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Domestic Relations--Recognition of Foreign Modifiable Alimony Decrees

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able contract probably would fail in Florida,[31] it might be used successfully in other jurisdictions.

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Domestic Relations — Recognition of Foreign Modifiable Alimony Decrees

Suzanne S. Hill obtained a divorce from Ernest B. Hill on July 7, 1955, in Washington County, Pennsylvania. Thereafter, the custody of the children was awarded to Suzanne, and Ernest was ordered to pay support money for the maintenance of the children. Pennsylvania law provides that support decrees may be modified, either prospectively or retrospectively, as the case may warrant.[1] Modifications of the order pursuant to the Pennsylvania statute were made at various times, the last being October 30, 1964, requiring Ernest to pay $250.00 per month maintenance and $50.00 per month toward past due installments. Ernest then moved to West Virginia and subsequently failed to make the payments under the Pennsylvania decree. Upon Ernest's failure to make the required payments, Suzanne instituted an action in Pennsylvania which was transmitted to the Marion County Circuit Court according to the provisions of the Uniform Support Law of Pennsylvania. The Marion County Circuit Court dismissed the action on the grounds that the Pennsylvania order, by virtue of the statute, did not possess the requisite finality to be entitled to full faith and credit under the Constitution of the United States. Suzanne appealed to the West Virginia Supreme Court of Appeals. *Held,* reversed. The order, while modifiable, was sufficiently final as to be entitled to full faith and credit. *Hill v. Hill,* 168, S.E.2d 803 (W. Va. 1969).

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[31] See note 4 *supra* for an excerpt from FLA. STAT. § 708.07 (1969) which requires joinder of the husband before "encumbering real property". FLA. STAT. § § 693.03, 708.07 (1969) require such contracts to be executed in the presence of two witnesses. *See* Zimmerman v. Diedrich, 97 So. 2d 120 (Fla. 1957); Frederick and Logan, SPECIFIC PERFORMANCE AGAINST MARRIED WOMEN, 16 U. FLA. L. REV. 353 (1963).

[1] PA. STAT. ANN. *tit.* 17, § 263 (1962),"Any order . . . made . . . for the support of a wife, child or parent, may be altered, repealed, suspended, increased, or amended, and the said court may, at any time, remit, correct or reduce the amount of arrearages, as the case may warrant."

The problem of interstate recognition of foreign decrees is one that is inherent in our federal system of government. The scope of this comment is to consider one aspect of that problem—the enforcement of modifiable foreign maintenance and support decrees.

The practice in most states, whether by statute or by power of the court, is to permit maintenance and support decrees to be modified.[2] Normally this power extends to the payment of accrued as well as future installments.[3] As a result of this practice, enforcement of decrees for alimony outside the granting state is difficult.[4] The difficulty arises because alimony decrees, for the purpose of enforcement, are considered to be the same as money judgements. Since the common law action of debt required that money judgments be final and for a sum certain in order to be entitled to full faith and credit, the same requirement was imposed upon alimony decrees. The imposition of the requirement of finality upon a alimony decrees compounded the already existing problem of full faith and credit and thereby negated the advantages of modifiable decrees.

The early decisions of the United States Supreme Court illustrate the tendency to classify decrees for alimony with money judgments.[6] In *Sistare v. Sistare*[7] the petitioner sought enforcement of a prospectively modifiable foreign alimony decree as to accrued installments. The Court held that a decree for future alimony, even though modifiable prospectively, is entitled to full faith and credit as to accrued installments so long as the installments are not retroactively modifiable. A prior decision of the Supreme Court had permitted a foreign judgment for arrears, which had accrued under a prospectively modifiable foreign alimony decree, to be granted full faith and credit.[8] The Court, however, stated that the Constitution did not require a state to establish a modifiable foreign decree as a decree of its own courts, with all the remendial advantages of a local decree.

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[2] Note, *Enforcement of Foreign Non-Final Alimony Decrees,* 18 VAND. L. REV. 830, 831 (1965).

[3] *Id.* at 831.

[4] Scoles, *Enforcement of Foreign "Non-Final" Alimony and Support Orders* 53 COLUM. L. REV. 817 (1953).

[5] *Id.* at 818; Note, *supra* note 2, at 834.

[6] *See* Lynde v. Lynde, 181 U.S. 183 (1901); Barber v. Barber, 62 U.S. (21 How.) 582 (1858).

