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Marvin M. Moore

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PARENTS' SUPPORT OBLIGATIONS TO THEIR ADULT CHILDREN

by

MARVIN M. MOORE*

I. INTRODUCTION

The average parent is likely to assume that his legal obligations to his children terminate upon the child's attainment of majority. This was, in fact, the common law rule,¹ and it is true in a few states today.² However, most jurisdictions, through statute or court decision, have made parents responsible for the maintenance of their physically or mentally incapacitated adult children,³ and a number of states have authorized courts to order divorced parents to help defray their post-majority childrens' high school and/or college expenses.⁴ The purpose of this article is to examine and evaluate the states' support laws insofar as they impose an obligation on parents to provide financial assistance to their adult children.

II. CLASSIFICATION OF SUPPORT LAWS

State child support laws may be classified into the following four groups:

1. Fourteen jurisdictions terminate parental support responsibility when the child reaches legal adulthood except in the situation where a divorcing parent has expressly agreed to assume some additional obligation.⁵ About half of these states have support statutes which explicitly authorize a court to order a divorcing parent to help maintain his "minor" children⁶ (thereby excluding adult children from possible con-

*Professor of Law, The University of Akron School of Law. B.A., 1955, Wayne State University; J.D., 1957, L.L.M., 1960, J.S.D., 1968, Duke University.

¹Note, *Domestic Relations-Child Support — Parental Duty to Support a Subnormal Adult Child*, 48 Miss. L.J. 361 (1977).

²See *infra* note 5.

³See *Feinberg v. Diamant*, 389 N.E.2d 998, 1000 (Mass. 1979).

⁴Regarding parental liability through child's completion of high school, see *infra* note 13. Respecting parental responsibility for child's higher education expenses, see *infra* note 14 and see also Annot. 99 A.L.R.3d 322, 355-59 (1978).

⁵Ala., Conn., Ga., Ind., Kan., Mont., Neb., Nev., N.M., N.C., Tenn., Va., Wis., and Wyo. See *infra* notes 6 and 8.

⁶CONN. GEN. STAT. §§ 46b-56, 46b-66 (1981); KAN. STAT. ANN. § 60-1610 (1983); NEB. REV. STAT. § 42-364 (1983); N.M. STAT. ANN. § 40-4-7(B) (1978); N.C. GEN. STAT. §§ 110-128-129 (1975); TENN. CODE ANN. § 36-5-101(a) and (e) (1984); VA. CODE § 20-107.2 (1984).

Typical of this group is the Virginia statute, which provides in part: "Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce . . . the court may make such further decree as it shall deem expedient concerning the custody and support of the minor children of the parties." *Id.*

The North Carolina approach differs from that of the others by limiting support entitlement to "dependent children" and then defining a "dependent child" as "any person under the age of 18 [sic] who is not otherwise emancipated, married or a member of the armed forces of the United States." N.C. GEN. STAT. §§ 110-128-129.

sideration⁷), and the remaining jurisdictions have reached the same result through court decisions.⁸

2. Thirty jurisdictions impose responsibility on parents to support their adult children who are indigent and unable to maintain themselves.⁹ Nineteen of these states clearly limit the parents' duty to situations where the child is physically or mentally incapacitated,¹⁰ and statutes in nine states establish a parental support obligation whenever the child is needy and unable to maintain himself.¹¹ The distinction between the two concepts (incapacitated as contrasted with needy and unable to provide for oneself) appears to be largely one of semantics, however, for the writer has been able to find only one case in which a healthy (nondisabled) adult was held to be needy and unable to support himself and therefore entitled to a judicial award of parental financial help.¹²
3. Six states impose a duty on parents to support their children through high school, even though the child may attain the age of majority sev-

⁷See Note, *Support Obligations of the Noncustodial Parent for Private, Secondary, and College Education: Toward a Uniform & Equitable Resolution*, 16 SUFFOLK U.L. REV. 755, 780 (1982) [hereinafter cited as Note].

⁸Davenport v. Davenport, 356 So. 2d 205 (Ala. Civ. App. 1978); Sherrard v. Sherrard, 242 Ga. 611, 250 S.E.2d 474 (1978); Isler v. Isler, 422 N.E.2d 416 (Ind. Ct. App. 1981); Chrestenson v. Chrestenson, 180 Mont. 96, 589 P.2d 148 (1979); Norris v. Norris, 93 Nev. 65, 560 P.2d 149 (1977); Miller v. Miller, 67 Wis. 2d 435, 227 N.W.2d 626 (1975); Wantulok v. Wantulok, 67 Wyo. 22, 214 P.2d 477 (1950).

⁹Alaska, Ariz., Ark., Cal., Colo., D.C., Fla., Hawaii, Idaho, Ill., Iowa, Ky., La., Me., Md., Mass., Mich., Minn., N.H., N.J., N.D., Ohio, Ore., Pa., R.I., S.C., S.D., Tex., Utah, and Wash. See *infra* notes 10-11.

