145.58 AND 3113.21 OF THE REVISED CODE.

742.47 Exemption from execution [Eff. 12-1-86]

Except as provided in section SECTIONS 742.461 AND 3113.21 of the Revised Code, sums of money due or to become due to any person from the police and firemen's disability and pension fund are not liable to attachment, GARNISHMENT, levy, or seizure under any legal or equitable process, whether such sums remain with the treasurer of the fund or any officer or agent of the board of trustees of the fund, or is in the course of transmission to the person entitled thereto, but shall inure wholly to the benefit of such person.

2151.23 Jurisdiction of juvenile court; orders for child support [Eff. 12-1-86]

(A) The juvenile court has exclusive original jurisdiction under the Revised Code:

(1) Concerning any child who on or about the date specified in the complaint is alleged to be a juvenile traffic offender, or a delinquent, unruly, abused, neglected, or dependent child;

(2) To determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapters 5122. and 5123. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, or a mentally retarded person subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code;

(5) To hear and determine all criminal cases charging adults with the violation of any section of Chapter 2151. of the Revised Code;

(6) Under the interstate compact on juveniles in section 2151.56 of the Revised Code;

(7) To hear and determine applications for consent to marry pursuant to section 3101.04 of the Revised Code.

(B) The juvenile court has original jurisdiction under the Revised Code:

(1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to Chapter 3111. of the Revised Code;

(3) Under the uniform reciprocal enforcement of support act in Chapter 3115. of the Revised Code;

ORDERED TO WITHHOLD OR DEDUCT AN AMOUNT OF MONEY FROM THE INCOME OR OTHER ASSETS OF A PERSON REQUIRED TO PAY SUPPORT AND THAT THE COURT ALSO MAY REQUIRE THE EMPLOYER, THE BUREAU OF WORKERS' COMPENSATION, AN EMPLOYER THAT IS PAYING WORKERS' COMPENSATION BENEFITS, A BOARD, BOARD OF TRUSTEES, OR OTHER GOVERNING ENTITY OF A RETIREMENT SYSTEM, PERSON PAYING OR DISTRIBUTING INCOME TO AN OBLIGOR UNDER A SUPPORT ORDER, OR FINANCIAL INSTITUTION TO PAY THE ACCUMULATED SUPPORT ARREARAGES.

3105.18 Allowance of alimony; factors determining nature, amount, and manner of payment; continuing jurisdiction; modification; enforcement orders; contempt [Eff. 1-1-86]

(A) In divorce, dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony if it considers reasonable to either party.

The alimony may be allowed in real or personal property, or cash, or by decreeing a sum of money, payable either in gross or by installments, as the court considers equitable.

(B) In determining whether alimony is necessary, and in determining the nature, amount, and manner of payment of alimony, the court shall consider all relevant factors, including, but not limited to the following:

- (1) The relative earning abilities of the parties;
- (2) The ages, and the physical and emotional conditions of the parties;
- (3) The retirement benefits of the parties;
- (4) The expectancies and inheritances of the parties;
- (5) The duration of the marriage;
- (6) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home;
- (7) The standard of living of the parties established during the marriage;
- (8) The relative extent of education of the parties;
- (9) The relative assets and liabilities of the parties;
- (10) The property brought to the marriage by either party;
- (11) The contribution of a spouse as homemaker.

(C) In an action brought solely for an order for alimony under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(D) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after the effective date of this amendment, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony unless the court determines that the circumstances of the parties have changed and unless one of the following applies:

(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically SPECIFICALLY authorizing the court to modify the amount or terms of alimony;

(2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically SPECIFICALLY authorizing the court to modify the amount or terms of alimony.

(E) EACH ORDER FOR ALIMONY MADE OR MODIFIED BY A COURT ON OR AFTER DECEMBER 1, 1986, SHALL BE ACCOMPANIED BY ONE OR MORE ORDERS DESCRIBED IN DIVISION (D) OR (H) OF SECTION 3113.21 OF THE REVISED CODE, WHICHEVER IS APPROPRIATE UNDER THE REQUIREMENTS OF THAT SECTION, A

STATEMENT REQUIRING ALL PARTIES TO THE ORDER TO NOTIFY THE COURT IN WRITING OF THEIR CURRENT MAILING ADDRESS, THEIR CURRENT RESIDENCE ADDRESS, AND OF ANY CHANGES IN EITHER ADDRESS, AND A NOTICE THAT THE REQUIREMENT TO NOTIFY THE COURT OF ALL CHANGES IN EITHER ADDRESS CONTINUES UNTIL FURTHER NOTICE FROM THE COURT.

IF ANY PERSON REQUIRED TO PAY ALIMONY UNDER AN ORDER MADE OR MODIFIED BY A COURT ON OR AFTER DECEMBER 1, 1986, IS FOUND IN CONTEMPT OF COURT FOR FAILURE TO MAKE ALIMONY PAYMENTS UNDER THE ORDER, THE COURT THAT MAKES THE FINDING SHALL, IN ADDITION TO ANY OTHER PENALTY OR REMEDY IMPOSED, ASSESS ALL COURT COSTS ARISING OUT OF THE CONTEMPT PROCEEDING AGAINST THE PERSON AND REQUIRE THE PERSON TO PAY ANY REASONABLE ATTORNEY'S FEES OF ANY ADVERSE PARTY, AS DETERMINED BY THE COURT, THAT AROSE IN RELATION TO THE ACT OF CONTEMPT.

3105.21 Custody and support of children; support orders [Eff. 12-1-86]

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or alimony, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of any dependent child of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Each order for child support made OR MODIFIED under this section on or after April 15, 1985, DECEMBER 1, 1986, shall be accompanied, unless the order is subject to division (C) of section 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be withheld from the personal earnings or workers' compensation payments of the person required to pay the support in accordance with division (B)(1)(a) or (b) of section 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be deducted from an account of the person required to pay the support in accordance with division (B)(1)(c)(i) of that section, by an order requiring the posting of bond in accordance with division (B)(1)(c)(ii) of that section, by a provisional order of the type described in division (B)(2) of that section, or by an order of the type BY ONE OR MORE ORDERS described in division (G)(2) (D) OR (H) of that section 3113.21 OF THE REVISED CODE, whichever is appropriate under the requirements of that section, A STATEMENT REQUIRING ALL PARTIES TO THE ORDER TO NOTIFY THE COURT IN WRITING OF THEIR CURRENT MAILING ADDRESS, THEIR CURRENT RESIDENCE ADDRESS, AND OF ANY CHANGES IN EITHER ADDRESS, AND A NOTICE THAT THE REQUIREMENT TO NOTIFY THE COURT OF ALL CHANGES IN EITHER ADDRESS CONTINUES UNTIL FURTHER NOTICE FROM THE COURT. Each order for child support made under this section on or after April 15, 1985, that is subject to division (C) of section 3113.21 of the Revised Code may be accompanied by an order requiring the posting of bond in accordance with that division, but shall not be accompanied by an order of a type described in division (B)(1)(a), (1)(b), (1)(c), (2)(a)(i), (2)(a)(ii), (2)(a)(iii), (2)(a)(iv), or (G) of that section. If any person required to pay child support under an order made under this section on or after April 15, 1985, OR MODIFIED ON OR AFTER DECEMBER 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceed-

ing against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3109.05 Factors determining amount of support; support orders; medical needs; visitation rights [Eff. 12-1-86]

(A) In a divorce, dissolution of marriage, alimony, or child support proceeding, the court may order either or both parents to support or help support their children, without regard to marital misconduct. In determining the amount reasonable or necessary for child support, including the medical needs of the child, the court shall consider all relevant factors including:

- (1) The financial resources of the child;
- (2) The financial resources and needs of the custodial parent and of the noncustodial parent, when there is only one custodian;
- (3) The standard of living the child would have enjoyed had the marriage continued;
- (4) The physical and emotional condition of the child, and his educational needs;
- (5) The financial resources and needs of both parents, when there are joint custodians;
- (6) The educational needs of the child and the educational opportunities that would have been available to him had the circumstances requiring a court order for his support not arisen.

The court shall include in the support order the requirement that one or both of the parents provide for the health care needs of the child to the satisfaction of the court AND A REQUIREMENT THAT ALL SUPPORT PAYMENTS BE MADE THROUGH THE BUREAU OF SUPPORT.

Each order for child support made OR MODIFIED under this section on or after April 15, 1985 DECEMBER 1, 1986, shall be accompanied, ~~unless the order is subject to division (C) of section 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be withheld from the personal earnings or workers' compensation payments of the person required to pay the support in accordance with division (B)(1)(a) or (b) of section 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be deducted from an account of the person required to pay the support in accordance with division (B)(1)(e)(i) of that section, by an order requiring the posting of bond in accordance with division (B)(1)(e)(ii) of that section, by a provisional order of the type described in division (B)(2) of that section, or by an order of the type BY ONE OR MORE ORDERS described in division (G)(2) (D) OR (H) of that section 3113.21 OF THE REVISED CODE, whichever is appropriate under the requirements of that section, A STATEMENT REQUIRING ALL PARTIES TO THE ORDER TO NOTIFY THE COURT IN WRITING OF THEIR CURRENT MAILING ADDRESS, THEIR CURRENT RESIDENCE ADDRESS, AND OF ANY CHANGES IN EITHER ADDRESS, AND A NOTICE THAT THE REQUIREMENT TO NOTIFY THE COURT OF ALL CHANGES IN EITHER ADDRESS CONTINUES UNTIL FURTHER NOTICE FROM THE COURT. Each order for child support made under this section on or after April 15, 1985, that is subject to division (C) of section 3113.21 of the Revised Code may be accompanied by an order requiring the posting of bond in accordance with that division, but shall not be accompanied by an order of a type described in division (B)(1)(a), (1)(b), (1)(c), (2)(a)(i), (2)(a)(ii), (2)(a)(iii), (2)(a)(iv), or (G) of that section.~~

(B) The court may make any just and reasonable order or decree permitting any parent who is deprived of the care, custody, and control of the children to visit them at the time and under the conditions that the court directs. The court may, upon notice and hearing, make any modification that it determines just in an order of support of a child or an award of alimony upon proof that the party subject to the order has been continuously or repeatedly prevented from exercising a right to visit the child established by an order of court. In the discretion of the court, reasonable companionship or visitation rights may be granted to any other person having an interest in the welfare of the child. The juvenile court shall have

exclusive jurisdiction to enter the orders in any case certified to it from another court.

(C) If any person required to pay child support under an order made under division (A) of this section on or after April 15, 1985, OR MODIFIED ON OR AFTER DECEMBER 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3111.13 Effects of judgment; supplemental release; factors determining amount of support; support orders; contempt [Eff. 12-1-86]

(A) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(B) If the judgment or order of the court is at variance with the child's birth certificate, the court may order that a new birth certificate be issued under section 3111.18 of the Revised Code.

(C) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order shall direct the father to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement. After entry of the judgment or order, the father may petition for custody of the child or for visitation rights in a proceeding separate from any action to establish paternity.

(D) Support judgments or orders ordinarily shall be for periodic payments that may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(E) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall base the judgment or order of support upon the financial status of the parents and the father's ability to pay support, and shall consider all relevant facts, including, but not limited to, all of the following:

- (1) The needs of the child;
- (2) The standard of living and circumstances of the parents;
- (3) The relative financial means of the parents;
- (4) The earning ability of the parents;
- (5) The need and capacity of the child for education;
- (6) The age of the child;
- (7) The financial resources and the earning ability of the child;
- (8) The responsibility of the parents for the support of others;
- (9) The value of services contributed by the custodial parent.

(F) Each order for child support made OR MODIFIED under this section on or after April 15, 1985 DECEMBER 1, 1986, shall be accompanied, ~~unless the order is subject to division (C) of section 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be withheld from the personal earnings or workers' compensation payments of the person required to pay the support in accordance with division (B)(1)(a) or (b) of section 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be deducted from an account of the person required to pay the support in accordance with division (B)(1)(e)(i) of that section, by an order requiring the posting of bond in accordance with division (B)(1)(e)(ii) of that section, by a provisional order of the type described in division (B)(2) of that section, or by an order of the type BY ONE OR MORE ORDERS described in division (G)(2) (D) OR (H) of that section 3113.21 OF THE REVISED CODE, whichever is appropriate under the requirements of that section, A STATEMENT REQUIRING ALL PARTIES TO THE ORDER TO NOTIFY THE COURT IN WRITING OF THEIR CURRENT MAILING ADDRESS, THEIR~~

SUBSTITUTE HOUSE BILL No. 231

Act Effective Date: 10-5-87
 Date Passed: 6-30-87
 Date Approved by Governor: 7-6-87
 Date Filed: 7-6-87
 File Number: 52
 Chief Sponsor: HINIG

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code; however, LSC's certification required a change of references to RC 3317.029 in Act section 41 and RC 3317.028 in Act section 43, and of references to Act section numbers contained in sections 5, 8, 12, and 15 of this Act.

