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Limitation of Actions -- Claims Between Spouses

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Limitation of Actions—Claims Between Spouses

In an action by a wife against her husband to establish a resulting or constructive trust in land or, in the alternative, to recover money advanced to the husband for improvements in consideration of his oral promise to convey to her a one-half interest in land held in the husband's name, it was held that the wife's evidence was insufficient to establish either a resulting or a constructive trust and that her alternative action based on implied contract was barred by the statute of limitations.[1] The court concluded that notwithstanding the continuance of the marital relationship the statute of limitations had commenced running at the time of the husband's repudiation of his agreement to convey.

The controversy whether statutes of limitations should be applied, during coverture, to claims between spouses appears to have arisen primarily from the common-law fictional unity of the spouses with the consequent disability of the wife to sue her husband and the policy of the law to encourage domestic peace and tranquility.[2] The emergence of so-called "married women's" acts relieving married women of many of the common-law disabilities gave rise to the question whether these statutes, by eliminating the wife's inability to sue, had repealed by implication the married-women's

[1] Fulp v. Fulp, 264 N.C. 20, 140 S.E.2d 708 (1965). The statute provides a three-year limitation period for actions "upon a contract, obligation or liability arising out of a contract, express or implied. . . ." N.C. GEN. STAT. § 1-52(1) (1953). The application of the statute of limitations to contracts implied in law seems both historically and statutorily sound. At common-law, contracts implied in law were cognizable at law by writ of assumpsit. CORBIN, CONTRACTS § 19 (1963). Furthermore, in all cases in which equity and law might have concurrent jurisdiction, the courts of equity were bound by the limitations statutes and did not act merely in analogy to it. Falls v. Torrance, 11 N.C. 412 (1826); KELLY, CODE LIMITATIONS OF ACTIONS § 47 (1903); 1 MCINTOSH, N.C. PRACTICE & PROCEDURE § 273 (2d ed. 1956).

By statute, "The distinction between actions at law and suits in equity and the forms of such actions and suits are abolished, and there is but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which is denominated a civil action." N.C. GEN. STAT. § 1-9 (1953). Under this statute, the statute of limitations would apply to both legal and equitable claims. 1 MCINTOSH, *supra* at § 273.

[2] See, *e.g.*, Barnett v. Harshbarger, 105 Ind. 410, 5 N.E. 718 (1886); In the Matter of Estate of Crawford, 155 Kan. 388, 125 P.2d 354 (1942); Morris v. Pennsgrove Nat'l Bank & Trust Co., 115 N.J. Eq. 219, 170 Atl. 16 (Ch. 1934); Alpaugh v. Wilson, 52 N.J. Eq. 424, 28 Atl. 722 (Ch. 1894); Stockwell v. Stockwell's Estate, 92 Vt. 489, 105 Atl. 30 (1918); Second Nat'l Bank v. Merrill & Houston Iron-works, 81 Wis. 151, 50 N.W. 505 (1891). See generally Annot., 121 A.L.R. 1382 (1939).

exemption from the limitations statutes.[3] Conflicting decisions were reached with no discernible majority rule.[4]

Subsequently, many state legislatures expressly eliminated coverture from the list of statutory disabilities under limitations statutes; but, even absent this saving clause, the weight of authority held that claims between spouses were exempt from the statute during continuance of the marital relation.[5] The basic reasoning applied by these courts seems to have been that even though the spouses are permitted to bring actions against each other during coverture, public policy demands the exemption of such claims from the compulsive force exerted by statutes of limitations.[6] Thus, the limitation period will begin running only upon termination of the marriage through death or divorce.[7] However, when the limitation period

[3] Originally statutes of limitations were viewed with disfavor and judicial exceptions were implied at every opportunity. See Richards v. Maryland Ins. Co., 12 U.S. (8 Cranch) 84 (1814). In later years, however, statutes of limitations were considered as applicable to all causes of action not specially excepted by the legislature. See M'Iver v. Ragan, 15 U.S. (2 Wheat.) 25 (1817).

