

Spring 1996

1995 Supreme Court of Rhode Island Survey: Family Law

Deborah J. Miller-Tornabene
Roger Williams University School of Law

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Miller-Tornabene, Deborah J. (1996) "1995 Supreme Court of Rhode Island Survey: Family Law," *Roger Williams University Law Review*: Vol. 1: Iss. 1, Article 13.
Available at: http://docs.rwu.edu/rwu_LR/vol1/iss1/13

This Survey of Rhode Island Law is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Family Law. *Wrobleski v. Wrobleski*, 653 A.2d 732 (R.I. 1995). In an action for divorce, a trial judge has the discretion to award alimony for an indefinite period of time to the dependant spouse even though that spouse received a substantial property settlement pursuant to the divorce.

Alimony may be awarded in Rhode Island pursuant to Rhode Island General Laws section 15-5-16.¹ To determine an appropriate alimony award the trial judge must consider the evidence in view of the factors set forth in section 15-5-16.² Although the Rhode Island Supreme Court has held that alimony is "a rehabilitative tool designed to provide economic support for a dependent spouse and is based upon need,"³ permanent alimony may be proper in certain circumstances as long as the trial judge has considered all of the factors set forth in the statute.⁴ In the present case, the Rhode Island Supreme Court affirmed an award of alimony, to continue indefinitely, even though the recipient spouse

1. R.I. Gen. Laws § 15-5-16 (1991).

2. *Id.* The factors that must be considered pursuant to R.I. Gen. Laws § 15-5-16 are as follows: "the length of the marriage; the conduct of the parties during the marriage; the health, age, station, occupation, amount and source of income, vocational skills, and employability of the parties; and the state and the liabilities and needs of each of the parties." Section 15-5-16 of the Rhode Island General Laws was amended in 1993, and all cases filed after July 7, 1993 follow the amended version of the statute. The instant case, however, was filed in 1991 and therefore was analyzed by the court under the earlier version of the statute. Pursuant to the amended statute, the court must also consider: "the extent to which either party is unable to support herself/himself adequately because that party is the primary physical custodian of a child. . . ; the extent to which either party is unable to support herself/himself adequately with consideration being given to: the extent to which a party was absent from employment while fulfilling homemaking responsibilities, and the extent to which any education, skills, or experience of that party have become outmoded and his/her earning capacity diminished; the time and expense required for the supported spouse to acquire the appropriate education or training to develop marketable skills and to find appropriate employment; the probability, given a party's age and skills, of completing education or training [to become] self-supporting; the standard of living during the marriage; the opportunity of either party for future acquisition of capital assets and income; the ability to pay the of supporting spouse, taking into account the supporting spouse's earning capacity, earned and unearned income, assets, debts, and standard of living; [and,] any other factor which the court shall expressly find to be just and proper." *Id.*

3. *Ramsbottom v. Ramsbottom*, 542 A.2d 1098, 1100 (R.I. 1988).

4. *Perreault v. Perreault*, 540 A.2d 27, 30-31 (R.I. 1988).

could have been rehabilitated within five years and was also awarded a property settlement in excess of \$1.3 million dollars.⁵

FACTS AND TRAVEL

The trial judge made several findings of fact relative to the Wrobleski's marriage: Joan and Daniel Wrobleski were married in 1970 and had one child, Amanda, born in 1981.⁶ Joan was a school teacher and Daniel was a surgeon.⁷ Throughout their marriage, which lasted twenty-two years, the family moved several times in order for Daniel to complete his training to become a board certified colon and rectal surgeon.⁸ Throughout these years, Joan worked "conscientiously" as a homemaker to enable Daniel to remain in training.⁹ Additionally, after the birth of Amanda, the couple decided that Joan would remain at home to care for the child and household.¹⁰

Daniel began to drink excessively after Amanda was born and he suffered from emotional instability.¹¹ He grew distant from Joan, had an extra-marital affair and spent much of his free time away from his family.¹² Consequently, the couple experienced an "inability to communicate," which left them unable to save their marriage.¹³