¹⁰The following ten jurisdictions have legislation providing that a parent can be made to support an adult child who is physically or mentally disabled: ARIZ. REV. STAT. ANN. § 25-320B (1976); CAL. CIV. CODE §§ 241(d), 242 (West 1983); D.C. CODE ANN. § 21-586 (1973) (duty limited to institutionalized mentally impaired children); HAWAII. REV. STAT. § 580-47(a) (1983); ILL. REV. STAT. ch. 40 § 405.020 (1980); ME. REV. STAT. ANN. tit. 19, § 441 (1984); MD. FAM. LAW. CODE ANN. § 13-101 (1984); MINN. STAT. ANN. § 518.54 (1984); S.C. CODE ANN. § 20-7-420(17) (1981); TEX. FAM. CODE ANN. § 14.05 (Vernon 1961).

Court decisions in nine states have established a parental duty to financially aid a handicapped adult child: Arkansas (Petty v. Petty, 252 Ark. 1032, 482 S.W. 2d 119 (1972)); Colorado (Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983)); Florida (Fagan v. Fagan, 381 So. 2d 278 (Fla. Dist. Ct. App. 1980)-holding that a mentally impaired child is classified as "dependent" within the meaning of Fla. Stat. Ann. § 743.07 (1980)); Michigan (Parrish v. Parrish, 138 Mich. App. 546, 361 N.W.2d 366 (1984)-deciding that a divorced wife's voluntarily-assumed burden of caring for the parties' physically-incapacitated daughter entitled the wife to additional alimony); New Jersey (Kruvant v. Kruvant, 100 N.J.Super. 107, 241 A.2d 259 (1968)); Ohio (Castle v. Castle, 15 Ohio St. 3d 279, 473 N.E.2d 803 (1984)); Rhode Island (Siravo v. Siravo, 424 A.2d 1047 (R.I. 1981)); Utah (Kiesel v. Kiesel, 619 P.2d 1374 (Utah 1980)); Washington (Van Tinker v. Van Tinker, 38 Wash. 2d 390, 229 P.2d 333 (1951)).

¹¹ALASKA STAT. § 25.20.030 (1983); CAL. CIV. CODE § 206 (West 1981); IDAHO CODE § 32-1002 (1983); LA. CIV. CODE ANN. § 229 (West 1952); N.H. REV. STAT. ANN. § 546-A:2 (1980); N.D. CENT. CODE § 14-09-10 (1983); OR. REV. STAT. § 109.010 (1981); PA. STAT. ANN. tit. 62, § 1973 (Purdon 1968); S.D. CODIFIED LAWS ANN. § 25-7-6 (1976).

¹²Rebensdorf v. Rebensdorf, 169 Cal. App. 3d 138, 215 Cal. Rptr. 76 (1985) (holding that a divorced father could be ordered to continue child support payments to his eighteen-year-old son, who was classified as "in need," until the son finished high school).

California has been included in this group of states and in the immediately preceding group as well because California imposes both a general statutory obligation to financially aid one's indigent children who are unable to maintain themselves and a separate specific statutory duty to help support one's incapacitated

eral months before he earns his diploma.¹³

4. Courts in nineteen jurisdictions are given the authority, in some circumstances, to order divorced parents to financially contribute to their children's college education, even though such children have reached the age of eighteen.¹⁴ The states comprising the bulk of this group may be divided into three subgroups. Seven jurisdictions have established a post-eighteen age ceiling — usually twenty-one years — beyond which the child is no longer eligible for parental educational support.¹⁵ Some of these seven have merely kept the age of majority at twenty-one years for purposes other than voting.¹⁶ Three states limit parental responsibility for higher education expenses to those situations where the child is afflicted with a disability.¹⁷ Eight states impose no specific limitation on parental liability for college-related expenses, although some of them have established statutory or judicial guidelines.¹⁸

¹³California (*Rebensdorf v. Rebensdorf*, 169 Cal. App. 3d 138, 215 Cal. Rptr. 76 (1985)); DEL. CODE ANN. tit. 13, § 501(d) (1974) (must support child through high school or until he reaches age nineteen, whichever first occurs); MINN. STAT. ANN. § 518.54 (1979) (must support child through high school or until he attains age twenty, whichever happens first); OHIO REV. CODE ANN. § 3103.03 (Page 1974) ("so long as the child continuously attends on a full-time basis any recognized and accredited high school, even when such child has attained the age of majority"); OKLA. STAT. ANN. tit. 12, § 1277 (1977) ("for so long as the child is attending high school for the current school year in which the child reached his eighteenth birthday"); VT. STAT. ANN. tit. 15 § 651(d) (1981) (until child "attains the age of majority or terminated his secondary education, whichever is later").

¹⁴Ark., Fla., Hawaii, Ill., Iowa, Mass., Mich., Miss., Mo., N.H., N.J., Ohio, N.Y., Or., Pa., S.C., Utah, Wash., and W.Va. See *infra* notes 15, 17, 18.

