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quirement so that defendants may appeal from either the motion for new trial or judgment and sentence. The rules for Oklahoma criminal and civil appellate practice would then be identical on this point. Furthermore, appellate review should no longer be confined to allegations of error raised in the motion for new trial, if one is filed. This rule, especially in its application, has worked hardships on defendants whose trial attorneys have not recalled and recounted alleged trial errors to the satisfaction of the Court of Criminal Appeals.⁹² The court has other theories of review available to dispose of trial irregularities, for example, a failure to object, to move to suppress evidence, or to request instructions, overwhelming evidence of guilt, and the harmless error doctrine. Eliminating the motion for new trial as a method for limiting appellate review will not necessarily increase a defendant's chances for relief. It will, however, promote consistency in results, reduce confusion to practicing attorneys, and encourage confidence in the Oklahoma criminal appellate process.

Anne M. Moore

Domestic Relations: Oklahoma's Live-In Lover Statute: § 1289(D) of Title 12

Since 1965 the Oklahoma statutes have provided for downward modification or termination of support alimony in the event of either spouse's death or the recipient's remarriage.¹ In 1979 the Oklahoma legislature added a third

92. It can be argued that limiting appellate review to errors raised in the motion for new trial forces criminal defense attorneys to do a better job of representing their clients at trial. On the other hand, many criminal defendants in Oklahoma qualify for court-appointed attorneys, some of whom have little experience in criminal law and no incentive to develop better skills. Furthermore, the goal of improving client representation must be balanced against the cost to the defendant who suffers when his attorney does not understand the rules of criminal appellate procedure relating to the motion for new trial. Unlike the defendant in a civil case, the criminal defendant stands to lose his liberty, and perhaps even his life, if his attorney forfeits trial errors through procedural default.

Perhaps the goal of improving the quality of client representation could be met if the Court of Criminal Appeals were more willing to grant appellate relief based on a finding that the defendant was inadequately represented at trial. In *Johnson v. State*, 620 P.2d 1311 (Okla. Crim. App. 1980), the court abandoned the farce and mockery standard for judging ineffective assistance of counsel and adopted a reasonably competent assistance of counsel standard. No defendant in Oklahoma has ever successfully pursued an ineffective assistance of counsel claim, at least not in any published decision. A new trial was granted to the defendant in *Smith v. State*, 650 P.2d 904 (Okla. Crim. App. 1982) on grounds that appear to be ineffective assistance, but the court raised the error itself after appellate counsel, who was also trial counsel, failed to do so. No appellant has met the "heavy burden" required, even under the lower standard the court has adopted. *See, e.g., Taylor v. State*, 659 P.2d 362, 365 (Okla. Crim. App. 1983).

1. 12 OKLA. STAT. § 1289 (1981).

basis for modification: voluntary cohabitation of a former spouse with a member of the opposite sex.² In *Roberts v. Roberts*,³ the Oklahoma Supreme Court recently construed this newly established ground for modification. This note challenges the constitutionality of the so-called "live-in lover" statute on the basis of equal protection violations. It also suggests that the applicable case law demonstrates that the Oklahoma Supreme Court is showing more interest in a moral philosophy than in dispensing justice.

Purpose and Scope of Section 1289(D)

Presumably the Oklahoma legislature added cohabitation as a basis for reducing or terminating alimony to equalize the previous disparate treatment between financially emancipated alimony recipients who cohabit without remarriage and those who do remarry.⁴ Although this may be a legitimate, even a desirable, state objective, the goal could and should have been effectuated by language far less broad than the statute employs. The statute provides:

The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate support payments upon proof of substantial change of circumstances relating to need for support or ability to support.⁵

If the intent of the legislature was to put cohabiting alimony recipients on an equal footing with remarried alimony recipients, application of the statute should have been expressly limited to a former spouse who is a recipient of alimony and cohabits with a member of the opposite sex. In its present language, the *payor of alimony* who cohabits with a member of the opposite sex may invoke the statute. Thus, as was pointed out in a recent law review article,⁶ a payor whose ability to pay diminished because of his cohabitation with a member of the opposite sex may ask the court to reduce or terminate his obligation to pay alimony.

