

6307

1. "LEGAL SETTLEMENT," "LEGAL RESIDENCE" AND "DOMICILE" TERMS NOT SYNONYMOUS—APPLICATION TO LEGAL SETTLEMENT OF PERSON EVEN THOUGH EXISTENT FOR MORE THAN ONE YEAR.
2. MINOR FEMALE UPON MARRIAGE LOSES LEGAL SETTLEMENT DERIVED THROUGH PARENTS—DERIVATIVELY OBTAINS NEW LEGAL SETTLEMENT—LEGAL SETTLEMENT OF HUSBAND.
3. MINOR MALE—EVEN THOUGH EMANCIPATED, CANNOT ACQUIRE LEGAL SETTLEMENT AT PLACE OTHER THAN THAT OF PARENTS—PROVISO, UNLESS CHANGED BY LEGAL ACTION.
4. MINOR—MAY NOT ACQUIRE LEGAL SETTLEMENT OTHER THAN THAT OF PARENTS—EXCEPTION—BY MARRIAGE OR COURT DECREE PLACING DUTY OF SUPPORT UPON SOME OTHER PERSON, I. E., ADOPTION, DIVORCE DECREE—LEGAL SETTLEMENT OF WIFE—REMAINS THAT OF HUSBAND UNLESS CHANGED BY DEATH OR DIVORCE.
5. MINOR—AGE OF MAJORITY—POSSESSES LEGAL SETTLEMENT OF PARENTS—CONTINUES UNTIL NEW LEGAL SETTLEMENT ESTABLISHED AT DIFFERENT PLACE WHERE HE SUPPORTED HIMSELF WITHOUT RELIEF FOR ONE YEAR OR MORE.
6. WIFE MARRIED TO HUSBAND IN ARMED FORCES—LEGAL SETTLEMENT, LAST LEGAL SETTLEMENT OF HER HUSBAND UNTIL HE ESTABLISHES NEW LEGAL SETTLEMENT OR UNTIL MARITAL RELATIONSHIP TERMINATED.

SYLLABUS:

1. The terms "legal settlement", "legal residence" and "domicile" are not synonymous even though the legal settlement of a person has existed for more than one year.
2. A minor female upon marriage loses the legal settlement derived through

her parents and obtains derivatively a new legal settlement which is the legal settlement of her husband.

3. A minor male, even though emancipated, cannot acquire a legal settlement at a place other than that of the legal settlement of his parents. His legal settlement is the same place as that of his parents unless changed by legal action.

4. A minor may not acquire a legal settlement other than that of its parents except by marriage or court decree placing the primary legal duty of support upon some other person, as by adoption or in a divorce decree. Likewise, the legal settlement of a wife remains that of her husband until changed by his death or by divorce.

5. A minor, upon arriving at the age of majority, possesses a legal settlement which is that of his parents, which settlement continues until he shall have established a new settlement by residing at a different place at which he has supported himself without relief for a period of one year or more.

6. A wife married to a husband in the armed forces may not acquire a legal settlement other than that of the last legal settlement of her husband until he shall have established a new legal settlement or until the termination of the marital relationship.

Columbus, Ohio, August 21, 1943.

Hon. Carson Hoy, Acting Prosecuting Attorney,
Cincinnati, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“The relief authorities of this county are now in process of settling various items of long standing growing out of hospitalization furnished to alleged county charges by the Cincinnati General Hospital under the following provision of the General Code Section 3476:

* * * Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they can not be satisfactorily cared for except at the county infirmary or under county control. * * *

Both the city and county authorities are having considerable difficulty in determining their respective liabilities under the above provision in that General Code Section 3479, in which a

definition of 'legal settlement' is given, is inadequate to cover many of the situations under consideration.

The following specific case now pending will serve to illustrate the general problem:

A female 'A' who is a minor, has resided all her life in the city of Cincinnati with her parents. Neither she, nor her parents, have applied previously for any public assistance. In 1943 she married a minor 'B', who lives with his parents in the State of Indiana. So far as our investigation goes, neither 'B' nor his parents have received any public assistance. 'B' is now in the army and 'A' has at all times continued to live with her parents at their residence in Cincinnati. 'A' recently was admitted to the Cincinnati General Hospital for necessary medical care and hospitalization for which none of the parties involved are able to pay. A claim is now made by the Cincinnati General Hospital against Hamilton County for the expense of hospitalization and other necessary relief.