Section Effective Date(s): This Act contains provisions which take effect on dates different from the effective date of the Act itself. See Act section(s) 5, 8, 9, 12, 15, and 16.

To amend sections 9.81, 109.71, 109.77, 109.91, 109.93, 109.94, 109.941, 109.942, 109.96, 109.97, 122.72, 122.78, 123.02, 124.11, 124.321, 125.22, 125.89, 135.21, 141.151, 307.443, 319.301, 329.02, 329.04, 329.042, 742.3716, 1514.02, 1514.03, 1545.07, 1545.21, 1545.22, 1545.25, 1545.29, 1545.30, 1545.35, 2301.35, 2301.351, 2301.353, 2301.37, 2301.372, 2301.41, 2301.42, 2301.43, 2329.66, 2705.031, 2901.01, 2921.51, 2933.52, 2935.01, 2935.03, 3105.18, 3105.21, 3109.05, 3111.09, 3111.13, 3113.04, 3113.21, 3113.212, 3113.31, 3115.01, 3115.15, 3115.21, 3115.22, 3115.24, 3301.25, 3313.57, 3313.61, 3313.64, 3313.641, 3313.645, 3313.672, 3317.028, 3317.029, 3317.03, 3321.03, 3501.01, 3501.17, 3505.10, 3505.33, 3513.12, 3513.151, 3513.30, 3517.14, 3745.01, 3745.12, 3773.33, 4141.01, 4141.08, 4141.23, 4141.24, 4141.25, 4141.29, 4141.35, 4141.43, 4301.10, 4301.47, 4303.271, 4305.11, 4305.13, 4305.131, 4307.05, 5101.16, 5101.46, 5101.461, 5101.462, 5101.463, 5101.464, 5101.54, 5101.58, 5101.59, 5101.80, 5101.81, 5101.82, 5101.83, 5101.84, 5101.86, 5101.90, 5101.99, 5104.011, 5107.04, 5107.15, 5107.27, 5113.041, 5113.14, 5123.01, 5123.74, 5123.76, 5153.01, 5153.35, 5703.19, 5703.26, 5703.47, 5705.01, 5705.10, 5709.61, 5709.63, 5717.04, 5727.61, 5728.061, 5728.08, 5728.10, 5731.15, 5733.21, 5733.28, 5735.12, 5735.121, 5739.13, 5739.15, 5739.19, 5739.30, 5739.33, 5739.99, 5741.01, 5741.17, 5743.05, 5743.071, 5743.081, 5743.082, 5747.07, 5747.09, 5747.13, 5747.99, 5907.02, and 5909.03; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 109.93 (122.21), 109.94 (122.22), 109.941 (122.23), 109.942 (122.24), 109.95 (122.25), 109.96 (122.26), 109.97 (122.27), and 5113.14 (5113.07); to enact new sections 5113.01, 5113.02, 5113.03, 5113.04, 5113.05, 5113.06, and 5747.15, and sections 329.043, 1545.041, 3301.077, 3301.078, 3301.079, 3301.0710, 3301.0711, 3313.21, 3313.603, 3315.01, 3319.151, 3319.99, 3517.091, 5111.09, 5122.60, 5153.121, 5703.081, 5703.261, 5703.262, 5705.392, 5733.067,

and 5739.133; and to repeal sections 109.98, 124.12, 149.092, 329.11, 2301.352, 3343.09, 4141.041, 5101.20, 5101.21, 5101.22, 5107.031, 5113.01, 5113.02, 5113.03, 5113.04, 5113.05, 5113.06, 5113.07, 5113.09, 5113.11, 5113.12, 5113.13, 5113.99, and 5747.15 of the Revised Code, to amend Section 2 of Am. Sub. H.B. 494 of the 116th General Assembly, to amend Section 5 of Am. Sub. H.B. 530 of the 114th General Assembly, and to repeal Sections 3.22 and 3.23 of Am. Sub. H.B. 171 of the 117th General Assembly to provide authorization and conditions for the operation and administration of state programs affected by the main operating appropriations act for the biennium beginning July 1, 1987, and ending June 30, 1989, to amend section 2301.35 of the Revised Code, effective June 6, 1988, to amend sections 4141.01, 4141.23, 4141.24, 4141.25, and 4141.29 of the Revised Code, effective October 1, 1988, and to amend sections 109.71, 109.77, 2901.01, 2921.51, 2935.01, and 2935.03 of the Revised Code, effective December 31, 1987.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 9.81, 109.71, 109.77, 109.91, 109.93, 109.94, 109.941, 109.942, 109.96, 109.97, 122.72, 122.78, 123.02, 124.11, 124.321, 125.22, 125.89, 135.21, 141.151, 307.443, 319.301, 329.02, 329.04, 329.042, 742.3716, 1514.02, 1514.03, 1545.07, 1545.21, 1545.22, 1545.25, 1545.29, 1545.30, 1545.35, 2301.35, 2301.351, 2301.353, 2301.37, 2301.372, 2301.41, 2301.42, 2301.43, 2329.66, 2705.031, 2901.01, 2921.51, 2933.52, 2935.01, 2935.03, 3105.18, 3105.21, 3109.05, 3111.09, 3111.13, 3113.04, 3113.21, 3113.212, 3113.31, 3115.01, 3115.15, 3115.21, 3115.22, 3115.24, 3301.25, 3313.57, 3313.61, 3313.64, 3313.641, 3313.645, 3313.672, 3317.028, 3317.029, 3317.03, 3321.03, 3501.01, 3501.17, 3505.10, 3505.33, 3513.12, 3513.151, 3513.30, 3517.14, 3745.01, 3745.12, 3773.33, 4141.01, 4141.08, 4141.23, 4141.24, 4141.25, 4141.29, 4141.35, 4141.43, 4301.10, 4301.47, 4303.271, 4305.11, 4305.13, 4305.131, 4307.05, 5101.16, 5101.46, 5101.461, 5101.462, 5101.463, 5101.464, 5101.54, 5101.58, 5101.59, 5101.80, 5101.81, 5101.82, 5101.83, 5101.84, 5101.86, 5101.90, 5101.99, 5104.011, 5107.04, 5107.15, 5107.27, 5113.041, 5113.14, 5123.01, 5123.74, 5123.76, 5153.01, 5153.35, 5703.19, 5703.26, 5703.47, 5705.01, 5705.10, 5709.61, 5709.63, 5717.04, 5727.61, 5728.061, 5728.08, 5728.10, 5731.15, 5733.21, 5733.28, 5735.12, 5735.121, 5739.13, 5739.15, 5739.19, 5739.30, 5739.33, 5739.99, 5741.01, 5741.17, 5743.05, 5743.071, 5743.081, 5743.082, 5747.07, 5747.09, 5747.13, 5747.99, 5907.02, and 5909.03 be amended; sections 109.93 (122.21), 109.94 (122.22), 109.941 (122.23), 109.942 (122.24), 109.95 (122.25), 109.96 (122.26), 109.97 (122.27), and 5113.14 (5113.07) be amended for the purpose of adopting a new section number as indicated in parentheses; new sections 5113.01, 5113.02, 5113.03, 5113.04, 5113.05, 5113.06, and 5747.15, and sections 329.043, 1545.041, 3301.077, 3301.078, 3301.079, 3301.0710, 3301.0711, 3313.21, 3313.603, 3315.01, 3319.151, 3319.99, 3517.091, 5111.09, 5122.60, 5153.121, 5703.081, 5703.261, 5703.262, 5705.392, 5733.067, and 5739.133 of the Revised Code be enacted to read as follows:

9.81 Procedure for payroll deduction [Eff. 10-5-87]

After an authorization adopted under section 9.80 of the Revised Code, any public officer or employee of any department or division of the state, any political subdivision or school district thereof, or of any institution supported in whole or in part by the state, a county, or municipality MUNICIPAL CORPORATION, who desires to make a contribution by the payroll deduction plan to one or more of the specified charitable agencies which are corporations not for profit, community chests, united funds, or other similar united community fund organizations, may be permitted to have such contribution payments deducted from the salary or wages due

of state university law enforcement officer appointed under section 3345.04 of the Revised Code, OR OHIO VETERANS' HOME POLICEMAN APPOINTED UNDER SECTION 5907.02 OF THE REVISED CODE shall arrest and detain until a warrant can be obtained a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, college, or university, OR OHIO VETERANS' HOME in which the peace officer is appointed, employed, or elected, a law of this state or an ordinance of a municipal corporation.

(B) When there is reasonable ground to believe that an offense of domestic violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, college, or university, OR OHIO VETERANS' HOME in which the peace officer is appointed, employed, or elected, a sheriff, deputy sheriff, marshal, deputy marshal, police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state university law enforcement officer appointed under section 3345.04 of the Revised Code, OR OHIO VETERANS' HOME POLICEMAN APPOINTED UNDER SECTION 5907.02 OF THE REVISED CODE may arrest and detain until a warrant can be obtained any person whom he has reasonable cause to believe is guilty of the offense. For purposes of this division, the execution of a written warrant by a person alleging that an alleged offender has committed the offense of domestic violence against the person or against a child of the person, constitutes reasonable ground to believe that the offense was committed and reasonable cause to believe that the person alleged to have committed the offense is guilty of the violation.

(C) A constable, within the limits of the township in which the constable is appointed or elected, shall arrest and detain until a warrant can be obtained a person found by him committing, within the limits of the township, a misdemeanor, either in violation of a law of this state or an ordinance of a village.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, constable, or state university law enforcement officer appointed under section 3345.04 of the Revised Code is authorized under division (A), (B), or (C) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which he is appointed, employed, or elected, a person until a warrant can be obtained, the peace officer may, outside the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which he is appointed, employed, or elected, arrest, and detain that person until a warrant can be obtained if all of the following apply:

- (1) The pursuit takes place without unreasonable delay after the offense is committed;
- (2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which the peace officer is appointed, employed, or elected;
- (3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to division (G) of section 4507.021 of the Revised Code.

This section is an interim section effective until December 31, 1987.

3105.18 Allowance of alimony; factors determining nature, amount, and manner of payment; continuing jurisdiction;

tion; modification; enforcement orders; contempt [Eff. 10-5-87]

(A) In divorce, dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony if it considers reasonable to either party.

The alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court considers equitable.

(B) In determining whether alimony is necessary, and in determining the nature, amount, and manner of payment of alimony, the court shall consider all relevant factors, including, but not limited to, the following:

- (1) The relative earning abilities of the parties;
- (2) The ages, and the physical and emotional conditions of the parties;
- (3) The retirement benefits of the parties;
- (4) The expectancies and inheritances of the parties;
- (5) The duration of the marriage;
- (6) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home;
- (7) The standard of living of the parties established during the marriage;
- (8) The relative extent of education of the parties;
- (9) The relative assets and liabilities of the parties;
- (10) The property brought to the marriage by either party;
- (11) The contribution of a spouse as homemaker.

(C) In an action brought solely for an order for alimony under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(D) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after the effective date of this amendment MAY 2, 1986, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony unless the court determines that the circumstances of either party have changed and unless one of the following applies:

- (1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony;
- (2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony.

(E) Each order for alimony made or modified by a court on or after December 1, 1986, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the court BUREAU OF SUPPORT in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the requirement to notify the court BUREAU OF SUPPORT of all changes in either address continues until further notice from the court.

If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, is found in contempt of court for failure to make alimony payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3105.19

orders [Eff. 10-5-87]

(A) Upon divorce, or dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony if it considers reasonable to either party.

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3105.21 Custody and support of children; support orders [Eff. 10-5-87]

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or alimony, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of any dependent child of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Each order for child support made or modified under this section on or after December 1, 1986, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the court BUREAU OF SUPPORT in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the requirement to notify the court BUREAU OF SUPPORT of all changes in either address continues until further notice from the court. If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3109.05 Factors determining amount of support; support orders; medical needs; visitation rights [Eff. 10-5-87]

(A) In a divorce, dissolution of marriage, alimony, or child support proceeding, the court may order either or both parents to support or help support their children, without regard to marital misconduct. In determining the amount reasonable or necessary for child support, including the medical needs of the child, the court shall consider all relevant factors including:

- (1) The financial resources of the child;
- (2) The financial resources and needs of the custodial parent and of the noncustodial parent, when there is only one custodian;
- (3) The standard of living the child would have enjoyed had the marriage continued;
- (4) The physical and emotional condition of the child; and his educational needs;
- (5) The financial resources and needs of both parents, when there are joint custodians;
- (6) The educational needs of the child and the educational opportunities that would have been available to him had the circumstances requiring a court order for his support not arisen.

