Montana Law Review

Volume 21
Issue 2 *Spring 1960*

Article 5

1960

Divorce—Adjudication of Property Rights in Divorce Action

J. A. Alexander

Follow this and additional works at: https://scholarworks.umt.edu/mlr

Part of the Law Commons

Let us know how access to this document benefits you.

Recommended Citation
J. A. Alexander, *Divorce—Adjudication of Property Rights in Divorce Action*, 21 Mont. L. Rev. 230 (1959).
Available at: https://scholarworks.umt.edu/mlr/vol21/iss2/5

This Legal Shorts is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Montana Law Review by an authorized editor of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

clear case of judicial legislation. This step the court would be understandably loath to take.[17]

Under the present state of Montana law a lawyer's decision whether or not to appeal from an equity decree is at best a guess as to which standard the court will apply. In view of the complex mass of cases on the subject and the awkward legislation now in effect it would seem that well planned legislative action would bring the best solution to the problem. A well defined rule on scope of review is badly needed; it is an everyday working tool of an appellate court.

DOUGLAS C. ALLEN

DIVORCE—ADJUDICATION OF PROPERTY RIGHTS IN DIVORCE ACTION. The plaintiff husband filed a complaint for divorce on grounds of desertion. Defendant in her answer denied the alleged desertion, asked for a decree of separate maintenance, and further alleged that she had, during the marriage, contributed to the plaintiff approximately $3,000.00 for the purchase and maintenance of real and personal property, which is now owned solely by the plaintiff. The court found the wife guilty of desertion and granted the divorce to the husband. The court further found that the wife, by reason of the money she had contributed to the purchase and maintenance of plaintiff's property, was equitably entitled to $1,600.00, to be paid out of plaintiff's sole property. The plaintiff appealed from that part of the judgment requiring him to pay this amount to the defendant. On appeal to the Supreme Court of Montana, *held,* affirmed. A divorce court, although without specific statutory authority, has the equitable power to adjudicate the property rights of the parties to a divorce action. *Johnson v. Johnson,* 349 P.2d 310 (Mont. 1960) (Justices Harrison and Castles dissenting).

By the decision in the instant case the Montana Supreme Court has apparently overruled a long line of cases which have consistently held that the divorce court has no power to adjudicate the property rights of the parties to a divorce action.[1]

Revised Codes of Montana, 1947, section 21-139 states in part: "Where a divorce is granted for an offense of the husband, the court may compel him to . . . make such suitable allowance to the wife for her support during her life or for a shorter period as the court may deem just."

This statute provides for the payment of alimony, but is expressly lim-

[17]Subsequent to the instant case, however, the Montana court has again used the substantial evidence test in an equity appeal. Roth v. Palutzke, 350 P.2d 358 (Mont. 1960).

[1]Shaw v. Shaw, 122 Mont. 593, 208 P.2d 514 (1949); Emery v. Emery, 122 Mont. 201, 200 P.2d 251 (1948); Rufenach v. Rufenach, 120 Mont. 351, 185 P.2d 293 (1947); Grush v. Grush, 90 Mont. 381, 3 P.2d 402 (1931); Albrecht v. Albrecht, 83 Mont. 37, 269 Pac. 158 (1928); Damm v. Damm, 82 Mont. 239, 266 Pac. 410 (1928); Bischoff v. Bischoff, 70 Mont. 503, 226 Pac. 508 (1924); Thrift v. Thrift, 54 Mont. 463, 171 Pac. 272 (1918).

ited to cases where the divorce is granted for an offense of the husband. Neither this statute, nor any other, authorizes a court to grant alimony in a case where the wife is the one at fault. The majority opinion correctly states that the above statute is not involved in this case for the further reason that the award to the wife is a property settlement, not alimony. Strictly speaking, alimony is a continuing allowance given to the wife (and in some states to the husband) for her support. A property settlement, on the other hand, is a permanent division of the property of the parties. Whereas alimony will continue only so long as the wife is living or remains unmarried, a property settlement is a final determination of the rights of the parties and is not dependent upon remarriage or death of one of the parties.[2]

The court in the instant case takes the position that the wife is only regaining her rightful share of property held in her husband's name. The majority opinion then goes on to state: "[T]*hough the point is not directly involved here,* the writer thinks that the case of Rufenach v. Rufenach, 120 Mont. 351, 185 P.2d 293, supra, and others holding that a divorce court cannot adjust property rights are erroneous and should be overruled."[3] (Emphasis added.) Despite the disclaimer, the question of the court's power to adjust property rights in a divorce action remains the crux of the decision. As is stated in the dissenting opinion, "it is but a fiction to say that the court is not actually divesting the husband of property and transferring it to the wife, but is actually giving the wife that which is already hers."[4]

The rule of the overwhelming majority of American jurisdictions is that the power of a court in a divorce action is strictly statutory.[5] There was no common law divorce.[6] These courts state that the power of a divorce court to award alimony and to adjudicate property rights must come from the statutes. The California Court, under an alimony statute similar to ours,[7] has said that the divorce court's jurisdiction does not extend to the separate property of either party.[8]

In many jurisdictions there is specific statutory authority to adjudicate property rights between the parties to a divorce.[9] Under these statutes the courts are generally given broad equitable powers to divide the property in a just manner regardless which party obtains the divorce.

