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ALIMONY: TITLE 12 SECTION 1289 OKLAHOMA STATUTES
TITLED "ALIMONY PAYMENTS-TERMINATED"

The Thirtieth Legislature Regular Session enacted into law Section 1289 of Title 12¹ entitled: "An Act relating to divorce and alimony; permitting a judge to terminate payments upon death or remarriage." The statute reads as follows: "In a divorce decree which provides for periodic payments of alimony, the court may, in its discretion, declare that the obligation to pay future installments automatically ceases on the death or remarriage of the person receiving the alimony."

A thorough examination of the statute, considering cases construing the existing alimony statute,² reveals three important problems which will directly effect its construction and application. The problems are: The necessity of the divorce decree fixing a definite, ascertainable alimony award; the effect of a contingency in the decree on the amount of alimony ultimately to be paid; and the inability to modify a valid alimony decree after the term of court in which the judgment was rendered. To provide a basis for resolving these problems, and to aid in understanding the import of the statute, certain concepts should be defined.

The rule for statutory construction in Oklahoma is: "Words used in any statute are to be understood in their ordinary sense, except where a contrary intention plainly appears. . . ."³

Alimony has been defined by the Oklahoma Supreme Court as an allowance for support of the wife.⁴ Alimony is provided for by statute, the portion pertinent to this discussion being: "[A]limony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable in gross or in installments as the court may deem just and equitable. . . ."⁵

The statute under consideration must first be examined with reference to the nature of the alimony allowed as it appears to be ambiguous in that regard. The existing alimony statute provides for "*a sum of money, payable in gross or in installments. . .*" (Emphasis added). The new statute sets forth the following language: "In a divorce decree which provides for *periodic payments of alimony. . .*" (Emphasis added.) Is the language of the new statute to be construed as authorizing "periodic alimony," that is, an allowance of alimony requiring no fixed ascertainable amount to be paid or does it anticipate an extension of "alimony in gross," a sum certain, payable in installments?

The Oklahoma Supreme Court has construed the existing alimony statute as providing the wife an allowance in a fixed and definite sum of

¹ OKLA. SESS. LAWS 1965, ch. 344, § 1.

² 12 OKLA. STAT. § 1278 (1961).

³ 25 OKLA. STAT. § 1 (1961).

⁴ Noel v. Noel, 206 Okla. 16, 18, 240 P.2d 739, 742 (1952).

⁵ 12 OKLA. STAT. § 1278 (1961).

money, referred to as "alimony in gross."⁶ In applying the rule of alimony in gross the court has held that where the decree providing for alimony does not fix the amount ultimately to be paid the decree is void as to the alimony award.⁷ The award of alimony in gross may, however, be paid in installments.⁸

In *Dutton v. Dutton*,⁹ the plaintiff was awarded alimony in the amount of \$100.00 per month until her child became twenty-four years of age. In the event the child died prior to its twenty-fourth year the plaintiff was to receive \$50.00 per month thereafter until she remarried. The court, interpreting the decree as providing child support rather than alimony, said: "The whole authority of the court for decreeing alimony is found in this section,¹⁰ and no authorization is here found for decreeing alimony in monthly or other payments without limitation of the amount to be paid."¹¹

To construe a statute, "words in common use are to be given their plain, ordinary and commonly understood meaning in the absence of any statutory or well established technical meaning. . . ."¹² Furthermore, in order to determine the legislative intent, the act to be construed must be considered together with all other enactments upon the same subject.¹³ Considering the unanimity of cases construing Section 1278 of Title 12 in conjunction with the rules of statutory construction, there is but one conclusion to be drawn regarding the nature of the alimony award now authorized. The legislative intent embodied in the act is aimed at providing for an allowance of alimony in gross; that is, a sum of money, payable in gross or in installments, and not periodic alimony, or alimony to be paid with no requirement as to an ascertainable amount ultimately to be paid.

Another problem regarding interpretation of the statute is the effect of a contingency in the decree such as the death or remarriage of the wife in relation to the requirement of a gross alimony award. Prior to the enactment of this statute, if the obligation to pay future installments of alimony was made contingent on the occurrence of some future event, the court ruled the alimony portion of the decree void for lack of cer-

⁶ *Dobry v. Dobry*, 203 Okla. 327, 329, 220 P.2d 698, 700-01 (1950); *Vanderslice v. Vanderslice*, 195 Okla. 496, 497, 159 P.2d 560, 562 (1945); *Bishop v. Bishop*, 194 Okla. 209, 212, 148 P.2d 472, 475 (1944); *Flaxman v. Flaxman*, 169 Okla. 65, 35 P.2d 950 (1934); *Dutton v. Dutton*, 97 Okla. 234, 236, 223 P. 149, 150 (1923).

