

1977

Domestic Relations—Fault in Marriage
Dissolution—Peterson v. Peterson, _____ Minn.
_____, 242 N.W.2d 103 (1976)

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

Recommended Citation

(1977) "Domestic Relations—Fault in Marriage Dissolution—Peterson v. Peterson, _____ Minn. _____, 242 N.W.2d 103 (1976)," *William Mitchell Law Review*: Vol. 3: Iss. 1, Article 15.
Available at: <http://open.mitchellhamline.edu/wmlr/vol3/iss1/15>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

Domestic Relations—FAULT IN MARRIAGE DISSOLUTION—*Peterson v. Peterson*, ___ Minn. ___, 242 N.W.2d 103 (1976).

The element of fault remains in Minnesota's marriage dissolution proceeding despite the enactment of no-fault divorce legislation.¹ Following the decision in *Peterson v. Peterson*,² evidence of marital misconduct continues to be admissible in the determination of alimony and division of real and personal property.³

In *Peterson*, the husband appealed from the trial court's order which fixed alimony and property division without consideration of evidence of the wife's misconduct. The Minnesota Supreme Court affirmed the trial court's ruling that the misconduct was too remote in time to be accorded the status of a "prevailing factor"⁴ in the determination of the award. However, in addressing the issue of marital misconduct, or fault, as it affects property distribution, the court concluded that the no-fault legislation has not removed evidence of fault from the proceeding as a matter of law "upon a showing of proper circumstances."⁵

Admission of evidence of marital misconduct into any stage of a marital dissolution seems inconsistent with the judicially recognized purpose of the legislation to minimize the bitterness of divorce.⁶ Retention of fault conflicts with the awareness that a marriage break-down may cause spousal misconduct as well as result from it.⁷ Elimination of fault as a ground for divorce⁸ gives credence to that distinction but failure to eliminate fault completely merely postpones the bitterness to a later stage of the proceeding.

Some states have completely eliminated fault from the divorce proceeding.⁹ Other states have expressly retained fault in the determination

1. Act of Mar. 14, 1974, ch. 107, 1974 Minn. Laws 157 (codified at MINN. STAT. §§ 518.001-.01, .03, .06-.16, .17-.175, .25-.27, .54-.59, .62-.64, .66 (1976)).

2. ___ Minn. ___, 242 N.W.2d 103 (1976).

3. See generally MINN. STAT. § 518.55 (1976) (court to determine "whether or not either spouse is entitled to alimony"); *id.* § 518.58 (court to consider "all the facts and circumstances of the case" to arrive at a just disposition of property).

4. See ___ Minn. ___, ___, 242 N.W.2d 103, 108 (1976). The *Peterson* decision, by sustaining the trial court's finding of remoteness, suggests the viability of condonation as a possible defense. The misconduct preceded an earlier suit for divorce which was dismissed when the parties reconciled. Another defense, laches, prevailed in a suit for alimony which was initiated 18 years after the divorce. See *Corah v. Corah*, 246 Minn. 350, 75 N.W.2d 465 (1956).

5. See ___ Minn. ___, ___, 242 N.W.2d 103, 108 (1976).

6. See *id.*

7. See *id.* (factors evidencing fault are often merely symptoms, rather than causes, of marital breakdown).

8. See MINN. STAT. § 518.06(1) (1976) (ground for dissolution is irretrievable breakdown of marriage relationship). An irretrievable breakdown may be proved by evidence of detrimental conduct or serious marital discord. Thus, the statutory language retains the flavor of fault. See *id.* § 518.06(2).

9. The Iowa court found that the legislature had intended to abolish the fault factor

of the alimony award and property division when enacting no-fault statutes.¹⁰ Minnesota may have joined the latter group through judicial construction of its no-fault divorce act and interpretation of the Minnesota Legislature's intent. Although the legislature neither expressly eliminated nor retained fault in the statutes, it has failed to pass subsequent bills which would have done so.¹¹ It also amended the statutes which empower the courts to award alimony and property division to conform to the no-fault terminology but otherwise did not alter them.¹² The *Peterson* court construed these actions as indicative of the legislature's intention to retain fault in the determination of the award.¹³

