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Divorce - Illinois 60-Day "Cooling-Off" Period Held Constitutional

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nois in regard to the conflict between property rights and the police power is the same as that of New Jersey. The court in *Lasdon v. Hallihan* said that while a person's business, profession or occupation is property within the meaning of the due process clause, the power of the legislature to interfere by passing laws for the preservation of good order or to promote public welfare and safety, or to prevent fraud, deceit, cheating and imposition, has always been recognized in Illinois.[21]

In *Gadlin v. Auditor of Public Accounts,* the court said:

> Legislative determination that regulations are needful . . . in order to be imposed must bear some definite, substantial relation to the public health, safety morals or public welfare.[22]

The decision in the instant case will no doubt be of benefit and importance if the corresponding section of the Illinois statute[23] is ever involved in litigation. The final determination of the question, however, will lie in the opinion of the court as to whether the regulation bears definite, substantial relation to the public health, safety, morals or welfare.[24]

[21] 377 Ill. 187, 36 N.E. 2d 227 (1941).

[22] 414 Ill. 89, 95, 110 N.E. 2d 234, 237 (1953); cf. Hannifin Corp. v. Berwyn, 1 Ill. 2d 28, 115 N.E. 2d 315 (1953).

[23] Ill. Rev. Stat. (1955) c. 111½, § 73.8a.

[24] Hannifin v. Berwyn, 1 Ill. 2d 28, 115 N.E. 2d 315 (1953); Gadlin v. Auitor of Public Accounts, 414 Ill. 89, 110 N.E. 2d 234 (1953); Lasdon v. Hallihan, 377 Ill. 187, 36 N.E. 2d 227 (1941).

DIVORCE–ILLINOIS 60-DAY "COOLING-OFF" PERIOD HELD CONSTITUTIONAL

Plaintiff sought the issuance of a writ of mandamus to compel the clerk of court to receive and file a complaint for divorce without first filing a praecipe for summons as required by the 1955 amendment to the Divorce Act[1] which provides for a 60-day "cooling-off period" between service of the summons and filing of the complaint, except in cases specifically provided for.[2] Plaintiff contended that the act was violative of due process, in that it was vague, indefinite, and uncertain; that it contravened Art. VI, sec. 29, of the Illinois constitution, which provides that "all laws relating to courts shall be general, and of uniform operation;" and that it violated Art. IV, sec. 22, of the Illinois constitution, which states: "The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For–Granting divorces." The trial court denied mandamus, and on direct appeal the Illinois Supreme Court held

[1] Ill. Rev. Stat. (1955) c. 40, §§ 7a, 7b.

[2] Ibid., at § 7c.

unanimously that mandamus was properly denied. *People ex rel. Doty v. Connell*, 9 Ill. 2d 390 (1956).

In disposing of the issues involved, Mr. Justice Hershey's opinion stated:

> The "60-day cooling off period" provision is designed to effectuate a legislative policy directed toward affording an opportunity for reconciliation of the parties prior to hearing and decree. This court in previous decisions has recognized the laudable purposes which are sought to be achieved by legislation of this type. See, for example, *People ex rel. Christiansen v. Connell*, 2 Ill. 2d 332, 346, 118 N.E. 2d 262.... The issue of due process of law is to be determined by judging whether the particular statute is reasonable in the light of the legislative objectives. (Cf. *Clarke v. Storchak*, 384 Ill. 564.) So judged, we cannot say that a post-jurisdictional delay of 60 days is unreasonable. . . . Under certain conditions the 60-day waiting period may be waived, the law providing as follows: "The court, in its discretion, may upon written motion supported by affidavit setting forth facts showing that immediate relief is warranted or required to protect the interest of any party or person who might be affected by a final decree or order in the proceedings, grant leave to file or order the filing of a complaint before the expiration of the 60-day period." (Ill. Rev. Stat. 1955, Chap. 40, par. 7c).[3]

It was this provision in particular which plaintiff contended was so vague, indefinite, and uncertain as to be violative of due process. The court continued:

> The exercise of discretion being such an essential part of the judicial process, one can find numerous examples of provisions governing practice and procedure which are analogous to the statute in question. . . . In effect the legislature has done no more than confer upon the courts the necessary discretion to regulate proceedings pending before them, similar to that exercised in a wide variety of situations. . . . We conclude that this authority of the court to exercise judicial discretion in determining whether the immediate filing of the complaint is warranted or necessary, satisfied due process of law, and since all divorce litigants are subject to its provisions it is not special legislation, violative of section 22 of article IV or section 29 of article VI of the Illinois constitution. . . .[4]

This decision crowns with victory the determined, concerted effort of a group of members of the Illinois bench and bar who, since 1947 or earlier, have sought to modernize Illinois divorce procedure to make it better able to cope with the progressively worsening break-down of family life they found developing around them in their day to day practice.