The court shall include in the support order the requirement that one or both of the parents provide for the health care needs of the child to the satisfaction of the court and a requirement that all support payments be made through the bureau of support.

Each order for child support made or modified under this section on or after December 1, 1986, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the court BUREAU OF SUPPORT in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the requirement to notify the court BUREAU OF SUPPORT of all changes in either address continues until further notice from the court.

(B) The court may make any just and reasonable order or decree permitting any parent who is deprived of the care, custody, and control of the children to visit them at the time and under the conditions that the court directs. ~~The court may, upon notice and~~

~~hearing, make any modification that it determines just in an order of support of a child or an award of alimony upon proof that the party subject to the order has been continuously or repeatedly prevented from exercising a right to visit the child established by an order of court. In the discretion of the court, reasonable companionship or visitation rights may be granted to any other person having an interest in the welfare of the child. The juvenile court shall have exclusive jurisdiction to enter the orders in any case certified to it from another court.~~

(C) If any person required to pay child support under an order made under division (A) of this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3111.09 Genetic tests [Eff. 10-5-87]

(A) In any action instituted under sections 3111.01 to 3111.19 of the Revised Code, the court may, upon its own motion or upon the motion of any party to the action that ~~is made at a time so as~~ not THE COURT DETERMINES IS NOT BEING MADE to unduly delay the proceedings ACTION, order the child's mother, the child, the alleged father, and any other person who is a defendant in the action to submit to genetic tests. Any fees charged for the tests shall be paid by the party that requests them, unless the court orders the fees taxed as costs in the action. If the court orders the fees taxed as costs in the action, if the custodian of the child is represented by the BUREAU OF SUPPORT IN ITS ROLE AS THE agency that is designated in the county to provide PROVIDING enforcement of child support orders under Title IV-D of the "Social Security Act," 49 88 Stat. 629-(1935) 2351 (1975), 42 U.S.C. 304 651, as amended, if the custodian is a recipient of aid to federally dependent children payments UNDER CHAPTER 5107. OF THE REVISED CODE for the benefit of the child, and if the defendant in the action is found to be indigent, then the designated child support enforcement agency is authorized BUREAU OF SUPPORT, within guidelines contained in THAT federal law, to pass through all MAY USE FUNDS RECEIVED PURSUANT TO TITLE IV-D OF THE "SOCIAL SECURITY ACT," 88 STAT. 2351 (1975), 42 U.S.C. 651, AS AMENDED, TO PAY THE costs of the tests. Any costs passed through in such a manner are FUNDS USED IN ACCORDANCE WITH THIS DIVISION BY THE BUREAU OF SUPPORT SHALL BE in addition to any amount provided for under OTHER FUNDS THAT THE BUREAU OF SUPPORT IS ENTITLED TO RECEIVE AS A RESULT OF any contractual provision for specific funding allocations for the agency BUREAU OF SUPPORT between the county, the state, and the federal government.

(B) The genetic tests shall be made by qualified examiners who are appointed by the court. The examiners may be called as witnesses to testify as to their findings. Any party may demand that other qualified examiners perform independent genetic tests under order of the court. The number and qualifications of the independent examiners shall be determined by the court.

(C) Nothing in this section prevents any party to the action from producing other expert evidence on the issue covered by this section, but, if other expert witnesses are called by a party to the action, the fees of these expert witnesses shall be paid by the party calling the witnesses and only ordinary witness fees for these expert witnesses shall be taxed as costs in the action.

(D) If the court finds that the conclusions of all the examiners are that the alleged father is not the father of the child, the court shall enter judgment that the alleged father is not the father of the child. If the examiners disagree in their findings or conclusions, the court or jury shall determine the father of the child based upon all the evidence.

SUBSTITUTE HOUSE BILL NO. 708

Act Effective Date: 4-19-88
Date Passed: 3-10-88
Date Approved by Governor: 4-19-88
Date Filed: 4-20-88
File Number: 203
Chief Sponsor: SHIVERS

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Emergency: Pursuant to O Const, Art II, § 1d, this Act was declared to be an emergency measure necessary for the preservation of the public peace, health, and safety. See Act section 32.

Section Effective Date(s): This Act contains provisions which take effect on dates different from the effective date of the Act itself. See Act section(s) 5, 8, 11, 14, and 17.

To amend sections 1.30, 9.41, 9.60, 109.42, 109.79, 109.80, 118.23, 119.12, 120.52, 120.53, 122.21, 122.22, 122.24, 122.27, 122.78, 122.89, 124.11, 124.81, 131.23, 133.05, 135.14, 145.01, 149.01, 155.10, 169.02, 177.01, 307.202, 307.443, 307.88, 307.90, 319.16, 319.301, 323.01, 329.03, 329.091, 505.262, 505.69, 924.06, 924.12, 955.011, 955.53, 1308.28, 1309.111, 1333.41, 1340.08, 1343.011, 1501.191, 1502.02, 1521.06, 1533.11, 1701.01, 1701.59, 1701.79, 1701.85, 1711.11, 1711.53, 1733.32, 1742.05, 1742.06, 1742.12, 1901.07, 1901.13, 1901.14, 1901.18, 1901.21, 1901.30, 1901.31, 1923.01, 1923.02, 1923.061, 1923.15, 2109.371, 2301.35, 2301.351, 2301.353, 2301.36, 2301.37, 2301.372, 2301.41, 2301.42, 2301.43, 2301.44, 2705.031, 2715.041, 2715.045, 2716.05, 2716.13, 2743.56, 2917.46, 2921.01, 2921.13, 2923.31, 2923.32, 2933.10, 2933.54, 2949.12, 2967.13, 3105.18, 3105.21, 3109.05, 3109.09, 3111.09, 3111.13, 3113.04, 3113.21, 3113.211, 3113.212, 3113.213, 3113.31, 3115.22, 3115.24, 3301.0711, 3303.24, 3311.06, 3313.712, 3317.023, 3317.024, 3505.20, 3517.10, 3517.11, 3701.23, 3701.66, 3702.51, 3706.18, 3710.08, 3733.19, 3735.30, 3743.03, 3770.071, 3773.45, 3905.01, 3957.10, 4123.27, 4141.16, 4501.06, 4503.10, 4503.44, 4511.99, 4513.11, 4519.03, 4582.12, 4727.03, 4728.14, 4743.01, 4745.01, 4923.02, 5101.02, 5101.141, 5101.16, 5101.161, 5101.311, 5101.34, 5101.36, 5101.46, 5101.87, 5103.16, 5103.30, 5111.02, 5113.16, 5143.07, 5149.36, 5705.01, 5705.17, 5709.25, 5709.61, 5709.62, 5709.63, 5709.64, 5735.061, 5735.32, 5739.02, 5739.025, 5741.021, 5741.023, 5747.02, 5747.03, 5747.99, and 6103.02; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 1907.091 (1907.19) and 5505.202 (5505.28); to amend, for the purpose of adopting a new section number as indicated in parentheses, section 505.08 (505.103) as enacted by Am. Sub. H.B. 237 of the 116th General Assembly; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 4301.101 (4301.102) as enacted by Am. Sub. H.B. 583 of the 116th General Assembly; to enact new sections 109.71, 109.77, 122.04, 171.02, 2901.01,

2921.51, 2935.01, 2935.03; to repeal sections 109.71, 109.77, 122.04, 171.02, 1121.08, 2901.01, 2921.51, 2935.01, 2935.03, and 5113.01; to repeal sections 109.71, 109.77, 2901.01, 2921.51, 2935.01, and 2935.03 as amended by Section 6 of Sub. H.B. 231 of the 116th General Assembly; to repeal section 505.263 of the Revised Code as enacted by Sub. H.B. 390 of the 117th General Assembly; and to repeal Sections 3.22 and 3.23 of Am. Sub. H.B. 171 of the 117th General Assembly to harmonize multiple prior amendments of certain sections, correct nonsubstantive errors in the Revised Code, and update or repeal obsolete provisions of law and to amend sections 1742.05 and 1742.06, effective July 1, 1989; to amend section 2301.35, effective June 6, 1988; to amend section 4141.28, effective October 1, 1988; to amend section 5735.141, effective October 1, 1993; and to amend section 5747.03 of the Revised Code, effective July 1, 1989, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1.30, 9.41, 9.60, 109.42, 109.79, 109.80, 118.23, 119.12, 120.52, 120.53, 122.21, 122.22, 122.24, 122.27, 122.78, 122.89, 124.11, 124.81, 131.23, 133.05, 135.14, 145.01, 149.01, 155.10, 169.02, 177.01, 307.202, 307.443, 307.88, 307.90, 319.16, 319.301, 323.01, 329.03, 329.091, 505.262, 505.69, 924.06, 924.12, 955.011, 955.53, 1308.28, 1309.111, 1333.41, 1340.08, 1343.011, 1501.191, 1502.02, 1521.06, 1533.11, 1701.01, 1701.59, 1701.79, 1701.85, 1711.11, 1711.53, 1733.32, 1742.05, 1742.06, 1742.12, 1901.07, 1901.13, 1901.14, 1901.18, 1901.21, 1901.30, 1901.31, 1923.01, 1923.02, 1923.061, 1923.15, 2109.371, 2301.35, 2301.351, 2301.353, 2301.36, 2301.37, 2301.372, 2301.41, 2301.42, 2301.43, 2301.44, 2705.031, 2715.041, 2715.045, 2716.05, 2716.13, 2743.56, 2917.46, 2921.01, 2921.13, 2923.31, 2923.32, 2933.10, 2933.54, 2949.12, 2967.13, 3105.18, 3105.21, 3109.05, 3109.09, 3111.09, 3111.13, 3113.04, 3113.21, 3113.211, 3113.212, 3113.213, 3113.31, 3115.22, 3115.24, 3301.0711, 3303.24, 3311.06, 3313.712, 3317.023, 3317.024, 3505.20, 3517.10, 3517.11, 3701.23, 3701.66, 3702.51, 3706.18, 3710.08, 3733.19, 3735.30, 3743.03, 3770.071, 3773.45, 3905.01, 3957.10, 4123.27, 4141.16, 4501.06, 4503.10, 4503.44, 4511.99, 4513.11, 4519.03, 4582.12, 4727.03, 4728.14, 4743.01, 4745.01, 4923.02, 5101.02, 5101.141, 5101.16, 5101.161, 5101.311, 5101.34, 5101.36, 5101.46, 5101.87, 5103.16, 5103.30, 5111.02, 5113.16, 5143.07, 5149.36, 5705.01, 5705.17, 5709.25, 5709.61, 5709.62, 5709.63, 5709.64, 5735.061, 5735.32, 5739.02, 5739.025, 5741.021, 5741.023, 5747.02, 5747.03, 5747.99, and 6103.02 be amended; sections 1907.091 (1907.19) and 5505.202 (5505.28) be amended for the purpose of adopting new section numbers as indicated in parentheses; section 505.08 (505.103) as enacted by Am. Sub. H.B. 237 of the 116th General Assembly be amended for the purpose of adopting a new section number as indicated in parentheses; section 4301.101 (4301.102) as enacted by Am. Sub. H.B. 583 of the 116th General Assembly be amended for the purpose of adopting a new section number as indicated in parentheses; and new sections 109.71, 109.77, 122.04, 171.02, 2901.01, 2921.51, 2935.01, and 2935.03 of the Revised Code be enacted to read as follows:

1.30 Intent of Code revision acts is nonsubstantive [Eff. 4-19-88]

(A) In enacting any legislation with the stated purpose of correcting nonsubstantive errors in the Revised Code, it is the intent of the general assembly not to make substantive changes in the law in effect on the date of such enactment. A section of the Revised Code affected by any such act shall be construed as a restatement and correction of, and substituted in a continuing way for, the corresponding statutory provision existing on its date of enactment.

as to each such sentence of life imprisonment, plus the minimum term or terms, diminished as provided in sections 2967.19, 2967.193, 5145.11, and 5145.12 of the Revised Code, or in the case of another type of life sentence, the number of years before parole eligibility, diminished as provided in sections 2967.19, 2967.193, 5145.11, and 5145.12 of the Revised Code, if applicable, of the other sentences consecutively imposed.

