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Divorce: Lump Sum Payment of Alimony

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are: What is "sufficient evidence"? What is "clear and convincing evidence"? Will the courts require only sufficient evidence, or will they demand clear and convincing evidence? As a practical matter, just what will the courts consider evidence in these cases? Must the evidence be strong enough to rebut a presumption which the courts say does not exist? Will age, sex, physical condition, rigor mortis, or numerous other circumstantial matters have any bearing on the decision of a case of this character in Florida today?  

In Smith v. Croom the Supreme Court of Florida stated that matters of age and sex were to be considered along with the other evidence in the case. Justice DuPont, speaking for the court, said, "But while the mere legal presumption is rejected as the basis of a conclusion, yet it not unfrequently happens that the consideration of age, sex, etc., are resorted to in connection with other circumstances as a matter of evidence, from which a certain conclusion may be legitimately inferred." Just what balance the court will strike between the holding of the Croom case and the provisions of the uniform law is a matter that rests in conjecture.  

OSEE R. FAGAN

DIVORCE: LUMP SUM PAYMENT OF ALIMONY

Florida Laws 1947, c. 23894

Prior to an enactment of the 1947 Legislature it was well settled in Florida that a decree awarding permanent alimony should provide for the payment of sums at regular periods, subject to modification should a change in status of the parties require it. This rule was in accord with the view that prevails in other jurisdictions in the absence of statutory authority to make a lump sum award. Changing this rule, the 1947 amendment now authorizes the court to order either periodic pay-

\[\text{References}\]

2. Smith v. Croom, 7 Fla. 81, 143-144 (1857).
6. Russell v. Russell, 4 Greene 26 (Iowa 1853); Roberts v. Roberts, 160 Md. 513, 154 Atl. 95 (1931); Parmly v. Parmly, 125 N. J. Eq. 545, 5 A.2d 789 (1939).
ments or a lump sum payment of alimony.\textsuperscript{4}

Under the old statute an early Florida decision held that a decree awarding a lump sum for alimony and for the maintenance of a minor child was erroneous, even though this sum was required to be paid in monthly installments.\textsuperscript{5} In that case the Court stated that this was clearly the rule as to permanent alimony for the wife and that by analogy the same principle was applicable to provisions for the support and maintenance of a minor child.\textsuperscript{6} If the Court continues to apply this analogy, under the new amendment there would seem to be no objection to an award of a lump sum payment for the support of minor children.\textsuperscript{7}

The apparent intent of the Legislature is to leave to the discretion of the court the decision as to whether payment shall be made in periodic installments or in a lump sum. This appears to be the unanimous construction of similar statutes in other jurisdictions.\textsuperscript{8} The possible modes of payment under the new statute include: (a) a lump award;\textsuperscript{9} (b) a lump sum award payable in installments;\textsuperscript{10} (c) periodic payments;\textsuperscript{11} and (d) a combination of the foregoing.\textsuperscript{12} For example, the court may order periodic payments for the support and maintenance of children, in addition to an award of permanent alimony in a lump sum to the wife.\textsuperscript{13} It should be noted, however, that in a minority of states having such statutes an award of permanent alimony in a lump sum precludes periodic payments in addition thereto;\textsuperscript{14} and, in like manner, an allowance of periodic payments precludes an award of alimony in a lump sum.\textsuperscript{15}

\textsuperscript{4}Florida Laws 1947, c. 23894, §1, Fla. Stat. Ann. §65.08.
\textsuperscript{5}Heckes v. Heckes, 129 Fla. 653, 176 So. 541 (1937).
\textsuperscript{6}Heckes v. Heckes, 129 Fla. 653, 657, 176 So. 541, 543 (1937).
\textsuperscript{7}Yarborough v. Yarborough, 290 U. S. 202 (1933); Green v. Green, 29 Ala. 303, 195 So. 549 (1940).
\textsuperscript{8}Whitaker v. Whitaker, 298 Ky. 590, 183 S. W.2d 530 (1944); White v. Shalit, 136 Me. 65, 1 A.2d 765 (1938); Baird v. Baird, 311 Mass. 329, 41 N. E.2d 5 (1942); Bowzer v. Bowzer, 236 Mo. App. 514, 155 S. W.2d 530 (1941); Eaton v. Davis, 176 Va. 330, 10 S. E.2d 893 (1940).
\textsuperscript{9}Florida Laws 1947, c. 23894, §1, Fla. Stat. Ann. §65.08.
\textsuperscript{10}McKay v. Willet, 248 Ill. App. 602 (1928).
\textsuperscript{11}Florida Laws 1947, c. 23894, §1, Fla. Stat. Ann. §65.08.
\textsuperscript{12}Roubicek v. Roubicek, 246 Ala. 442, 21 So.2d 244 (1945); Smith v. Rogers, 215 Ala. 581, 112 So. 190 (1927); Brosie v. Brosie, 329 Ill. App. 514, 69 N.E.2d 518 (1946); Fuller v. Fuller, 175 Ore. 136, 151 P.2d 835 (1944).
\textsuperscript{13}Bast v. Bast, 68 Mont. 69, 217 Pac. 345 (1923).
\textsuperscript{14}Kraft v. Kraft, 193 Iowa 602, 187 N. W. 449 (1922).
\textsuperscript{15}Howard v. Howard, 161 Ore. 689, 103 P.2d 756 (1940).
A decree awarding periodic payments creates no vested right, but a decree awarding a lump sum does give the wife a vested right with every element of finality even though made payable in installments. Although the court clearly has the power to modify a decree or agreement providing for periodic payments without a reservation in the decree itself, this statutory power to modify probably does not extend to a decree awarding a lump sum unless such reservation is incorporated in the decree. This view is supported by the holding of the Florida Court prior to the new amendment that a decree should provide for periodic payments in order that it might be modified; that, since the statute authorizing modification applied only to a decree ordering periodic payments, an award of alimony in a lump sum was erroneous. Furthermore, this power to modify has been held inapplicable to a property settlement contract between parties to a divorce suit; nor does the statute permit the modification of delinquent payments for alimony and support. This reasoning would lead to the conclusion that a decree awarding a lump sum without reserving the power to modify—creating, as it does, a vested right—likewise is not subject to modification.

Virgil L. Milbrath

LEGISLATIVE NOTES

10 Blanton v. Blanton, 154 Fla. 750, 18 So.2d 902 (1944); Chiapetta v. Jordon, 153 Fla. 788, 16 So.2d 641 (1943); Vilas v. Vilas, 153 Fla. 102, 13 So.2d 807 (1943); Dickenson v. Sharpe, 94 Fla. 25, 113 So. 638 (1927).
12 Magginis v. Magginis, 323 Ill. 113, 153 N. E. 654 (1926); Fitch v. Fitch, 229 Iowa 344, 294 N. W. 577 (1940); Basset v. Aters, 103 Kan. 853, 176 Pac. 663 (1918); Arnold v. Arnold, 222 S. W. 996 (1920); Graham v. Graham, 135 Neb. 761, 284 N. W. 280 (1939).
12 Cases cited note 17 supra.
24 Dix v. Dix, 140 Fla. 91, 191 So. 205 (1939).