⁷ *Oder v. Oder*, 149 Okla. 63, 64, 299 P. 202, 203 (1931); *West v. West*, 134 Okla. 226, 227, 273 P. 209, 210 (1929).

⁸ *Dobry v. Dobry*, 203 Okla. 327, 220 P.2d 698 (1950), which holds that the award must be for a sum in gross which may be paid in installments. The wife, moreover, has an absolute property right in the gross sums allowed.

⁹ 97 Okla. 234, 223 P. 149 (1923).

¹⁰ 12 OKLA. STAT. § 1278 (1961).

¹¹ *Dutton v. Dutton*, *supra* note 9, at 236, 223 P. at 150.

¹² Board of Trustees of Firemen's Relief and Pension Fund of City of Muskogee v. Templeton, 184 Okla. 281, 86 P.2d 1000 (1939).

¹³ *Dowell v. Board of Education*, 185 Okla. 342, 345, 91 P.2d 771, 774 (1939).

tainty.¹⁴ In *Vanderslice v. Vanderslice*,¹⁵ the divorce decree provided that the defendant pay alimony to the plaintiff in the amount of \$50.00 per month until such time as the youngest child of the marriage reached the age of twenty-one years, the payments then to terminate. The court, quoting from a Kansas case¹⁶ construing a statute from which Oklahoma's statute was adopted,¹⁷ and involving a similar factual situation, stated: "'An award of permanent alimony . . . payable in installments, depending on contingencies that may or may not happen, without fixing a definite sum to be paid, is void. . . .'"¹⁸ The court reasoned that the amount was not definite in that the child could die prior to reaching its majority, thereby materially lessening the amount of alimony contemplated. Conversely, the Nebraska Supreme Court, confronted with a similar situation,¹⁹ sustained the award of alimony basing their decision on the presumption that the minor child would live to attain its majority. The court stated that the amount of alimony awarded was ascertainable from the face of the decree.

In the *Dutton* case where an alimony award subject to a contingency was disallowed, the court said: "[N]o authorization is here found for decreeing alimony in monthly or other periodical payments without limitation of the amount to be paid."²⁰ It appears that the new statute expressly authorizes a contingency to be placed on the gross amount awarded to the wife—her death or remarriage—and provides the authorization lacking at the time of the decision in the *Dutton* case.

The final problem to be resolved is the inability to modify a valid alimony decree after the term of court in which the decree was rendered. The rule in Oklahoma is that the amount of alimony awarded is to be determined by the circumstances surrounding the parties at the time of the divorce and in the absence of fraud or mistake may not be modified due to subsequent changes in circumstances.²¹ This rule is subject only to the exception that all judgments, decrees or other orders, however conclusive, are under the control of the court pronouncing them, and may be set aside, vacated or modified during the term in which they were rendered.²² The statute under discussion provides in part: "*In a divorce decree . . . the court may . . . declare. . . .*" (Emphasis added.) This indicates that it is contemplated that the provision be incorporated into the final divorce decree. In addition, the inclusion in the statute of the words

¹⁴ *Vanderslice v. Vanderslice*, 195 Okla. 496, 497, 159 P.2d 560, 562 (1945). *But cf.* *Chilton v. Chilton*, 207 Okla. 647, 252 P.2d 121 (1952).

¹⁵ 195 Okla. 496, 159 P.2d 560 (1945).

¹⁶ *Catren v. Catren*, 136 Kan. 864, 18 P.2d 134 (1933).

¹⁷ GEN. STAT. KAN., 1889, par. 4756.

¹⁸ *Vanderslice v. Vanderslice*, *supra* note 14.

¹⁹ *Wharton v. Jackson*, 107 Neb. 288, 185 N.W. 428 (1921).

²⁰ *Dutton v. Dutton*, *supra* note 9, at 236, 223 P. at 150. (Emphasis added.)

²¹ *Bishop v. Bishop*, 194 Okla. 209, 212, 148 P.2d 472, 475 (1944); *Gilcrease v. Gilcrease*, 186 Okla. 451, 453, 98 P.2d 906, 907 (1939); *Bowen v. Bowen*, 182 Okla. 114, 116, 76 P.2d 900, 902 (1938); *Anderson v. Anderson*, 140 Okla. 168, 172, 282 P.335, 338 (1929).

²² *Chilton v. Chilton*, 207 Okla. 647, 648, 252 P.2d 121, 122 (1952); 12 OKLA. STAT. § 1031, 1038 (1961).