(K) A prisoner serving a definite term of imprisonment for a felony of the third or fourth degree shall be released from imprisonment when he has served the full term of his definite sentence, diminished as provided in sections 2967.19, 2967.193, 5145.11, and 5145.12 of the Revised Code, and may be released from imprisonment pursuant to section 2967.18 or 2967.31 of the Revised Code.

(L) The cumulative total of any diminution of sentence granted under section 2967.19 of the Revised Code, any days of credit awarded under section 2967.193 of the Revised Code, and any diminution of sentence granted under section 5145.11 or 5145.12 of the Revised Code shall not exceed, for any prisoner, one-third of the minimum or definite sentence, or in the case of a sentence of life imprisonment, one-third of the number of years before parole eligibility, of the sentence imposed upon the prisoner. No prisoner shall be eligible for parole before serving two-thirds of the sentence imposed by the sentencing court, reduced as provided in section 2967.191 of the Revised Code.

3105.18 Allowance of alimony; factors determining nature, amount, and manner of payment; continuing jurisdiction; modification; enforcement orders; contempt [Eff. 4-19-88]

(A) In divorce, dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony it considers reasonable to either party.

The alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court considers equitable.

(B) In determining whether alimony is necessary, and in determining the nature, amount, and manner of payment of alimony, the court shall consider all relevant factors, including, but not limited to, the following:

- (1) The relative earning abilities of the parties;
- (2) The ages, and the physical and emotional conditions of the parties;
- (3) The retirement benefits of the parties;
- (4) The expectancies and inheritances of the parties;
- (5) The duration of the marriage;
- (6) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home;
- (7) The standard of living of the parties established during the marriage;
- (8) The relative extent of education of the parties;
- (9) The relative assets and liabilities of the parties;
- (10) The property brought to the marriage by either party;
- (11) The contribution of a spouse as homemaker.

(C) In an action brought solely for an order for alimony under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(D) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony unless the court determines that the circumstances of either party have changed and unless one of the following applies:

- (1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony;
- (2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into

the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony.

(E) Each order for alimony made or modified by a court on or after December 1, 1986, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the bureau of support CHILD SUPPORT ENFORCEMENT AGENCY in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the requirement to notify the bureau of support AGENCY of all changes in either address continues until further notice from the court.

If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, is found in contempt of court for failure to make alimony payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3105.21 Custody and support of children; support orders [Eff. 4-19-88]

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or alimony, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of any dependent child of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Each order for child support made or modified under this section on or after December 1, 1986, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the bureau of support CHILD SUPPORT ENFORCEMENT AGENCY in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the requirement to notify the bureau of support AGENCY of all changes in either address continues until further notice from the court. If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3109.05 Factors determining amount of support; support orders; medical needs; visitation rights [Eff. 4-19-88]

(A) In a divorce, dissolution of marriage, alimony, or child support proceeding, the court may order either or both parents to support or help support their children, without regard to marital misconduct. In determining the amount reasonable or necessary for child support, including the medical needs of the child, the court shall consider all relevant factors including:

- (1) The financial resources of the child;
- (2) The financial resources and needs of the custodial parent and of the noncustodial parent, when there is only one custodian;
- (3) The standard of living the child would have enjoyed had the marriage continued;
- (4) The physical and emotional condition of the child;
- (5) The financial resources and needs of both parents, when there are joint custodians;

are defined in section 1716.01 of the Revised Code, to which contributions.

organization that solicits contributions for the purpose of raising materials containing information relating to missing children shall expressly state or imply in any way that it is affiliated with or soliciting contributions on behalf of, an organization that assists in the location of missing children without the written consent of that organization. Whoever violates division (A) or (B) of this section is guilty of the solicitation of contributions for missing children, a felony of the third degree.

SECTION 2. That existing sections 109.31, 109.32, 1716.01, 1716.03, 1716.04, 1716.05, 1716.07, 1716.99, and section 1716.06 of the Revised Code are hereby

AMENDED SUBSTITUTE HOUSE BILL NO. 514

Act Effective Date: 8-13-90
Date Passed: 7-20-90
Approved by Governor: 8-13-90
Date Filed: 8-13-90
File Number: 276
Chief Sponsor: WALSH

Local and Permanent Nature: Per the Director of the Ohio Service Commission, this Act's section numbering of general and permanent nature is complete and in conformity with the Revised Code.

Emergency: Pursuant to O Const, Art II, § 1d, this Act was enacted to be an emergency measure necessary for the preservation of the public peace, health, and safety. See Act section 5.

Effective Date(s): This Act contains provisions which take effect on dates different from the effective date of the Act. See Act section(s) 4.

Amend sections 2119.03, 2151.23, 2301.03, 2303.201, 2329.66, 2743.66, 2907.01, 3105.01, 3105.03, 3105.04, 3105.06, 3105.091, 3105.10, 3105.17, 3105.18, 3105.21, 3105.63, 3105.65, 3109.04, 3109.05, 3109.06, 3111.06, 3113.21, 3117.05, 3117.07, 3117.08, 3517.13, 3770.071, and 5101.31, and to enact section 3105.171 of the Revised Code to modify the domestic relations law to provide for spousal support and division of marital property and separate property, instead of for alimony, to clarify that certain changes made in section 3109.05 of the Revised Code by Am. Sub. H.B. 591 of the 118th General Assembly were not substantive changes but were intended only to conform the section to changes made in it by Am. Sub. H.B. 15 of the 118th General Assembly on that act's effective date of May 31, 1990, and to declare an emergency.

Enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2119.03, 2151.23, 2301.03, 2329.66, 2743.66, 2907.01, 3105.01, 3105.03, 3105.04, 3105.091, 3105.10, 3105.17, 3105.18, 3105.21, 3105.63, 3109.04, 3109.05, 3109.06, 3111.06, 3113.21, 3113.215, 3117.07, 3117.08, 3517.13, 3770.071, and 5101.31 be amended and section 3105.171 of the Revised Code be enacted to read as follows:

2151.23 Powers of trustee [Eff. 1-1-91]

A trustee appointed under section 2119.01 of the Revised Code shall proceed without order of the probate court to take possession of the property of the absentee wherever located within the state; to collect all debts due to the absentee;

(C) To retain and invest the estate in accordance with Chapters 2113. to 2125., inclusive, of the Revised Code.

The trustee may pay such part or all of the income or principal of the estate as the court may, from time to time, MAY direct for the maintenance and support of the absentee's dependents and may, under the order of the court, MAY bring and defend suits on behalf of the absentee, compromise claims in favor of and against the absentee, and pay such debts of the absentee as the court finds necessary for the protection of his dependents, including insurance premiums, orders for alimony AN AWARD OF SPOUSAL SUPPORT, and other obligations. The court may make such other orders as it deems proper for the care and custody of said THE property and its proceeds.

2151.23 Jurisdiction of juvenile court; orders for child support [Eff. 1-1-91]

(A) The juvenile court has exclusive original jurisdiction under the Revised Code:

(1) Concerning any child who on or about the date specified in the complaint is alleged to be a juvenile traffic offender, or a delinquent, unruly, abused, neglected, or dependent child;

(2) To determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapters 5122. and 5123. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, or a mentally retarded person subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code;

(5) To hear and determine all criminal cases charging adults with the violation of any section of Chapter 2151. of the Revised Code THIS CHAPTER;

(6) Under the interstate compact on juveniles in section 2151.56 of the Revised Code;

(7) Concerning any child who is to be taken into custody pursuant to section 2151.31 of the Revised Code, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;

(8) To hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to section 5103.15 of the Revised Code;

(9) To hear and determine applications for consent to marry pursuant to section 3101.04 of the Revised Code.

(B) The juvenile court has original jurisdiction under the Revised Code:

(1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.19 of the Revised Code;

(3) Under the uniform reciprocal enforcement of support act in Chapter 3115. of the Revised Code;

(4) To hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state.

(C) The juvenile court, except as to juvenile courts which are a separate division of the court of common pleas, or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or alimony involving LEGAL SEPARATION THAT INVOLVES the custody or care of children AND THAT IS filed in the court of common pleas and certified by the court of common pleas with all the papers filed therein IN THE ACTION to the court for trial, provided that no such certification shall be made to any court unless the consent of the juvenile judge is first IS obtained. After such certification is made and consent obtained, the court shall proceed as if such THE action were originally HAD BEEN begun in that court except as to awards for alimony SPOUSAL SUPPORT or support due and unpaid at the time of certification, over which the court has no jurisdiction.

(D) The juvenile court has jurisdiction to hear and determine all matters as to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted, including jurisdiction to modify the judgment

and decree of custody and support.

(E) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(F)(1) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(2) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(G) Each order of the juvenile court on or after the date of the Revised Code of that section, notify the court of the current resident a notice that the juvenile court shall either address a juvenile court trial or after the effective date of the juvenile court jurisdiction court as defined in section 2151.01.

(H) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(I) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(J) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(K) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(L) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(M) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

2301.03 J
[Eff. 1-1-91]

(A) In Frank's case, whose terms began in 1969, and January 1991, the qualifications, receive the same common pleas court as designated as judges of the relations. They are and all cases under PARENTAGE Code over which dissolution, the judge shall be assigned judge who is on the services board, and the duties of the docket.

(B)(1) In the case of any juvenile court jurisdiction court as defined in section 2151.01.

(2) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(3) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(4) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(5) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(6) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(7) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(8) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(9) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(10) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(11) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(12) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(13) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

(14) The juvenile court in the case of any juvenile court jurisdiction court as defined in section 2151.01.

- (B) Willful absence of the adverse party for one year;
- (C) Adultery;
- (D) Extreme cruelty;
- (E) Fraudulent contract;
- (F) Any gross neglect of duty;
- (G) Habitual drunkenness;
- (H) Imprisonment of the adverse party in a state or federal penal institution under sentence to the institution at the time of filing the complaint;
- (I) Procurement of a divorce outside this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while those obligations remain binding upon the other party;
- (J) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation;
- (K) Incompatibility, unless denied by either party.

A plea of *res judicata* or of recrimination with respect to any provision of this section does not bar either party from obtaining a divorce on this ground.

3105.03 Residency requirement and venue; jurisdiction of common pleas court [Eff. 1-1-91]

The plaintiff in actions for divorce and annulment shall have been a resident of the state at least six months immediately before filing the complaint. Actions for divorce and annulment shall be brought in the proper county for commencement of action pursuant to the Civil Rules OF CIVIL PROCEDURE. The court of common pleas shall hear and determine the case, whether the marriage took place, or the cause of divorce or annulment occurred, within or without the state.

Actions for *alimony* LEGAL SEPARATION shall be brought in the proper county for commencement of actions pursuant to Civil THE Rules OF CIVIL PROCEDURE.

3105.04 Residence of spouse [Eff. 1-1-91]

When a person files a petition for divorce or for *alimony* LEGAL SEPARATION, the residence of the spouse does not preclude the use of sections 3105.01 to 3105.21 of the Revised Code.

3105.06 Notice by publication authorized in certain cases [Eff. 1-1-91]

If the residence of a defendant in an action for divorce, annulment, or *alimony* LEGAL SEPARATION is unknown, or if the defendant is not a resident of this state or is a resident of this state but absent from the state, notice of the pendency of the action shall be given by publication as provided by the Rules of Civil Procedure.

3105.091 Conciliation order; procedure [Eff. 1-1-91]

(A) At any time after thirty days from the service of summons or first publication of notice in an action for divorce, annulment, or *alimony* LEGAL SEPARATION, or at any time after filing a petition for dissolution of marriage, the court of common pleas, upon its own motion or the motion of one of the parties, may order the parties to undergo conciliation for the period of time not exceeding ninety days as the court specifies. The order requiring conciliation shall set forth the conciliation procedure and name the conciliator. The conciliation procedures may include without limitation referrals to the conciliation judge as provided in Chapter 3117. of the Revised Code, public or private marriage counselors, family service agencies, community health services, physicians, licensed psychologists, or clergymen. The costs of any conciliation procedures shall be paid by the parties.

(B) No action for divorce, annulment, or *alimony* LEGAL SEPARATION, in which conciliation has been ordered, shall be heard or decided until the conciliation has concluded and been reported to the court.

3105.10 Power to dissolve marriage; enforcement of separation agreement providing for child support; condonation and recrimination defenses eliminated; effect on dower [Eff. 1-1-91]

(A) The court of common pleas shall hear any of the causes for divorce or annulment charged in the complaint and may, upon proof to the satisfaction of the court, pronounce the marriage contract dissolved and both of the parties released from their obligations.

