Notre Dame Law Review

Volume 33 | Issue 1 Article 6

12-1-1957

Parent and Child -- Responsibility of Adult Child for the Support of Needy Parents

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Parent And Child

RESPONSIBILITY OF ADULT CHILD FOR THE SUPPORT OF NEEDY PARENTS

Introduction

The steady march toward industrialization and urbanization has overturned what were once firmly established societal relationships — one of the most noticeable being that of the adult child to his parents. Sociologists decry the destructive effect which modern industrial society has had upon duties once traditionally owed by the child to his parents in their later years.[1] When our population was predominantly rural,[2] it was customary for aged parents to live with their children; there was usually adequate room, and there were always tasks which an elderly person could easily and contentedly perform.[3] Such is no longer the case. The population shift to the cities has confined most workers to cramped quarters with the prospect of a future which lacks the agrarian security of old, and forced them to depend solely upon cash earnings for day-to-day needs. The victim of this particular social transition is the elderly parent, who has been forced to live independently, relying for his existence, like his children, solely on cash income.

The number of these aged persons is growing constantly, as medical science extends human life expectancy. According to one survey, the number of persons over the age of 65 is increasing at the rate of 1,000 a day, and today this age group is four times as large as it was in 1900.[4] Another survey reports that while there were only three million persons over the age of 65 in 1900 (one twenty-fifth of the total population), there are over thirteen million today (one twelfth of the total population), and it is estimated that by 1975 this group will constitute one half of the adult population.[5]

The problem of supporting such great numbers of people who have outlived their most productive years becomes acute when it is considered that their adult children, who are trying to advance in a society that looks upon accumulation of material goods as the ultimate standard of success, have ignored or forgotten their moral obligation to provide for the support and maintenance of their parents.

This moral obligation was not always so neglected. In fact, so widely was it recognized that at early common law there was no *legal* duty for an adult child to support his needy parents;[6] it was believed unnecessary to impose an artificial duty when the true duty was readily recognized and accepted by the great majority of people. However, since there have

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1 WICKENDEN, THE NEEDS OF OLDER PEOPLE 4, 5 (1953).

2 The census of 1920 was the last to show that a majority of the population were self-employed. *Id.* at 4, 5.

3 *Ibid.*

4 BOND, OUR NEEDY AGED xiii (1954).

5 WICKENDEN, *op. cit. supra* note 1, at 7.

6 *In re* Fitzwater's Guardianship, 69 F. Supp. 866 (D.C. 1947); Rutecki v. Lukaszewski, 273 App. Div. 638, 79 N.Y.S.2d 341 (4th Dept 1948); 67 C.J.S., *Parent and Child* § 24 (1950).

been deviates from moral duties in every society, it was found necessary at the beginning of the 17th century to give *legal* recognition to this duty of support. Accordingly, in 1601 there was enacted, for the relief of the poor,[7] an act rendering the "father, grandfather, mother, grandmother, husband or child" responsible for the relief and maintenance "of a poor, old, blind, lame or impotent person." Thus was taken the first legal step to force a child to comply with his nature, a step which caused an English court to make the shameful admission that:

> By the law of nature a man was bound to take care of his own father and mother; but there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by Act of Parliament . . . [8]

It was unfortunate that Parliament had to take over enforcement of a duty grounded in human nature, but this situation creates an even greater problem today because of the ever increasing number of aged parents and the ever increasing multitude of able but laggard children. The English solution has been utilized by thirty-six jurisdictions.[9] Seventeen jurisdictions, on the other hand, provide for no legal enforcement of this duty, leaving it solely to the child's conscience.[10]

The Statutes and Their Interpretation

The statute itself, called variously the "Pauper's Statute," the "Poor Law" or the "Relatives Responsibility Statute," is basically the same in all states providing for such relief. The essential provisions are that the person to be aided be in "need"[11] and that the person required to give aid be of sufficient financial "ability" to so contribute.[12] Usually relatives

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7 Act for the Relief of the Poor, 1601, 43 ELIZ, 2, § 7.

