The Phyllis Schlafly Report

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Pennsylvania and Colorado Courts Prove

ERA Takes Away Rights From Wives

Two sensational Court decisions in the past few months clearly show what is in store for wives and families if the Equal Rights Amendment is ever ratified.

The Pennsylvania Superior Court in the case of *Wiegand* v. *Wiegand* on September 19, 1973 knocked out the special rights of wives in regard to separate maintenance and attorney's fees. More precisely, the Court ruled unconstitutional the sections of the Pennsylvania law which permit a wife (but not a husband) to obtain a divorce from bed and board (called "separate maintenance" in many states), alimony pendente lite (support-money during the litigation), and attendant costs and counsel fees (payment for her lawyer).

Pennsylvania is one of the few states which now have a *State* Equal Rights Amendment already in effect. Under this new section of the Pennsylvania State Constitution, the Court declared that the sections of the law giving special rights to wives had to be invalidated. According to *United States Law Week* (a respected national weekly survey of current law): "This decision may foretell a national rule if the proposed Equal Rights Amendment to the U.S. Constitution is adopted."

See Page 4 for information on what was said about this case on the NBC TODAY Show.

In this case, the wife argued that the Equal Rights Amendment was meant to be limited to insuring women equality of opportunity in the areas of education, jobs, wages and benefits for workers. The lower court agreed. But the Pennsylvania Superior Court reversed the lower court decision and rejected this argument, saying: "Such a restrictive interpretation does not comport with either the plain meaning of the Amendment's words or its meaning as understood by the electorate which adopted it. . . . The Amendment specifically says that 'equality of rights under the law shall not be denied . . . because of . . . sex.' No exception is made for rights in the area of domestic relations."

ERA proponents have been confidently assuring their uninformed audiences that, when courts rule on the superior rights and benefits which present laws give to women, the courts will *extend* those benefits to men. This Pennsylvania case gives the lie to this argument. The Court absolutely did *not* make these rights reciprocal -- the Court simply knocked out the special rights enjoyed by wives, saying: "Absent such mutuality of rights to both sexes, the present statutes must fall. . . . We therefore cannot judicially interpret the word 'wife' as meaning spouse. . . . We are thus compelled to hold Nos. 11 and 46 of the Divorce Law unconstitutional."

Colorado Case

Meanwhile, another case called *Colorado* v. *Elliott*, decided under the new Colorado *State* Equal Rights Amendment on June 8, 1973, was even more devastating to the rights of wives. Larry Lee Elliott was charged by the State with felony non-support under the Colorado Law, which is typical of the support laws in most states.

The Court dismissed the case on the ground that the statute applies only to males, and such laws must be invalidated under the new Colorado *State* Equal Rights Amendment. The Court stated: "It is clear that only men can be prosecuted for non-support, and only men can be convicted of a felony under this law. It is just this type of sexual discrimination under the law that the Equal Rights Amendment prohibits. The sexual discrimination contained in this statute is clearly in violation of the Equal Rights Amendment to the Colorado Constitution."

These two cases are a clear warning of what courts will decide if the Federal Equal Rights Amendment is ever ratified by three-fourths of the States. Women who naively think that the Equal Rights Amendment merely means "equal pay for equal work" are in for a big shock when they find out what "equality" really means. These cases show the foresight of eminent legal authorities such as Professor Paul A. Freund of the Harvard Law School, who wrote: "*What will be the reaction of wives to the Equal Rights Amendment when husbands procure judicial decisions in its name relieving them of the duty of support because an equal duty is not imposed on their wives?*" and of Professor Philip B. Kurland of the University of Chicago Law School who wrote: "*It is largely misrepresented as a women's rights amendment when in fact the primary beneficiary will be men.*"

The full texts of the Pennsylvania and Colorado decisions are reprinted on the following pages.

Pennsylvania Case: *Wiegand* v. *Wiegand*

SARA WIEGAND,
Appellee

vs.

MYRON PAUL WIEGAND,
Appellant

THE SUPERIOR COURT OF PENNSYLVANIA

Decided
September 19, 1973

No. 251

Appeal from the Order dated March 10, 1972, Court of Common Pleas, Allegheny County, Family Division.

