

IN THE SUPREME COURT OF OHIO

MARION J. FLETCHER

Plaintiff-Appellant,

vs.

ESTATE OF:

ALDEN S. FLETCHER, III, et al.

Defendants-Appellees.

CASE NO.:

On Appeal from the Lake County Court of Appeals, Eleventh Appellate District

Court of Appeals Case No.: 2013-L-084

MEMORANDUM IN SUPPORT OF JURISDICTION
OF PLAINTIFF/APPELLANT

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**THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case involves a critical issue of whether a Domestic Relations Court lacks jurisdiction to enforce its orders once a party dies. In the case at bar Appellant's ex-husband/decedent died six (6) months after the termination of their marriage. As part of their Judgment Entry of Divorce Appellant and decedent agreed to equally pay the mortgage and utilities for the marital residence. After his death Appellant demanded decedent's estate to continue paying as ordered in the Judgment Entry of Divorce. The estate declined to do so. Thereafter, the Appellant filed a Motion to Show Cause against the estate. Prior to this Motion to Show Cause the estate moved and was allowed to substitute itself for the decedent to enforce a separate obligation against Appellant. The Judgment Entry of Divorce required wife and husband to equally divide decedent's 401(k) plan. Since it had not been divided by a QDRO at the time of his death, the entire amount was paid to Appellant since she was listed as the sole beneficiary.

The Magistrate initially decided that the estate was obligated to pay one-half (1/2) the mortgage and utilities, but Appellant had to give the estate one-half (1/2) the 401(k) proceeds. The Trial Court reversed the Magistrate's Decision. As well as ordering the Appellant to give the estate one-half (1/2) the 401(k) proceeds via a constructive trust. By a 2-1 majority the Court of Appeals upheld the Trial Court.

Both the Trial Court and a majority of the Court of Appeals held that the Domestic Relations court lacked jurisdiction to enforce its own orders.

The Court of Appeals' ruling in this case circumvents statute and caselaw.

Ohio Revised Code Section 3105.011 relevantly provides that "The court of common

pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. Subject matter jurisdiction gives the court the authority to hear and decide a case on its merits. **Nalesnik v. Nalesnik** (April 5, 1990), Eight District No. 56614, 1990 Ohio App. LEXUS 1368. Further a court has the power to enforce a property division incorporated into a divorce decree. Ohio Revised Code Section 3105.65 (B). *See also* **Pugh v. Pugh** (1984), 15 Ohio St.3d 136 citing **Windham Bank v. Tomaszczyk** (1971), 27 Ohio St.2d 55 at paragraph two of the syllabus held:

“2. The purpose of civil contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice.”

In **Durgin v. Durgin** (May 9, 2013), Cuyahoga App. No. 98888, 2013-Ohio 1897, the appellate court affirmed the trial court which dismissed a pending divorce case because husband died. Wife attempted to enforce a temporary spousal support arrearage against the estate. The appellate court cited the principle in **Coffman v. Finney**, 65 Ohio St. 61, (1901), in relevant part as follows:

“[T]he domestic relations court awarded alimony, *pursuant to a divorce decree*, to the wife. Without making any payment and while the appeal was pending, the husband killed his wife and then himself. The issue presented to the court was whether the action to enforce the alimony award survived the death of the wife.

To resolve the issue, the court distinguished between a pending action to *award* alimony versus a pending action to *enforce* an alimony award. The Supreme Court explained that while an action termed “personal,” such as for divorce or for determination and order of an alimony award, abated upon the death of one party to the action, an action that sought to enforce *fixed rights and liabilities*, such as an action to enforce alimony already awarded, survives the death of that party.

“A final decree is unaffected by the subsequent death of a party to the divorce action. **Porter v. Lerch**, 129 Ohio St. 47; **King v. King**, 2002-Ohio-1060, 2002 WL 398716 (Ohio Ct. App. 4th Dist. Adams County 2002); **Endejann v. Endejann**, 1983 WL 8807 (Ohio Ct. App. 1st Dist. Hamilton County 1983). In this case, the divorce was final and therefore the divorce action

is not abated or terminated.