8 Rex v. Munden, 1 Strange 190, 93 Eng. Rep. 465 (1795).

9 ALA. CODE ANN. tit. 44, § 8 (1940); ALASKA COMP. LAWS ANN. § 51-2-22 (1949); CAL. WELFARE & INST'NS CODE ANN. § 2181 (West 1956) and CAL. PEN. CODE ANN. § 270 (c) (West 1955); COLO. REV. STAT. ANN. § 36-10-7 (1953); CONN. GEN. STAT. § 1444d (Supp. 1955); DEL. CODE ANN. tit. 13, § 501 (a) (Supp. 1956); D.C. CODE ANN. § 46-211 (1951); GA. CODE ANN. § 99-627 (1955); GUAM CIV. CODE § 206 (1953); HAWAII REV. LAWS § 12290 (1945); IDAHO CODE ANN. § 32-1002 (1947); ILL. ANN. STAT. c. 23, § 436-12 (Smith-Hurd Supp. 1956); IND. ANN. STAT. § 3-3001 (Burns Supp. 1955); IOWA CODE ANN. § 252.2 (1949); KY. REV. STAT. ANN. § 405.080 (Baldwin 1955); LA. CIV. CODE ANN. art. 229 (West 1952); ME. REV. STAT. ANN. c. 94, § 20 (1954); MD. ANN. CODE art. 27, § 112 (Supp. 1956); MASS. ANN. LAWS c. 117, § 6 (1949); MICH. STAT. ANN. § 16.122 (Supp. 1955); MINN. STAT. ANN. § 261.01 (1947); MISS. CODE ANN. § 7357 (1942); MONT. REV. CODES ANN. § § 71.233, 71.235 (1947); NEB. REV. STAT. § 68-101 (1943); N.H. REV. STAT. ANN. § § 167.2, 167.3 (1955); N.J. STAT. ANN. § 44:1-140 (1940); N.Y. SOC. WEL. LAW § 101 (Supp. 1956); N.D. REV. CODE § 50-0703 (1943); OHIO REV. CODE ANN. § 2901.40 (Page Supp. 1956); ORE. REV. STAT. § 411.425 (1955); PA. STAT. ANN. tit. 62, § 1973 (a) (Purdon Supp. 1956); R.I. GEN. LAWS c. 69, § 5 (1938); VT. REV. STAT. § 7129 (1947); VA. CODE ANN. § 20-88 (Supp. 1956); W. VA. CODE ANN. § 626 (150) (1955); WIS. STAT. § 52.01 (1) (1955).

10 Ariz., Ark., Fla., Kan., Mo., Nev., N.M., N.C., Okla., P.R., S.C., S.D., Tenn., Tex., Utah, Wash., Wyo.

11 People v. Hill, 163 Ill. 186, 46 N.E. 746 (1896).

12 Without a provision that the responsible party have the ability to contribute to the needy parent's support, the statute would probably be held unconstitutional. See Mallatt v Luihn, 206 Ore. 678, 294 P.2d 871, 877 (1956) (dictum).

other than children are included, some statutes specifically naming parents and grandparents along with children, while others include all close relatives in general.

As long as the statute includes only these provisions it will be upheld against claims of constitutional infringement. This was established in the leading case of *People v. Hill,*[13] where the court espoused both the object of the statute[14] and the means set out to enforce it — by complaint of the state's attorney.

A thorough understanding of the statute demands a closer look at the basic requirements — "need" and "ability"; it is from these terms that the statute derives its impact, or lack of impact, since the *interpretation* of these words determines the effectiveness of the statute. There is a clear division of authority on this statutory interpretation. Many courts cling to the theory that since the statutes are in derogation of the common law, they are to be strictly construed.[15] Others will look to the statute's remedial nature and construe it liberally.[16] Indeed, the conflict exists even between courts of the same state. In 1939 one New York court stated:

> A statute having for its object the relieving of the general public of liability for the support or maintenance of an unfortunate individual by one bound by at least a moral obligation to supply such support and maintenance, should be more liberally construed. . . . [17]

Yet five years later another New York court held the identical statute required a strict construction.[18] One state has undertaken to resolve the confusion by expressly providing in the statute the necessity for a liberal construction.[19]

As a general rule it is discretionary with the particular court to determine if the "need" exists in any given case.[20] It has been held that a person can be in "need" even though he is working,[21] or is receiving federal social security benefits,[22] or is already receiving contributions from a child.[23] Whether holding an interest in real property will automatically

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13 163 Ill. 186, 46 N.E. 796 (1896).

14 "The object of both the statute of Elizabeth and of our existing statute is to protect the public from loss occasioned by neglect of a moral or natural duty imposed on individuals, and to do this by transforming the imperfect moral duty into a statutory and legal liability." *Id.* at 798.

15 County Commissioners v. Kohrell, 100 Colo. 445, 68 P.2d 32 (1937); *In re* Morrissey's Estate, 183 Misc. 530, 49 N.Y.S.2d 464 (Surr. Ct. 1944); Commonwealth v. Ruckle, 1 Pa. D.&C. 2d 51 (1954); Spies v. Peterson, 271 Wis. 505. 74 N.W.2d 148 (1956).

16 Rogers v. Kinnie, 134 Conn. 58, 54 A.2d 487 (1947); *In re* Garrison, 171 Misc. 983, 14 N.Y.S.2d 803 (County Ct. 1939); *In re* Wright's Estate. 172 Misc. 215, 14 N.Y.S.2d 953 (Surr. Ct. 1939).