¹⁵IOWA CODE ANN. § 598.1(2) (West 1977) (child is potentially entitled to educational financial aid until he reaches the age of twenty-two years); MASS. GEN. LAWS ANN. ch. 208 § 28 (West 1983); Mississippi (*Ranken v. Bobo*, 410 So. 2d 1326 (1982) (divorced father ordered to pay educational support for his daughter until she attained the age of twenty-one)); Missouri (*In re Marriage of Goodrich*, 622 S.W.2d 411 (Mo. Ct. App. 1981) (divorced father ordered to pay \$300 per month toward daughter's maintenance and college costs until she reached the age of twenty-one)); OR. REV. STAT. § 107.108 (1981) (child may qualify for parental educational support until he is twenty-one so long as he is "a student regularly attending . . . college or . . . a course of vocational or technical training . . ."); UTAH CODE ANN. § 15-2-1 (1983) (*but see* *Ferguson v. Ferguson*, 578 P.2d 1274 (Utah 1978), where it was decided that the court could not properly order child support beyond the age of eighteen for college educational purposes unless there was a finding of "special or unusual circumstances"); West Virginia (*Trembly v. Whiston*, 220 S.E.2d 690 (W.Va. 1975) (dictum)).

¹⁶This is true, for example, in Mississippi, see *Rankin v. Bobo*, 410 So. 2d 1326 (Miss. 1982), and, West Virginia, see *Trembly v. Whiston*, 220 S.E.2d 690 (W. Va. 1975).

¹⁷Arkansas (*Elkins v. Elkins*, 262 Ark. 63, 553 S.W.2d 34 (1977) (divorced father ordered to continue child support and medical payments as long as his dyslexic child remained in college)); Florida (*Fagan v. Fagan*, 381 So. 2d 278 (Fla. Dist. Ct. App. 1980) (mentally disturbed child who was attending junior college held to be "dependent" within meaning of Fla. Stat. Ann. § 743.07 (1980) and therefore still entitled to support from divorced father)); Ohio (*Mullanney v. Mullanney*, 15 Ohio St. 3d 279, 473 N.E.2d 803 (1984) (divorced father ordered to continue support payments to his handicapped daughter, who was a student at Wright State University)).

¹⁸HAWAII REV. STAT. § 580-41(a) (1983); ILL. REV. STAT. ch. 40, § 513 (1982) (statute contains support guidelines); Michigan (*Price v. Price*, 395 Mich. 6, 232 N.W.2d 630 (1975) (provision of a college education deemed to be within the purview of "exceptional circumstances" referred to by Mich. Comp. Laws § 552.17(a) (1981)); New Hampshire (*Heinze v. Heinze*, 122 N.H. 358, 444 A.2d 559 (1982)); New Jersey (*Schumm v. Schumm*, 122 N.J. Super. 146, 299 A.2d 423 (1973)); Ross v. Ross, 167 N.J. Super. 441, 400 A.2d 1233 (1979) (divorced father ordered to continue weekly support payments through daughter's completion of law school); New York (*Lord v. Lord*, 96 Misc. 2d 434, 409 N.Y.S.2d 46 (Fam. Ct. 1978) (court articulated support guidelines, adding that a parent would be ordered to help finance his child's college education beyond the age of twenty-one only in "exceptional circumstances")); Pennsylvania (*Deiley v. Deiley*, 281 Pa. Super. 288, 422 A.2d 172 (1980) (court recognized two support guidelines)); Washington (*Childers v.*

III. EVALUATION OF SUPPORT LAWS

A. *Laws Protective of Children About to Complete High School and Incapacitated Children*

The writer submits that those jurisdictions having the fairest and most defensible support laws are those that make parents responsible for the support of their adult children who are: (a) over eighteen years of age but still teenagers and within a few months of finishing high school; or (b) unable to maintain themselves, because of physical or mental disabilities. As to category (a), it does not seem excessively burdensome to hold a parent responsible to provide for his child through high school, and it is hardly an exaggeration to say that in this country today a person who lacks a high school diploma is both socially stigmatized and vocationally handicapped.¹⁹ The incapacitated child (category (b)) presents a different scenario. To make a parent liable for the potentially lifelong maintenance of such a child may be distinctly burdensome. Yet the child must be supported by someone; and, the parent, who — however blamelessly — brought the child into the world, would appear to bear a greater responsibility for his maintenance than does anyone else, including the state or deficit-ridden federal government.²⁰

B. *Laws Authorizing Educational Support for Adult Children*

In the writer's judgment, laws empowering courts to order divorced parents to help finance their adult children's college education cannot be justified. Since only a handful of states have statutes expressly authorizing the awarding of such support,²¹ a majority of the courts which have made such educational awards have based their rulings largely on policy considerations. It is believed that an examination of these policy reasons will disclose that they are of questionable merit.

Several courts have justified college educational awards with the argument that the promotion of higher education is beneficial both to the young adult and to the state.²² They have reasoned that in today's complex and technologically-oriented society the acquisition of a college education is almost a necessity if an individual is to become economically self-sufficient and able to

Childers, 89 Wash. 2d 592, 575 P.2d 201 (1978) (sons attending college full-time held to be "dependent" within the meaning of Rev. Code Wash. Ann. § 26.09.100 (1976)).

¹⁹By 1979 a higher percentage of Americans between the ages of eighteen and twenty-four had completed at least one year of college than had failed to graduate from high school. WORLD ALMANAC AND BOOK OF FACTS 270 (1981).

²⁰"The wants and weaknesses of children render it necessary that some person maintains them, and the voice of nature has pointed out the parent as the most fit and proper person. . . . The obligation on the part of the parent to maintain the child continues until the latter is in a condition to provide for its own maintenance . . ." Vol. 2 KENT. COMMENTARIES ON AMERICAN LAW 190 (1884).

²¹See *supra* notes 15, 18 and accompanying text.

