

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

March 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

IN RE: ESTATE OF JAMES)	CLAI BORNE COUNTY
EDWARD COLSON)	03A01-9511-PB-00382
)	
Plaintiff - Appellant)	
)	
v.)	HON. BILLY J. WHITE,
)	CHANCELLOR
)	
SUNNY SUE COLSON)	
)	
Defendant - Appellee)	AFFIRMED AND REMANDED

JAMES D. ESTEP, III, OF TAZEVELL FOR APPELLANT

JOE E. MAGILL OF CLINTON FOR APPELLEE

O P I N I O N

Goddard, P. J.

The Estate of James Edwards Colson appeals an adverse award in favor of Sunny Sue Colson from the Claiborne County Chancery Court. The Chancellor granted, on equitable grounds, an award of \$1000 per month in alimony against the Estate of the decedent.

The following are the factual findings of the Chancellor which are undisputed by either party. On December 29, 1950, James Colson was married to Sunny Sue Webb Colson. They had four children. Ms. Colson was a housewife and has never worked outside the home. Ms. Colson was diagnosed with multiple sclerosis in 1968.

The parties were married for 31 years. In 1981, Mr. and Ms. Colson were divorced in Kentucky. They entered into a property settlement agreement which provides in part as follows:

6. The first party [Mr. Colson] shall pay the second party [Ms. Colson] the sum of ONE THOUSAND (\$1,000.00) DOLLARS per month as alimony, the same to continue until her death or remarriage. This alimony figure is based upon the current earning capacity of the first party as a pilot for King Coal Company and as a recipient of retirement pay from the United States Air Force. The parties agree that said sum may be reviewed and modified by the Court upon a showing of substantial change in the income of the first party.

Mr. Colson died on February 1, 1992, leaving an estate valued at over one million dollars. A claim on behalf of Sunny Sue Colson for support of \$1,000 per month, with a present value of \$114,358 was filed against the Estate of Mr. Colson. The Probate Judge found that Mr. Colson's death terminated the support obligations under the agreement. Thus, he denied Ms. Colson's claim. Ms. Colson filed an exception to the Master's Report.

This matter was heard by the Claiborne County Chancellor on April 20, 1995. After hearing the evidence, the Chancellor stated "[i]t is my opinion that because of the factual situation in this case that Mr. Colson clearly intended to provide a permanent income for Ms. Colson, the mother of his four children, as long as she lived or until she remarried." The Chancellor stated that his finding of intent was based on equitable grounds.

The Administrator of Mr. Colson's Estate takes exception to the conclusion of the Chancellor, arguing that the death of Mr. Colson terminated the obligation to pay alimony under the agreement. Also, the Administrator argues that the Estate is not obligated to continue payments under the alimony agreement.

It is the general rule in Tennessee that agreements providing for alimony are terminated upon the death of the obligor absent some stipulation in the agreement which would require payments after the death of the obligor. Bringhurst v. Tual, 598 S.W2d 620 (Tenn. App. 1980); Smith v. Phelps, 218 Tenn. 369, 403 S.W2d 747 (Tenn. 1966); Swan v. Harrison, 42 Tenn. 534 (1865). However, we must look to the document to determine whether there is any indication that payments should continue after the death of the obligor. "By the use of appropriate terms in a decree (or for that matter a contractual agreement) the termination of the alimony upon the death of the husband may be

prevented." Bringhurst v. Tual, supra. See also: Edwards v. Edwards, 713 S.W2d 642 (Tenn.1986) cert. denied 479 U.S. 1024, 107 S.Ct. 863, 93 L.Ed.2d 819 (1987); Smith v. Phelps, supra; In re Kerby's Estate, 49 Tenn. App. 329, 354 S.W2d 814 (1961); In re More's Estate, 34 Tenn. App. 131, 234 S.W2d 847 (1949).

In *Bringhurst*, this Court found that where a settlement agreement provides for payments "during her life" or "until her death or remarriage", such language could be interpreted as evidence of intent that obligation survive the death of the obligor. The Tennessee Supreme Court discussed the effect of an "until death or remarriage" provision in Prim v. Prim, 754 S.W2d 609 (Tenn.1988). The property settlement agreement subject to that dispute provided that the obligation for alimony should continue until the death or remarriage of the wife. It also provided that the wife be kept as named beneficiary on two life insurance policies held by the husband. Subsequent to the settlement agreement, the Court entered a decree in response to the husband's petition to reduce alimony payments. The decree reduced the payments but did not contain language that the payments should continue until death or remarriage.

The Court noted that "general provisions that alimony will be payable to the wife until her death or remarriage have frequently been held sufficient to support claims as continuing obligations after the death of the husband." The Court went on to direct that this general language must be accompanied by some

circumstance which would evince an intent that the obligation survive the death of the obligor. The Court found that the fact that the husband agreed to provide policies of life insurance for his wife's benefit showed intent that, upon the death of the husband, the proceeds of the policies should take the place of the alimony obligations. Thereafter, the Court concluded that the absence of the general language obligating the husband until the wife's death or marriage from the final amended decree, coupled with the obligation of the husband to maintain life insurance policies for his wife's benefit, disproved any contention that the parties intended that the husband's obligation to pay alimony continued after his death.

The case at bar is distinguishable from *Prim* on the major points that the Supreme Court relied. Here, the one and only agreement obligates Mr. Colson to pay alimony to Mrs. Colson until her death or remarriage. This obligation has not in any way been modified. Also, the agreement provided no other support for Mrs. Colson other than alimony payments.

The Appellant points to the language in the agreement that states:

This alimony figure is based upon the current earning capacity of the first party as a pilot for King Coal Company and as a recipient of retirement pay from the United States Air Force. The parties agree that said sum may be reviewed and modified by the Court upon a showing of substantial change in the income of the first party.

The Appellant contends that this language shows that the parties did not intend for alimony to continue beyond the death of the decedent.

The clause states how the alimony payments were deprived and that if something should happen to these income streams, the court *may* review and modify the amount of the alimony payment. The plain language of this clause would not require a court to modify the alimony figure should one or both of these income streams cease. Rather, the language allows the court the discretion to do so. By no manner of construction can it be interpreted that the decedent's estate is absolutely not bound by the Property Settlement Agreement upon the death of the decedent. On the contrary, as noted by the Tennessee Supreme Court, although the Agreement could have been modified during the decedent's lifetime, "he did not choose to do so but instead kept his payments current, which indicates to us he intended to carry out the agreement." Smith v. Phelps, supra.

Also, we find, as did the Tennessee Supreme Court, that death is not a change in circumstances that *requires* termination of alimony. Edwards v. Edwards, supra. Furthermore, the appropriate inquiry is not only the change in circumstances of the obligor but also the unchanged need of the alimony recipient. Here it is uncontroverted that Ms. Colson has never worked outside the home and that she has suffered from multiple sclerosis since 1968. These facts were known to Mr. Colson at

the time of the agreement and were unchanged at the time of his death. Thus, we conclude that it was reasonable for the Chancellor to conclude, from the language of the document and from the circumstances surrounding the agreement, that Mr. Colson intended to provide his ex-wife with support until her death or remarriage.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings as may be necessary and collection of costs below. Costs of appeal are adjudged against the Estate of James Edward Colson and his surety.

Houston M. Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

William H. Inman, Sr. J.