Since the divorce action has not been abated or terminated in this case, the Court has the right to enforce the Court orders that were issued in this case. In the case of **Concepcion v. Concepcion, 131 Ohio App.3d 271 (3d Dist. Seneca County 1999)** the court held that since the husband violated a temporary restraining order that prohibited him from changing the beneficiary on a life insurance policy, the wife was entitled to enforce the order even though the husband died while the divorce was pending.”

It’s incongruous for the Appellate Court to hold the Trial Court does not have jurisdiction to enforce its order regarding payment of the mortgage and utilities, but then to hold the Trial Court has jurisdiction to impose a constructive trust. Since the rights and liabilities were fixed the domestic relations court has jurisdiction to enforce its orders.

Moreover, the decision by the Eleventh District Court of Appeals creates a conflict between the First, Third, and Eighth Districts on an important issue of law. Because of this, this action is of great public and general importance.

STATEMENT OF THE CASE AND FACTS

This case originated in the Common Pleas Court, Division of Domestic Relations, Lake County, Ohio. On September 29, 2009 Appellant Marion J. Fletcher filed a Complaint for Divorce from the Defendant Alden S. Fletcher, III. On December 9, 2010 the Trial Court filed an Agreed Journal Entry granting Appellant a divorce from the Decedent, Alden S. Fletcher, III.

The seminal portions of the judgment entry are as follows:

“IT IS FURTHER ORDERED that the Husband’s Lincoln Electric 401(k) / Employee Savings account that has an approximate value of \$94,650.14 as of December 21, 2009 shall be divided equally between the parties by way of a QDRO as of September 2, 2010 with each party bearing equally any gain or loss in this account after September 2, 2010. Wife shall be responsible for preparation of the QDRO to divide this account.”

“IT IS FURTHER ORDERED that beginning September 1, 2010, the Husband and the Wife are each equally responsible for the mortgage payment on the marital home that is payable to National City Bank. Wife shall give her share of the mortgage payment to Husband seven days before the payment is due and then the Husband shall make the mortgage payment on a timely basis until the home is sold. The joint National City Bank account proceeds shall be applied to the mortgage payment due in September 2010 and the utilities which come due in September 2010 and any remaining proceeds shall be divided equally.”

“IT IS FURTHER ORDERED that beginning September 1, 2010, the Husband and the Wife are each equally responsible for the costs of the utilities for the marital home which include electric, gas, water and sewer. Wife shall pay to Husband her share of the utilities costs within ten days of receiving a bill from the Husband for those costs.”

On June 12, 2011 the Decedent died. Subsequent to Decedent’s death on June 12, 2011 the Appellee-Estate refused to pay one-half (1/2) of the mortgage nor would it pay one-half (1/2) the costs as ordered by the court.

On December 30, 2011 Appellee, Estate of Alden S. Fletcher, III, filed a Motion to Show Cause and a Motion to Enforce Agreed Judgment Entry. On January 4, 2012 Appellant received, **AS A DEATH BENEFIT**, the entire 401(k) plan since Appellant was the only one designated

the death beneficiary by Decedent. Decedent had designated Appellant his sole beneficiary prior to the termination of their marriage and Decedent had not changed said designation since the termination of the marriage. On March 2, 2012 Appellant filed a Motion for an Order dismissing Appellee's Motion to Show Cause and Motion to Enforce Agreed Judgment Entry. On March 12, 2012 Appellee filed a Motion to Add Party, to wit: The Executor of the Estate of Alden S. Fletcher, III as a new party in this matter. On March 26, 2012 Appellee filed a Motion to Substitute Mary Elizabeth Lateulere, the executor of the Estate of Alden S. Fletcher, III as a party in place of Alden S. Fletcher, III. On March 26, 2012 Appellee filed a Suggestion of Death of Alden S. Fletcher, III. On April 10, 2012 a Magistrate's Order was filed substituting Mary Lateulere the Executor of the Estate of Alden S. Fletcher, III as the party Defendant for Alden S. Fletcher, III. On April 16, 2012 Appellee filed a brief regarding the continuing jurisdiction of the Lake County Court of Common Pleas, Division of Domestic Relations, to enforce the agreed judgment entry which terminated the parties' marriage on December 9, 2010.