[7] 218 U.S. 1 (1910).

[8] Lynde v. Lynde, 181 U.S. 183 (1901).

A concurring opinion in *Barber v. Barber*[9] indicates what may be considered a trend toward a different conclusion with respect to enforcement of modifiable decrees for alimony. In that opinion Mr. Justice Jackson emphasized the fact that finality was not a requirement of the full faith and credit clause. Neither the full faith and credit clause[10] nor the Act of Congress implementing it[11] even mentioned final decrees.

The assertion of Justice Jackson in the *Barber* case was echoed two years later by Justices Rutledge and Frankfurter in *Griffin v. Griffin*.[12] Justice Rutledge, dissenting in part, approached the matter from a standpoint similar to that of Justice Jackson. He noted the absence of a constitutional requirement of absolute finality, and proposed that all judgments sufficient to sustain the issuance and levy of execution be entitled to full faith and credit.[13] Justice Frankfurter, also dissenting, took issue with Justice Rutledge's proposal but favored the granting of full faith and credit to modifiable foreign ailmony decrees. Justice Frankfurter's ideas are best expressed in his concurring opinion in *New York ex rel. Halvey v. Halvey*.[15] In *Halvey* Justice Frankfurter sugguested that the inherent differences between alimony decrees and ordinary money judgments should be evidenced in the law. It follows, then, that the flexibility which provisions for modification lend to the law, should not be defeated by technical questions of finality.[16]

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[9] 323 U.S. 77, 87 (1944) (concurring opinion).

[10] U.S. CONST. art. IV, § 1, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

[11] 28 U.S.C. § 1738 (1964). "The records and judicial proceedings of any court of any State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of . . . [the] State . . . from which they are taken."

[12] 327 U.S. 220 (1946).

[13] *Id.* at 247 (dissenting in part).

[14] *Id.* at 249 (dissenting opinion).

[15] 330 U.S. 610 (1947).

[16] *Id.* at 616 (concurring opinion).

> Conflicts arising out of family relations raise problems and involve considerations very different from controversies to which debtor-creditor relations give rise. Such cardinal differences in life are properly reflected in law. And so, the use of the same legal words and phrases in enforcing full faith and credit for judgments involving the two types of relations ought not to obliterate the great difference between the interests affected by them, and should not lead to an irrelevant identity in result.

The opinions of Justices Jackson, Rutledge and Frankfurter have led a few furisdictions to extend full faith and credit to foreign alimony decrees, modifiable both prospectively and retrospectively. One such jurisdiction, California, holds that while the Constitution does not require the enforcement of modifiable decrees, neither does it prohibit a state from recognizing a decree as a matter of comity.[17] The practice in California is to establish the foreign decree as a decree of the California courts with the same effect and methods of enforcement as a local decree. Minnesota courts take the view that so long as a judgment is absolute in its terms and remains unmodified, or until an application for modification has been made, it is entitled to full faith and credit.[18]

Prior to *Hill v. Hill* the leading case dealing with modifiable foreign decrees in West Virginia was *Henry v. Henry*.[19] The *Henry* case reflected the commitment of the West Virginia courts to the traditional view of modifiable foreign alimony decrees. The lack of finality in the foreign decree was the ground upon which the court refused to extend full faith and credit. The *Henry* case, however, is distinguishable from the usual one involving a degree for alimony, in that the decree was for alimony pendente lite. Furthermore not only was the granting of alimony temporary, but the suit for separation in which it was granted was not prosecuted to a final decree. It is thus a classic example of the type of factual situation in which the traditional requirement of finality could, with some justification, be applied. There are, however, some persuasive arguments which call for the application of the same rules of enforcement to both temperary and permanent decrees for alimony.[20]

The *Hill* case presents a situation completely different from *Henry,* since the action in the former was based on a final but modifiable decree. The substantive issues concerning the circumstances existing at the time of the decree had been conclusively determined

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. . . The scope of the Full Faith and Credit Clause is bounded by its underlying policy and not procedural considerations unrelated to it. Thus, in judgments relating to domestic relations technical questions of "finality" as to alimony and custody seem to me irrelevant. . . .

[17] Worthley v. Worthley, 44 Cal.2d 465, 283 P.2d 19 (1955).

[18] Holton v. Holton, 153 Minn. 346, 190 N.W. 542 (1922).