(B)(1) A separation agreement providing for the support of children eighteen years of age or older is enforceable by the court of common pleas. If

(2) A SEPARATION AGREEMENT THAT WAS VOLUNTARILY ENTERED INTO BY THE PARTIES MAY BE ENFORCEABLE BY THE COURT OF COMMON PLEAS UPON THE MOTION OF EITHER PARTY TO THE AGREEMENT, IF THE COURT DETERMINES THAT IT WOULD BE IN THE INTERESTS OF JUSTICE AND EQUITY TO REQUIRE ENFORCEMENT OF THE SEPARATION AGREEMENT.

(3) IF A court of common pleas has a division of domestic relations, all cases brought for enforcement of a separation agreement providing for the support of children eighteen years of age or older UNDER DIVISION (B)(1) OR (2) OF THIS SECTION shall be assigned to that division.

(C) A plea of condonation or recrimination is not a bar to a divorce.

(D) Upon the granting of a divorce, on a complaint or counterclaim, by force of the judgment, each party shall be barred of all right of dower in real estate situated within this state of which the other was seized at any time during coverture.

(E) Upon the granting of a judgment for *alimony* LEGAL SEPARATION, when by the force of the judgment real estate is granted to one party, the other party is barred of all right of dower in the real estate and the court may provide that each party shall be barred of all rights of dower in the real estate acquired by either party at any time subsequent to the judgment.

"Dower" as used in this section has the meaning set forth in section 2103.02 of the Revised Code.

3105.17 Grounds for legal separation [Eff. 1-1-91]

(A) Either party to the marriage may file a complaint for divorce or for *alimony* LEGAL SEPARATION, and when filed the other may file a counterclaim for divorce or for *alimony* LEGAL SEPARATION. THE COURT OF COMMON PLEAS MAY GRANT DIVORCES FOR THE CAUSES SET FORTH IN SECTION 3105.01 OF THE REVISED CODE. The court of common pleas may grant *alimony* LEGAL SEPARATION on a complaint or counterclaim, regardless of whether the parties are living separately at the time the complaint or counterclaim is filed, for the following causes:

(A)(1) EITHER PARTY HAD A HUSBAND OR WIFE LIVING AT THE TIME OF THE MARRIAGE FROM WHICH LEGAL SEPARATION IS SOUGHT;

(2) WILLFUL ABSENCE OF THE ADVERSE PARTY FOR ONE YEAR;

(3) ADULTERY;

(B)(4) EXTREME CRUELTY;

(5) FRAUDULENT CONTRACT;

(6) Any gross neglect of duty;

(C) Abandonment without good cause;

(D) Ill-treatment by the adverse party;

(E)(7) Habitual drunkenness;

(F)(8) Imprisonment of the adverse party in a state or federal penal institution under sentence thereto at the time of filing the petition COMPLAINT;

(9) ON THE APPLICATION OF EITHER PARTY, WHEN HUSBAND AND WIFE HAVE, WITHOUT INTERRUPTION FOR ONE YEAR, LIVED SEPARATE AND APART WITHOUT COHABITATION;

(10) INCOMPATIBILITY, UNLESS DENIED BY EITHER PARTY.

(B) THE FILING OF A COMPLAINT OR COUNTERCLAIM FOR LEGAL SEPARATION OR THE GRANTING OF A DECREE OF LEGAL SEPARATION UNDER THIS SECTION DOES NOT BAR EITHER PARTY FROM FILING A COMPLAINT OR COUNTERCLAIM FOR A DIVORCE OR ANNULMENT OR OBTAINING A DIVORCE OR ANNULMENT.

3105.171 Division of marital property; separate property [Eff. 1-1-91]

(A) AS USED IN THIS SECTION:

(1) "DISTRIBUTIVE AWARD" MEANS ANY PAYMENT OR PAYMENTS, IN REAL OR PERSONAL PROPERTY, THAT ARE PAYABLE IN A LUMP SUM OR OVER TIME, IN FIXED AMOUNTS, THAT ARE MADE FROM SEPARATE PROPERTY OR INCOME, AND THAT ARE NOT MADE FROM MARITAL PROPERTY AND DO NOT CONSTITUTE PAYMENTS OF SPOUSAL SUPPORT, AS DEFINED IN SECTION 3105.18 OF THE REVISED CODE.

(2) "DURING THE MARRIAGE" MEANS WHICHEVER OF THE FOLLOWING IS APPLICABLE:

(a) EXCEPT AS PROVIDED IN DIVISION (A)(2)(b) OF THIS SECTION, THE PERIOD OF TIME FROM THE DATE OF THE MARRIAGE THROUGH THE DATE OF THE FINAL HEARING IN AN ACTION FOR DIVORCE OR IN AN ACTION FOR LEGAL SEPARATION;

(b) IF THE COURT DETERMINES THAT THE USE OF EITHER OR BOTH OF THE DATES SPECIFIED IN DIVISION (A)(2)(a) OF THIS SECTION WOULD BE INEQUITABLE, THE COURT MAY SELECT DATES THAT IT CONSIDERS EQUITABLE IN DETERMINING MARITAL PROPERTY. IF THE COURT SELECTS DATES THAT IT CONSIDERS EQUITABLE IN DETERMINING MARITAL PROPERTY, "DURING THE MARRIAGE" MEANS THE PERIOD OF TIME BETWEEN THOSE DATES SELECTED AND SPECIFIED BY THE COURT.

(3)(a) "MARITAL PROPERTY" MEANS, SUBJECT TO DIVISION (A)(3)(b) OF THIS SECTION, ALL OF THE FOLLOWING:

(i) ALL REAL AND PERSONAL PROPERTY THAT CURRENTLY IS OWNED BY EITHER OR BOTH OF THE PARTIES, INCLUDING, BUT NOT LIMITED TO, THE RETIREMENT BENEFITS OF THE PARTIES, AND THAT WAS ACQUIRED BY EITHER OR BOTH OF THE PARTIES DURING THE MARRIAGE;

(ii) ALL INTEREST THAT EITHER OR BOTH OF THE PARTIES CURRENTLY HAS IN ANY REAL OR PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE RETIREMENT BENEFITS OF THE PARTIES, AND THAT WAS ACQUIRED BY EITHER OR BOTH OF THE PARTIES DURING THE MARRIAGE;

(iii) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ALL INCOME AND APPRECIATION ON SEPARATE PROPERTY, DUE TO THE LABOR, MONETARY, OR IN-KIND CONTRIBUTION OF EITHER SPOUSE OR BOTH SPOUSES THAT OCCURRED DURING THE MARRIAGE.

(b) "MARITAL PROPERTY" DOES NOT INCLUDE ANY SEPARATE PROPERTY.

(4) "PASSIVE INCOME" MEANS INCOME ACQUIRED OTHER THAN AS A RESULT OF THE LABOR, MONETARY, OR IN-KIND CONTRIBUTION OF EITHER PARTY.

(5) "PERSONAL PROPERTY" INCLUDES BOTH TANGIBLE AND INTANGIBLE PERSONAL PROPERTY.

(6)(a) "SEPARATE PROPERTY" MEANS ALL REAL AND PERSONAL PROPERTY AND ANY INTEREST IN REAL OR PERSONAL PROPERTY THAT IS FOUND BY THE COURT TO BE ANY OF THE FOLLOWING:

(i) AN INHERITANCE BY ONE SPOUSE BY BEQUEST, DEVISE, OR DESCENT DURING THE COURSE OF THE MARRIAGE;

(ii) ANY REAL OR PERSONAL PROPERTY OR INTEREST IN REAL OR PERSONAL PROPERTY THAT WAS ACQUIRED BY ONE SPOUSE PRIOR TO THE DATE OF THE MARRIAGE;

(iii) PASSIVE INCOME AND APPRECIATION ACQUIRED FROM SEPARATE PROPERTY BY ONE SPOUSE DURING THE MARRIAGE;

(iv) ANY REAL OR PERSONAL PROPERTY OR INTEREST IN REAL OR PERSONAL PROPERTY ACQUIRED BY ONE SPOUSE AFTER A DECREE OF LEGAL SEPARATION ISSUED UNDER SECTION 3105.17 OF THE REVISED CODE;

(v) ANY REAL OR PERSONAL PROPERTY OR INTEREST IN REAL OR PERSONAL PROPERTY THAT IS EXCLUDED BY A VALID ANTENUPTIAL AGREEMENT;

(vi) COMPENSATION TO A SPOUSE FOR THE SPOUSE'S PERSONAL INJURY, EXCEPT FOR LOSS OF MARITAL EARNINGS AND COMPENSATION FOR EXPENSES PAID FROM MARITAL ASSETS;

(vii) ANY GIFT OF ANY REAL OR PERSONAL PROPERTY OR OF AN INTEREST IN REAL OR PERSONAL PROPERTY THAT IS MADE AFTER THE DATE OF THE MARRIAGE AND THAT IS PROVEN BY CLEAR AND CONVINCING EVIDENCE TO HAVE BEEN GIVEN TO ONLY ONE SPOUSE.

(b) THE COMMINGLING OF SEPARATE PROPERTY WITH OTHER PROPERTY OF ANY TYPE DOES NOT DESTROY THE IDENTITY OF THE SEPARATE PROPERTY AS SEPARATE PROPERTY, EXCEPT WHEN THE SEPARATE PROPERTY IS NOT TRACEABLE.

(B) IN DIVORCE PROCEEDINGS, THE COURT SHALL, AND IN LEGAL SEPARATION PROCEEDINGS UPON THE

REQUEST OF EITHER PARTY, THE COURT MAY, DETERMINE WHAT CONSTITUTES MARITAL PROPERTY AND WHAT CONSTITUTES SEPARATE PROPERTY. IN EITHER CASE, UPON MAKING SUCH A DETERMINATION, THE COURT SHALL DIVIDE THE MARITAL AND SEPARATE PROPERTY EQUITABLY BETWEEN THE PARTIES, IN ACCORDANCE WITH THIS SECTION. FOR PURPOSES OF THIS SECTION, THE COURT HAS JURISDICTION OVER ALL PROPERTY IN WHICH ONE OR BOTH PARTIES HAVE AN INTEREST.

(C)(1) EXCEPT AS PROVIDED IN THIS DIVISION OR DIVISION (E) OF THIS SECTION, THE DIVISION OF MARITAL PROPERTY SHALL BE EQUAL. IF AN EQUAL DIVISION OF MARITAL PROPERTY WOULD BE INEQUITABLE, THE COURT SHALL NOT DIVIDE THE MARITAL PROPERTY EQUALLY BUT INSTEAD SHALL DIVIDE IT BETWEEN THE PARTIES IN THE MANNER THE COURT DETERMINES EQUITABLE. IN MAKING A DIVISION OF MARITAL PROPERTY, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING THOSE SET FORTH IN DIVISION (F) OF THIS SECTION.

(2) EACH PARTY SHALL BE CONSIDERED TO HAVE CONTRIBUTED EQUALLY TO THE PRODUCTION AND ACQUISITION OF MARITAL PROPERTY.

(3) THE COURT SHALL PROVIDE FOR AN EQUITABLE DIVISION OF MARITAL PROPERTY UNDER THIS SECTION PRIOR TO MAKING ANY AWARD OF SPOUSAL SUPPORT TO EITHER PARTY UNDER SECTION 3105.18 OF THE REVISED CODE, AND WITHOUT REGARD TO ANY SPOUSAL SUPPORT SO AWARDED.

(D) EXCEPT AS OTHERWISE PROVIDED IN DIVISION (E) OF THIS SECTION OR BY ANOTHER PROVISION OF THIS SECTION, THE COURT SHALL DISBURSE A SPOUSE'S SEPARATE PROPERTY TO THAT SPOUSE. IF A COURT DOES NOT DISBURSE A SPOUSE'S SEPARATE PROPERTY TO THAT SPOUSE, THE COURT SHALL MAKE WRITTEN FINDINGS OF FACT THAT EXPLAIN THE FACTORS THAT IT CONSIDERED IN MAKING ITS DETERMINATION THAT THE SPOUSE'S SEPARATE PROPERTY SHOULD NOT BE DISBURSED TO THAT SPOUSE.

(E)(1) THE COURT MAY MAKE A DISTRIBUTIVE AWARD TO FACILITATE, EFFECTUATE, OR SUPPLEMENT A DIVISION OF MARITAL PROPERTY. THE COURT MAY REQUIRE ANY DISTRIBUTIVE AWARD TO BE SECURED BY A LIEN ON THE PAYOR'S SPECIFIC MARITAL PROPERTY OR SEPARATE PROPERTY.

