December 1959

Domestic Relations--Survivorship of a Child Support Agreement After The Death of The Father

A. M. P.

West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Family Law Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol62/iss1/7

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
DOMESTIC RELATIONS—SURVIVORSHIP OF A CHILD SUPPORT AGREEMENT AFTER THE DEATH OF THE FATHER.— Incorporated into a divorce decree between A and B was a separation agreement under which B, the husband, agreed to make monthly payments of $125 for the support of the two children until they reached the age of eighteen years. The payments were made promptly until the father's death. At the time of his death, one of the children was fourteen years old. This action was brought by the child's guardian to compel the executor of the father's estate to continue the payments. Held, the agreement pertaining to the child's support remains effective after the father's death, and is a contractual liability against his estate. Simpson v. Simpson, 108 So. 2d 632 (Fla. 1959).

Florida has, on at least two prior occasions, been faced with the problem of whether the estate of a father, who has been ordered to make payments for the support of his children, can be held liable for payments that accrue subsequent to the father's death. The Florida Court, two judges dissenting, held in Guinta v. Lofte, 159 Fla. 448, 31 So. 2d 704 (1947), that a father's obligation, pursuant to a divorce decree ordering him to make periodic payments for the support of his minor children, is terminated by the father's death, and his estate is not liable for payments accruing subsequent to the father's death. The court followed the Guinta case in Fagler v. Flager, 94 So. 2d 592 (Fla. 1957). In this case, three judges filed dissenting opinions.

Thus at first glance it seems that the case in question is contrary to previous case holdings in Florida, but the court, in the principal case, has clearly distinguished the older holdings. In the case in question, the decree incorporated a prior agreement between the parties concerning child support until the age of eighteen for each child, whereas in the prior discussed cases, there was no such agreement, but only a divorce decree. These cases show how the Florida courts have treated the problem of child support after the father's death, but this is not by any means the only way the problem of child support has been approached.

Under the common law, the father's obligation to support his minor children terminates upon his death, and a father can disinherit his children, leaving them as public charges. Most states have enacted statutes which permit the courts to provide for child support in divorce decrees, but this alone does not avoid the problem of the child's support after the father's death.
Some courts have interpreted such statutes as only extensions of the common law rule and have held, in the absence of an agreement between the parties, that the obligation is terminated by the death of the father. *Guinta v. LoRe*, 159 Fla. 448, 31 So. 2d 704 (1947); *Blades v. Szatai*, 151 Md. 644, 135 Atl. 841 (1927); *Gardine v. Cottey*, 360 Mo. 681, 230 S.W.2d 731 (1950).

Other courts have viewed the statutes as allowing the courts to impose an obligation of child support which is not terminated by the father’s death. In these jurisdictions whether the obligation continues depends upon the intent of the court as expressed in the decree. *Garber v. Robitshek*, 226 Minn. 398, 33 N.W.2d 30 (1948); *Stone v. Bayley*, 75 Wash. 184, 134 Pac. 820 (1913). Even in these jurisdictions, however, there is a conflict as to whether certain phrases manifest an intent by the court to allow the obligation to continue after the obligor’s death.

In a few jurisdictions, it has been held that the obligation imposed by a decree to support minor children is not terminated by the death of the father unless the court clearly states to the contrary. *Taylor v. George*, 34 Cal.2d 552, 212 P.2d 505 (1949); *Edelman v. Edelman*, 65 Wyo. 271, 199 P.2d 840 (1948).

In the absence of an agreement or a decree, the common law rule is still followed and a child has no claim upon its deceased parent’s estate, but where the parents enter into a separation agreement, even in the absence of a decree, such an agreement is enforceable and the obligation would not be terminated by the death of one of the parties unless so provided in the agreement. In *Silberman v. Brown*, 72 N.E.2d 267 (Ohio 1946), it was held that the incorporation of a separation agreement between the parties, as to child support during the minority of the children, created a binding contract between the parties, and that the father’s obligation was not terminated by his death. *Ramsay v. Sims*, 209 Ga. 228, 71 S.E.2d 639 (1952); *Smith v. Funk*, 141 Okla. 188, 284 Pac. 638 (1930).

The West Virginia view seems to be predicated upon an adoption of the common law rule and is expressed in the case of *Robinson v. Robinson*, 131 W. Va. 160, 50 S.E.2d 455 (1948). The court discussed the aforementioned conflicting views as to termination of child support, and relying heavily upon the case of *Blades v. Szatai*, supra., indicated that this case correctly stated the law concerning the problem under discussion. The court said of this case that,
"This decision is founded upon the theory that the common law obligation of a father to support his child ceases upon his death, and that, upon that event, the interest of the child in his estate is based upon the statutory right of inheritance, where the father dies intestate, but subject, of course, to the right of the father to disinherit a child by the execution of a will; and upon the further theory that, to hold otherwise would be to disrupt the general theory of inheritance, prefer one child over another, and interfere with the common rules firmly established by statute law, governing the descent and distribution of the property of a descent." *Robinson v. Robinson*, *supra.* at 166.

The court reached the conclusion that the principles laid down in the *Blades* case should be applied to the case then at bar.

The West Virginia view is a sound way of approaching the problem and in the absence of an agreement between the parties or a decree which clearly states a contrary intent, a father's obligation to support his minor children should terminate upon his death. To hold otherwise would be an unjust enfringement of the father's right of testamentary disposition and to the rights of creditors.

However, it is the opinion of the writer that the *Robinson* case does not absolutely preclude the possibility that a court in West Virginia could by its decree expressly provide that the obligation is to continue after the father's death, and if faced with a case similar to the *Simpson* case that our court would reach the same decision as the Florida court, by resting its decision upon the agreement between the parties.

Surely if a contract between the parents providing for support of the children is binding upon the father's estate, the wife and children should not lose their rights under such a contract because the court incorporates such an agreement in the divorce decree. It seems that the incorporation of an agreement between the parties in a divorce decree indicates that the court attests to the reasonableness of the terms of such an agreement, and by so doing provides an easier means of enforcement by suing directly upon the decree.

A. M. P.