[4] See Smith's Ex'r v. Johns, 154 Ky. 274, 157 S.W. 21 (1913) (no repeal by implication); Brown v. Cousens, 51 Me. 301 (1864) (repeal by implication); Lindell Real-Estate Co. v. Lindell, 142 Mo. 61, 43 S.W. 368 (1897) (no repeal by implication); Wiesner v. Zaun, 39 Wis. 188 (1875) (no repeal by implication).

[5] *E.g.*, Hamby v. Brooks, 86 Ark. 448, 111 S.W. 277 (1908); Mergenthaler v. Mergenthaler, 69 Cal. App. 2d 525, 160 P.2d 121 (Dist. Ct. App. 1945); Fourthman v. Fourthman, 15 Ind. App. 199, 43 N.E. 965 (1896); Barnett v. Harshbarger, 105 Ind. 410, 5 N.E. 718 (1886); Yeomans v. Petty, 40 N.J. Eq. 495, 4 Atl. 631 (Ch. 1885); Cary v. Cary, 159 Ore. 578, 80 P.2d 886 (1938); Morrish v. Morrish, 262 Pa. 192, 105 Atl. 83 (1918) (dictum); Stockwell v. Stockwell's Estate, 92 Vt. 489, 105 Atl. 30 (1918); Brader v. Brader, 110 Wis. 423, 85 N.W. 681 (1901) (affirmed rule without giving assent thereto in order to protect those who had relied upon it); Second Nat'l Bank v. Merrill & Houston Iron-works, 81 Wis. 151, 50 N.W. 505 (1891) (dictum).

[6] The best-considered decisions upon the subject in hand, even since the Married Women's Property Acts, are to the effect, that owing to the social importance of maintaining the family relation, in suits between wives and their husbands for the protection of the former's property, statutes of limitation, as also presumptions or estoppels by lapse of time, ordinarily, do not affect the rights of the wife, since she cannot be expected to treat her husband as a stranger. As certain courts have well said, any other policy would be apt to beget disagreements and contentions in the family fatal to domestic peace. . . .

Morrish v. Morrish, 262 Pa. 192 at 201, 105 Atl. 83 at 86 (dictum). See 1 WIS. L. REV. 378 (1922).

[7] As to mere separations, a distinction seems to have been drawn by some courts between amicable separations with a possibility of reconciliation and separations which lack this element. In jurisdictions in which the public policy argument prevails, this distinction would seem to be necessary in view of the fact that, since the limitation is tolled during cohabitation

has begun running on a claim before coverture, the general rule is that the subsequent marriage of the parties does not toll the statute.[8] This result, when applied in majority-rule jurisdictions, would appear to come into direct conflict with the public policy foundation of the initial exemption, *i.e.* the policy of strengthening the family relation by refusing to compel spouses to sue during coverture or suffer their claim to become barred by lapse of time would seem to be as applicable to claims arising prior to as well as subsequent to the marriage of the parties. In both cases, the threat of forcing litigation between spouses during marriage would appear to be the target to which the policy argument is directed.

There would appear also to be some question as to the validity of the basic premise upon which the policy argument is founded. The compulsory effect of the running of limitations may indeed result in claims between spouses and thus afford evidence of a corruption of the domestic peace and tranquility; but, the true threat to the maintenance of the family relation would seem to be the underlying wrong done, not the formal action based thereon.[9] Consequently, it might be argued that suit by the wife merely places a preoccurring breach of the marital relationship upon the public stage—it is the result, not the cause, of the family discord.[10]

On the other hand, there is the possibility that a reconciliation will more likely occur where the injustices of the home have not been placed before the public. However, it would seem that mere exemption of the claim from the running of the limitation period

in the interest of family peace, the reason for the rule actually gains force where separation with a tenuous possibility of reconciliation has intervened. See Hampton v. Hampton Holding Co., 17 N.J. 431, 439, 111 A.2d 761, 765 (1955) (dictum); Lineweaver's Estate, 284 Pa. 384, 390, 131 Atl. 378, 380 (1925) (dictum).

[8] People Sav. Bank & Trust Co. v. Renz, 203 Ky. 566, 262 S.W. 951 (1924); Graves v. Howard, 159 N.C. 594, 75 S.E. 998 (1912); Charmley v. Charmley, 125 Wis. 297, 103 N.W. 1106 (1905). *Contra,* Fourthman v. Fourthman, 15 Ind. App. 199, 43 N.E. 965 (1896); Morris v. Pennsgrove Nat'l Bank & Trust Co., 715 N.J. Eq. 219, 170 Atl. 16 (Ch. 1934).