Because the classification of persons into categories can imply inequality, the equal protection clause operates as a limitation on permissible legislative classification.⁷ To determine whether a classification is reasonable, it is necessary to look beyond the classification to the purpose of the law. Afford-

2. 12 OKLA. STAT. § 1289(D) (1981).

3. 657 P.2d 153 (Okla. 1983).

4. *Id.* at 157 (Opala, J., concurring).

5. 12 OKLA. STAT. § 1289(D) (1981).

6. Comment, *The Effect of Third Party Cohabitation on Alimony Payments*, 15 TULSA L.J. 772, 786 (1980).

7. For a general discussion of the equal protection clause, see Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341 (1949).

ing relief to a payor whose ability to pay is reduced because of his own cohabitation is clearly unrelated to the purpose of the live-in lover statute.

Even if the courts avoid this fundamental unfairness by refusing to reduce or terminate the obligation in such a circumstance,⁸ the statute nevertheless fails in its attempt to equalize the status of cohabiting and remarried alimony recipients because it provides only for reduction or termination of alimony payments.⁹ When a recipient of alimony remarries, the former spouse's duty to support terminates,¹⁰ but at the same time the new spouse assumes the duty to support.¹¹ When a recipient of alimony chooses to cohabit rather than remarry, however, the former spouse's duty to support may now be terminated, but the paramour does not assume the duty to support.¹² If the paramours end their relationship, the former recipient has no recourse against either the former spouse or the former lover and must look to the state for any additional support that is needed.

To avoid this situation, the legislature should have provided that alimony be suspended or waived during the cohabitation so long as the need for support is reduced.¹³ Should the paramour move out, however, the payor would resume the obligation to support the recipient. Only then would the statute bear a rational relationship to a legitimate state objective.

Because the statute does not limit the basis for modification to cohabitation of the recipient spouse,¹⁴ and because the requisite change of circumstances may relate to the *ability* to support as well as the need for support,¹⁵ the statute is too broad to bear a rational relationship to the state's purported goal of affording relief to an alimony payor whose recipient has become financially emancipated. The United States Supreme Court in *Orr v. Orr*¹⁶ assumed forthrightly that "if upon examination it becomes clear that there is no substantial relationship between the statutes and their purported objectives, this may well indicate that these objectives were not the statute's goals in the first place."¹⁷

8. The court is of the opinion that even if the statute contains unfair elements, it must apply it anyway: "It is the duty of courts to give effect to legislative acts, not to repeal or circumvent them. A court is not justified in ignoring the plain words of the statute. [Citation omitted]." *Allgood v. Allgood*, 626 P.2d 1323, 1327 (Okla. 1981). Since the wording of the statute is so plain, presumably the court will not ignore it.

9. 12 OKLA. STAT. § 1289(D) (1981).

10. 12 OKLA. STAT. § 1289(B) (1981).

11. 32 OKLA. STAT. § 3 (1981).

12. *Allgood v. Allgood*, 626 P.2d 1323, 1326 (Okla. 1981).

13. This was suggested by Justice Doolin in *Smith v. Smith*: "When the cohabitation has ceased, the court should modify support alimony only for those times when the cohabitation, and hence the need for support alimony, was viable." 652 P.2d 297, 300 (Okla. 1982) (Doolin, J., dissenting).

Tennessee's corresponding statute provides for suspension only. TENN. CODE ANN. § 36-820(a)(3) (1977).

14. The statute reads: "The voluntary cohabitation of a former spouse with a member of the opposite sex . . ." 12 OKLA. STAT. § 1289(D) (1981) (emphasis added).

15. *Id.*

16. 440 U.S. 268 (1979).

17. *Id.* at 281 n.10.