At the time of the trial, the trial judge found as a matter of fact that "Daniel's gross annual income was \$718,000; Joan's annual income capacity as a substitute teacher was \$9,000. However, if and when she became certified in Rhode Island her annual income capacity would be approximately \$40,000."¹⁴ According to the trial judge, Joan and Amanda required \$126,000 per year for living expenses, while Daniel earned an excess of approximately \$350,000 over his annual needs.¹⁵

5. *Wrobleski v. Wrobleski*, 653 A.2d 732 (R.I. 1995).

6. *Id.*

7. *Id.*

8. *Id.* at 733.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

The trial judge awarded Joan sixty percent of the marital assets which had been valued at nearly 2.2 million dollars.¹⁶ In addition, she was awarded alimony in the amount of \$5,000 per month for a period of five years and thereafter the sum of \$2,000 per month until further order of the Family Court.¹⁷ Daniel appealed to the Rhode Island Supreme Court. The issue on appeal was whether the trial judge erred in awarding Joan alimony in addition to the equitable distribution award. Daniel contended that alimony was not appropriate in light of the sizable property settlement and her potential earning capacity as a teacher.¹⁸

BACKGROUND

Alimony is historically based on the common-law duty of a man to support his wife.¹⁹ Traditional property concepts in marriage considered a married couple to be an indivisible unit with all property held by the husband alone.²⁰ Furthermore, because a marriage was insoluble during common-law times the only form of divorce available was the *divorce a mensa et thoro*.²¹ But even this "divorce" did not destroy the marital bond or its obligations.²² Accordingly, an award in alimony was the logical extension of a husband's common-law duty to support his wife.²³

Rhode Island courts have long considered alimony to be a tool used to economically rehabilitate the dependant spouse according to his or her needs upon the divorce.²⁴ The power of the family court to grant the award of alimony is statutory, and accordingly any action taken by the court must expressly be conferred by the alimony statute.²⁵

16. *Id.*

17. *Id.*

18. *Id.*

19. *D'Agostino v. D'Agostino*, 463 A.2d 200, 202 (R.I. 1983) citing Inkler, Walsh, & Perocchi, *Alimony and Assignment of Property: The New Statutory Scheme In Massachusetts*, 10 Suffolk U. L. Rev. 1, 11 (1975).

20. Inkler *et al*, *supra* note 19 at 12.

21. *D'Agostino*, 463 A.2d at 202. A *divorce a mensa et thoro* was a divorce from the bed and board and is the equivalent to the modern separation. See Clark, *Law of Domestic Relations in the United States* 420 (2d ed. 1968).

22. *D'Agostino*, 463 A.2d at 202.

23. *Id.*

24. *Id.*; *Fricke v. Fricke*, 491 A.2d 990 (R.I. 1985); *Murphy v. Murphy*, 471 A.2d 619 (R.I. 1984).

25. *Paolino v. Paolino*, 420 A.2d 830 (R.I. 1980).

ANALYSIS AND HOLDING

Awards in alimony require that the trial judge evaluate the evidence in view of the factors set forth in section 15-5-16.²⁶ These relevant factors are: "the length of the marriage; the conduct of the parties during the marriage; the health, age, station, occupation, amount and source of income, vocational skills, and employability of the parties; and the state and liabilities and needs of each of the parties."²⁷

The Rhode Island Supreme Court began its analysis with a review of the equitable distribution of marital property. Rhode Island General Laws section 15-5-16.1(b) provides that "[t]he assignment of property, if any, to be made shall precede the award of alimony, as the needs of each party will be affected by the assignment."²⁸ This assignment of property is not the result of a need-based analysis of the parties, but rather on the partnership theory of marriage.²⁹ Its purpose is to provide a fair assignment of the assets of the marriage.³⁰