Reinforced by the *Peterson* court's interpretation of the no-fault act, the role of marital misconduct with respect to alimony and property division may not change. The Minnesota court in the past has adhered to the principle that the parties' conduct is always material in determining the amount of support.¹⁴ Generally, fault is most significant where the dependent spouse, usually the wife, who seeks alimony and a large portion of her husband's property,¹⁵ is also the spouse accused of misconduct.¹⁶ However, only rarely will the wife's misconduct be considered grave enough to overcome and outweigh her need for support.¹⁷ Because

and further observed that both parties to a marriage are at fault in a marriage breakdown. See *In re Marriage of Williams*, 199 N.W.2d 339, 345 (Iowa 1972). California expressly eliminates fault. See CAL. CIV. CODE § 4509 (West Supp. 1977). The grounds for divorce have been restricted by the Michigan Legislature to breakdown of the marriage relationship. See MICH. COMP. LAWS ANN. § 552.6 (West 1976). However, a Michigan court has found that conduct of the parties remains relevant to the determination of alimony and property division. See *Kretzschmar v. Kretzschmar*, 48 Mich. App. 279, 210 N.W.2d 352 (1973). Accord, *Flanagan v. Flanagan*, 270 Md. 335, 311 A.2d 407 (1974); *Chapman v. Chapman*, 498 S.W.2d 134 (Ky. 1973).

10. See, e.g., FLA. STAT. ANN. § 61.08 (West Supp. 1977) (retains evidence of adultery and any other factor necessary to do equity in the determination of alimony, despite enactment of no-fault grounds).

11. The *Peterson* court notes that the legislature has failed twice to enact bills aimed at eliminating fault from the divorce proceeding. See ____ Minn. ____, ____, 242 N.W.2d 103, 107 n.4 (1976).

12. Compare MINN. STAT. §§ 518.55, .58 (1976) with *id.* (1971).

13. ____ Minn. ____, ____, 242 N.W.2d 103, 107-08 (1976).

14. See *Buerfening v. Buerfening*, 23 Minn. 563, 564 (1877).

15. MINN. STAT. § 518.59 (1976) empowers the court to award to either spouse up to one-half the value of the other spouse's non-coverture real and personal property.

16. See, e.g., *Swanson v. Swanson*, 233 Minn. 354, 360, 46 N.W.2d 878, 882 (1951) (marital harmony cannot be promoted if "a wife may drive her husband from her without prejudice to her claim for alimony and property"). This principle, referring to the wife, is presumably applicable to a husband. The legislature drafted the statute using the term "spouse" without any reference to sex. See MINN. STAT. §§ 518.55-.63 (1976). However, the Minnesota Supreme Court has not had the opportunity to affirm this principle as to a husband's award of alimony.

17. See *Baskerville v. Baskerville*, 246 Minn. 496, 512, 75 N.W.2d 762, 772-73 (1956) (court affirmed alimony award without regard to husband's financial worth because of wife's grave misconduct). Cf. *LaFroth v. LaFroth*, 297 Minn. 185, 210 N.W.2d 246 (1973)

the husband's marital duty to support his wife is to be supplanted by the court's award, the award is based on the wife's present and future needs and the husband's ability to pay.¹⁸ The dependent spouse's need is the controlling factor. Although an errant spouse does not stand the equal of one whose conduct is irreproachable,¹⁹ the court has observed a "somewhat chivalrous and well-established policy"²⁰ of basing the award primarily on need even in the face of misconduct.²¹

Fault is only one of several factors used to determine the extent of the duty to support the dependent spouse.²² The award of alimony and property should reflect this duty and not punish either party.²³ This duty, however, may be lessened by the dependent spouse's misconduct²⁴ because it is unfair that a "husband should be held to a full performance of his marital duties when [the wife] has neglected to perform hers."²⁵ Using this reasoning, the apparent inconsistency of admitting fault into a no-fault dissolution is justifiable as a means of protecting the economic interests of a spouse who is legally bound to support a dependent unfaithful partner.

Although misconduct on the part of the supporting spouse is also material, an award influenced more by that misconduct than by the needs of the dependent spouse may not be sustainable²⁶ because the

(per curiam) (wife's ten-year adulterous affair and her ability to self-support were factors in denial of alimony and award of 10% of husband's estate).

18. See *Johnston v. Johnston*, 280 Minn. 81, 86, 158 N.W.2d 249, 254 (1968).

19. See *Buerfening v. Buerfening*, 23 Minn. 563, 564 (1877).

20. See *Webber v. Webber*, 157 Minn. 422, 426, 196 N.W. 646, 647 (1923).

21. See *Felsheim v. Felsheim*, 298 Minn. 287, 214 N.W.2d 696 (1974) (wife's unemployment and long period of marital service prior to her misconduct merited alimony). *Vandewege v. Vandewege*, 284 Minn. 330, 334, 170 N.W.2d 228, 230 (1969); *Reiland v. Reiland*, 280 Minn. 444, 448, 160 N.W.2d 30, 33 (1968) (dictum).