Opinion by Spaulding, Judge:

Appellant Myron Paul Wiegand appeals from an order of the Court of Common Pleas of Allegheny County directing him to pay counsel fees, costs and expenses in this divorce action.

The facts are undisputed. Appellee Sara Wiegand filed a complaint in divorce a.m.e.t., a petition for alimony, and an initial petition for alimony pendente lite, counsel fees and expenses. On August 14, 1967, an order was entered requiring appellant to pay $875 per month alimony pendente lite and $250 preliminary counsel fees. Subsequently, appellee filed several other petitions for additional counsel fees and costs and for continued or increased alimony pendente lite. Appellant filed answers to these pleadings and a counterclaim seeking divorce a.v.m. on the grounds of adultery, indignities to the person, or desertion. After several hearings on the various petitions, the lower court entered an order on March 10, 1972, the subject of this appeal, which required appellant to pay $5,000 counsel fees and $82.20 costs.

There are no children resulting from this marriage. Appellee has received about $50,000 in alimony pendente lite from the date of the initial order to March 10, 1972. She also admits having received additional monies from appellant of approximately $100,000, but contends in her brief that these payments were "either gifts or the result of business ventures entered into by the parties". Appellee testified that she has spent all of these funds and is now destitute.

The parties have confined their arguments to two related issues: whether the amount awarded for counsel fees is excessive under the circumstances, and whether the court below erred in refusing to allow cross-examination of appellee as to how she had disbursed the money appellant provided and as to whether she had other funds comprising her separate estate. Neither of these questions is discussed here as there is an additional issue which is controlling.

[1] *We are compelled to consider whether, in light of the adoption of the Equality of Rights Amendment to the Pennsylvania Constitution, Nos. 11 and 46 of The Divorce Law, Act of May 2, 1929, P.L. 1237, as amended, 23 P.S. Nos. 11 and 46, providing respectively that wives,* but not husbands, *may obtain divorces from bed and board and can be allowed reasonable alimony pendente lite, counsel fees, and costs in a divorce action, still pass constitutional muster.* This question is one of a number of constitutional problems presented by the Amendment. We have recently dealt with the same question, regarding only No. 46 of the Divorce Law, in the case of *Henderson* v. *Henderson*, 224 Pa. Superior Ct. 182, *303* A.2d 843 (1973), where the constitutionality of that section was upheld by a divided six-man Court. The full Court is now properly presented with the issue, including the constitutionality of No. 11, as well as No. 46, of the Act.

The Amendment provides that: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual." *Since Nos. 11 and 46 afford rights exclusively to females, the rights of males in Pennsylvania are abridged by these sections solely because of their sex. The sections therefore fall in light of the Amendment.*

[2] We would not interfere with the legislature's judgment that a spouse who has been abandoned, turned out, treated cruelly by his or her spouse or subjected to an intolerable condition, or has had adultery committed against him or her, deserves a divorce, (compare with No. 11) possibly with a permanent support order. Likewise, we deem it an appropriate legislative concern that counsel fees, alimony pendente lite, and costs be awarded to a needy spouse in a divorce proceeding, whether he or she is plaintiff or defendant, if the party can show both need and that the other party can afford to pay. (Compare with No. 46). But these remedies and rights must be available to either spouse who meets the legislative requirements specified. Legislation providing for such reciprocal rights would clearly meet the constitutional test of the Amendment, despite the fact that, given the present socio-economic structure of our society, it may be expected that many more women would receive benefits from such legislation than men. *However, absent such mutuality of rights to both sexes, the present statutes must fall.*

[3] The following reasoning in the dissenting opinion in *Henderson*, supra, passing on the constitutionality of No. 46 is equally applicable to No. 11:

" 'At this time when equal rights, regardless of sex, are constantly being asserted, . . . we have repeatedly stated that the financial positions of the parties, their respective earning capacities, their separate estates, together with their needs are fundamental questions in determination of an award, . . . ' *Hamond vs. Hamond*, 207 Pa. Superior Ct. 333, 336, 217 A.2d 855, 857 (1966), appeal after remand, 210 Pa. Super. 386, 233 A.2d 628 (1967). In applying this policy, we have consistently held that the 'proper cases' for a pendente lite award to a wife pursuant to No. 46 are those in which she has shown both her need and her husband's ability to pay. *Wolfe v. Wolfe*, 202 Pa. Super. 70, 195 A.2d 272 (1963): *Chambers v. Chambers*, 188 Pa. Super. 506, 149 A.2d 532 (1959); *Rothman v. Rothman*, 180 Pa. Super. 421, 119 A.2d 584 (1956). *However, the Equality of Rights Amendment mandates a further extension of this policy of equality by repudiating the sex of the individual as a permissable criteria for determining legal rights in Pennsylvania.*

"The court below interpreted the equal rights amendment in its opinion:

'The thrust of the equal rights amendment is to insure full equality of political rights, . . . , full equality of

educational opportunities at all levels, and full economic equality in the area of jobs and wages, as well as all types of benefits provided for workers. It was not intended to establish as basic law the demands of the extremist wing of the so-called Women's Liberation Movement.' (R.17a)

While it is true that the Amendment does not adopt the extremist views referred to by the court below, *its application is not limited to the areas enumerated above. Such a restrictive interpretation does not comport with either the plain meaning of the Amendment's words or its meaning as understood by the electorate which adopted it.*

" 'Where in the Constitution the words are plain . . . [they] must be given their common or popular meaning, for in that sense the voters are assumed to have understood them when they adopted the Constitution: *Busser v. Snyder*, 282 Pa. 440, 449, 128 A. 80; *Lighton v. Abington Township*, 336 Pa. 345, 354-355, 9 A.2d 609.; *Breslow v. Baldwin Twp. School Dist.*, 408 Pa. 121, 125, 182 A.2d 501, 504, (1962); cited with approval in *Walsh v. Tate*, 444 Pa. 229, 282 A.2d 284 (1971). In the instant case, *the Amendment specifically states that 'equality of rights under the law shall not be denied . . . because of . . . sex'. No exception is made for rights in the area of domestic relations.*

" 'While we are fully aware of the strong presumption of Constitutionality which attaches to every Act of the Legislature *(Daly v. Hemphill*, 411 Pa. 263, 191 A.2d 835, and a myriad cases cited therein), we nevertheless are convinced that the Act . . . is devoid of reasonable grounds of differences, and is arbitrary, discriminatory and invalid . . . . as violative of the Equality of Rights Amendment. Section 46 cannot be read so as to operate equally between the sexes because it specifically states that the court may only allow 'a wife' a pendente lite award. The Statutory Construction Act, Act of May 28, 1937, P.S. 1010, art. I, Nos. 1 et seq., 46 P.S. Nos. 501 et seq., at No. 551 applies here: 'When the words of a law are clear and free from all ambiguity, the letter of it is not to be disregarded.' The statute must be given its plain and obvious meaning. *Commonwealth ex rel. Cartwright v. Cartwright*, 350 Pa. 638, 40 A.2d 30 (1944); cited with approval in *Davis v. Sulcowe*, 416 Pa. 138, 205 A.2d 89 (1964), and *Pgh. Beer Corp. Liquor License Case*, 216 Pa. Super. 71, 260 A.2d 493 (1969). *We therefore cannot judicially interpret the word 'wife' as meaning spouse, even to save the Act from falling as unconstitutional.* To redraft No. 46 in this manner 'would be to undertake a wholly inappropriate judicial activity amounting to judicial legislation. See *State Board of Chiropractic Examiners v. Life Fellowship of Pennsylvania*, 441 Pa. 293, 300, 272 A.2d 478, 482 (1971); *Saulsbury v. Bethlehem Steel Co.*, 413 Pa. 316, 320, 196 A.2d 664, 667 (1964).' *Commonwealth v. Armao*, 446 Pa. 325, 338, 286 A.2d 626, 632, (1972)." 224 Pa. Super. at 185-190, 303 A.2d at 846.