[9] "A litigation of the kind between husband and wife may be unseemly and abhorrent to our ideas of propriety, but a litigation in one form can be no more so than in another, and no more so than the necessity itself which gives rise to the litigation. . . ." Wilson v. Wilson, 36 Cal. 447, 454 (1868).

[10] In *Fulp,* a separation had resulted from the domestic discord prior to the bringing of the wife's action. 264 N.C. at 22, 140 S.E.2d at 711. It would seem arguable that where a cause of action is evidence itself of a prior deterioration and collapse of the family relation there remains in fact no family relation to protect.

would have little effect upon the occurrence of a reconciliation, unless such reconciliation is based upon the wife's forgiving today on the hope of suing tomorrow. It appears doubtful that any such reconciliation would in fact lead to a strengthening of the family relation.

In judging the persuasiveness of the public policy argument, it should also be noted that the limitations statutes themselves are founded upon the broader policy that it is best to suppress fraudulent and stale claims from springing up after great lapses of time and surprising the parties when the evidence may be lost, the facts obscure, and the witnesses absent.[11] It would seem, therefore, that the policy of maintaining family peace must be considered in conjunction with the policy of protecting other interested parties from stale claims.[12]

In jurisdictions applying the statute of limitations to claims between husband and wife during marriage, the reasoning of the courts has been that since the limitations statute contains no express exemption in favor of such causes of action, the courts cannot engraft such an exemption into the statute.[13] Such a theory would appear to be applicable in North Carolina. Not only is coverture no longer a bar to a wife's maintaining an action against her husband,[14] but it has also been expressly stricken from the disability exemptions to the North Carolina statute of limitations.[15] This deletion was made notwithstanding a statutory command that "civil actions can only be commenced within the periods prescribed . . . except where in special cases a different limitation is prescribed *by statute.*"[16] The command of the statute would seem to evidence an explicit

[11] Order of R.R. Telegraphers v. Ry. Express Agency, Inc., 321 U.S. 342 (1944); Shearin v. Lloyd, 246 N.C. 363, 98 S.E.2d 508 (1957).

[12] See In the Matter of Estate of Crawford, 155 Kan. 388, 125 P.2d 354 (1942). The "dead man's statute," N.C. GEN. STAT. § 8-51 (1953), offers some protection, but its effect is no greater a safeguard in the husband-wife claim situation than in other situations subject to the running of limitations. Since the husband presumptively holds his wife's property in trust for her, it appears that § 8-51 may actually be less effective in the family claim cases.

[13] *In re* Estate of Deaner, 126 Iowa 701, 102 N.W. 825 (1905); Wyatt v. Wyatt, 81 Miss. 219, 32 So. 317 (1902); *In re* Lange's Estate, 91 N.E.2d 546 (Ohio Ct. App. 1949).

[14] Graves v. Howard, 159 N.C. 594, 75 S.E. 998 (1912) (containing dictum to the effect that the statute of limitations should run on the wife's claim).

[15] N.C. Sess. Laws 1899, ch. 78.

[16] N.C. GEN. STAT. § 1-15 (1953). (Emphasis added.)

legislative intent that married women be removed from any and all disability exemptions. Upon this ground alone the North Carolina result would appear to be correct.[17]

Furthermore, it would seem that the result reached in *Fulp* could be justified on the ground that exemption of claims between spouses from the running of limitations does not in fact strengthen the family relation. This position, noted previously, might be maintained on the additional ground that even when a complete reconciliation is accomplished, there is no longer a wrong for which a remedy is required.

However, it could be maintained that a distinction should be made between situations in which the husband has wronged his wife or her property by an overt act and those situations in which the delict has been his failure to act.[18] Though, in reality, it may be that the wife should not be expected to bring an action to compel her husband to repay a loan, perform his promise or otherwise fulfill a legal obligation to her, such a distinction as stated above seems unnecessary. Since the husband is presumed to hold in trust any property given him by his wife,[19] it appears that it will generally take an overt act by the husband to start the running of the statute against his wife's claim. In such a situation the only burden on the wife would seem to be the burden of determining whether her

[17] See cases cited note 13 *supra*.