(2) THE COURT MAY MAKE A DISTRIBUTIVE AWARD IN LIEU OF A DIVISION OF MARITAL PROPERTY IN ORDER TO ACHIEVE EQUITY BETWEEN THE PARTIES, IF THE COURT DETERMINES THAT A DIVISION OF THE MARITAL PROPERTY IN KIND OR IN MONEY WOULD BE IMPRACTICAL OR BURDENSOME.

(3) IF A SPOUSE HAS ENGAGED IN FINANCIAL MISCONDUCT, INCLUDING, BUT NOT LIMITED TO, THE DISSIPATION, DESTRUCTION, CONCEALMENT, OR FRAUDULENT DISPOSITION OF ASSETS, THE COURT MAY COMPENSATE THE OFFENDED SPOUSE WITH A DISTRIBUTIVE AWARD OR WITH A GREATER AWARD OF MARITAL PROPERTY.

(F) IN MAKING A DIVISION OF MARITAL PROPERTY AND IN DETERMINING WHETHER TO MAKE AND THE AMOUNT OF ANY DISTRIBUTIVE AWARD UNDER THIS SECTION, THE COURT SHALL CONSIDER ALL OF THE FOLLOWING FACTORS:

- (1) THE DURATION OF THE MARRIAGE;
- (2) THE ASSETS AND LIABILITIES OF THE PARTIES;
- (3) THE DESIRABILITY OF AWARDED THE FAMILY HOME, OR THE RIGHT TO RESIDE IN THE FAMILY HOME FOR REASONABLE PERIODS OF TIME, TO THE SPOUSE WITH CUSTODY OF THE CHILDREN OF THE MARRIAGE;
- (4) THE LIQUIDITY OF THE PROPERTY TO BE DISTRIBUTED;
- (5) THE ECONOMIC DESIRABILITY OF RETAINING INTACT AN ASSET OR AN INTEREST IN AN ASSET;
- (6) THE TAX CONSEQUENCES OF THE PROPERTY DIVISION UPON THE RESPECTIVE AWARDS TO BE MADE TO EACH PARTY;
- (7) THE COSTS OF SALE, IF IT IS NECESSARY THAT AN ASSET BE SOLD TO EFFECTUATE AN EQUITABLE DISTRIBUTION OF PROPERTY;

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(8) ANY DIVISION OR DISBURSEMENT OF PROPERTY MADE IN A SEPARATION AGREEMENT THAT WAS VOLUNTARILY ENTERED INTO BY THE PARTIES;

(9) ANY OTHER FACTOR THAT THE COURT EXPRESSLY FINDS TO BE RELEVANT AND EQUITABLE.

(G) IN ANY ORDER FOR THE DIVISION OR DISBURSEMENT OF PROPERTY OR A DISTRIBUTIVE AWARD MADE PURSUANT TO THIS SECTION, THE COURT SHALL MAKE WRITTEN FINDINGS OF FACT THAT SUPPORT THE DETERMINATION THAT THE MARITAL PROPERTY HAS BEEN EQUITABLY DIVIDED AND SHALL SPECIFY THE DATES IT USED IN DETERMINING THE MEANING OF "DURING THE MARRIAGE."

(H) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE HOLDING OF TITLE TO PROPERTY BY ONE SPOUSE INDIVIDUALLY OR BY BOTH SPOUSES IN A FORM OF CO-OWNERSHIP DOES NOT DETERMINE WHETHER THE PROPERTY IS MARITAL PROPERTY OR SEPARATE PROPERTY.

(I) A DIVISION OR DISBURSEMENT OF PROPERTY OR A DISTRIBUTIVE AWARD MADE UNDER THIS SECTION IS NOT SUBJECT TO FUTURE MODIFICATION BY THE COURT.

(J) THE COURT MAY ISSUE ANY ORDERS UNDER THIS SECTION THAT IT DETERMINES EQUITABLE, INCLUDING, BUT NOT LIMITED TO, EITHER OF THE FOLLOWING TYPES OF ORDERS:

(1) AN ORDER GRANTING A PARTY THE RIGHT TO USE THE MARITAL DWELLING OR ANY OTHER MARITAL PROPERTY OR SEPARATE PROPERTY FOR ANY REASONABLE PERIOD OF TIME;

(2) AN ORDER REQUIRING THE SALE OR ENCUMBRANCING OF ANY REAL OR PERSONAL PROPERTY, WITH THE PROCEEDS FROM THE SALE AND THE FUNDS FROM ANY LOAN SECURED BY THE ENCUMBRANCE TO BE APPLIED AS DETERMINED BY THE COURT.

3105.18 Spousal support [Eff. 1-1-91]

(A) AS USED IN THIS SECTION, "SPOUSAL SUPPORT" MEANS ANY PAYMENT OR PAYMENTS TO BE MADE TO A SPOUSE OR FORMER SPOUSE, OR TO A THIRD PARTY FOR THE BENEFIT OF A SPOUSE OR A FORMER SPOUSE, THAT IS BOTH FOR SUSTENANCE AND FOR SUPPORT OF THE SPOUSE OR FORMER SPOUSE. "SPOUSAL SUPPORT" DOES NOT INCLUDE ANY PAYMENT MADE TO A SPOUSE OR FORMER SPOUSE, OR TO A THIRD PARTY FOR THE BENEFIT OF A SPOUSE OR FORMER SPOUSE, THAT IS MADE AS PART OF A DIVISION OR DISTRIBUTION OF PROPERTY OR A DISTRIBUTIVE AWARD UNDER SECTION 3105.171 OF THE REVISED CODE.

(B) In divorce, dissolution of marriage, or alimony AND LEGAL SEPARATION proceedings, UPON THE REQUEST OF EITHER PARTY AND AFTER THE COURT DETERMINES THE DIVISION OR DISBURSEMENT OF PROPERTY UNDER SECTION 3105.171 OF THE REVISED CODE, the court of common pleas may allow alimony it considers AWARD reasonable SPOUSAL SUPPORT to either party.

The alimony AN AWARD OF SPOUSAL SUPPORT may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, FROM FUTURE INCOME OR OTHERWISE, as the court considers equitable.

ANY AWARD OF SPOUSAL SUPPORT MADE UNDER THIS SECTION SHALL TERMINATE UPON THE DEATH OF EITHER PARTY, UNLESS THE ORDER CONTAINING THE AWARD EXPRESSLY PROVIDES OTHERWISE.

(C)(1) In determining whether alimony SPOUSAL SUPPORT is necessary APPROPRIATE AND REASONABLE, and in determining the nature, amount, and manner TERMS of payment, AND DURATION of alimony SPOUSAL SUPPORT, WHICH IS PAYABLE EITHER IN GROSS OR IN INSTALLMENTS, the court shall consider all relevant OF THE FOLLOWING factors, including, but not limited to, the following:

(a) THE INCOME OF THE PARTIES, FROM ALL SOURCES, INCLUDING, BUT NOT LIMITED TO, INCOME DERIVED FROM PROPERTY DIVIDED, DISBURSED, OR DISTRIBUTED UNDER SECTION 3105.171 OF THE REVISED CODE;

(b) The relative earning abilities of the parties;

(c) The ages; and the physical, MENTAL, and emotional conditions of the parties;

(3)(d) The retirement benefits of the parties;

(4) The expectancies and inheritances of the parties;

(5)(e) The duration of the marriage;

(6)(f) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home;

(7)(g) The standard of living of the parties established during the marriage;

(8)(h) The relative extent of education of the parties;

(9)(i) The relative assets and liabilities of the parties, INCLUDING BUT NOT LIMITED TO ANY COURT-ORDERED PAYMENTS BY THE PARTIES;

(10) The property brought to the marriage by either party;

(11)(j) The contribution of a spouse as homemaker EACH PARTY TO THE EDUCATION, TRAINING, OR EARNING ABILITY OF THE OTHER PARTY, INCLUDING, BUT NOT LIMITED TO, ANY PARTY'S CONTRIBUTION TO THE ACQUISITION OF A PROFESSIONAL DEGREE OF THE OTHER PARTY;

(k) THE TIME AND EXPENSE NECESSARY FOR THE SPOUSE WHO IS SEEKING SPOUSAL SUPPORT TO ACQUIRE EDUCATION, TRAINING, OR JOB EXPERIENCE SO THAT THE SPOUSE WILL BE QUALIFIED TO OBTAIN APPROPRIATE EMPLOYMENT, PROVIDED THE EDUCATION, TRAINING, OR JOB EXPERIENCE, AND EMPLOYMENT IS, IN FACT, SOUGHT;

(l) THE TAX CONSEQUENCES, FOR EACH PARTY, OF AN AWARD OF SPOUSAL SUPPORT;

(m) THE LOST INCOME PRODUCTION CAPACITY OF EITHER PARTY THAT RESULTED FROM THAT PARTY'S MARITAL RESPONSIBILITIES;

(n) ANY OTHER FACTOR THAT THE COURT EXPRESSLY FINDS TO BE RELEVANT AND EQUITABLE.

(2) IN DETERMINING WHETHER SPOUSAL SUPPORT IS REASONABLE AND IN DETERMINING THE AMOUNT AND TERMS OF PAYMENT OF SPOUSAL SUPPORT, EACH PARTY SHALL BE CONSIDERED TO HAVE CONTRIBUTED EQUALLY TO THE PRODUCTION OF MARITAL INCOME.

(D) In an action brought solely for an order of alimony ILEGAL SEPARATION under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(E) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, AND BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT OR IF A CONTINUING ORDER FOR PERIODIC PAYMENTS OF MONEY AS SPOUSAL SUPPORT IS ENTERED IN A DIVORCE OR DISSOLUTION OF MARRIAGE ACTION THAT IS DETERMINED ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony OR SPOUSAL SUPPORT unless the court determines that the circumstances of either party have changed and unless one of the following applies:

(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony OR SPOUSAL SUPPORT;

(2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony OR SPOUSAL SUPPORT.

(F) FOR PURPOSES OF DIVISIONS (D) AND (E) OF THIS SECTION, A CHANGE IN THE CIRCUMSTANCES OF A PARTY INCLUDES, BUT IS NOT LIMITED TO, ANY INCREASE OR INVOLUNTARY DECREASE IN THE PARTY'S WAGES, SALARY, BONUSES, LIVING EXPENSES, OR MEDICAL EXPENSES.

(G) Each order for alimony made or modified by a court on or after December 1, 1986, AND BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT, AND EACH ORDER FOR SPOUSAL SUPPORT MADE OR MODIFIED BY A COURT ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the child support enforcement agency in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the

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requirement to notify the agency of all changes in either address continues until further notice from the court.

If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, AND BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT OR ANY PERSON REQUIRED TO PAY SPOUSAL SUPPORT UNDER AN ORDER MADE OR MODIFIED BY A COURT ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT is found in contempt of court for failure to make alimony OR SPOUSAL SUPPORT payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, SHALL assess all court costs arising out of the contempt proceeding against the person and SHALL require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3105.21 Custody and support of children; support orders [Eff. 1-1-91]

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or alimony LEGAL SEPARATION, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of any dependent child of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Each order for child support made or modified under this section on or after December 1, 1986, shall be accompanied by one or more orders described in division (D) or (H) of section 3113.21 of the Revised Code, whichever is appropriate under the requirements of that section, a statement requiring all parties to the order to notify the child support enforcement agency in writing of their current mailing address, their current residence address, and of any changes in either address, and a notice that the requirement to notify the agency of all changes in either address continues until further notice from the court. Any court of common pleas that makes or modifies an order for child support under this section on or after the effective date of this amendment shall comply with sections 3113.21 to 3113.218 of the Revised Code. If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

3105.63 Petition for dissolution; separation agreement [Eff. 1-1-91]

A petition for dissolution of marriage shall be signed by both spouses, and shall have attached and incorporated a separation agreement agreed to by both spouses. The separation agreement shall provide for a division of all property; alimony SPOUSAL SUPPORT; if there are minor children of the marriage, for custody of minor children, child support, and visitation rights; and, if the spouses so desire, an authorization for the court to modify the amount or terms of alimony SPOUSAL SUPPORT provided in the separation agreement. An amended separation agreement may be filed at any time prior to or during the hearing on the petition for dissolution of marriage. Upon receipt of a petition for dissolution of marriage, the court may cause an investigation to be made pursuant to the Civil Rules OF CIVIL PROCEDURE.

IF A PETITION FOR DISSOLUTION OF MARRIAGE CONTAINS AN AUTHORIZATION FOR THE COURT TO MODIFY THE AMOUNT OR TERMS OF SPOUSAL SUPPORT PROVIDED IN THE SEPARATION AGREEMENT, ANY SUCH MODIFICATION SHALL BE IN ACCORDANCE WITH SECTION 3105.18 OF THE REVISED CODE.