The following specific questions seem to arise in applying General Code Sections 3476 and 3479 to the above circumstances:

1. Are 'legal settlement' and 'legal residence' or 'domicile' synonymous where the legal settlement has existed for more than one year?
2. Does a minor, upon marriage, lose the legal settlement of her parents and adopt that of a husband, whether or not an actual change in residence is effected by the marriage?
3. May an emancipated minor acquire a legal settlement other than that of his parents?
4. May a minor acquire a legal settlement other than that of its parents and may a wife acquire one other than that of her husband? If so, under what circumstances?
5. Does a minor gain a legal settlement upon arriving at the age of twenty-one, or must he have a legal settlement for a year subsequent to becoming twenty-one?
6. May a wife married to a husband in the armed forces acquire a legal settlement other than that of the last legal settlement of her husband?

Inasmuch as the foregoing case includes a consideration of many matters arising out of General Code Section 3479, which

are apparently not covered by previous opinions or adjudications, we would appreciate your full and complete consideration of all questions involved in the instant case."

The term "legal settlement" is similar in meaning to the term "residence" and "domicile" in that it is the place to which the person has the intention of returning if he should be absent therefrom. However, the term differs from each of such terms in that by reason of the statutory provision a legal settlement may not be acquired until a person has resided in a particular place for a period of one year without having received relief for the poor. See Section 3477 of the General Code. In the case of a change of residence or domicile, such change takes place as soon as the person, while located thereat, possesses the intent to make such place his domicile or residence. In Ohio the term "legal settlement" is defined in Section 3477 of the General Code as follows:

"Each person shall be considered to have obtained a legal settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months, without relief under the provisions of law for the relief of the poor, or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief. No adult person coming into this state and having dependents residing in another state, shall obtain a legal settlement in this state so long as such dependents are receiving public relief, care or support at the expense of the state, or any of its civil divisions, in which such dependents reside."

As stated in 41 Am. Jur., 698:

"The term 'settlement' as used in poor laws is the equivalent of 'residence', 'home', or 'dwelling place', rather than that of 'domicile', for while a man must in the eyes of the law always have a domicile, he need not always have a settlement, a residence, or a home; and consequently may lose one settlement without gaining another."

In the case of a "domicile", a person must always have a domicile somewhere.

Bulkey v. Williamson, 3 Gray (Mass.) 493;

Barhydt v. Cross, 156 Ia. 271;

Anderson v. Pifer, 315 Ill. 164;

Sturgeon v. Korte, 34 O. S. 534.

A domicile once acquired continues until a new domicile is acquired and is not lost even by absence for a period of years.

Sturgeon v. Korte. *supra*;

Borland v. Boston, 132 Mass. 89;

Van Matre v. Sankey, 148 Ill. 536;

Desmare v. United States, 93 U. S. 605;

Henrietta Township v. Oxford Township, 2 O. S. 32, 35;

Egan v. Lumsden & McGovern, 2 Disn. 166.

It would seem that the phrase "legal settlement", when used with reference to poor laws, is synonymous with the terms "dwelling place" and "house" or "home", if such dwelling place or home has existed for the statutory period and the occupant has not during such period received relief for the poor. Warren v. Thomaston, 43 Me. 406; Georgia v. Waterville, 107 Vt. 347. Such being true it would seem to follow that your first inquiry must be answered in the negative.

The question of a legal settlement of a minor has been before the courts of this state on several occasions. In Trustees of Jefferson Township v. Trustees of Letart Township, 3 Ohio 100, the court held:

"A minor obtains a settlement in the township where his father was legally settled, and can by no act of his own, whilst a minor, obtain a legal settlement elsewhere."

In Trustees of Spencer Township v. Trustees of Pleasant Township, 17 O. S. 31, the court held that:

"1. The legal settlement of a minor child, member of his father's family, continues to be in the township where his father was last legally settled, notwithstanding the father removes with his wife and children to a township in another county and there abandons them, if neither he nor his family remain in such township long enough to acquire a new settlement.

2. The abandoned wife, during coverture, is not legally able to acquire for herself or minor child a legal settlement different from that of her abandoned husband, the father of the child.

3. After such abandoned wife procures a divorce from her husband, she then, but not before, becomes able, as a *feme sole*,

to acquire for herself a legal settlement; and if her custody of the minor child, granted by the decree of divorce, has any effect to make her legal settlement instead of her former husband's, the settlement of the child, such effect cannot follow until time enough elapses after the divorce and before her subsequent second marriage, to enable her to acquire a legal settlement as a *feme sole*."

In *Trustees of Bloomfield v. Trustees of Chagrin*, 5 Ohio 316, the court held:

"The mother of an infant pauper settled in one township, does not change the infant's residence, by marrying a second husband settled in another township, and there residing without the infant pauper."