If relief to the alimony payor is not the legislature's goal, it appears that Justice Simms was correct when he concluded in his dissenting opinion in *Roberts* that, "The provision is not concerned with need, but sexual conduct."¹⁸ Cohabiting recipients "are penalized by this provision in the exercise of their rights to privacy, and freedom of association in their own homes for behavior which is lawful and wholly unrelated to the purpose of alimony for support."¹⁹

Oklahoma Supreme Court Cases

Although the 1983 case of *Roberts v. Roberts*²⁰ was the first case to which the Oklahoma Supreme Court found the live-in lover statute to be applicable, earlier cases set the foundation for the court's position. In the 1981 case of *Allgood v. Allgood*,²¹ the former husband asked that the court terminate his obligation to pay alimony because his former wife was living with her boyfriend. The court noted that section 1289(D) did not affect the parties in this case because they were divorced before the amended provision became effective.²²

Implicit in the court's conclusion was that section 1289(D) acts prospectively only.²³ Consequently, all alimony recipients divorced before October 1, 1979 are free to cohabit and accept support from their paramours without jeopardizing the right to receive support from their former spouses. Further, *Allgood* suggests that although a husband has a legal duty to support his wife that can continue after divorce in the form of support alimony, a paramour has no such corresponding duty either during the cohabitation or afterward.²⁴ Once the cohabitation ends, if the alimony has been terminated, the court is without jurisdiction to order either the former spouse or the former paramour to resume or continue contributing support to the former recipient.

Though section 1289(D) requires proof of a substantial change of circumstances relating to the need or the ability to pay, the legislature did not see fit to include guidelines in the statute. That leaves the courts as the sole determiners of what constitutes a substantial change. The prevailing test for economic need in states having statutory provisions for modifying alimony based on change of circumstances is the test defined by the New Jersey Superior Court in *Garlinger v. Garlinger*.²⁵ The *Garlinger* test acknowledges two situations where there may be a change of circumstances sufficient to entitle the alimony payor to relief: (1) where the recipient former spouse is being supported in whole or in part by her paramour, or (2) where the

18. *Roberts v. Roberts*, 657 P.2d 153, 159 (Okla. 1983).

19. *Id.* at 158.

20. *Id.* at 153.

21. 626 P.2d 1323 (Okla. 1981).

22. *Id.* at 1325.

23. This later became an explicit ruling in *Smith v. Smith*, 652 P.2d 297, 298 (Okla. 1982).

24. *Allgood v. Allgood*, 626 P.2d 1323, 1326 (Okla. 1981).

25. 137 N.J. Super. 56, 347 A.2d 799 (1975).

paramour resides with the recipient without contributing toward food or normal household bills.²⁶ In the latter situation, there may be a reasonable inference that the alimony is being used, at least in part, for the benefit of the paramour.²⁷

In *Allgood*, the Oklahoma court cited *Garlinger* in supporting the husband's contention that the alimony should be terminated based on his former wife's changed circumstances.²⁸ The court distinguished *Garlinger* on the basis that New Jersey had a statute providing for modification for change in circumstances, but Oklahoma did not.²⁹ Because the court merely distinguished *Garlinger* and did not comment on the desirability of the test pronounced therein, it is possible that the *Garlinger* test may yet be adopted to determine whether a change of circumstances is substantial enough to afford the alimony payor relief.

Finally, the court noted in *Allgood* that section 1289(D) does not respond to those situations wherein the alimony recipient receives aid from someone outside the conjugal relationship, e.g., parents, a sibling, or roommates of the same gender.³⁰ In this remark, the majority implies that section 1289(D) is underinclusive. Of course, the legislature is free to remedy a general problem in a piecemeal fashion without subjecting the statute to constitutional infirmity. If the implied underinclusiveness of section 1289(D) was not a hint of a constitutional problem, *Allgood* suggests the court's receptiveness to an even more extensive statute that would afford relief to an alimony payor whose recipient's need diminished because of aid received, for example, from her parents.

The Oklahoma Supreme Court's next opportunity to comment on the live-in lover statute was in the 1982 case of *Smith v. Smith*.³¹ The implicit ruling in *Allgood*³² that section 1289(D) is prospective only became explicit in *Smith* when a much divided court held that the section does not apply to grants of support alimony imposed prior to the enactment of the statute.³³ In his special concurrence, Justice Opala agreed with the plurality in holding that the statute is only prospective in nature.³⁴ Justice Simms also filed a special concurrence, but did not indicate whether the statute should be applied only to grants of alimony imposed after its enactment.³⁵ The remaining four justices dissented. In order for a case to set a binding precedent, five justices

26. *Id.*, 347 A.2d at 799, 803.

27. *Id.* It is beyond the scope of this note to examine whether the payee's use of the money is constitutionally protected as a fundamental privacy right.