²²Veron, *Parental Support of Post-Majority Children in College: Changes and Challenges*, J. FAM. L. 645, 648-49 (1978-79) (hereinafter cited as Veron).

make a contribution to society.²³ Hence, the state should make all reasonable efforts to facilitate higher education. Among the cases espousing this point of view are *Finn v. Finn*²⁴ and *Pass v. Pass*.²⁵ In the former case, the Supreme Court of Florida confronted the following situation. A 1971 divorce decree ordered a father, Leonard, to pay child support of \$100 per week until his twin sons attained their majority. In early 1973, Florida reduced the age of majority from twenty-one to eighteen but authorized courts to order support for "dependent" persons beyond the age of eighteen.²⁶ When his sons reached the age of eighteen in September 1973, Leonard stopped paying child support, although the sons had entered college. The boys' mother moved for an order compelling the resumption of such support, contending that a nondisabled adult child who is attending college full-time can classify as "dependent." The Supreme Court of Florida agreed with the mother and affirmed a ruling directing the resumption of child support. Said the court:

In this age of sophisticated technology and economic complexity with the necessity of development of special skills to qualify for pursuit of a trade, profession or to obtain employment, a person over 18 [sic] and less than 21 [sic] may indeed be dependent on the help of others to obtain what education and training is needed to be competitive in the economic system in which he must make his way. He and society have a right to expect his parents to meet that need to the reasonable extent of their ability to do so. . . .²⁷

In the *Pass* case, a divorced wife petitioned for an upward modification of child support to pay for the college expenses of the parties' daughter, who planned to enter the University of Mississippi in a few months. The Supreme Court of Mississippi affirmed a judgment granting the petition, saying:

The fact is that the importance of a college education is being more and more recognized in matters of commerce, society, government, and all human relations, and the college graduate is being more and more preferred over those who are not so fortunate. No parent should subject his worthy child to this disadvantage if he has the financial capacity to avoid it

We are living today in an age of keen competition, and if the children of today who are to be the citizens of tomorrow are to take their rightful place in a complex order of society and government, and discharge the duties of citizenship as well as meet with success the responsibilities devolving upon them in their relations with their fellow man, the church,

²³*Id.*

²⁴312 So. 2d 726 (Fla. 1975).

²⁵238 Miss. 2d 449, 118 So. 2d 769 (1960).

²⁶FLA. STAT. ANN. § 743.07 (West 1973).

²⁷*Finn*, 312 So. 2d at 731. *But see* Kern v. Kern, 360 So. 2d 482, (Fla. Dist. Ct. App. 1978); *See infra* text accompanying notes 50 and 51.

the state and nation, it must be recognized that their parents owe them the duty to the extent of their financial capacity to provide for them the training and education which will be of such benefit to them in the discharge of the responsibilities of citizenship. It is a duty which the parent not only owes to his child, but to the state as well, since the stability of our government must depend upon a well-equipped, a well-trained, and well-educated citizenship.²⁸

At least two responses can be made to the "beneficialness-of-higher-education" argument. First, merely because a given social result, such as the development of a well educated citizen, is generally deemed to be worthwhile, it does not follow that the state should compel nonparticipating next-of-kin (the adult student's parents) to finance the achievement of this result. For example, it is presumably desirable that restitution be made to the victims of intentional torts, and nearly all states have, accordingly, enacted statutes imposing liability on parents for the willful torts of their minor children.²⁹ Yet, this liability is not extended to torts committed by the parents' *adult* children.³⁰ Secondly, if a college-educated populace is clearly beneficial to the *state*, then arguably the state, rather than the student's parents, should pay for such education. Yet, although nearly all states provide publicly-subsidized state universities, only California has undertaken a sweeping commitment to providing higher education at public expense.³¹

Some courts and writers have defended education-related support awards with the observation that college costs have risen to the point where the great majority of young people cannot afford to attend college full-time without outside help.³² One writer has stated that "(a)s young adults have extended their studies beyond the high school level, reliance on the financial support of parents has become prevalent, making economic autonomy at the age of majority the exception rather than the rule"³³ "With the escalating costs of attending college, courts must be willing to consider alternative sources . . . to

²⁸*Pass*, 238 Miss. 2d at 453, 118 So. 2d at 773. *Accord* *Khalaf v. Khalaf* 58 N.J. 63, 71-72, 275 A.2d 132, 137 (1971).

²⁹W. PROSSER & R. KEETON, *THE LAW OF TORTS* 913 (5th ed. 1984).

³⁰For example, the Ohio statute dealing with parents' responsibility for the torts of their children reads as follows:

Any owner of property is entitled to maintain an action to recover actual damages in any amount not to exceed \$3,000 from the parents, having the custody and control of a minor under the age of eighteen years who willfully damages property belonging to such owner, or who commits acts cognizable as a theft offense

OHIO REV. ANN. § 3109.09 (Page 1978).

³¹E. KUNZI, *THE CALIFORNIA EDUCATION CODE* 15, 25 (1978).

³²Comment, *Does a Florida Dissolution Court Possess Authority to Compel Child Support of Healthy, Majority Age Children Who are Attending College?* 9 FLA. ST. U.L. REV. 107, 108-109 (1981). "With legal majority now routinely preceding economic autonomy, the issue has become whether the phrase 'dependent person' includes those offspring who are attending college" *Id.* at 108.