In *Board of Commissioners of Summit County v. Board of Commissioners of Trumbull County*, 116 O. S. 663, the court held:

"When the parents of minor children are divorced, and the decree gives to the mother the sole and exclusive care, custody and control of the minor children, the legal settlement of the mother thereby becomes the legal settlement of the minor children; and when the mother thereafter, acting in good faith, moves to another county, taking the minor children with her, and intending to make the latter county the permanent home of herself and her minor children as well, and, pursuant thereto, the mother acquires a legal settlement in the county to which she thus moves, the minor children thereby acquire, through their mother, a legal settlement in the same county."

From such cases it would seem that a child, if legitimate, upon birth acquires a legal settlement which may be referred to as a derivative settlement, through its father, which it ordinarily retains until it reaches the age of twenty-one years. In the case of an illegitimate child the derivative settlement is acquired through the mother and its settlement is that of its mother. See *Blythe v. Ayers*, 96 Cal. 532.

From such cases it further appears to be established that a child may not by any act of its own acquire a legal settlement separate and apart from that of its parents. However, there seems to be certain exceptions to such rule. Thus, if the father and mother are divorced and in the divorce proceeding the court, having jurisdiction of the child's person, grants the custody and control over the child to the mother, then it would seem that the mother may acquire a new legal settlement distinct from that of her husband and when so acquired, the legal settlement of the minor children so awarded to her custody follows that of the mother.

Board of Commissioners of Summit County v. Board of Commissioners of Trumbull County, *supra*. However, in the case of Trustees of Spencer Township v. Trustees of Pleasant Township, *supra*, the court held that even though the wife and children were abandoned by the husband and father she could not establish a new legal settlement either for herself or for her children.

Likewise, in Trustees of Bloomfield Township v. Trustees of Chagrin, *supra*, the court recognized the general rule that a female, upon marriage, acquires the legal settlement of her husband. See also Crane Township v. Antrim Township, 12 O. S. 430. You inquire whether the rule recognized in those cases supersedes or is an exception to the rule that a minor, by her own act, may not change her legal settlement. I have been unable to find any reported decisions of courts of last resort in Ohio on such question. In 38 C. J. 480, Section 111, the author states that :

“It is a well settled rule at common law that the wife takes, by derivation, the settlement of her husband, thereby losing her maiden settlement. * * * The fact that the husband’s settlement was by way of derivation from his parents does not prevent such settlement from becoming that of his wife.”

Many authorities are cited in support of such statement in the text, including many to the effect that such is true even though the wife may be insane or otherwise incapacitated from acquiring a legal settlement in her own right.

In most of the decisions of the courts of other states the theory of legal settlement of a minor is founded upon the proposition of who is primarily liable for the support in question (see Town of Randolph v. Montgomery, 109 Vt. 130), and that the granting of relief is rather the granting of public assistance to the person upon whom the law places the primary duty of support. If the primary duty by statute is upon the husband and father to support his wife and minor children his settlement is determinative of that of the wife and minor children and if, under the laws of the particular state, a minor, upon marriage, has the primary duty to support himself and wife, then his settlement is determinative of the legal settlement of his entire family. Many courts have taken the view that the legal settlement of the married minor son is that of his father but that the legal settlement of his wife and children is not that of the father of such minor husband, but that she retains her former settlement. Such latter view has not been followed by the Ohio decisions.

In Ohio Section 7997 of the General Code places the primary duty of supporting the wife and family upon the husband. Such section reads as follows :

"The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able."

Since this statute places the primary duty of supporting the wife upon her husband, I am of the opinion that the legal settlement of the wife who is a minor during coverture is that possessed by her husband, rather than that of her parents and that upon marriage she loses her former legal settlement.

When we come to a consideration of the question of the effect of emancipation of a minor on his legal settlement, we find a diversity of opinion in the decisions of the courts of other states and no decisions directly in point in Ohio. Upon examination of those decisions, we find that a greater percentage of such apparent conflicts is caused by the specific statutory provisions in the states wherein the decisions were rendered. In Ohio I find no statute defining the effect of an emancipation of a minor.

What is an emancipation of a minor? At common law the father was entitled to the work and efforts of his children until they reached the age of majority. He was entitled to have them reside at his home or a place designated by him. He could apprentice them to others and was entitled to all of their earnings until they reached the age of majority. On the other hand, he was liable for their support and maintenance.

The common law rule has been to some extent modified by the provisions of Section 7996 of the General Code, which provides that:

"The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto."

Section 7997 of the General Code requires that the husband, not only support his wife, but his minor children as well, if he is able. By the emancipation of a minor the father releases the child of his duty to live under the family roof, his duty to furnish further services to the father and gives to the minor the right to retain all of his earnings. From the date of the emancipation the father has no further right to the child's services or earnings and has renounced his control over him.