[18] No such distinction has been made in the cases. *Compare* Morrish v. Morrish, 262 Pa. 192, 105 Atl. 83 (1918) (limitations did not run against wife on claim for cancellation of deed on grounds of fraud), *with* Stockwell v. Stockwell's Estate, 92 Vt. 489, 105 Atl. 30 (1918) (Wife's claim for money loaned husband is not barred by limitations). *Compare In re* Lange's Estate, 91 N.E.2d 546 (Ohio Ct. App. 1949) (Wife's claim for money loaned is barred by limitations), *with* Rosenberger v. Mallerson, 92 Mo. App. 27 (1901) (Wife's action for conversion is barred by limitations). See also Posnick v. Posnick, 160 A.2d 804 (D.C. Munic. Ct. App. 1960), in which it was held that where the wife had been involved in constant litigation with her husband for six years and had merely failed to join the claim in question with her earlier actions, the statute of limitations barred her claim.

[19] Where a wife voluntarily delivers her money to her husband the law will presume, in the absence of direct evidence that it was intended as a gift, that he takes it as trustee for her. Etheredge v. Cochran, 196 N.C. 681, 682, 146 S.E. 711, 712 (1929). Claims by the *cestui que trust* for breach of the trust are not subject to the running of limitations until knowledge of the trustee's repudiation of the trust has reached the claimant. Solon Lodge v. Ionic Lodge, 247 N.C. 310, 101 S.E.2d 8 (1957). Neither do limitations run against a *cestui que trust* in possession. Bowen v. Darden, 241 N.C. 11, 17, 84 S.E.2d 289, 294 (1954).

For discussion of the running of limitations in the constructive trust situation see 44 N.C.L. REV. 202 (1965).

husband has in fact repudiated his trust or obligation.[20] Such a burden would not seem to create a threat to the maintenance of the family relation. However, where the wife's claim is to be subject to the running of limitations, perhaps it would better serve the policy of striving for domestic peace to require a clear showing of repudiation by the husband.[21]

The protection of the family relation is a worthy policy; but, when used in support of judicial determinations, it would seem to stand as a statement of a conclusion only, leaving vacant the area of discussion in which should fall the reasons why and the manner by which the decision has in fact supported the stated policy. The danger appears when "the protection of the family relation" becomes a mere shibboleth of the courts to be utilized perfunctorily in engrafting judicial exemptions into the statute of limitations.

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Limitation of Actions—Equitable Remedies—Repudiation

In consideration of her husband's oral promise to convey to her a one-half interest in land held in the husband's name, the wife advanced him money for improvements.[1] Upon completion of the improvements and in answer to his wife's request to put her name on the deed, the husband replied: " 'You don't think I am a damn

[20] Further protection is afforded by N.C. GEN. STAT. § 1-52(9) (1953), which provides that for relief based upon fraud or mistake the cause of action is not deemed to have accrued until the aggrieved party has or should have discovered such fraud or mistake. In addition, ". . . equity will deny the right to assert that defense [running of limitations] when delay has been induced by acts, representations, or conduct, the repudiation of which would amount to a breach of good faith. . . ." Nowell v. Great Atl. & Pac. Tea Co., 250 N.C. 575, 579, 108 S.E.2d 889, 891 (1959) (defendant's promises to correct defects estopped him to plead limitations).

[21] In the rare case in which the husband has a claim based upon his wife's failure to act, exemption of his claim from the running of limitations would appear of little consequence, since whatever he gives his wife is presumptively a gift. Bowling v. Bowling, 252 N.C. 527, 114 S.E.2d 228 (1960); Shoe v. Hood, 251 N.C. 719, 725, 112 S.E.2d 543, 548 (1960). It appears, therefore, that since lapse of time would decrease the possibilities of overcoming the presumption, it is doubtful that the exemption would be utilized.

[1] Fulp v. Fulp, 264 N.C. 20, 140 S.E.2d 708 (1965). It should be noted that in North Carolina full performance by one of the parties to a contract unenforceable under the Statute of Frauds does not take the contract out of the statute. Carter v. Carter, 182 N.C. 186, 108 S.E. 765 (1921).