28. *Allgood v. Allgood*, 626 P.2d 1323, 1325 (Okla. 1981).

29. *Id.* at 1326.

30. *Id.* at 1327.

31. 652 P.2d 297 (Okla. 1982).

32. *Allgood v. Allgood*, 626 P.2d 1323, 1325 (Okla. 1981).

33. *Smith v. Smith*, 652 P.2d 297, 298 (Okla. 1982). The statute became effective October 1, 1979. Justice Wilson, writing for the plurality, was joined by Chief Justice Irwin and Vice Chief Justice Barnes.

34. *Id.* at 299.

35. *Id.* at 298, 299. Justice Simms would strike § 1289(D) as unconstitutional.

must concur in the result. In *Smith*, only four justices indicated agreement with the specific holding; accordingly, the holding is not binding on future cases.

Justice Doolin wrote for the majority in *Allgood*³⁶ wherein the court noted that section 1289(D) had no effect on a support alimony award granted before the statute was enacted.³⁷ In *Smith*, however, he authored a strong dissent to the contrary,³⁸ stating that although section 1289(D) cannot be retroactively applied to “terminate support alimony due and owing *prior* to October 1, 1979,”³⁹ support alimony that becomes due and owing after that date is subject to termination under the statute.⁴⁰ He persuasively reasoned that:

A judgment, particularly a support alimony judgment, calling for periodic payments, may fix or define vested property rights but usually is not ipso facto a vested right in itself. Otherwise the Legislature could not have allowed for the termination of support alimony upon the death or remarriage of the recipient, or upon the voluntary cohabitation of the recipient . . . Each payment becomes *vested only when due*, and not before.⁴¹

Because this reasoning is the sounder approach, one can hope that it will attain majority status the next time the court considers the issue. Justice Doolin went on to suggest that:

When the cohabitation has ceased, the court should modify support alimony only for those times when the cohabitation, and hence the need for support alimony, was viable. The object of the statute should not be to punish the spouse who cohabits with a member of the opposite sex; the aim is to allow modification of support alimony when need for such has decreased or ceased to exist. We cannot, and will not dictate our personal moral philosophy.⁴²

Although there is no statutory provision to modify support alimony on a temporary basis, or to reinstate or increase such after it has been terminated or reduced, suspending payments for only the time when need for support has decreased or ceased to exist would better serve the purpose of the statute. This assumes, of course, that the purpose is to grant relief to alimony payors whose recipients no longer need the support.

Justice Opala’s special concurrence suggests that section 1289(D) is unnecessary, that the court already had the power to terminate support alimony

36. *Allgood v. Allgood*, 626 P.2d 1323 (Okla. 1981).

37. *Id.* at 1325.

38. *Smith v. Smith*, 652 P.2d 297, 299 (Okla. 1982).

39. *Id.*

40. *Id.*

41. *Id.* at 299, 300 (emphasis added).

42. *Id.* at 300.

on the basis of cohabitation under section 1289(B), which provides for termination upon remarriage:

A nonspousal union based in a common household may create a bond of economic interdependence that bears all the earmarks of a matrimonial partnership. When interposed for the purpose of terminating support alimony, such bond should be treated as a *de facto* remarriage within the purview of 12 O.S. 1981 § 1289B.⁴³

It is unclear what Justice Opala means by the phrase "*de facto* remarriage." *Black's Law Dictionary* defines *de facto* as "in fact, in deed, actually,"⁴⁴ then goes on to explain that the phrase is used to characterize "a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate."⁴⁵ What is clear is that Justice Opala advocates that the law recognize cohabitation as the equal of remarriage, at least for the purpose of alimony modification. The question then arises: If such a bond were treated as a *de facto* remarriage for purposes of termination of support alimony, would the bond receive the same treatment for purposes of determining whether the duty to support exists under section 3 of Title 32 of the Oklahoma Statutes? If it were, the plight of the alimony recipient whose lover moves out after the support alimony has been terminated would be solved. Logically, then, the state would simply charge the paramour with the duty to support. However, because Justice Opala has already advanced this proposal in at least two cases without so much as a comment from his brethren,⁴⁶ it is doubtful that his view will attain majority status in the present court.