On March 22, 2013 the Magistrate issued a decision regarding all pending motions. The Magistrate decided that Appellant shall return one-half (1/2) the funds she received from the Lincoln Electric 401(k) Employee Savings Account to the Estate of Alden S. Fletcher, III, less \$5,980.86 to reimburse Appellant for the net monies owed to her for the advancement of payments on the mortgage, insurance, utilities, and landscaping for the marital residence. The Magistrate further decided that effective September 1, 2010 the Appellee Estate of Alden S. Fletcher, III and Appellant are equally responsible for the mortgage payment on the marital home that is payable to National City Bank or its successor. Further, the Magistrate decided that effective October 1, 2012 Appellee and Appellant are equally responsible for the costs of utilities at the marital home which include electric, gas, water, and sewer. Finally, the Magistrate

decided that neither party is entitled to an award of attorney fees.

On April 2, 2013 Appellant filed objections to the Magistrate's Decision. On April 8, 2013 Appellee filed objections to the Magistrate's Decision.

On August 20, 2013 the Trial Court filed a journal entry ruling upon Appellant's and Appellee's objections. The Trial Court upheld the Magistrate's Decision ordering Appellant to equally divide the Lincoln Electric 401(k)/Employee Savings Account with Appellee. The Trial Court reversed the Magistrate's Decision ordering Appellee to reimburse Appellant for one-half (1/2) of the mortgage and utilities she paid after the death of Decedent since June 12, 2011. The Trial Court determined that the Domestic Relations Court is without subject matter jurisdiction to enforce any claimed obligations by Appellant against the Appellee Estate arising after the death of the Decedent on June 12, 2011. The Trial Court stated the only financial matters the Appellee-Estate is subject to for a contempt are any unpaid obligations of Decedent from the real estate due to Appellant as of his date of death of June 12, 2011. The Trial Court went on to further state that pursuant to Stipulation 16, the Decedent's obligations to Appellant were paid as of the date of his death. Accordingly, the Trial Court did not find Appellant's Motion to Show Cause well-taken and the Trial Court set aside the Magistrate's determination that Appellee-Estate was in contempt. The Trial Court did order, though, the Appellant to pay attorney fees to Appellee in the amount of \$3,400.00. The Trial Court based this award of attorney fees on the fact that Appellant filed motions similar to her April 27, 2012 motions in the Lake County Court of Common Pleas, Probate Division on April 12, 2012. Since the Probate Court denied Appellant's motions since it found said motions were time-barred it was inappropriate for Appellant to also file motions in the Division of Domestic Relations.

On September 4, 2013 Appellant filed a Motion to Stay Execution of Final Judgment

Entry of August 20, 2013.

On September 4, 2013 Appellant filed a timely Notice of Appeal.

On September 16, 2013 the Trial Court granted a stay of the August 20, 2013 Judgment Entry on the condition that Appellant post a supersedeas bond in the amount of \$75,000.00 with the clerk of courts.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Once a Domestic Relations Court terminates a marriage pursuant to its Judgment Entry of Divorce, the Court may enforce its orders against a party/decedent's estate.

The Trial Court held it had no subject matter jurisdiction pursuant to **Diemer v. Diemer**, 1994, 99 Ohio App.3d 54 to enforce its order against Appellee arising after Decedent's death on June 12, 2011, nor does it have subject matter jurisdiction over the sale of the real estate. The trial court stated the real estate is now within the jurisdiction of the probate court.

The trial court's reliance on **Diemer** is misplaced.

As the court explained in ***Diemer v. Diemer***, 99 Ohio App.3d 54, 649 N.E.2d 1285 (8th Dist.1994), ***Coffman v. Coffman***, 65 Ohio St. 61, 61 N.E. 155 established the test in determining whether an action abated upon the death of a party: the determining factor was whether the action sought to *enforce fixed rights and liabilities*. ***Diemer*** at 60.

In ***Diemer***, the husband and wife had an antenuptial agreement. The wife filed a complaint for divorce but died during the pendency of the proceedings. The executor of her estate sought to enforce the antenuptial agreement.