³³Note, *supra* note 7, at 173.

supplement any contribution by the noncustodial father."³⁴ In *Risinger v. Risinger*,³⁵ the Supreme Court of South Carolina made a similar statement while affirming a ruling ordering a divorced father to pay his nineteen year-old daughter \$100 per month as long as she remained a full-time college student in good standing and did not marry. Deciding that an adult child's desire and aptitude for higher education constituted an "exceptional circumstance" within the meaning of the state's support statute,³⁶ the court noted:

Children over 18 [sic] with a physical or mental disability, and children over 18 [sic] in need of further education, have much in common. In each case, the child's ability to earn is either diminished or entirely lacking Were we to construe the act narrowly, children without independent means would often be unable to finish even high school.³⁷

That going to college has become expensive is indisputable. The total annual average cost at a private educational institution in this country is now \$9,659 for a resident student, and such cost at a public institution is \$5,314.³⁸ It is nevertheless questionable whether a divorcing parent should be made to help defray his post-majority child's college expenses. Such a parent is typically already undergoing some financial strain as a result of the divorce, and since *most* jurisdictions do not (as of yet) mandate such an expenditure, he is not likely to have anticipated it. Moreover, as will be discussed more fully later,³⁹ parents who remain married are not compelled to make any contribution to their adult children's higher education.⁴⁰ It would seem that the fairest course of action would be to let the post-majority children of divorced parents rely on the same funding sources that their counterparts from intact marriages utilize — full-time employment coupled with part-time enrollment or, alternatively, part-time jobs, student loans, and *voluntary* financial aid from their parents.

Finally, a few authorities have advanced the argument that the designation of an arbitrary age — the age of majority — as automatically ending parental support liability is unduly rigid and therefore inequitable. For instance, one writer has declared, "Age is merely one factor to be considered, and such an arbitrary standard should not be controlling From society's point of view, setting a child on his own at age 18 [sic] or 21 [sic] may do him real

³⁴*Id.* at 774.

³⁵273 S.C. 36, 253 S.E.2d 652 (1979).

³⁶South Carolina Code authorizes the family court to make post-majority support orders "where there are physical or mental disabilities of the child or other exceptional circumstances that warrant it" S.C. CODE ANN. § 14-21-810(b)(4) (Law. Co-op 1982).

³⁷*Risinger*, 273 S.C. at 36, 253 S.E.2d at 653.

³⁸*Akron Beacon Journal*, Aug. 11, 1985, at 12, col. 1. The costs for a commuting student are \$8,347 and \$4,240 respectively. *Id.*

³⁹*See infra* Part IV.

harm."⁴¹ In *Schumm v. Schumm*,⁴² a New Jersey court echoed this view when it ordered a divorced father to continue paying support of twenty-five dollars per week for his eighteen-year-old son, who was a college student. Said the court:

There is no fixed age in the law when emancipation occurs In its simplest terms, the present act concerning minors deems every person 18 [sic] or more years of age to be an adult, just as prior law deemed persons 21 [sic] or more years of age to be adults When a person reached 21 [sic] emancipation was not automatic. It was prima facie evidence of 'but not necessarily emancipation'⁴³

This argument fails to consider that the establishment of an age of majority, for any purposes, necessarily involves some arbitrariness and inevitably imposes on those persons just above the specified age certain responsibilities and liabilities from which, as minors, they were previously free. Yet for hundreds of years Anglo-American law has seen fit to recognize an age of majority.⁴⁴ To provide that an individual relinquishes parental support entitlement at a designated age seems no more arbitrary than to compel him to assume various other burdens of adulthood, for example unshielded responsibility for his crimes and liability for his debts. In addition, simple justice surely demands that a parent be able to rely on the termination of his support obligations at some fixed, predictable point in time in order to be able to plan for his future. This latter consideration appeared to influence a New Jersey court's decision in *Sakovits v. Sakovits*.⁴⁵ There the Bergen County Superior Court refused to order a divorced father to contribute to the college education of his twenty-two-year-old son, who had lived alone and been employed for the preceding four years. Said the court, "It is also clear that plaintiff [father] has structured his financial future, realistically relying upon these circumstances To permit such extension of this [college expenses obligation] doctrine would create an unreasonable, open-ended burden on parents"⁴⁶

IV. DISCRIMINATORY ASPECT OF PLACING COLLEGE EDUCATIONAL SUPPORT OBLIGATION ON DIVORCED PARENTS

As a general rule, those states which impose on parents a duty to support their incapacitated post-majority children do so through laws which empower

⁴¹Washburn, *Post-Majority Support: Oh Dad, Poor Dad*, 44 TEMP. L.Q. 319, 327, 329 (1971). Similarly, the author of one casenote has stated: "(W)hile it is desirable that the parental duty of child support terminate at some point, it is difficult to justify arbitrarily assigning a specific age for all cases." Note, *Post-Minority Child Support in Dissolution Proceedings*, 54 WASH. L. REV. 459, 464 (1979).

⁴²122 N.J. Super. 146, 299 A.2d 423 (1973).

⁴³*Id.* at 150, 299 A.2d at 425-26 (quoting *Straver v. Straver*, 26 N.J. Misc. 218, 222, 59 A.2d 39, 43 (1948)).

