# MODIFIABLE ALIMONY DECREE GRANTED FULL FAITH AND CREDIT FOR FUTURE PAYMENTS

*Light v. Light,*

*12 Ill.2d 502, 147 N.E.2d 34 (1958)*

In a cross appeal from a proceeding to register a Missouri divorce and alimony decree in Illinois under the Illinois Uniform Enforcement of Judgment Act,[1] plaintiff, wife, contended that the decree was entitled to full faith and credit as to *future* installments of alimony and other support money. The court sustained this contention.[2]

Alimony decrees which order payments to be made on an installment basis are usually modifiable (as to unaccrued payments) by suitable motion, in the court which granted the decree. Thus, when an action is brought to enforce such a decree in a sister state, full faith and credit has been withheld on the grounds that a modifiable decree is a non-final order.[3] It should be noted that neither the full faith and credit clause[4] nor the legislation which implements it[5] specifies that its terms cover only final judgments.[6]

The unwillingness to accord full faith and credit to the modifiable decree has not meant, however, that such decrees are completely unenforceable in sister states. Quite the contrary is true. Substantial relief has been afforded in many cases through the application of comity principles.[7]

Withholding of full faith and credit from the modifiable support decree has its basis in the doctrine enunciated by the United States Supreme Court in the *Sistare*[8] case. There, a wife had brought suit in Connecticut to enforce the past due installments of an alimony decree granted in New York. The Supreme Court of Errors of Connecticut, in reversing a judgment for the wife, had declared that since the alimony decree was modifiable in New York, it was not entitled to full faith and credit. The United States Supreme Court reversed, the Court declaring

[1] ILL. REV. STAT. c. 77, §§ 88-105 (1957).

[2] Light v. Light, 12 Ill.2d 502, 147 N.E.2d 34 (1958).

[3] Sistare v. Sistare, 218 U.S. 1 (1910).

[4] U.S. CONST. art. 4, § 1.

[5] 28 U.S.C. § 1738 (1948).

[6] "Neither the full faith and credit clause of the Constitution nor Act of Congress implementing it says anything about final judgments or, for that matter, about any judgments. Both require that full faith and credit be given to 'judicial proceedings' without limitations as to finality." See Barber v. Barber, 323 U.S. 77, 87 (1944) (concurring opinion).

[7] Haddock v. Haddock, 201 U.S. 562, 617 (1906) (dissenting opinion) "[P]rinciples of comity . . . give to the court a certain latitude of discretion, whereas, under the full faith and credit clause, the consideration given to a decree in the state where it is rendered is obligatory in every other state."

[8] Note 3, *supra.*

that *past due* installments of a judgment for future alimony rendered in one state are within the protection of the full faith and credit clause unless the right to receive the past due alimony is discretionary with the court which rendered the decree.

This rule, which limits constitutional protection to past due non-final payments, imposes considerable hardship on the spouse who seeks compliance of the decree by her defaulting partner who has moved to another state. It requires a multiplicity of suits with all its attendant expenses in attorney's fees and other litigation costs. In many cases, where the amount is small and the litigant poor, the result is that the defaulting spouse escapes all payment by moving across a state line. This, in turn, has created a social problem of significant economic proportions.[9]

Awareness of this social problem, coupled with the desire of preventing their state from becoming a haven for defaulting husbands[10] has impelled the state courts to grant substantially more recognition to the out of state modifiable decree than the minimum specified by the *Sistare* decision. Thus, for example, Illinois has given judgment on a Nevada decree for accrued and all future alimony as it becomes due.[11] Oregon has allowed recovery of future payments once a California decree was established in Oregon.[12] In *Worthley v. Worthley*,[13] California granted enforcement of future payments of a New Jersey decree although the court pointed out that it was not constitutionally bound to do so.[14]

In the Mississippi case of *Fanchier v. Gammill*[15] is found the closest approach to the granting of full faith and credit prior to the instant case. Divorce and alimony were equity proceedings in Mississippi. Thus, alimony payments could be enforced by contempt proceedings as well as by other traditional modes of equitable enforcement. In *Fanchier*, the court was asked to make a Nevada decree for divorce and alimony its own. The action was opposed by the divorced husband who contended that the Nevada decree should be treated in Mississippi as a judgment at law, and thus he denied equitable enforcement. The court, however,

[9] *Commissioners' Prefatory Note*, 9C U.L.A. 3. "In June 1949 the Social Security Administration announced that the total bill for aid to dependents where the father was absent and not supporting was approximately $205,000,000 a year for the nation and the states."

[10] "[T]he courts of Florida should have the same vital interest in enforcing [a New York alimony decree] as the courts of the state where such obligation was originally assumed. . . . [W]e have no desire to make this state a haven for fugitive husbands." Sackler v. Sackler, 47 So. 2d 292, 294 (Fla. 1950).

[11] Rule v. Rule, 313 Ill. App. 108, 39 N.E.2d 379 (1942).

[12] Cousineau v. Cousineau, 155 Ore. 184, 63 P.2d 897 (1936).

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

[14] "Since the New Jersey decree is both prospectively and retroactively modifiable . . . we are not constitutionally bound to enforce defendants obligations under it." Worthley v. Worthley, *supra* note 13, at 22.

[15] 148 Miss. 723, 114 So. 813 (1927).

felt that if it adopted the Nevada decree as its own, the constitutional requirement of full faith and credit required it to give the same standing to the decree as it gave its own divorce and alimony decrees. The *Fanchier* case, therefore, does not hold that modifiable alimony decrees from sister states are entitled to full faith and credit in Mississippi, but rather that the constitutional requirement of full faith and credit forbids Mississippi from placing an out of state decree, once adopted by Mississippi courts, on a lesser footing than its own decree.

The Illinois court in the instant case, however, has squarely held that a modifiable decree, even as to future payments is entitled to full faith and credit. Despite the traditional reluctance to so hold, which is evidenced by the decisions in the field, there are excellent reasons to support the holding, of which three may be cited:

1. The increasing mobility of the American public would seem to require that these decrees be enforced as a matter of right rather than at the discretion of the various states.

2. Full faith and credit has been given in the analogous field of child custody. Custody orders are nearly always modifiable and yet, not only do they receive full faith and credit in sister states, but the sister states have the right to modify the orders unilaterally.[16]

3. Perhaps the most significant reason is found in the language of the Illinois Uniform Enforcement of Judgment Act[17] under which this litigation arose. By the terms of the act,[18] its procedures could not be used to enforce out of state judgments which were not entitled to full faith and credit. Thus, to hold that a modifiable alimony decree was not so entitled, would be to deny the simple, inexpensive procedure to a class of litigants that could make peculiarly good use of them.

By making this decision, the Illinois Supreme Court has broadened the constitutional protection of the full faith and credit clause. It now remains for a jurisdiction without the compelling phrases of the Uniform Act to reach a similar decision.

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[16] New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947); Setzer v. Setzer, 251 Wis. 234, 29 N.W.2d 62 (1947).

[17] *Supra* note 1.

[18] ILL. REV. STAT. c. 77, § 88a (1957). "'Foreign Judgment' means any judgment, decree, or order of a court of the United States or of any State or Territory *which is entitled to full faith and credit in this state.*" (Italics added.)