Applying the "fixed rights and obligations" principle set forth in ***Coffman***, 65 Ohio St. 61, 61 N.E. 155, this court in ***Diemer*** explained that in ***Coffman***, because the *divorce decree* itself served to create the fixed rights and liabilities, the action to enforce the alimony award survived the decedent's death. In ***Diemer***, although there was no divorce decree, the wife's fixed rights and liabilities were fixed in the antenuptial agreement; therefore, the executor's action survived the wife's demise in accordance with ***Coffman***. We held, however, that the domestic relations court lacked subject matter jurisdiction to enforce the antenuptial agreement because no determination of any kind had been adjudicated prior to the wife's death. The interpretation and determination of the antenuptial agreement was a matter for the probate court."

In the case, *sub judice*, rights and liabilities were fixed unlike the facts in **Durgin**. Since rights and liabilities were fixed the Domestic Relations Trial Court did have subject matter jurisdiction. Surprisingly, the Appellee also supports this position. Appellee filed a Brief Regarding Continuing Jurisdiction of the trial court on April 16, 2012. Appellee stated,

“A final decree is unaffected by the subsequent death of a party to the divorce action. **Porter v. Lerch**, 129 Ohio St. 47; **King v. King**, 2002-Ohio-1060, 2002 WL 398716 (Ohio Ct. App. 4th Dist. Adams County 2002); **Endejann v. Endejann**, 1983 WL 8807 (Ohio Ct. App. 1st Dist. Hamilton County 1983). In this case, the divorce was final and therefore the divorce action is not abated or terminated.

Since the divorce action has not been abated or terminated in this case, the Court has the right to enforce the Court orders that were issued in this case. In the case of **Concepcion v. Concepcion**, 131 Ohio App.3d 271 (3d Dist. Seneca County 1999) the court held that since the husband violated a temporary restraining order that prohibited him from changing the beneficiary on a life insurance policy, the wife was entitled to enforce the order even though the husband died while the divorce was pending.”

In **Diemer** the domestic relations court had not issued any judgment entry or order fixing the rights and liabilities of the decedent unlike the decedent in **Coffman**. In **Coffman** an action was instituted to enforce an award that had already been ordered by the court. In the case, *sub judice*, Appellant is attempting to litigate in the domestic relations court fixed rights and liabilities pursuant to an Agreed Judgment Entry issued by the trial court of the domestic relations division. In **Diemer**, the antenuptial agreement fixed the rights and liabilities of the parties which was appropriate for the probate division to determine. The enforceability of the antenuptial agreement did not depend upon an action that could be maintained in the domestic relations court.

The fact that there were no outstanding obligations owed to Appellant on the date of decedent’s death (6/12/2011) is inconsequential. Appellant’s and decedent’s rights and liabilities were fixed at the time of his death pursuant to the Trial Court’s Agreed Judgment Entry of Divorce filed December 9, 2010.

Appellant submits that Appellee requested and was granted permission by the trial court to be substituted as a party. It is contradictory for the Appellee to demand enforcement of perceived rights of the Agreed Judgment Entry but then argue that it is immune from the Agreed

Judgment Entry's liabilities. Once the trial court granted Appellee's Motion to Substitute the Appellee became obligated to the Agreed Judgment Entry's rights and liabilities.

While the Court of Appeals cited R.C. §2117.12 having been regularly applied in situations where a claim is asserted against a decedent's estate based on a final decree of divorce, it certainly doesn't stand for the proposition that Probate Court is the only forum in which a domestic relations court order may be enforced.

Proposition of Law No. 2: The Domestic Relations Court should not require Appellant to pay Appellee attorney fees in the amount of \$3,400.00 since it has jurisdiction to enforce an order requiring the Appellee estate to pay one-half (1/2) the mortgage and utilities.

The trial court premises an award of attorney fees payable by Appellant upon the notion that it does not have subject matter jurisdiction. If this court finds the Domestic Relations Court does have subject matter jurisdiction than the award of attorney fees would be inappropriate.

Since Appellee estate, which duly became a party when it asked to be substituted for the decedent, failed to abide by a court order, which should be enforced by the Trial Court, then the Appellee should pay Appellant attorney fees for its contumacious conduct. Not the other way around.

CONCLUSION

For the reasons set forth above, this case involves matters of public and great general interest and involves a substantial constitutional question. The Defendants request that this Court accept jurisdiction in this case, so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



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