Based on this reasoning, Nos. 11 and 46, must be viewed as violative of the Amendment. It is interesting to note that the dissent in *Henderson*, id., which reached this conclusion, too, also discussed decisions of two lower courts dealing with the Equality of Rights Amendment and our domestic relations statutes. *Comm. ex rel. Lukens v. Lukens*, May Term, 1972, No. F-19149, Legal Intelligencer, Oct. 19, 1972 (Delaware City), affirmed (by this Court subsequent to *Henderson*), 224 Pa. Super. 227, 303 A.2d, 522 (1973), held that the Pennsylvania support laws did not violate the Amendment because, while there may not be mathematically precise equality, the statutes do create reciprocal rights to support for both sexes. But this was not the case in *Corso v. Corso*, 120 P.L.J. 183 (Allegheny Cnty. 1972), and the companion case of *Kehl v. Kehl*, 120 P.L.J. 296 (Allegheny Cnty. 1972), where the same Court of Common Pleas, indeed the same trial judge, that heard the instant case, subsequent to deciding the instant case, held Nos. 11 and 46 respectively, to be unconstitutional.

President Judge Broskey's later opinions are in accord with our conclusion here. His opinion in *Corso* paraphrased pertinent parts of the excellent commentary in support of a federal equal rights amendment, as applicable to the Amendment passed by the Citizens of this Commonwealth:

'The basic principle of the Pennsylvania Equal Rights Amendment is that sex is not a permissable factor in determining the legal rights of women, or of men. This means that the treatment of any person by the law may not be based upon the circumstances that such person is of one sex or the other. The law does, of course, impose different benefits or different burdens upon different members of the society. That differentiation in treatment may rest upon particular traits of the persons affected, such as strength, intelligence, and the like. But under the Pennsylvania Equal Rights Amendment the existence of such a characteristic . . . to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic or trait . . .

This basic principle of the Pennsylvania Equal Rights Amendment derives from two fundamental judgments inherent in the decision to eliminate discrimination against women from our legal system. Equality of rights is not a factor. [and] . . . [t]he Equal Rights Amendment, furnishes a viable structure for achieving equality of rights for women. (Emphasis in original.)

We are thus compelled to hold Nos. 11 and 46 of the Divorce Law unconstitutional. The order of the court below is reversed.

Note: Footnotes have been omitted for lack of space. A dissenting opinion was filed, but not on the ground of the effect of the Equal Rights Amendment on Pennsylvania law.

Here are the sections of the Pennsylvania statute which were declared unconstitutional under the Pennsylvania Equal Rights Amendment:

No. 11: "Upon complaint, and due proof thereof, it shall be lawful for a wife to obtain a divorce from bed and board, whenever it shall be judged, in the manner hereinafter provided in case of divorce, that her husband has: (a) Maliciously abandoned his family; or (b) Maliciously turned her out of doors; or (c) By cruel and barbarous treatment endangered her life; or (d) Offered such indignities to her person as to render her condition intolerable and life burdensome; or (e) Committed adultery."

No 46: "In case of divorce from the bonds of matrimony or bed and board, the court may, upon petition, in proper cases, allow a wife reasonable alimony pendente lite and reasonable counsel fees and expenses. If at any time, either before or after a final decree has been entered divorcing the parties, the husband is in arrears . . . the wife . . . may, by affidavit of default, upon praecipe of the prothonotary, obtain a judgment for such arrearages."

These are the rights which wives in Pennsylvania have lost because of ERA.

*UN*Equal Time on NBC TODAY Show

On October 18, Phyllis Schlafly debated the Equal Rights Amendment on the NBC TODAY Show with Mrs. Lucy Wilson Benson, president of the League of Women Voters. Apparently, the pro-ERA forces were so badly hurt by the evidence Phyllis presented of the unfortunate effects of the Equal Rights Amendment, that they cooked up a scheme to secure extra time on the TODAY Show to attack Phyllis when she was not there to refute their misstatements.