The first attempt in the current series was the Domestic Relations Act of 1947 which sought to set up in all counties of over 500,000 population (i.e., Cook County) a special divorce division to which all cases of divorce, annulment and separate maintenance "may" be referred.[5] This act also pro-

[3] People ex rel. Doty v. Connell, 9 Ill. 2d 390 (1956).

[4] Ibid., at 397.

[5] Ill. Rev. Stat. (1947), c. 40, c. 37 § 105.1–105.18.

vided that in these actions wherein the rights of minor children were involved, court files were to be impounded for at least 30 days after the filing of the complaint.[6] The act was held to contravene Art. IV, sec. 22 of the Illinois constitution in *Hunt v. County of Cook*[7] but the main points sought were clearly visible and have finally been achieved. They are, first, a "cooling-off period" during which an attempt may be made at reconciliation, before the acrimony, mutual recrimination, and public airing of dirty linen entailed in a divorce action, and second, a type of machinery for effectuating a reconciliation.

The second tack taken was an attempt, through petition, to have the Illinois Supreme Court supply the desiderata outlined above through a rule which would have provided for the filing of a declaration of intention to file a complaint for divorce, which declaration would have had to precede by at least 60 days the actual filing of the complaint, and by at least 90 days any final decree.[8] Included in the proposed rule was a provision under which the judge could have invited the prospective parties to confer with him in his chambers. No testimony was to be taken nor any record made of the statements of the participants in the voluntary conference. Again we see the same two points emerge: the cooling-off period and the machinery for effectuating a reconciliation. The court however felt this to be a matter in the province of the legislature, and the second phase of the battle ended.

Phase three opened in 1953 with the passing by the legislature of the Divorce Act of 1953,[9] which embodied essentially the same provisions as the rule proposed to the Supreme Court in 1949, and which, in addition, provided for the appointment of aids to the courts to assist in matters pertaining to divorce, annulment and separate maintenance actions. The compliance of this act with the Illinois constitution was tried, and found wanting, in *People ex rel. Christiansen v. Connell.*[10] The court said:

> It is suggested . . . that this statute may be sustained as merely creating a procedural step which it is reasonable to require as an incident to the administration of justice. . . . [T]his law could be sustained as a rule of procedure only if the procedure sought to be established applied uniformly to all cases. The legislature has no more power to discourage the filing of divorce cases by postponing the right of access to the courts than it would have to discourage actions for personal injury by similar measures. To hold otherwise would be a denial of that equal protection of the law to which every person is entitled.[11]

[6] Ibid., at c. 37, § 105.10.

[7] 398 Ill. 412, 76 N.E. 2d 48 (1947).

[8] Petition for the Adoption of a Rule Relative to Divorce, Separate Maintenance and Annulment Proceedings, presented to the Supreme Court of Illinois in January Term, 1949, by the Illinois State Bar Association, The Chicago Bar Association, and the Honorable Julius H. Miner, Judge of the Circuit Court of Cook County.

[9] Ill. Rev. Stat. (1953) c. 40, §§ 7a–7c, 23–29.

[10] 2 Ill. 2d 332, 118 N.E. 2d 262 (1954).

[11] Ibid., at 346 and 269.

The particular provision of the Illinois constitution which the 1953 act was held to contravene was Art. II, sec. 19, which provides:

> Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay.