3105.65 Dismissal of petition or approval of agreement and grant of dissolution; effect of decree; continuing jurisdiction

tion; modification of spousal support; conversion of dissolution action into divorce action [Eff. 1-1-91]

(A) If, at the time of the hearing, either spouse is not satisfied with the separation agreement or does not wish a dissolution of the marriage and if neither spouse files a motion pursuant to division (C) of this section to convert the action to an action for divorce, the court shall dismiss the petition and refuse to validate the proposed separation agreement.

(B) If, upon review of the testimony of both spouses, and of the report of the investigator pursuant to the Rules of Civil Procedure, the court approves the separation agreement and any amendments to it agreed upon by the parties, it shall grant a decree of dissolution of marriage that incorporates the separation agreement. A decree of dissolution of marriage has the same effect upon the property rights of the parties, including rights of dower and inheritance, as a decree of divorce. The court has full power to enforce its decree, and retains jurisdiction to modify all matters of custody, child support, and visitation, and, only in accordance with division (D)(E)(2) of section 3105.18 of the Revised Code, has authority to modify the amount or terms of alimony SPOUSAL SUPPORT.

(C) At any time before a decree of dissolution of marriage has been granted under division (B) of this section, either spouse may convert the action for dissolution of marriage into a divorce action by filing a motion with the court in which the action for dissolution of marriage is pending for conversion of the action for dissolution of marriage. The motion shall contain a complaint for divorce that contains grounds for a divorce and that otherwise complies with the Rules of Civil Procedure and this chapter. The divorce action then shall proceed in accordance with the Rules of Civil Procedure in the same manner as if the motion had been the original complaint in the action, including, but not limited to, the issuance and service of summons pursuant to Civil Rules 4 to 4.6, except that no court fees shall be charged upon conversion of the action for dissolution of marriage into a divorce action under this division.

3109.04 Court awarding custody; joint custody; modifications; best interests of child [Eff. 1-1-91]

(A) Upon hearing the testimony of either or both parents and in accordance with sections 3109.21 to 3109.36 of the Revised Code, the court shall decide to whom the care, custody, and control of the children shall be given. The court may grant the care, custody, and control of the children to either parent or, if a request is made in accordance with division (D) of this section, to the parents jointly. The court shall take into account that which would be in the best interest of the children. The court may allow any child who is twelve years of age or older to choose, in an original proceeding on custody and in a proceeding for modification of a prior custody order of the court, the parent with whom the child is to live, unless the court finds that the parent so selected is unfit to take charge or unless the court finds, with respect to a child who is twelve years of age or older, that it would not be in the best interest of the child to have the choice. The court shall not grant joint care, custody, and control of the children to the parents unless they request the grant of joint care, custody, and control pursuant to division (D) of this section.

If the court allows any child who is twelve years of age or older to choose the parent with whom the child is to live, the court shall offer the child the opportunity to inform the court of the choice in chambers or in open court. If the child elects to inform the court of the choice in chambers, no persons other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers when the child informs the court of the choice and is questioned with respect to the choice.

Prior to trial, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action and may order the parties and their minor children to submit to medical, psychological, and psychiatric examinations. The report of the investigation and examinations shall be made available to either party or his counsel of record not less than five days before trial, upon written request. The report shall be signed by the investigator and the investigator shall be subject to cross-examination by either party concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

The court may order that the parents have joint care, custody, and control of the children only if both parents request joint custody and file a plan for joint custody pursuant to division (D) of this section and if joint custody is in the best interest of the child.

00124-A

August 1990



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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND
 FILED WITH THE SECRETARY OF STATE THROUGH FILE 30 ***
 *** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH MARCH 3, 2010 ***

TITLE 31. DOMESTIC RELATIONS -- CHILDREN
 CHAPTER 3105. DIVORCE, ALIMONY, ANNULMENT, DISSOLUTION OF MARRIAGE
 SPOUSAL SUPPORT

Go to the Ohio Code Archive Directory

ORC Ann. 3105.171 (2010)

§ 3105.171. Equitable division of marital and separate property; distributive award

(A) As used in this section:

(1) "Distributive award" means any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support, as defined in section 3105.18 of the Revised Code.

(2) "During the marriage" means whichever of the following is applicable:

(a) Except as provided in division (A)(2)(b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;

(b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, "during the marriage" means the period of time between those dates selected and specified by the court.

(3) (a) "Marital property" means, subject to division (A)(3)(b) of this section, all of the following:

(i) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage;

(iv) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses, to the extent of the following: the moneys that have been deferred by a continuing member or participating employee, as de-

find in that section, and that have been transmitted to the Ohio public employees deferred compensation board during the marriage and any income that is derived from the investment of those moneys during the marriage; the moneys that have been deferred by an officer or employee of a municipal corporation and that have been transmitted to the governing board, administrator, depository, or trustee of the deferred compensation program of the municipal corporation during the marriage and any income that is derived from the investment of those moneys during the marriage; or the moneys that have been deferred by an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, and that have been transmitted to the governing board, as defined in that section, during the marriage and any income that is derived from the investment of those moneys during the marriage.

(b) "Marital property" does not include any separate property.

(4) "Passive income" means income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse.

(5) "Personal property" includes both tangible and intangible personal property.

(6) (a) "Separate property" means all real and personal property and any interest in real or personal property that is found by the court to be any of the following:

(i) An inheritance by one spouse by bequest, devise, or descent during the course of the marriage;

(ii) Any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage;

(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

(iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;

(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;

(vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.

(b) The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.

(B) In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property, excluding the social security benefits of a spouse other than as set forth in division (F)(9) of this section, in which one or both spouses have an interest.

(C) (1) Except as provided in this division or division (E) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in division (F) of this section.

(2) Each spouse shall be considered to have contributed equally to the production and acquisition of marital property.

(3) The court shall provide for an equitable division of marital property under this section prior to making any award of spousal support to either spouse under section 3105.18 of the Revised Code and without regard to any spousal support so awarded.

(4) If the marital property includes a participant account, as defined in section 148.01 of the Revised Code, the court shall not order the division or disbursement of the moneys and income described in division (A)(3)(a)(iv) of this

section to occur in a manner that is inconsistent with the law, rules, or plan governing the deferred compensation program involved or prior to the time that the spouse in whose name the participant account is maintained commences receipt of the moneys and income credited to the account in accordance with that law, rules, and plan.

(D) Except as otherwise provided in division (E) of this section or by another provision of this section, the court shall disburse a spouse's separate property to that spouse. If a court does not disburse a spouse's separate property to that spouse, the court shall make written findings of fact that explain the factors that it considered in making its determination that the spouse's separate property should not be disbursed to that spouse.

(E) (1) The court may make a distributive award to facilitate, effectuate, or supplement a division of marital property. The court may require any distributive award to be secured by a lien on the payor's specific marital property or separate property.

(2) The court may make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses, if the court determines that a division of the marital property in kind or in money would be impractical or burdensome.

(3) If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.

(F) In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

- (1) The duration of the marriage;
- (2) The assets and liabilities of the spouses;
- (3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;
- (4) The liquidity of the property to be distributed;
- (5) The economic desirability of retaining intact an asset or an interest in an asset;
- (6) The tax consequences of the property division upon the respective awards to be made to each spouse;
- (7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;
- (8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;
- (9) Any retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension;
- (10) Any other factor that the court expressly finds to be relevant and equitable.

(G) In any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of "during the marriage."

(H) Except as otherwise provided in this section, the holding of title to property by one spouse individually or by both spouses in a form of co-ownership does not determine whether the property is marital property or separate property.

(I) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.

(J) The court may issue any orders under this section that it determines equitable, including, but not limited to, either of the following types of orders:

- (1) An order granting a spouse the right to use the marital dwelling or any other marital property or separate property for any reasonable period of time;

(2) An order requiring the sale or encumbrancing of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court.

HISTORY:

143 v H 514 (Eff 1-1-91); 144 v S 300 (Eff 11-5-92); 148 v II 628. Eff 9-21-2000; 152 v II 395, § 1, eff. 4-7-09.



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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND
 FILED WITH THE SECRETARY OF STATE THROUGH FILE 30 ***
 *** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2010 ***
 *** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH MARCH 3, 2010 ***

TITLE 31. DOMESTIC RELATIONS -- CHILDREN
 CHAPTER 3105. DIVORCE, ALIMONY, ANNULMENT, DISSOLUTION OF MARRIAGE
 SPOUSAL SUPPORT

Go to the Ohio Code Archive Directory

ORC Ann. 3105.18 (2010)

§ 3105.18. Award of spousal support; modification

(A) As used in this section, "spousal support" means any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse. "Spousal support" does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property or a distributive award under section 3105.171 [3105.17.1] of the Revised Code.

(B) In divorce and legal separation proceedings, upon the request of either party and after the court determines the division or disbursement of property under section 3105.171 [3105.17.1] of the Revised Code, the court of common pleas may award reasonable spousal support to either party. During the pendency of any divorce, or legal separation proceeding, the court may award reasonable temporary spousal support to either party.

An award of spousal support may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable.

Any award of spousal support made under this section shall terminate upon the death of either party, unless the order containing the award expressly provides otherwise.

(C) (1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

- (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 [3105.17.1] of the Revised Code;
- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;

(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

(g) The standard of living of the parties established during the marriage;

(h) The relative extent of education of the parties;

(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

(2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.

(D) In an action brought solely for an order for legal separation under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

(E) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, and before January 1, 1991, or if a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:

(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(F) For purposes of divisions (D) and (E) of this section, a change in the circumstances of a party includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses.

(G) If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, and before January 1, 1991, or any person required to pay spousal support under an order made or modified by a court on or after January 1, 1991, is found in contempt of court for failure to make alimony or spousal support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and shall require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

HISTORY:

RS § 5699; S&C 512; 51 v 377, § 7; 90 v 348; GC § 8003-19; 114 v 320(478); 124 v 178; Bureau of Code Revision, 10-1-53; 135 v H 233 (Eff 9-23-74); 141 v H 358 (Eff 5-2-86); 141 v H 509 (Eff 12-1-86); 142 v H 231 (Eff 10-5-87); 142 v H 708 (Eff 4-19-88); 143 v H 514 (Eff 1-1-91); 143 v S 3 (Eff 4-11-91); 145 v H 173 (Eff 12-31-93); 147 v H 352 (Eff 1-1-98); 148 v S 180. Eff 3-22-2001; 150 v H 36, § 1, eff. 4-27-05.

TO: Senate Republican Caucus
FROM: Lisa M. Wu Scott
RE: Senate Judiciary Committee, January 31, 1990
DATE: January 31, 1990

ROLL CALL

Senators Cupp, Henry, Levey, Montgomery, Johnson, and Chairman Pfeifer

AGENDA

SB 273 (Levey) Prosecutors appeal court's acquittal after guilty verdict of jury
4TH HEARING
SB 179 (Cupp) Continuous order of wage garnishment
1ST HEARING
SB 271 (Hobson) OMVI penalties
1ST HEARING
HB 346 (Suster) Changes in probate law
3RD HEARING
HB 51 (Mottl) Electronic monitored house arrest
1ST HEARING
HB 397 (Walsh) Legal services for victims of domestic violence
1ST HEARING
HB 514 (Walsh) Modify domestic relations law
1ST HEARING

"THIS DOCUMENT IS A XEROGRAPHIC COPY OF A PUBLIC RECORD IN THE CUSTODY OF THE OHIO HISTORICAL SOCIETY UNDER PROVISIONS OF SECTION 149.31 OF THE OHIO REVISION CODE."

- I. Meeting commenced at 10:10 AM
A. HB 397 (Walsh) -- sponsor testimony
1. Representative Walsh
a. bill will allow legal aid societies to represent victims of domestic violence (DV) who fall above current financial guidelines
b. many victims have no access to marital funds after leaving abusive spouse and cannot pay private attorney, yet legal aid cannot represent them because they must consider spouse's income
c. mandates judge to award reasonable attorney's fees when DV proven
d. sets aside 10% of state funds to legal aid societies for aid to victims of DV
e. questions/comments
1) Chairman: what if the volume of DV cases does not consume mandated funds?