Morse v. Welton, 6 Conn. 547;

Corter v. Powell, 79 Ia. 151;

Rounds Bros. v. McDaniel, 133 Ky. 669;

Ream v. Walkins, 27 Mo. 516

However, in view of the express provisions of Section 7997 of the General Code to the effect that "the husband must support * * * his minor children out of his property, or by his labor", can we say that such provision only requires such support unless he has emancipated the children? In *Thiessen v. Moore*, 105 O. S. 401, the court held that the duty of the father to support his minor children did not terminate until the child had reached the age of twenty-one years. A similar holding was made in *Mieszkalski v. Mieszkalski*, 44 O. App., 152. If, as held in *Town of Milford v. Town of Greenwich*, 126 Conn., 340, the theory of a derivative settlement of a minor through his parent is by reason of the fact that the parent has the primary legal liability for his support and that poor relief at public expense is furnished when the person obligated for such support is no longer able to furnish it, it would seem to require that we add to the language of Section 7997 of the General Code an exception or proviso in order to establish a legal settlement for the minor at a place other than that of the legal settlement of the father. The statute itself contains no exceptions as to the duty of the father to support the child until it reaches the age of twenty-one years.

It is a well established rule of interpretation of statutes that the meaning thereof must be derived from the language of the statute itself, if possible, and that in arriving at the legislative intent we may neither add language to a statute nor take language from the statute if the language therein contained expresses a meaning, even though we may deduce from other sources that the Legislature probably meant something different from that expressed in the language which it enacted into the statute.

Watson, Jr. v. Tax Commission of Ohio, 135 O. S. 377 ;

Smith v. Bock, 119 O. S. 101, 103 ;

Stanton v. Realty Co., 117 O. S. 345, 349 ;

State, ex rel. Harness v. Roney, 82 O. S. 376 ;

Slingluff v. Weaver, 66 O. S. 621 ;

D. T. Woodbury & Co. v. Berry, 18 O. S. 456 ;

United States v. Goldenberg, 168 U. S. 96, 102, 103

In view of the fact that the language of Section 7997 of the General Code is clear and unambiguous it would seem that we may not add thereto the proviso "unless such minor children have been emancipated". Likewise, it would seem that if it be the established rule that a minor can not change his settlement by his own act alone, he could not, by entering into an unenforceable agreement, change the primary duty of supporting himself from his father to himself and thus alter his legal settlement.

I am, therefore, of the opinion that an emancipated minor can not obtain a legal settlement for purposes of poor relief separate from that of his parents.

From the decisions of the above cases and the reasoning above set forth, it would appear that a minor upon birth obtains a derivative legal settlement through his parent which he retains until he reaches the age of majority, unless such settlement is altered by reason of the death of the parent or judicial action, which settlement he would retain until he has acquired a new legal settlement by residing at some other place for a period of one year without receiving poor relief from the state or a subdivision thereof or from some other private institution which keeps the records specified by statute.

It would, therefore, appear in answer to your fifth inquiry that a child, upon reaching the age of majority, retains the legal settlement which he has had derivatively through his father prior to reaching such age, until he has established a different one even though he be married and that since his settlement is that of his father or other person in loco parentis, which place becomes the legal settlement of his wife and children until he reaches the age of majority and establishes another settlement.

Similarly, in answer to your sixth inquiry, from what I have hereinbefore stated, since a wife has the legal settlement of her husband she would retain such settlement even though her husband was in the armed forces until he had established a new legal settlement for himself at which place she would derivatively assume a new legal settlement.

Specifically answering your inquiries, it is my opinion that:

1. The terms "legal settlement", "legal residence" and "domicile" are not synonymous even though the legal settlement of a person has existed for more than one year.

2. A minor female upon marriage loses the legal settlement derived through her parents and obtains derivatively a new legal settlement which is the legal settlement of her husband.

3. A minor male, even though emancipated, can not acquire a legal settlement at a place other than that of the legal settlement of his parents. His legal settlement is the same place as that of his parents unless changed by legal action.

4. A minor may not acquire a legal settlement other than that of its

parents except by marriage or court decree placing the primary legal duty of support upon some other person, as by adoption or in a divorce decree. Likewise, the legal settlement of a wife remains that of her husband until changed by his death or by divorce.

5. A minor, upon arriving at the age of majority, possesses a legal settlement which is that of his parents, which settlement continues until he shall have established a new settlement by residing at a different place at which he has supported himself without relief for a period of one year or more.

6. A wife married to a husband in the armed forces may not acquire a legal settlement other than that of the last legal settlement of her husband until he shall have established a new legal settlement or until the termination of the marital relationship.

Respectfully,

THOMAS J. HERBERT,
Attorney General.