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LEGAL SETTLEMENT—MARRIED WOMAN'S RESIDENCE—THAT OF HER HUSBAND—IF BY REASON OF HIS WRONGFUL CONDUCT OR REFUSAL OR INABILITY TO SUPPORT HER IT BECOMES NECESSARY TO TAKE UP RESIDENCE IN ANOTHER COUNTY SHE MAY ACQUIRE A NEW LEGAL SETTLEMENT—SECTION 5113.05 RC.

SYLLABUS:

A married woman's residence and legal settlement is that of her husband, and must so continue unless and until, by reason of his wrongful conduct or his refusal or inability to support her, it becomes necessary for her to take up residence in another county, in which case she may acquire a new legal settlement, as defined in Section 5113.05 of the Revised Code.

Columbus, Ohio, October 6, 1955

Hon. Henry J. Robison, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Section 5113.05 of the Revised Code does not define the circumstances under which a woman may establish legal settlement apart from her husband. A recent dispute between two counties arises over the legal settlement of a woman who had lived apart from her husband for more than a year without a legal separation or divorce. There appears to have been no action on the part of the husband which accounted for the separation.

“Your opinion No. 3482 rendered February 11, 1954, implies that separation must be justified either by the wrongful conduct of the husband or by the absolute necessity for finding a livelihood. Is the concept of justifiable separation an essential part of the legal settlement of the woman or can she acquire a settlement whenever she makes a bona fide separation and maintains herself for a year or more without receiving poor relief?”

Section 5113.05 Revised Code, reads in part as follows:

“Legal settlement for the purposes of Sections 5113.01 to 5113.14, inclusive, of the Revised Code, is acquired by residing

in one county for a period of one year without receiving poor relief or relief from a private agency which maintains records relief given." * * *

We may start with the proposition that from the standpoint of the common law as well as the statutes of Ohio, the legal residence of a wife is that of her husband. As stated in 17 American Jurisprudence, page 614.

"Following the rule established at common law, a woman on her marriage loses her own domicile and, by operation of law, acquires that of her husband, no matter where the wife actually resides or what she believes or intends. The law fixes her domicile and whenever, during the marriage, the husband changes his domicile, hers follows and is drawn to it. The rule that the matrimonial domicile is that of the husband obtains irrespective of the state in which the marriage ceremony was performed.

"Since the husband is the head of the family, with the legal obligation of support, he has the right to choose the domicile, and since, according to the fiction of the common law, 'the husband and wife are one, and that one is the husband,' her domicile is and follows his." * * *

The same proposition seems to be set forth in Section 3103.02 of the Revised Code, which reads as follows:

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

It is, however, well recognized by the authorities, including those in Ohio, that there are circumstances where a wife may leave the residence of her husband and acquire a new residence of her own in some other county or state. The circumstances under which this right may be exercised and cases supporting the proposition are reviewed in my Opinion No. 3482, Opinions of the Attorney General for 1954, page 40, wherein it appeared that the family had lived in Kentucky and the husband and father was a patient in a veterans' hospital. The wife brought her children to Ohio and there supported herself and her children for more than a year. It was held:

"1. A married woman who, having separated from her husband in another state, has resided in a certain county of Ohio for one year without having received poor relief or relief from a private agency which maintains records of relief given, said hus-

band not having during such year received public relief, care or support at the expense of the state of his residence or its subdivisions, has under the terms of Section 5113.05, Revised Code, acquired a legal settlement in the county where she has so maintained her residence."

To like effect see Opinion No. 2150, Opinions of the Attorney General for 1940, page 340, where it was held:

"A married woman, residing outside of this state, may, on account of her husband's aggression, separate from him for the purpose of establishing in the state of Ohio her own legal settlement and that of her children in her custody."

This right on the part of a wife to separate from her husband and acquire a new residence may not be exercised merely because of her desire to get away from her husband. It is stated in 17 American Jurisprudence, page 617:

"In general, a voluntary separation will not give to the wife a different domiciliation in law from that of her husband. Moreover, in the absence of any statute changing the common-law rule, a married woman cannot, to suit her convenience or pleasure merely, create a legal residence for herself apart from that of her husband, at least where the parties are living together in harmony."

The same writer recognizes the fact that the above stated rule as to the domicil of a wife is subject to exceptions. The above quoted statement is followed by the following:

"The law, however, recognizes exceptions to the rule that the domicil of the wife is that of the husband, the foundation of which is the necessity for her protection and the fact that the interests of the husband and wife have ceased to be identical. Thus, the Supreme Court of the United States has said (*Cheever v. Wilson*, 9 Wall., 108) that the wife may acquire a separate domicil whenever it is necessary or proper that she should do so. The right springs from the necessity for its exercise and endures as long as the necessity continues."

This distinction was recognized in the case of *Cache v. Cache*, 12 Ohio App., 140, where it was held:

"When a married woman is justified in separating from her husband, his marital control over her, which made his residence her residence, is broken, and she can lawfully acquire an actual

residence separate from his. She then has a right to select any place for her residence that she may desire. If she comes into this state and lives here the required time, with the intention of making her home here, she becomes a resident of this state and can prosecute an action for divorce, notwithstanding her husband remains in the state of their marital residence.”

The same general principle and exceptions thereto are discussed in 15 Ohio Jurisprudence, page 579.

It seems manifest, therefore, that the separation by a wife from her husband which will enable her to acquire a residence and legal settlement in some other county than that of his residence must be based on some wrongful conduct or other circumstances rendering it necessary for the wife to leave him. The concept of justifiable separation is an essential part of the right of the wife to acquire a legal settlement different from that of her husband.

Accordingly, in specific answer to your question it is my opinion that a married woman's residence and legal settlement is that of her husband, and must so continue unless and until, by reason of his wrongful conduct or his refusal to take up residence in another county, in which case she may acquire a new legal settlement, as defined in Section 5113.05 of the Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General