RESPONSE: feel it is unlikely they won't spend budget allowance
2) Chairman: object to include attorney's fees in all cases?
RESPONSE: not at all

- B. SB 273 (Levey) -- vote
1. Levey moves bill for favorable passage, Montgomery seconds, vote:

Cupp	yes
Henry	yes
Levey	yes
Montgomery	yes
Johnson	no
Pfeifer	yes
 2. bill is favorably recommended to rules committee

- C. HB 346 (Suster) -- vote
1. Levey moves bill for favorable passage, Cupp seconds, vote:

Cupp	yes
Henry	yes
Levey	yes
Montgomery	yes
Johnson	yes
Pfeifer	yes
 2. bill is favorably recommended for floor vote today

- D. HB 514 (Walsh) -- sponsor testimony
1. Representative Walsh
 - a. codifies existing domestic relations (DR) case law and divides current statute dealing with property division and alimony into two separate sections, ~~each with separate criteria~~
 - b. replaces "alimony" with "property division" or "spousal support"
 - c. renames "action for alimony only" to "action for separation"
 - d. recognizes presence of second marriages in regard to marital and non-marital property
 - e. requires specific findings of fact if judge awards non-marital property to other spouse
 - f. replaces references to retirement with language that income earned during the marriage is considered to be earned by both spouses; does not deal with state pension plan problem
 - g. questions/comments
 - 1) Chairman: any overlap between this and upcoming child support guidelines?
RESPONSE: no, only possible overlap may be in spousal support

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- indigent prisoners to use it
- 2) Chairman: any other limitations on this sentencing other than mandatory incarceration?
RESPONSE: everyone else eligible
 - 3) Chairman: may want to inventory crimes we don't want to qualify for this
LSC to research

2. demonstration by manufacturers scheduled for next week to familiarized committee with electronic device and its use

II. Meeting adjourned 11:10 AM

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Am. Sub. H.B. 514
(As Passed by the House)

Reps. Walsh, Vukovich, Hartley, Lucas, Whalen, Guerra

Renames an action for alimony as an action for legal separation.

Establishes a procedure for distributing separate property and marital property in an action for divorce or legal separation.

Replaces alimony payments with spousal support.

Eliminates some existing factors used in determining the type and amount of spousal support and adds some new factors to be used in making such a determination.

CONTENT AND OPERATION

Action For Legal Separation

Existing law

Under existing section 3105.17, either party to a marriage may file a complaint for divorce or alimony, and the other party may file a counterclaim for divorce or alimony. The court of common pleas may grant alimony on a complaint or counterclaim for any of the following causes: adultery; any gross neglect of duty; abandonment without good cause; ill-treatment by the adverse party; habitual drunkenness; and imprisonment of the adverse party in a state or federal penal institution at the time of the filing of the petition. The procedures governing actions for alimony are set forth in Chapter 3105. and the Rules of Civil Procedure.

Operation of the bill

The bill would rename an action for "alimony" as an action for "legal separation" (proposed sec. 3105.17). The procedures of existing law that are applicable to actions for alimony would be applicable to actions for "legal separation," and the bill would provide additional new procedures (described below) that would be applicable to such actions. The bill would make technical changes to numerous sections to replace references to actions for "alimony" with a reference to actions for "legal separation." (Proposed secs. 2151.23, 2301.03, 2303.201, 2907.01, 3105.03, 3105.04, 3105.06, 3105.091, 3105.10, 3105.21, 3109.04, 3109.05, 3111.06, 3117.05, 3117.07, 3117.08, and 3517.13.)

The bill would change the causes for which a legal separation could be granted. It would eliminate "abandonment without good cause" and "ill treatment by the adverse party" as causes for granting a legal separation, and would include all of the following as additional causes for granting a legal separation: either party had a husband or wife living at the time of the marriage from which the legal separation is sought; willful absence of the adverse party for one year; extreme cruelty; fraudulent contract; on application of either party, when husband and wife, without interruption for one year, have lived separate and apart without cohabitation; and incompatibility, unless denied by either party. (Proposed sec. 3105.17; see COMMENT.)

Property Distribution

Definitions

The bill would enact new property distribution procedures for divorce and legal separation proceedings (as described below) and would define the following terms for the purposes of those procedures (proposed sec. 3105.171(A)):

1. "Distributive award" would mean any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support.

2. "During the marriage" would mean whichever of the following is applicable:

a. Except as provided in the following paragraph, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or for legal separation under the bill;

b. If the court determines that the use of either or both of the dates set forth in the immediately preceding paragraph would be inequitable and selects dates that it considers equitable in determining marital property, the period of time between the dates specified by the court as being equitable in determining marital property.

3. "Marital property" would mean, excluding separate property, all real and personal property that currently is owned by either or both of the parties and that was acquired by either or both of the parties during marriage and, except as otherwise set forth in the bill, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either spouse or both spouses that occurred during marriage.

4. "Passive income" would mean income acquired other than as a result of labor, monetary, or in-kind contribution by either party.

5. "Personal property" would include both tangible and intangible personal property.

6. "Separate property" would mean all real and personal property that is found by the court to be any of the following:

a. An inheritance by one spouse acquired by bequest, devise, or descent during the course of the marriage;

b. Any real or personal property acquired by one spouse prior to the date of the marriage;

c. Passive income and appreciation acquired during the marriage from separate property;

d. Any real or personal property acquired by one spouse after a decree of legal separation;

e. Any real or personal property excluded by a valid antenuptial agreement;

f. Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;

g. Any gift of real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.

For purposes of the above definitions and the bill's procedures for distribution of marital property and separate property, the commingling of separate asset with another asset would not destroy the identity of the separate asset as separate property unless the separate property is not traceable.

Procedure for determining and distributing property

The bill would require the court in all divorce proceedings, and authorize the court in legal separation proceedings upon the request of either party, to determine what constitutes marital property and separate property and would require it to distribute the marital property and separate property equitably between the parties, in accordance with the bill's requirements. For purposes of making that determination and distribution, the bill would give the court jurisdiction over all property in which one or both parties to a marriage have an interest. An award of assets as part of a property distribution would not be subject to future modification. In any order for the distribution of property made pursuant to the bill, the court would be required to make written findings of fact that support the determination that the marital property has been equitably divided and would have to specify the dates it used in determining the meaning of "during the marriage." (Proposed secs. 3105.171(B), (G), and (I).) In divorce and legal separation proceedings, the bill

would require the court to determine the distribution of property before awarding spousal support to either party (proposed sec. 3105.18(B)).

The court would be permitted to issue any orders that it determines equitable when it distributes property, including but not limited to, an order granting a party the right to use the marital property or any other marital property or separate property for any reasonable period of time or an order requiring the sale or encumbrancing of any asset, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court (proposed sec. 3105.171(J)).

Except as otherwise specifically provided in the bill, the holding of title to property by one spouse individually or by both spouses in a form of co-ownership would not determine whether the property is marital property or separate property (proposed sec. 3105.171(H)).

Factors governing distribution, and specific rules for distribution

Marital property. The bill generally would require the distribution of marital property to be equal; however, if an equal division would be inequitable, the court would be required to distribute the marital property between the parties in the manner the court determines equitable. In making a distribution of marital property, the court would be required to consider all relevant factors, including all of the following (proposed secs. 3105.171(C)(1) and (F)): the duration of the marriage; the assets and liabilities of the parties; the desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage; the liquidity of the property to be distributed; the economic desirability of retaining intact an asset or an interest in an asset; the tax consequences, upon the respective awards to be made to each party, of the property division to be made; the costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property; and any other factor that the court expressly finds to be relevant and equitable. Under the bill, each party would be considered to have contributed equally to the production and acquisition of marital property. The court would be required to provide for an equitable distribution of marital property without regard to any spousal support (as described below) awarded to either party. (Proposed sec. 3105.171(C)(2) and (3).)

Separate property. Except as otherwise described in the next paragraph or as otherwise provided in the bill, the court would be required to distribute a spouse's separate property to that spouse. If a court does not distribute a spouse's separate property to that spouse, the court would be required to make written findings of fact that explain the factors that it

considered in making its determination that the spouse's separate property should not be distributed to that spouse. (Proposed sec. 3105.171(D).)

Distributive award; greater award of marital property. If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets, the court would be permitted to compensate the offended spouse with a distributive award or with a greater award of marital property. It also could make a distributive award in lieu of a distribution of marital property in order to achieve equity between the parties, if it determines that a distribution in kind or in money from marital property would be impractical or burdensome. It also could make a distributive award to facilitate, effectuate, or supplement a distribution of marital property. It could require any distributive award to be secured by a lien on the payor's specific marital property or separate property. (Proposed sec. 3105.171(E).)

Spousal Support

Existing law

Under existing section 3105.18, the court of common pleas, in a divorce, dissolution of marriage, or alimony action, may allow alimony if it considers reasonable to either party. The alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court considers equitable. In determining whether alimony is necessary and the nature, amount, and manner of payment of the alimony, the court is required to consider all relevant factors, including, but not limited to, the following: the relative earning abilities of the parties; the ages and physical and emotional conditions of the parties; the retirement benefits of the parties; the expectancies and inheritances of the parties; the duration of the marriage; the extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside of the home; the standard of living of the parties established during the marriage; the relative extent of education of the parties; the relative assets and liabilities of the parties; the property brought to the marriage by either party; and the contribution of a spouse as a homemaker.

Operation of the bill

The bill would replace the term "alimony" with the term "spousal support," would define the latter term, would change some of the statutory factors to be considered when determining whether to award, and the amount of, spousal support, would separate spousal support determinations from property separation determinations, and would make related technical changes to several sections to coordinate the change in terminology

(proposed sec. 3105.18 and proposed secs. 2119.03, 2151.23, 2303.201, 2329.66, 2743.66, 3105.63, 3105.65, 3109.06, 3113.21, 3770.071, and 5101.31).

Definition. As used in the bill, "spousal support" would mean any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is for sustenance and spousal support. It would not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property under the bill. (Proposed sec. 3105.18(A).)

Rules and factors for determining spousal support. The bill would permit a court of common pleas to award reasonable spousal support to either party in a divorce or legal separation proceeding if either party requests the court to do so, but only after it determines the distribution of property pursuant to the bill (under the property distribution provisions described above). It also could modify, pursuant to the same procedures, the amount or terms of spousal support provided in a separation agreement in a dissolution of marriage action, if the petition for dissolution of marriage contains an authorization for such action. (Proposed secs. 3105.18(B) and 3105.63.)

An award of spousal support could be allowed only by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable. The award would terminate upon the death of either party, unless the order containing the award expressly provides otherwise. In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, the court would be required to consider each party as having contributed equally to the production of marital income. For the purposes of modifying a prior order for spousal support, a change in circumstances of a party (which is necessary for a modification) would include, but not be limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses. (Proposed secs. 3105.18(B), (C)(2), and (F).)

In determining whether spousal support is reasonable, and in determining the amount and terms of spousal support, the court would be required to consider the same factors it now considers when determining the type and amount of alimony, with several changes. The bill would eliminate the existing specific requirements for consideration of: (1) the retirement benefits of the parties; (2) the expectancies and inheritances of the parties; (3) the property brought to the marriage by either party; and (4) the contribution of a spouse as a homemaker. The bill would add new provisions that specifically would require consideration of: (1) the income of the parties from all sources including income from property distributed under the bill; (2) the mental conditions of the parties; (3) the contribution of

each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party; (4) the time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience in order to obtain appropriate employment to generate income to approximate the standard of living of the spouse established during the marriage; (5) the tax consequences for each party of an award of spousal support; (6) the lost income production capacity of either party that resulted from that party's marital responsibilities; and (7) any other factor that the court expressly finds to be relevant and equitable. (Proposed sec. 3109.18(C)(1).)

COMMENT

The causes for which a legal separation could be granted, as modified by the bill, would be the same as the existing causes for which a divorce may be granted, as set forth in existing section 3105.01, with one exception. The only difference is that the causes for which a divorce may be granted also include "the procurement of a divorce outside Ohio, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while those obligations remain binding upon the other party."

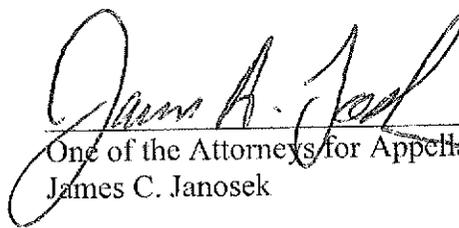
ACTION	DATE	JOURNAL ENTRY
Introduced Reported, H. Judiciary & Criminal Justice Passed House (96-0)	05-16-89 01-11-90 01-17-90	p. 615 p. 1386 pp. 1423-1424

CERTIFICATE OF SERVICE

A copy of the foregoing Appendix to Appellant James C. Janosek's Merit Brief was sent by first class United States mail, postage prepaid, this 25th day of May, 2010 to attorneys for Appellee, at the following addresses:

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