The court also held that the pre-trial conference provided for by the act would have required the judge to perform non-judicial functions.[12] In this connection, it is worthy of note that, although the *Christiansen* case did not attack those provisions of the 1953 act relating to the appointment of administrative aids to the courts, these provisions were changed in the 1955 act.[13] The changes made purport to allow for the handling by these aids of "such non-judicial duties with respect to proceedings for divorce and separate maintenance and matters ancillary thereto as the court shall direct."[14]

Against this sketchy historical back-drop the legal reasoning behind the Divorce Act of 1955 becomes clear. The action is commenced by filing a praecipe for summons with the clerk of the court.[15] Thus, immediate access to the courts may be had; there is no delay. The much fought for cooling-off period comes after both parties are subject to the jurisdiction of the court and may be exposed, at least, to the reconciliation machinery provided.[16] If it is necessary, in the light of the *Hunt* and *Christiansen* cases, that this reconciliation machinery be not spelled out in detail in the act, it also seems wiser that this be so. The individual judges are left freer thereby to experiment and to improvise as the exigencies of the particular case before them seem to demand.

A brief glance at attempts that have been made in sister states to deal with a mounting number of divorces confirms the initially favorable impression of this statute. Two main approaches to the problem of reconciliation may be distinguished in those states which have legislated on the matter. One group of states places restrictions on remarriage on one or both parties to a divorce action.[17] These statutes range from the absolute prohibition of remarriage by the guilty party in certain divorce actions (e.g., where the ground is adultery), which statutes seemed to be aimed primarily at the prevention of subsequent remarriages by parties considered unfit to marry,[18] through decrees *nisi* or interlocutory decrees,

[12] Ibid.

[13] Ill. Rev. Stat. (1955) c. 40, §§ 30, 31, 32.

[14] Ibid., at § 31.

[15] Ibid., at § 7a.

[16] Ibid., at § 7b.

[17] An exhaustive collection of cases and analysis of this group may be found in 36 Va. L.R. 665 (1950).

[18] Note in this connection, the statement of the court in Swinehart v. Bamberger, 166 Misc. 256, 2 N.Y.S. 2d 130, 135 (S.Ct., 1937): "The statute goes beyond the pre-

which provide a period during which reconciliation is possible, to statutes which provide for the issuance of absolute decrees without any intervening time lapse, but forbid the remarriage of the parties either for a specified period of time or at the discretion of the court.

Of this group, it may be remarked generally that, while it may indeed prevent hasty remarriages by those who already have been through one divorce, and thus save them from a second trip through the divorce courts, it would seem to accomplish little in the way of reconciliation of parties on the verge of a divorce. Experience would lead us to discount whatever deterrent effect on divorces this group of statutes might seem to create.

The second broad grouping of jurisdictions, into which Illinois now settles by virtue of the decision in the *Doty* case, are those in which opportunity (at least) for reconciliation is offered before the parties have reached the point of no return in a divorce action, by providing for a cooling-off period either before an action may be filed,[19] or after the commencement of an action but before the parties find themselves face to face in the divorce court, calling names and telling tales and airing the pent-up grievances which, once uttered, become so irretrievably final. It will readily be observed that, at least where there is a chance for reconciliation, this latter group of states provides an opportunity for the court to do all it can before the rupture of the marital relationship becomes a *fait accompli.*

In declaring constitutional the Divorce Act of 1955, the Illinois Supreme Court has placed the state in the forefront of those seeking, by appropriate legislation, to cut down somehow the appalling divorce rate and its constellar problems of broken homes, broken lives, juvenile delinquency, and the like. In providing for a 60-day cooling off period before a complaint may be filed, and before a decree can issue in the cause the act provides the opportunity, and by its provisions for administrative assistants to judges in divorce matters the machinery for reclaiming those marriages which can yet be saved.

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vention of hasty divorces secured because of a desire to remarry immediately, and beyond the mere will to punish the guilty party. It aims to protect the marital status by ascertaining to some extent the fitness of those seeking to re-enter the marriage state after violating its precepts. . . ."

[19] No. Car. Gen. Stat. (1951) c. 50, §§ 50–58; N.J. Stat. Ann. c. 50 § 2:50–2, as amended, L. 1948, c. 320, p. 1284, § (in cases of extreme cruelty).

FAIR TRADE–MANUFACTURER-WHOLESALER MAY NOT FIX PRICES WITH COMPETING WHOLESALERS

McKesson and Robbins, Inc., sold drugstore merchandise of various brands throughout the country, and also manufactured its own brand of drugstore products. The manufacturing division of the company main-