22. The court has listed the parties' conduct as one of many factors to be considered. See, e.g., *Hertz v. Hertz*, 304 Minn. 144, 229 N.W.2d 42 (1975) (factors include age of parties, their present and future earning abilities, their needs, conduct during marriage, duration of marriage, and parties' stations in life); *Ruprecht v. Ruprecht*, 255 Minn. 80, 96 N.W.2d 14 (1959). In *Messer v. Messer*, 289 Minn. 449, 452, 184 N.W.2d 801, 803 (1971) the court stated that good conduct should be one of the factors. Good conduct apparently may be substituted by long years of service. Compare *Vandewege v. Vandewege*, 284 Minn. 330, 170 N.W.2d 228 (1969) with *LaFroth v. LaFroth*, 297 Minn. 185, 210 N.W.2d 246 (1973).

23. See *Gilbertson v. Gilbertson*, 300 Minn. 553, 554, 220 N.W.2d 512, 513 (1974) (per curiam); *Markegard v. Markegard*, 293 Minn. 503, 197 N.W.2d 726 (1972) (per curiam); *Johnston v. Johnston*, 280 Minn. 81, 86, 158 N.W.2d 249, 254 (1968); *Wilcox v. Wilcox*, 222 Minn. 279, 285, 24 N.W.2d 237, 240 (1946).

24. See, e.g., *Vandewege v. Vandewege*, 284 Minn. 330, 334, 170 N.W.2d 228, 230 (1969); *Borchert v. Borchert*, 279 Minn. 16, 154 N.W.2d 902 (1967); *Baskerville v. Baskerville*, 246 Minn. 496, 75 N.W.2d 762 (1956).

25. See *Swanson v. Swanson*, 233 Minn. 354, 359, 46 N.W.2d 878, 882 (1951). Accord, *Baskerville v. Baskerville*, 246 Minn. 496, 508, 75 N.W.2d 762, 770 (1956).

26. See *Gilbertson v. Gilbertson*, 300 Minn. 553, 554, 220 N.W.2d 512, 513 (1974) (per curiam); *Cloutier v. Cloutier*, 261 Minn. 324, 329-30, 112 N.W.2d 347, 350-51 (1961).

award should satisfy needs and not punish either party.²⁷ If the supporting spouse challenges the court's assessment of the dependent spouse's needs, however, that misconduct may be emphasized by the court in sustaining the award.²⁸

The *Peterson* decision supports the policy of using fault as one of many factors in determining the duty to support. In spite of the no-fault divorce act, admission of marital misconduct remains a component of the balancing²⁹ necessary to reach an equitable division of property and a just determination of alimony.

Land Use Planning—THE METROPOLITAN LAND USE PLANNING ACT—Act of Apr. 2, 1976, ch. 127, 1976 Minn. Laws 292.

In response to steady, rapid urbanization of the Twin Cities area, the Minnesota Legislature in 1976 declared all metropolitan¹ governmental units to be interdependent² and established requirements and procedures for comprehensive, coordinated land use planning. Their product, the Metropolitan Land Use Planning Act,³ provides a design for the coordination and control of metropolitan growth as a joint effort between the Metropolitan Council and local governments. It also provides a method through which local proposals and plans will be exchanged among local governments likely to be affected. Prior to the Act, a community might carefully design, plan, and commence construction of a high-priced residential area on the city's edge, oblivious to the concurrent designation of the adjoining property as industrial by the neighboring community. The Act addresses the extra-territorial concerns of developing communities as well as the ultimate need to control metropolitan growth. If the local governments and the Metropolitan Council are able to resolve quickly conflicting land use planning objectives, a comprehensive development scheme for the metropolitan area will result.

The Metropolitan Land Use Planning Act is the product of nearly a decade of land use policy development⁴ by the Metropolitan Council.⁵

27. See note 23 *supra*.

28. See *Bollenbach v. Bollenbach*, 285 Minn. 418, 175 N.W.2d 148 (1970); *Borchert v. Borchert*, 279 Minn. 16, 21, 154 N.W.2d 902, 906 (1967).

29. See MINN. STAT. § 518.58 (1976) ("all the facts and circumstances of the case" are to be considered).

1. The Metropolitan Land Use Planning Act [hereinafter referred to as Act] affects the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. See MINN. STAT. § 473.872 (1976).

2. See MINN. STAT. § 473.851 (1976).

3. Act of Apr. 2, 1976, ch. 127, 1976 Minn. Laws 292 (codified at MINN. STAT. §§ 462.355, 473.121, .175, .851-.872 (1976)).

4. See Freilich & Ragsdale, *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009, 1018-24 (1974). For