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1. RESIDENCE—LEGAL SETTLEMENT—MARRIED WOMAN'S THAT OF HER HUSBAND—EXCEPTION, WHERE HUSBAND COMMITTED TO STATE HOSPITAL FOR MENTALLY ILL.
2. WHERE SUCH MARRIED WOMAN MOVES TO ANOTHER COUNTY SHE MAY ACQUIRE LEGAL SETTLEMENT IN SUCH COUNTY.
3. TO RECEIVE POOR RELIEF FROM SUCH FOREIGN COUNTY SUCH MARRIED WOMAN MUST COMPLY WITH PROVISIONS OF SECTION 3477 G. C. AS TO RESIDENCE FOR TWELVE CONSECUTIVE MONTHS, SUPPORT OF SELF, STATEMENT SHE HAS NO DEPENDENTS RESIDING IN FOREIGN STATE WHO RECEIVE PUBLIC RELIEF.

SYLLABUS:

1. An exception to the rule that a married woman's "legal settlement" is that of her husband arises in the case where the husband is committed to a state hospital for the mentally ill.

2. Where a married woman whose husband has been committed to a state hospital for the mentally ill moves from the county of her husband's "legal settlement" to another county, she may acquire a legal settlement in the latter county.

3. In order for a married woman whose husband has been committed to a state hospital for the mentally ill to obtain a legal settlement in a county other than that of her husband and receive poor relief from such county, she must comply with Section 3477 of the General Code, viz. (a) continual residence for twelve consecutive months; (b) support of self 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; (c) that she has no dependents residing in another state who are receiving public relief, care or support at the expense of the state or any of its civil divisions, in which such dependents reside.

Columbus, Ohio, August 22, 1949

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This Department has been asked to arbitrate a difference of opinion between two counties concerning the legal settlement of a

family which has applied for poor relief. A married woman with several children moved from County A in which she and her husband have a legal settlement, to County B after her husband was committed to a state hospital for the mentally ill. She and her children lived in County B without receiving public assistance for more than a year. During that time, her husband was, and still is, confined in a state hospital for the mentally ill. She is now in need of poor relief.

“The question arises whether County A or County B is liable for such relief. County A contends that she is a resident of County B because she and her children lived there for more than a year without relief. County B contends that she can not change her legal settlement as long as the husband maintains his legal settlement in County A.”

The answer to your question will, of course, depend on whether the married woman involved has acquired a legal settlement in County B or whether her legal settlement is that of her husband.

Section 3476 of the General Code provides the statutory authority for the granting of poor relief. This section states, in effect, that townships, cities and counties shall afford, at the expense of such bodies, public support or relief to all persons who have acquired a legal settlement therein and who require relief.

Section 3477, General Code, defines the term “legal settlement.” That section reads 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.”

Section 3479, General Code, relates to legal settlement in a township or municipal corporation and is not important for this discussion.

Therefore, we must examine the facts to see if the married woman involved has a legal settlement and where that legal settlement is located.

She has continuously resided in County B for more than twelve consecutive months. I presume, from the facts you have presented, that she has supported herself and her children for this period without relief either from a charitable organization or benevolent association or under any provisions of the law for the relief of the poor. This is a question of fact to be determined by the responsible authorities.

It is a general principle of law that a woman by marriage loses her own domicile, residence or legal settlement and acquires that of her husband. The matrimonial domicile, residence or legal settlement is presumed to be that of the husband at the time of marriage, and 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. See *The Trustees of Spencer Township v. Trustees of Pleasant Township*, 17 O. S. 32; 14 O. Jur. 579.

However, to this general principle there are many exceptions and it is generally recognized that insanity of the husband is one exception usually accepted. Thus, in the case of *Stocklein v. Priddy*, 31 O. N. P. (N. S.) 369, the court had this to say at page 372:

“The husband of Eva Priddy had no estate and contributed nothing toward the support of the family after his commitment to the hospital for the insane. Under the circumstances in this case the court is of the opinion that Eva Priddy, the mother, became the head of the family after the adjudication of her husband and his commitment. (Section 7997, General Code.) As the head of the family she was charged with the care, maintenance and support of her minor children, all of whom were under eighteen years of age.”

See also: *McKnight v. Dudley*, 148 Fed. 204, 78 C. C. A. 162, 15 O. F. D. 288 (for former opinion in same case see *McKnight v. Dudley*, 103 Fed. 918, 15 O. F. D. 785).

Also in 14 O. Jur. 581 is found the following:

“A wise exception to the general rule that the domicil of a wife is that of her husband has been established in cases where the husband becomes insane. The insanity of a husband and his confinement to an asylum make the wife the head of the family, and consequently vest in her the right to change her domicil. The fact that a husband is an inmate of an asylum does not deprive his wife of the right to change her residence as her interests and those of her children may seem to require.”

It is true that the terms "legal settlement," "legal residence" and "domicile" are not synonymous and that they are not synonyms even though the legal settlement has existed for more than a year. For an excellent discussion of this point see Opinion No. 6307, Opinions of the Attorney General for 1943, page 473. However, regardless of this distinction, I still am of the opinion that the exception noted above is applicable to legal settlement, as well as domicile and residence, and this view is further strengthened by Judge Wiseman in the Stoecklein case.

It is stated in the 1943 opinion, *supra*, at page 477:

"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.
* * *"

Therefore, it is my opinion that:

1. An exception to the rule that a married woman's "legal settlement" is that of her husband arises in the case where the husband is committed to a state hospital for the mentally ill.
2. Where a married woman whose husband has been committed to a state hospital for the mentally ill moves from the county of her husband's "legal settlement" to another county, she may acquire a legal settlement in the latter county.
3. In order for a married woman whose husband has been committed to a state hospital for the mentally ill to obtain a legal settlement in a county other than that of her husband and receive poor relief from such county, she must comply with Section 3477 of the General Code, viz. (a) continual residence for twelve consecutive months; (b) support of self 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; (c) that she has no dependents residing in another state who are receiving public relief, care or support at the expense of the state or any of its civil divisions, in which such dependents reside.

In view of the above, and in specific answer to your question, it is my opinion that from the facts given, County B is liable for the support and relief of the woman in question since she has obtained a legal settlement in County B.

Respectfully,

HERBERT S. DUFFY,
Attorney General.