[19] 74 W. Va. 563, 82 S.E. 522 (914).

[20] *See* Jacobs, *The Enforcement of Foreign Decrees For Alimony,* 6 LAW & CONTEMP. PROB. 250, (1939).

"If the husband is able to escape his obligations by going to [another state] something is the matter with the law in this field."

in Pennsylvania. The statute granting Pennsylvania courts the power to modify alimony decrees did not vest the courts with absolute discretion in such matters, since a court through its own caprice could not alter a decree. On the contrary, a showing of a substantial change in circumstances attendant to the decree was required in order to affect a change.[21]

The effect of *Hill v. Hill* is to permit an action to be brought for accrued installments based on a retroactively modifiable foreign alimony decree. The defendant, of course, must be given an opportunity to present any defenses in modification of the decree that would be available in the granting state.[22] A judgment so rendered is then final and is entitled to full faith and credit just as a similar determination in the original state would be. Thus the approach taken by the West Virginia Supreme Court is generally akin to that of the Minnesota courts. It must be remembered, however, that enforcement of a prospectively modifiable decree as to future installments was not at issue in the *Hill* case. When a proper case arises, the court will be faced with the option of either moving toward the principles adopted by the California courts or limiting the enforcement of modifiable decrees to those situations covered by the present decision.

The decision in the *Hill* case eliminates the possibility of a party escaping a duty of support, under a retroactively modifiable decree, by leaving the granting state.[23] A contrary decision would force the plaintiff to seek enforcement of the decree in Pennsylvania, either by attaching the property, if any, of the defendant or by reducing the arrears of the decree to a final judgment for a sum of money.[24] Consequently, the *Hill* case allieviates the necessity of reducing the accrued installments to a judgement in the decree-granting state before bringing suit in West Virginia. One comprehensive action now accomplishes the result which previously required two actions in two different states.[25] The expense and delay in obtaining a judgment is thereby reduced considerably, which

[21] *See* Commonwealth *ex rel.* Blumhardt v. Blumhardt, 129 Pa. Super. 443, 195 A. 790 (1937).
[22] Worthley v. Worthley, 44 Cal.2d 465, 471, 283 P.2d 19, 23 (1955).
[23] *See* Note, *supra* note 2, at 380; scoles, *supra* note 4, at 817.
[24] *See* Note, *supra* note 2, at 830.
[25] *See* Scoles, *supra* note 4 at 817.
[26] *Id.* at 817.

is of paramount importance to low-income groups.[26] The decision in *Hill v. Hill* is, therefore, consistent with a growing trend toward the extension of full faith and credit to modifiable decrees,[27] and to analogous situations in the law[28] in accordance with sound public policy.[29]

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Income Tax — Tax Status of Employer Financed Scholarships

Messrs. Johnson, Pomerantz, and Wolfe, employees of Westinghouse, were granted leave of absence for the purpose of researching and writing their doctoral theses. Mr. Johnson, as typical of the three plaintiffs, was granted leave from October 1, 1960 through June 30, 1961, and during this period he pursued the educational undertaking on a full time basis. Westinghouse paid him $5,670.00 which represented 80% of his normal salary for the period. Income taxes were withhold and Westinghouse treated the expenditures as indirect labor expenses on their records. The subject of the thesis had to relate at least generally to the employer's business. Employee benefits were continued and the employees were obligated to return to Westinghouse for a specified period at the end of the study leave. Claims for a refund were filed on the basis that the amounts received were schelarships or fellowship grants and excludible from income under section 117 of the Internal Revenue Code of 1954.[1] The Supreme Court, in reversing

[27] Barber v. Barber, 323 U.S. 77 (1944). *See, e.g.*, Worthley v. Worthley, 44 Cal.2d 465, 283 P.2d 19 (1955); Grossman v. Grossman, 242 S.C. 298, 130 S.E.2d 850 (1963).

[28] Scoles, *supra* note 4, at 820; New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947) (child custody); People *ex rel.* Bukovich v. Bukovich, 39 Ill.2d 76, 233 N.E.2d 382 (1968) (child custody).

[29] *See* Scoles, *supra* note 4, at 817.

[1] Section 117.

(a) General Rule. In the case of an individual, gross income does not include—

(1) any amount received—

(A) as a scholorship at an educational institution (as defined in section 151 (e) (4)), or

(B) as a fellowship grant, including the value of contributed ser-