Cases where a divorce court has been given power to adjudicate property rights without specific statutory authority have been found hereto-

[2]"Alimony is in no way a property settlement, but is the provision for the support of the wife." Stefonick v. Stefonick, 118 Mont. 486, 501, 167 P.2d 848, 855 (1946).
[3]Instant case at 312.
[4]*Id.* at 313.
[5]Ecker v. Ecker, 22 Okla. 873, 98 Pac. 918 (1908); Bernard v. Bernard, 74 S.D. 449, 54 N.W.2d 351 (1952). See 27B C.J.S. *Divorce* § 291 n.91 (1959) for annotation of cases supporting this rule.
[6]2 NELSON, DIVORCE AND ANNULMENT § 14.11 (2d ed. 1945).
[7]CAL. CIV. CODE § 139.
[8]Snyder v. Snyder, 134 Cal. App. 2d 445, 286 P.2d 362 (1955).
[9]*E.g.*, KAN. GEN. STAT. § 60-1511 (1949); S. D. CODE § 14.0726 (1939); COLO. REV. STAT. ch. 46-15 (1953).

Alexander: Johnson v. Johnson

fore in only two states. In the Florida case of *Eakin v. Eakin*[10] the court stated:[11]

> Under some circumstances it is within the power of the trial court to make an award to the wife of certain specific property. Such an award may be made when it is shown to be warranted by facts and circumstances sufficient to support a finding of equity in the property in favor of the wife arising from the contributions of funds or services made toward its accumulation above and beyond the performance of ordinary marital duties.

In *Williams v. Williams*[12] the Arkansas Supreme Court stated that a divorce court has an inherent power to give the wife equitable relief to protect her interest in property acquired through the joint efforts of the spouses.[13]

Prior to the instant case, the Montana court had consistently held that a divorce court has only statutory jurisdiction.[14] In *Shaw v. Shaw*[15] the court would not allow an involuntary property settlement to be made and stated:

> Montana has no community property law and the statutes of this state have conferred no power upon the court in an action for divorce to divest the title of the husband to specific real or personal property or to adjudge or order an involuntary assignment or transfer thereof to the wife. . . . The power of courts in divorce actions is to be determined entirely upon the terms of the statutes conferring jurisdiction.

The court's present position is that "once equity takes jurisdiction of a controversy it will grant complete relief."[16] In abandoning the doctrine of statutory limitation and in its place recognizing equitable powers to settle property rights, it would seem that the court has made the correct choice. By the exercise of its full equitable powers, the divorce court can now adjust all property rights of the parties in one suit, and the need for a subsequent, and perhaps inadequate, action to enforce any property rights arising during the marriage is thereby eliminated. The divorce court may more readily recognize a wife's informal contributions[17] to the family's assets held in the husband's name, and fully compensate her therefore.

If the instant case is followed, the mere fault of either spouse will not preclude a property settlement in his or her favor. Whether the court will limit property adjudications in divorce actions to situations where a spouse has contributed financially to the property of the other spouse, or whether it will extend to contributions of labor,[18] will have to be determined in future cases.

J. A. ALEXANDER

[10]99 So. 2d 854 (Fla. 1958).
[11]*Accord*, Wood v. Wood, 104 So. 2d 879 (Fla. 1958); Buckalew v. Buckalew, 115 So. 2d 564 (Fla. 1959).
[12]186 Ark. 160, 52 S.W.2d 971 (1932).
[13]*Accord*, Taylor v. Taylor, 224 Ark. 328, 273 S.W.2d 22 (1954); Stephens v. Stephens, 226 Ark. 219, 288 S.W.2d 957 (1956).
[14]See cases cited note 1 *supra*.
[15]122 Mont. 593, 612, 208 P.2d 514, 524 (1949).
[16]Instant case at 312.
[17]*E.g.*, a wife's labor in a store or on a farm owned by the husband.
[18]Which is apparently the situation in Arkansas. See notes 12 and 13 *supra*.

Published by ScholarWorks at University of Montana, 1959