⁴⁴Washburn, *supra* note 41, at 328 n.53.

⁴⁵178 N.J. Super. 623, 429 A.2d 1091 (1981).

some government official to enforce the obligation regardless of the parents' marital status.⁴⁷ By contrast, those jurisdictions which have recognized a parental responsibility to help defray their adult childrens' college expenses have imposed this obligation only in a situation involving divorce.⁴⁸ As a result, married (undivorced) parents remain free to decide for themselves whether they will contribute to their grown childrens' higher education, while divorced parents, in some jurisdictions, are denied such freedom of choice. The inequity of placing on divorced parents a legal burden of support not imposed on parents in intact families has been recognized by courts in Alaska⁴⁹ and Florida, which have decided that divorced fathers cannot be compelled to help pay for their adult childrens' college costs. In the Florida case, *Kern v. Kern*,⁵⁰ the trial court had granted an ex-wife's motion to upwardly modify a child support award to require her former husband to pay \$600 per month toward the college education of the parties' post-majority child. The Florida Fourth District Court of Appeal reversed and declared:

Moreover, it is clear that the children of a sound, harmonious marriage have no right to require their parents, no matter the degree of wealth they enjoy, to furnish a college education. It can hardly be contended that the law places upon the divorced parent any greater obligation toward his children than he has in the absence of divorce. In fact, such an interpretation may give rise to valid constitutional infirmities in that the state would have no reasonable grounds to treat the adult children of divorced parents any differently than the adult children of married parents.⁵¹

The injustice of discriminating against divorced parents has induced the California Second District Court of Appeal to invalidate a clause in a divorce decree which ordered the father to maintain a \$5,000 life insurance policy on his life and to name the parties' child as beneficiary.⁵² Observed the court:

Nothing can be derived from the order until the death of appellant [father], which may not occur until long after the minor has attained his majority and the obligation of appellant to support him has ceased The purpose of the law is to continue in effect after divorce the same legal obligation of support which the father owes to the children from their

⁴⁷Washburn, *supra* note 41, at 342-43.

⁴⁸Comment, *Graduate School Support: One Last Dip Into the Proverbial Parental Pocketbook*, 56 IND. L.J. 541, 556 nn. 82-83 (1981).

⁴⁹*Dowling v. Dowling*, 679 P.2d 480, (Alaska 1984).

⁵⁰360 So. 2d 482 (Fla. 1978).

⁵¹*Id.* at 485. In *Dowling v. Dowling*, 679 P.2d 480, (Alaska 1984), the Alaska Supreme Court decided that the lower court had correctly denied a former wife's motion to order her ex-husband to pay post-majority educational support stating: "Finally, a child of married parents has no legal right to post-majority educational support in Alaska [W]e are not convinced that the legislature intended to provide for post-majority educational support in either an original decree [of divorce], or in a modification of the original decree." *Id.* at 483.

⁵²*Miller v. Miller*, 52 Cal. App. 2d 443, 26 P.2d 357 (1942).

birth to their majority, where the marriage continues throughout that period It can hardly be contended that the law places upon the divorced parent any greater obligation toward his children than he has in the absence of a divorce.⁵³

Nevertheless, in the few instances in which the constitutionality of such seemingly discriminatory support laws has been directly confronted by the courts, the laws have been upheld.⁵⁴ An important factor leading to this outcome has been the courts' conclusion that since a law imposing child support obligations impacts only on the divorced parents' economic interests, it need only be rationally related to the promotion of a legitimate state objective to be constitutional.⁵⁵ *In re Marriage of Vrban*⁵⁶ is an example of the application of this "rational relationship" test to a challenged child support law. There the Supreme Court of Iowa upheld a statute allowing a court to order a divorced parent to pay support to an adult child "who is regularly attending an approved school . . . or is, in good faith, a full-time student in a college, university, or area school . . ." ⁵⁷ Responding to the defendant-father's contention that the statute violated the equal protection clauses of the United States and Iowa Constitutions, the court stated, "Since there is no suspect classification or fundamental right involved, we do not apply the strict scrutiny standard. We use, instead, the less rigorous traditional equal protection test . . ." ⁵⁸ "A statute will not be ruled invalid under this test 'unless it is "patently arbitrary" and bears no rational relationship to a legitimate governmental interest' . . ." ⁵⁹ "Clearly higher education is a matter of legitimate state interest . . ." ⁶⁰ "The differences in the circumstances between married and divorced parents establishes the necessity to discriminate between the classes. The statute is neither arbitrary nor unreasonable."⁶¹ Using similar reasoning, in *Kujawinski v. Kujawinski*⁶², the Supreme Court of Illinois sustained a state statute⁶³ authorizing courts to order divorcing parents to provide educational support to their children "whether of minor or majority age,"⁶⁴ commenting: "According to plaintiff [husband], sections 503(d) and 513 permit a dissolution order to require divorc-

⁵³*Id.* at 446, 126 P.2d at 358.

⁵⁴*Kujawinski v. Kujawinski*, 71 Ill. 2d 563, 376 N.E.2d 1382 (1978); *In re Marriage of Vrban*, 293 N.W.2d 482, 363 N.E.2d 1363, 1364 (1977) (Armstrong, J., concurring); *Childers v. Childers*, 89 Wash. 2d 592, 575 P.2d 201 (1978).