Nearly two weeks later, on October 30, Barbara Walters took time on the TODAY Show to read "verbatim" what she called "a letter from the Attorney "General" of Pennsylvania. This was completely untrue. The Attorney General of Pennsylvania did not write this letter. It was written by Ms. Kathleen Herzog Larkin, a young woman lawyer who has been out of law school only three years and employed in the office of the Attorney General for only about two months. The Office of the Pennsylvania Attorney General has confirmed that the Attorney General did not write the letter and has never given an opinion on the case of *Wiegand* v. *Wiegand* which Phyllis cited.

In this letter, Ms. Larkin grossly exaggerated what Phyllis said, and then proceeded to make a blanket charge that Phyllis made "incorrect representations." But she did *not* dispute anything Phyllis said about the recent Pennsylvania *Wiegand* case -- as, indeed, she could not, because Phyllis had accurately stated its hurtful effects on the rights of wives. Ms. Larkin sidestepped the *Wiegand* case by referring to an earlier case *(Lukens v. Lukens)* in which *other* rights of wives were upheld by the Court on the ground that *those* rights were reciprocal.

However, when Barbara Walters read the letter on the TODAY Show, she deleted the line from Ms. Larkin's letter which named the *Lukens* case. Barbara thus gave the wrong impression that the letter refuted what Phyllis said about the *Wiegand* case, when in fact it did not.

This TODAY Show experience proves conclusively that the proponents of "equal rights" are not willing to give equal rights to the opponents of ERA, and that the proponents cannot win when both sides are given an equal opportunity to present their case. They can only score when the opponents of ERA are blacked out of the media.

You are urged to write NBC, 30 Rockefeller Plaza, New York, N.Y. 10020, and:

(1) Protest the unfairness of conducting a debate, and then allowing the proponents to have additional time two weeks later to attack the opponents.

(2) Protest the unfairness of reading an attack on Phyllis Schlafly when she was not present to defend herself.

(3) Request time for Phyllis Schlafly to answer the unfair attack under the Fairness Doctrine of the FCC.

Colorado Case: *Colorado* v. *Elliott*

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, STATE OF COLO.
PEOPLE OF THE STATE OF COLORADO VS. LARRY LEE ELLIOTT, Defendant
Criminal Action No. 68844 **Judgment and Order**

The Defendant's Motion to Dismiss was argued before this Court on Friday, May 18, 1973. Deputy District Attorney David Costello appeared for the People and Deputy State Public Defender Duncan Cameron appeared for the defendant. Briefs were filed on behalf of the People and the defendant, and the Motion to Dismiss was taken under advisement.

The defendant, Larry Lee Elliott, is charged with felony non-support pursuant to CRS 1963 43-1-1. The question to be decided is whether the statute is unconstitutional under either the federal or state constitutions in that it applies only to men.

On January 11, 1973, the Equal Rights Amendment to the Colorado Constitution became effective. Article II, Section 29 states as follows:

"Equality of rights under the law shall not be denied or abridged by the State of Colorado or any of its political subdivisions on account of sex."

This Court is fully aware of the public policy which stresses the importance of requiring fathers to support their children. The Court recognizes that the father is usually in a better position to support the child than the mother. The Court also recognizes that child support is the right of the child and not the parent. However, clearly both parents have the obligation of supporting their children under both statutory and case law in Colorado. In an individual situation, it may be either the father or the mother who is better able financially to support the child.

A careful reading of No. 43-1-1 indicates that this statute applies only to males and cannot be read to apply to both sexes. *It is clear that only men can be prosecuted. for nonsupport, and only men can be convicted of a felony under this law. It is just this type of sexual discrimination under the law that the Equal Rights Amendment prohibits. The sexual discrimination contained in this statute is clearly in violation of the Equal Rights Amendment to the Colorado Constitution, and has been since January 11, 1973.*

Whether or not the sexual discrimination contained in No. 43-1-1 had strong justification in earlier years, or whether or not this classification by sex is permissible under the Equal Protection Clause of the federal Constitution, need not be decided here.

Accordingly, the Motion to Dismiss is granted on the specific grounds that the Non-Support Statute violates Article II, Section 29 of the Colorado Constitution.

BY THE COURT this 8th day of June, 1973.

/s/ ZITA L. WEINSHIENK

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