The factors that a trial judge must consider when assigning marital property are listed in Rhode Island General Laws section 15-5-16.1.³¹ These factors are: "the length of the marriage, the conduct of the parties during the marriage, and the contribution of each of the parties in the acquisition, preservation, or appreciation in the value of their respective estates, and the contribution and services of either party as a homemaker."³² The Supreme Court found that the trial judge considered the proper factors from section 15-5-16.1 in the assigning of the marital property and explained his findings on the record before reaching the issue of alimony.³³

26. R.I. Gen. Laws § 15-5-16 (1991).

27. *Id.* § 15-5-16 was amended in 1988 by P.L. 1993, ch. 78. The new version of the statute applies to cases filed on or after July 7, 1993. Because the instant case was filed in 1991, the court used the earlier version in the analysis.

28. R.I. Gen. Laws § 15-5-16.1(b)(1988 Reenactment).

29. *Van Duinwyk v. Van Duinwyk*, 511 A.2d 975, 977 (R.I. 1986).

30. *Id.* (quoting *D'Agostino*, 463 A.2d at 203).

31. R.I. Gen. Laws § 15-5-16.1(b)(1988 Reenactment).

32. *Id.*

33. *Wrobleski*, 653 A.2d at 734. For example, the Trial Judge noted the twenty two year marriage, the "conscientious" work history of Joan during the time Daniel was in training, her agreement to place her education and career behind Daniel's and her maintenance of the family home and caretaking of their

The Supreme Court next considered Daniel's contention that the trial judge erred in awarding alimony to Joan.³⁴ Awards of alimony require the trial judge to consider the evidence in light of the factors set forth in section 15-5-16.³⁵ These relevant factors are: "the length of the marriage; the conduct of the parties during the marriage; the health, age, station, occupation, amount and source of income, vocational skills, and employability of the parties; and the state and the liabilities and needs of each of the parties."³⁶

The Rhode Island Supreme Court has held that alimony is a "rehabilitative tool designed to provide economic support to a dependent spouse and is based on need."³⁷ Under certain circumstances, alimony for an indefinite time is proper as long as the trial judge properly considers the factors set forth in the statute.³⁸ In reviewing an award of alimony, the findings of fact by a trial judge in a divorce proceeding will not be disturbed unless she misconceived the relevant evidence or was otherwise clearly wrong.³⁹

In the instant case, the trial judge considered the statutory factors.⁴⁰ The trial judge noted and considered the length of the marriage, the conduct that Joan displayed during the marriage, her performances as mother and homemaker, Daniel's withdrawal from the family and his responsibilities, his extra-marital affair and his excessive drinking.⁴¹ The Rhode Island Supreme Court found that those findings of fact supported the award of alimony and thus found no abuse of the trial judge's discretion.⁴² The Supreme Court also rejected Daniel's last contention, that this award of alimony was in contradiction to Rhode Island case law and statutes because Joan could become self-sufficient within five years. The trial judge, after considering all of the relevant factors

daughter. In addition, the Judge noted the alcoholism, emotional instability and extra-marital affairs of Daniel.

34. *Id.*

35. R.I. Gen. Laws § 15-5-16 (1991).

36. *Id.*

37. *Ramsbottom*, 542 A.2d at 1100.

38. *Perreault*, 540 A.2d at 30-31.

39. *Id.* at 29.

40. *Wroblewski*, 653 A.2d at 734.

41. *Id.*

42. *Id.*

as required by section 15-5-16, concluded on the record that Joan's rehabilitation would take longer.⁴³

CONCLUSION

An award of alimony will be affirmed, in the absence of an abuse of discretion, as long as the trial judge considers the factors set forth in Rhode Island General Laws section 15-5-16.⁴⁴ In *Wrobleski*, the Supreme Court of Rhode Island held that an award of alimony is proper even though the recipient receives a sizable property distribution, as long as that distribution occurred before alimony was considered and if the trial judge took into account the factors set forth in General Laws section 15-5-16.1.⁴⁵

Deborah Miller-Tornabene

43. *Id.*

44. *Id.*

45. *Id.*