⁵⁵Note, *supra* note 7, at 777.

⁵⁶293 N.W.2d 198 (Iowa 1980).

⁵⁷IOWA CODE ANN. § 598.1(2) (West 1977).

⁵⁸*Vrban*, 293 N.W.2d at 201.

⁵⁹*Id.* (quoting *Frontiero v. Richardson*, 411 U.S. 677, 681 (1973)).

⁶⁰*Id.* at 202.

⁶¹*Id.*

⁶²71 Ill. 2d 563, 376 N.E.2d 1382 (1978).

⁶³ILL. ANN. STAT. ch. 40, § 513 (Smith-Hurd 1977).

ed parents to allocate funds for the education of their children beyond the children's minority, and he points out that such burden is not imposed upon non-divorced parents"⁶⁵ "The legislature may differentiate between persons similarly situated as long as the classification bears a reasonable relationship to a legitimate legislative purpose"⁶⁶ "Sections 503(d) and 513 do not violate the equal protection guarantees of the Federal and State constitutions."⁶⁷

Although the "rational relationship" test represents a relatively easy constitutional standard for an allegedly discriminatory law to meet, the state must nevertheless be able to show that there are *some* real differences between the statutorily differentiated classes and that the law in question is furthering a legitimate governmental objective.⁶⁸ As noted earlier, the courts have deemed the promotion of higher education to be a legitimate governmental interest.⁶⁹ Cases have distinguished the children of divorced parents from those of married couples mainly by advancing the following two propositions:

(1) Noncustodial divorced parents, usually fathers,⁷⁰ are unlikely to *voluntarily* help defray their adult childrens' college costs, whereas married parents are likely to do so.⁷¹

(2) Divorce commonly has such traumatic effects on the parties' children that these children are entitled to some special solicitude from the court and/or the legislature.⁷²

A case illustrating the acceptance of the first proposition is *Childers v. Childers*,⁷³ where the Supreme Court of Washington ruled that a statute⁷⁴ authorizing courts to order educational support for children past the age of majority did not offend the equal protection clause of the fourteenth amendment.⁷⁵ The court noted that "the fact that most married parents choose willingly to make financial sacrifices for their children's education, including college and regardless of age, seems to have been disregarded [by the Court of Appeals]"⁷⁶ "That the divorced parent, especially noncustodial, will some-

⁶⁵ *Kujawinski*, 71 Ill. 2d at 578, 376 N.E.2d at 1389.

⁶⁶ *Id.*

⁶⁷ *Id.* at 580, 376 N.E.2d at 1390.

⁶⁸ Note, *Parent and Child* 17 J. FAM. L. 604, 610 (1979).

⁶⁹ See *supra* text in Part III B accompanying notes 22 and 23.

⁷⁰ Most of the time the custody of minor children of divorcing parents is awarded to the mother. C. FOOTE, R. LEVY, & F. SANDER, *CASES AND MATERIALS ON FAMILY LAW* 866 (3rd ed. 1985) (excerpt from a study by Weitzman and Dixon).

⁷¹ See Veron, *supra* note 22, at 675-76.

⁷² See Comment, *supra* note 48, at 546.

⁷³ 89 Wash. 2d 592, 575 P.2d 201 (1978).

⁷⁴ WASH. REV. CODE ANN. § 26.09.100 (1976).

⁷⁵ *Childers*, 89 Wash. 2d at 603, 575 P.2d at 208.

⁷⁶ *Id.* at 601, 575 P.2d at 207. © UAkron, 1986

times not willingly provide what he otherwise would have but for the divorce, we recognized long ago 'Parents, when deprived of the custody of their children, very often refuse to do for such children what natural instinct would ordinarily prompt them to do.'"⁷⁷ A weakness in this rationale is not difficult to discern. Although many married parents undeniably make contributions toward their grown children's college expenses, these contributions are nevertheless *voluntary* and terminable at the will of the donor-parents. To contrast this willingness to help with the presumed recalcitrance of divorced parents and to emerge with an endorsement of a law *mandating* educational financial aid from divorced parents is to engage in strained and assailable reasoning.

The second proposition, that it is equitable to offset the detrimental effects of divorce on the parties' children by according them special educational benefits, was embraced in *Kujawinski v. Kujawinski*.⁷⁸ There the Supreme Court of Illinois stated, "It is certainly a legitimate legislative purpose to minimize any economic and educational disadvantages to children of divorced parents" "⁷⁹ "It cannot be overemphasized that a divorce, by its nature, has a major economic and personal impact on the lives of those involved."⁸⁰ Acknowledging that a divorce often has many adverse effects on the couple's children, it should be remembered that a divorce also tends to have disruptive effects on the parties themselves — both emotional and economic.⁸¹ As a consequence, the court's order that a divorced father help pay for his adult child's college education typically comes at a time when the father is already encountering monetary and emotional stress. Although the court is expected to take

