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## 1997 Survey of Rhode Island Law: Cases: Civil Procedure

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**Civil Procedure.** *Armentrout v. Armentrout*, 691 A.2d 559 (R.I. 1997). Where a request of alimony is made, the moving party is not required to serve the defendant personally within the borders of this jurisdiction as jurisdiction over the defendant is continuing.

#### FACTS AND TRAVEL

Marie Armentrout (Marie) and Luke Armentrout (Luke) ended their marriage on May 23, 1984.<sup>1</sup> The final divorce judgment required Luke to pay fifty dollars alimony per week for a ten-year period.<sup>2</sup> Six years later, Luke filed a complaint in family court to suspend his alimony obligation. The family court rendered a written decision granting Luke's request for modification.<sup>3</sup> Duplicate originals of the decision were sent to both parties. However, the court never entered a written order memorializing its decision. Following the family court's ruling, Luke stopped paying alimony.<sup>4</sup>

In early June of 1994, Marie learned that Luke, who was then residing in Ohio, would be visiting Rhode Island to attend their daughter's wedding.<sup>5</sup> On June 16, 1994, Marie filed a motion to adjudge Luke in contempt. Marie argued that without a signed order suspending the alimony payments, Luke was still obligated to pay alimony. On June 17, 1994, while a guest at his daughter's wedding in Rhode Island, Marie had Luke served personally with a summons and a contempt motion.<sup>6</sup>

In response to his ex-wife's zealous pursuit of monetary compensation, Luke entered a special appearance to contest Marie's contempt motion.<sup>7</sup> Luke filed his own motion to dismiss the contempt proceeding as frivolous because of the court's August, 1990 decision suspending his alimony obligation. Following this filing Marie moved in front of the court to amend her contempt motion and asked Luke's obligation to pay alimony be made permanent.<sup>8</sup> Luke was personally served in Ohio, within the requisite statutory

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1. See *Armentrout v. Armentrout*, 691 A.2d 559, 560 (R.I. 1997).

2. See *id.*

3. See *id.*

4. See *id.*

5. See *id.*

6. See *id.*

7. See *id.*

8. See *id.* at 560.

time requirements, with the amended motion.<sup>9</sup> Luke's local counsel was served by mail in Rhode Island.<sup>10</sup> Following service in Ohio, Luke "entered a 'special appearance' and made a motion to dismiss Marie's amended motion for lack of personal jurisdiction."<sup>11</sup>

The family court reviewed Marie's motion to amend her contempt claim and required her to file a new motion.<sup>12</sup> Marie argued that, because Luke had sought and obtained a rescission of alimony in the family court in 1990, the jurisdiction of the court continued over him. The family court found, however, that when Mr. Armentrout was served at his daughter's wedding, the service was invalid "because Marie had served him with a contempt motion notwithstanding the 1990 decision suspending Luke's obligation to pay alimony."<sup>13</sup> The family court judge believed that Marie was attempting to reestablish alimony rather than have Luke judged in contempt. Therefore, the court believed that personal service was required in Rhode Island for the "new" motion and service in Ohio was inadequate.<sup>14</sup> However, the Rhode Island Supreme Court would rely heavily on Rhode Island General Laws section 15-5-16(c)(2) for a dispositive conclusion to this procedural quandary.<sup>15</sup>

#### BACKGROUND

The family court has the power to modify an alimony decree at any time.<sup>16</sup> Either party's establishment of residence in another jurisdiction does not automatically terminate the family court's jurisdiction over the support proceeding.<sup>17</sup> Furthermore, Rhode Island Rule 64 A(a) of Domestic Relations Procedure provides that the party seeking post-judgment relief must serve the party against whom the relief is sought pursuant to Rule 4(d) and 4(e) of

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9. *See id.*

10. *See id.*

11. *Id.*

12. *See id.*

13. *Id.*

14. *See id.*; *see also* R.I. Gen. Laws § 15-5-16(c) (1956) (1996 Reenactment) (allowing for revision to the alimony award, as alimony is need based); *Ramsbottom v. Ramsbottom*, 542 A.2d 1098, 1100 (R.I. 1988). In entertaining a motion to amend, the moving party must show a "substantial change in circumstances." *Wroblewski v. Wroblewski*, 653 A.2d 732, 734 (R.I. 1995).

15. *See Armentrout*, 691 A.2d at 561 (citing R.I. Domestic Rel. P. 64A(a)).

16. *See* R.I. Gen. Laws § 15-5-16(c)(2) (1956).