In January 1983, the Supreme Court of Oklahoma squarely addressed the live-in lover statute in *Roberts v. Roberts*.⁴⁷ In that case the former husband filed an application to modify the support alimony award granted in the divorce decree on the grounds that there had been a substantial change in circumstances relating to the need for such support and that his former wife was living in a "private conjugal relationship." The former wife appealed the trial court's termination of the support alimony award.

The appellant alleged that the trial court erred in its finding of a substantial change of circumstances that would warrant termination of support alimony and that a private conjugal relationship existed.⁴⁸ She also attacked the statute as being violative of due process and equal protection.⁴⁹

Without even noting the facts, the majority of the court agreed that the

43. *Id.* at 299.

44. BLACK'S LAW DICTIONARY 375 (5th ed. 1979).

45. *Id.*

46. *Roberts v. Roberts*, 657 P.2d 153, 157 (Okla. 1983); *Smith v. Smith*, 652 P.2d 297, 299 (Okla. 1982).

47. 657 P.2d 153 (Okla. 1983).

48. *Id.* at 154.

49. *Id.*

trial court had spent “considerable time examining the evidence and listening to the witnesses and absent an abuse of discretion this Court will not reverse a discretionary decision by a trial court based on the evidence.”⁵⁰ The court did not address or pronounce a standard to be used by the trial courts because the appellant did not argue that an improper test had been applied.⁵¹

Although the court did not provide guidelines for determining when a change of economic need is substantial enough to merit reduction or termination of support alimony, the court implied what it would consider a “private conjugal relationship” by finding that the trial court had not abused its discretion in its factual finding. The dissent detailed the facts that the majority did not: The appellant and her boyfriend had spent twenty nights together over a period of approximately six months,⁵² an average of less than one night per week. If a change of financial need is this easy to prove, support alimony is indeed easily jeopardized.

Appellant further urged that the statute is violative of due process and equal protection because it does not allow a party the right to seek an increase in support alimony upon showing substantial change of circumstances. Moreover, the described cohabitation penalizes only the payee, not the payor who also engages in such conduct.⁵³

To the former allegation, the court answered that it has no power to increase the original support award because there is no statutory authority to do so.⁵⁴ Concluding that there is nothing unconstitutional in section 1289(D),⁵⁵ the court called appellant’s latter argument ludicrous. After all, said the court, “what possible bearing would that have on the need for support of the recipient spouse?”⁵⁶ The dissenting opinion answered the majority by pointing out that “sexual conduct—by either former spouse—has no bearing on the recipient’s need for support.”⁵⁷

Before the live-in lover statute was enacted, the only grounds for modification were death or remarriage of the recipient.⁵⁸ Both directly related to need.

50. *Id.* at 155.

51. *Id.* at 158 (concurring opinion). Thus, it is possible that at some later date the *Garlinger* test will be adopted.

52. *Id.* at 160 (dissenting opinion). Compare the definition of cohabitation in connection with common-law marriage:

That parties occupied [the] same room, or bed, overnight, does not constitute “cohabitation” as [this] term is employed in connection with common-law marriage, but, with respect to such marriage, the word means a living or residing together of a man and woman ostensibly as husband and wife, and ordinarily carries with it the *idea of a fixed residence*, and does *not* contemplate a *casual sojourning together*.

In re Miller’s Estate, 182 Okla. 534, 78 P.2d 819 (1938) (emphasis added).

53. *Roberts v. Roberts*, 657 P.2d 153, 154 (Okla. 1983).

54. *Id.* at 154-55.

55. *Id.*

56. *Id.*

57. *Id.* at 161.

58. 12 OKLA. STAT. § 1289(A), (B) (1981).

Section 1289(D) in some instances may relate to need.⁵⁹ As Justice Simms pointed out in dissent, the payor's ability to support is irrelevant in all other circumstances because the purpose of support alimony is the need of the recipient.⁶⁰ Yet when cohabitation is involved, the issue assumes sudden relevance.⁶¹

Justice Simms further explained that in order to support the notion that section 1289(D) is based on need, "it would be necessary to satisfactorily show that sexual activity in a cohabiting relationship represents a sufficiently legitimate, accurate proxy for financial need."⁶² Because such conduct is wholly unrelated to need, Justice Simms concluded that the classification is gratuitous and therefore unconstitutional.⁶³

Constitutionality of Section 1289(D)

The dissent in *Roberts* analyzed the unconstitutional elements in section 1289(D).⁶⁴ Equal protection is, of course, the guarantee that persons in similar circumstances will be dealt with in a similar manner and that people of different circumstances will not be treated as if they were the same.⁶⁵ The live-in lover statute violates both of these rules.