⁷⁷ *Id.* at 603, 575 P.2d at 208. (quoting *Esteb v. Esteb*, 138 Wash. 174, 184, 244 P. 264, 267 (1926)). *Accord*, *Kelsey v. Pannarelli*, 5 Mass. App. Ct. 480, 363 N.E.2d 1363 (1977), where the Appeals Court of Massachusetts affirmed the probate court's ruling denying a divorced father's motion to terminate his support obligations for a child who had attained the age of eighteen. The father contended that MASS. GEN. LAWS ANN. ch. 208, § 28 (West 1975), which authorizes the court to "make appropriate orders of maintenance, support, and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of the parents" unconstitutionally discriminated against divorced parents. *Id.* at 481, 363 N.E.2d at 1364. Responding to this argument, Justice Armstrong, in a concurring opinion, said:

"General Laws ch. 208, § 28 . . . represent a reasonable legislative attempt to secure to dependent children of broken homes advantages customarily made available to children of other homes and comparable age. In families that remain together, decisions by parents whether to terminate support when their children reach the age of majority are . . . decisions jointly arrived at by the parents There is nothing in the equal protection clause of the fourteenth amendment which bars the legislature from making reasonable provision for such cases where the familial decision making process has broken down." *Id.* at 482-83, 363 N.E.2d at 1365 (Armstrong, J., concurring).

⁷⁸ 71 Ill. 2d 563, 376 N.E.2d 1382 (1978). (See *supra* text accompanying notes 62-67).

⁷⁹ *Id.* at 580, 376 N.E.2d at 1390.

⁸⁰ *Id.* at 579, 376 N.E.2d at 1389. Similarly, in *Jackman v. Short*, 165 Or. 626, 656, 109 P.2d 860, 872 (1941), the Supreme Court of Oregon observed that "ordinarily, a child of divorced parents is in greater need of the help that a college education can give than one living in a home where marital harmony abides."

⁸¹ "[I]n the overwhelming majority of divorces there is not sufficient money or property to provide adequate alimony. The breakup of the family increases the living expenses of the members, who must then support two establishments rather than one. Even with both husband and wife working, this cannot ordinarily be done at the same level at which the family lived before the divorce For this reason the attorney consulted by divorce clients should advise them early in the game that divorce will probably involve financial hardship for both spouses"

into consideration the parent's ability to pay,⁸² it is often difficult for a divorcing father, who is already undergoing a domestic crisis, to foresee and document the multitude of expenses that he will confront in his new life. On balance, it would appear that the fairest approach would be to let the post-majority children of divorced parents pursue the same funding avenues as other students of limited means utilize.⁸³

V. SUMMARY AND CONCLUSION

At common law, a parent was legally obligated to support his children only through their minority. Today, a majority of states have by legislation or court decision extended this duty to encompass adult children who are incapacitated to the extent that they are unable to be self-supporting.⁸⁴ Since such afflicted children are not realistically "emancipated,"⁸⁵ and since they obviously require maintenance, such an extension of the support obligation seems eminently reasonable; and, it is submitted that all jurisdictions should recognize such a duty. A few jurisdictions have laws requiring parental support of teenage adult children who have not yet completed high school. These laws appear to be worthwhile and deserving of consideration in other states. Statutes and appellate court decisions in several states have authorized domestic relations courts to order divorced parents to help finance their post-majority children's college education. Since married parents have no similar legal obligation, such laws seem discriminatory, even though the few rulings on their constitutionality have sustained them. Moreover, the policy arguments advanced in favor of mandating such parental aid do not appear persuasive. As the current trend away from long-term alimony tends to suggest,⁸⁶ in a free society the law should force one adult to subsidize another only in compelling circumstances; and, a young adult's desire to attend college, however laudable it may be, cannot reasonably be said to meet this test. If the ambition and aptitude are

⁸²See *Lord v. Lord*, 96 Misc. 2d 434, 438-40, 409 N.Y.S.2d 46, 49 (N.Y. Fam. Ct. 1978); *Ross v. Ross*, 167 N.J. Super. 441 400 A.2d 1233 (1979). In the latter case, the Superior Court of New Jersey ordered a divorced father to continue paying weekly child support to his daughter, a first-year law student, until she completed professional school. *Id.* Said the court:

The court believes that the various factors that have to be considered [in evaluating an application for post-majority support] are the following:

1. The amount of support (or school cost) sought.
2. The ability of the noncustodial parent to pay that cost, and its relation to the type of schooling sought.
3. The financial position of the custodial parent.
4. The commitment and aptitude of the child to the schooling in question

Id. at 445-46, 400 A.2d at 1236.

⁸³See *supra* text following note 40.

⁸⁴See *Castle v. Castle*, 15 Ohio St. 2d 279, 282, 473 N.E.2d 803, 806 (1984).

⁸⁵In *Koltay v. Koltay*, 667 P.2d 1374, 1376, (Colo. 1983), the Supreme Court of Colorado declared that "if a child is physically or mentally incapable of self-support when he attains the age of majority, emancipation does not occur, and the duty of parental support continues for the duration of the child's disability."

⁸⁶"Growing antipathy to the who concept of alimony is easy to detect A basic change in attitudes toward alimony is in the making." H.D. KRAUSE, FAMILY LAW IN A NUTSHELL 332 (1977).

present, it is probable that the aspiring student will find a way to obtain a college education without making his reluctant and financially-pressed parent help pay for the same; and, such a graduate will have gained, along with his degree, an appreciation of what industriousness and self-discipline can accomplish.