17. *See Porter v. Porter*, 684 A.2d 259, 262 (R.I. 1996).

the Rhode Island Rules of Civil Procedure.<sup>18</sup> Absent a procedure to terminate jurisdiction, jurisdiction is not extinguished unless done so by the family court.<sup>19</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court held that after the alimony decree had been entered, the family court had continuing jurisdiction to modify an alimony order. This jurisdiction continues even when one of the parties is absent from the jurisdiction.<sup>20</sup> Therefore, serving Luke in Ohio was sufficient to compel appearance before the court for an alimony modification.<sup>21</sup> Furthermore, the service of Luke for contempt in Rhode Island during his daughter's wedding in 1994 was not necessary because the court already had jurisdiction over the matter.<sup>22</sup>

In interpreting section 15-5-16 of the Rhode Island General Laws<sup>23</sup> as allowing jurisdiction to continue after the order of the

18. See *Armentrout*, 691 A.2d at 561 (citing R.I. R. Domestic Rel. P. 64A(a)).

19. See *Porter*, 684 A.2d at 262.

20. See *id.* (citing R.I. Gen. Laws § 15-5-16(c)(2) (1956)).

21. See *id.*

22. See *id.* The Rules of Domestic Relations Procedure depart from the long established test set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which established the minimum-contacts test. Mr. Armentrout was most likely lacking the requisite-minimum contacts with the state of Rhode Island, given that he only returned briefly to attend his daughter's wedding. However, the Rhode Island Supreme Court in *Calcagno v. Calcagno*, 391 A.2d 79, 82 (R.I. 1978), established that the family court retains jurisdiction to enforce and modify judgments. See *id.* Additionally, the minimum-contacts test was formally discarded in child-custody cases in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (1984). See also Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B (1994) (facilitating the enforcement of child-support orders among states in order to discourage interstate controversies over child support and avoid jurisdictional competition among state courts in establishing child-support orders).

23. Rhode Island General Laws section 15-5-16 states in part:

(c)(1) For the purposes of this section, alimony shall be construed as payments for the support or maintenance of either the husband or the wife.

(2) Alimony is designed to provide support for a spouse for a reasonable length of time to enable the recipient to become financially independent and self sufficient. Provided, however, that the court may award alimony for an indefinite period of time when it is appropriate in the discretion of the court based upon the factors set forth in subdivision (b)(2)(ii)(B). After a decree for alimony has entered, the court may from time to time upon the petition of either party review and alter its decree relative to the amount of the alimony and the payment thereof, and may make any decree relative thereto which it might have made in the original suit. The

court has been entered, the court analogized section 15-5-16 with the rule handed down in *Porter v. Porter* which dealt with child support.<sup>24</sup> In *Porter*, the court held that the family court's jurisdiction was not ended by the parties' establishing residence in other jurisdictions.<sup>25</sup> Therefore, absent a factor terminating jurisdiction, the family court retains jurisdiction pursuant to section 15-5-16(c)(2) of the Rhode Island General Laws.<sup>26</sup>

### CONCLUSION

The court in *Armentrout* solidified the long-established rule regarding jurisdiction in domestic relations allowing the family court's jurisdiction to extend to nonresident parties. In analogizing the procedure in alimony disputes to the procedure used in custody disputes, the court squarely aligned itself behind Rhode Island case law<sup>27</sup> and statutory law.<sup>28</sup> Furthermore, in extending this rationale to domestic relations, the court further streamlined the procedural process by breaking down unnecessary hurdles that hinder expedient resolution to divorce litigation.

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decree may be made retroactive in the court's discretion to the date that the court finds that a substantial change in circumstances has occurred; provided however, the court shall set forth in its decision the specific findings of fact which show a substantial change in circumstances and upon which findings of facts the court has decided to make the decree retroactive. Nothing herein provided shall affect the power of the court as heretofore provided by law to alter, amend, or annul any order of alimony heretofore entered. Upon the remarriage of the spouse who is receiving alimony, the obligation to pay alimony shall automatically terminate at once.

R.I. Gen. Laws §§ 15-5-16(c)(1), (2) (1956) (1996 Reenactment).

24. See *Armentrout*, 691 A.2d at 561 (citing *Porter v. Porter*, 684 A.2d 259, 261 (R.I. 1996)).

25. *Porter*, 684 A.2d at 263 (holding that absence from the jurisdiction to avoid enforcement would undermine the effectuation of domestic-relations decisions and citing the Full Faith and Credit for Child Support Act).

26. *Armentrout*, 691 A.2d at 561 (citing R.I. Gen. Laws § 15-5-16(c)(2)).

27. See *Calcagno v. Calcagno*, 391 A.2d 79, 82 (R.I. 1978).

28. See R.I. Gen. Laws § 15-5-16(c)(2) (1956) (1996 Reenactment).