For example, an alimony recipient who is supported by her wealthy paramour but does not share his residence is similar to the alimony recipient who shares living expenses with her live-in lover. Although both have a reduced need for support alimony, the statute does not treat them in the same way. The recipient of support alimony with a paramour who has enough money to give financial assistance while maintaining separate households may in fact be in less need of continued support alimony than the recipient who must cohabit with her lover out of financial necessity, yet only the latter is subject to reduction or termination of the alimony. In other words, the statute discriminates against those who decide to cohabit for the reason of financial necessity.

In a special concurrence in *Roberts*, Justice Opala opined that the classification is permissible because it provides similar treatment for married and unmarried alimony recipients who are similarly situated.⁶⁶ The fault of this reasoning lies in the fact that remarried recipients have new spouses who are legally obligated to support them,⁶⁷ but the unmarried recipients have no

59. For example, when one of the former spouses cohabits and the recipient's need is reduced, a change in the recipient's need is not a requirement because of the alternate provision "or ability to pay." In fact, the movant need only allege voluntary cohabitation in his motion to modify. *Id.* § 1289(D).

60. *Roberts v. Roberts*, 657 P.2d 153, 159 (Okla. 1983).

61. *Id.*

62. *Id.* at 160.

63. *Id.*

64. *Id.* at 159-61.

65. Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 344 (1949).

66. *Roberts v. Roberts*, 657 P.2d 153, 157 (Okla. 1983).

67. See 32 OKLA. STAT. § 3 (1981).

one with such an obligation.⁶⁸ This fact makes the two groups of recipients dissimilar, yet both the statute and the court in *Roberts* treat them as if they were the same.

When these disparities are added to the possibility that a payor who cohabits and has a reduced ability to pay may be relieved from his duty to pay support alimony, the statute creates on its face a classification unrelated to its purpose. Support alimony is designed to provide maintenance for the dependent spouse. Once the individual becomes self-supporting, the payor should be released from the obligation to provide support. The live-in lover statute creates a class of alimony recipients who are subject to having their support terminated. In order for this statute to be constitutionally permissible, the class of recipients must be related to the purpose of the statute, that is, the recipient must no longer be financially dependent upon the payor. The class of recipients in the live-in lover statute includes recipients who are still financially dependent, but whose payors have a diminished ability to contribute to the recipient's support. As the dissenting opinion in *Roberts* stated, the classification does not satisfy even the lenient rational relationship standard, much less the stricter test requiring, as here, that where a fundamental right is involved, only a compelling state interest could justify the statute.⁶⁹

Conclusion

As it is presently written, Oklahoma's live-in lover statute violates the equal protection clause and is therefore unconstitutional. Although the Oklahoma Supreme Court held to the contrary in *Roberts*, not only was the court divided but the appellant advanced weak arguments. The appellant based her attack on the statute on the grounds that it does not allow for upward modification upon substantial change of circumstances and that it penalizes payees who cohabit but not payors who cohabit. A better strategy would have been to show the court how the impermissible classification created by the statute is not related to the purpose of the law, that is, the statute both includes persons it should not and fails to include persons it should. Because the court was so divided, it is at least possible that if and when a valid equal protection challenge reaches the Oklahoma Supreme Court, the live-in lover statute will be stricken as unconstitutional.

A provision for termination or, even better, suspension of alimony based on need could be made without an impermissible classification. The Tennessee statutes provide a useful and desirable model:

In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is thereby raised that:

68. *Allgood v. Allgood*, 626 P.2d 1323, 1326 (Okla. 1981). Justice Opala's opinion may be justified since he expresses the view that there is a de facto remarriage, provided, of course, that if there is a de facto remarriage, the paramour has a duty to support both during and after the cohabitation.

69. *Roberts v. Roberts*, 657 P.2d 153, 159 (Okla. 1983).