17 *In re* Wright's Estate, *supra* note 16 at 955.

18 *In re* Morissey's Estate, 183 Misc. 530, 49 N.Y.S.2d 464 (Surr. Ct. 1944).

19 CAL. WELFARE & INST'NS CODE ANN. § 2003 (West 1956).

20 Commonwealth v. Campbell, 180 Pa. Super, 581, 119 A.2d 816 (1956).

21 Rogers v. Kinnie, 134 Conn. 58, 54 A.2d 487 (1947). The court remarked that there was no necessity for the elderly person to stop working before bringing action, for such would only serve to make him more destitute.

22 Commonwealth v. Kotzker, 179 Pa. Super. 521, 118 A.2d 271 (1955).

23 County of San Bernardino v. Simmons, 46 Cal. 2d 394, 296 P.2d 329 (1956).

remove one from the roll of the "needy" is a question that has been answered both ways.[24] In *Commonwealth v. Hallman*,[25] "needy" was explained as meaning "destitute of means of comfortable subsistence"; thus the parent was allowed to keep the property to avoid becoming a public ward, and yet remain eligible to bring action for support against able children. But it has been decided that before an aged person can sue as a pauper under the statute, he must have *no* available means of support and must be in such dire straits that if the children or other relatives fail to contribute to his support he will be eligible for assistance as a public ward.[26] The factors which the welfare agencies or courts will consider in determining "need" vary from state to state:

> (Since) each State defines for itself who is a "needy" person . . . the States differ widely in the types of items that they recognize as necessary and in the amounts established as the costs of these items. Similarly, considerable variation occurs in the limits that States establish on the amounts of property or other resources that an individual may retain and still receive assistance as a needy person.[27]

Of course, items such as food, clothing, and shelter, are always considered necessary, as are generally, fuel, utilities, and medical treatment. The unity ends there, however, and it is extremely difficult to predict how a court or agency will react to a given factual situation.[28]

Requirement of Ability

The question of "ability" is likewise dependent upon the facts of each case as determined by the court or welfare agency, although many states, in an effort to escape from this case-to-case approach have included contribution scales in their statutes.[29] In some states, local agencies utilize income tax returns as a static and conclusive means of determining "ability."[30] This method was upheld recently in Oregon despite a vehement attack on constitutional grounds to the effect that equal protection of the laws was impaired by such a system since income was based on tax returns and a wealthy person with no taxable income would be exempt from contributing to the support of a needy parent.[31] Another common device is the establishment of a "base sum" minimum standard. An income below such sum is deemed insufficient to require contribution as a matter of

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24 Commonwealth v. Hallman, 3 Pa. D.&C. 2d 233 (1954).

25 *Id.* at 235

26 Tulin v. Tulin, 124 Conn. 518, 200 Atl. 819 (1938).

27 Hawkins, *Recipients of Old Age Assistance: Income and Resources,* SOC. SEC. BULL., Apr., 1956, p.3.

28 For an excellent discussion of the many items involved, their amounts and costs, see Hawkins, *supra* note 27,

29 *E.g.,* CAL. WELFARE & INST'NS CODE ANN. § 2181 (West 1956); GA. CODE ANN. § 99-626 (1955); MASS. ANN. LAWS c. 118 A, § 2a (1949); MONT. REV. CODES ANN. § 71.235 (1947); ORE. REV. STAT. § 411.425 (1955).

30 Epler, *Old-Age Assistance; Determining Extent of Chilren's Ability to Support,* SOC. SEC. BULL., May, 1954, p. 7.

31 Mallatt v. Luihn, 206 Ore. 678, 294 P.2d 871 (1956). Income tax return upheld as a reasonable and easily administered standard.

law.[32] Still another common agency procedure for ascertaining "ability" is the use of data on components and costs of city workers' families, as published by the Bureau of Labor Statistics.[33]

A good example of the manner in which a local agency will approach the problem of establishing "ability" is shown by the system utilized by the Public Welfare Department of Lake County, Indiana. Aided by a local citizens council, the agency set up a monthly income scale according to which adult children fall into one of three categories. If the children are in the "voluntary contribution" range, the agency will request aid for the parent but will not employ legal pressure; if the children are in the "negotiation" range, the agency will request that a family budget be prepared and the difference between the budget and the income be contributed to the parent's support. If the child refuses the agency will refer the case to the prosecuting attorney. If the child falls in the "support minimum" range, the child will be requested to contribute a certain minimum sum, and refusal will again result in prosecution.[34]

While some courts are reluctant to disturb the findings of local agencies regarding the financial ability of the person in question,[35] generally the courts have considered the question independently.[36] As a result certain principles have evolved. One is that a child is entitled not only to an income sufficient for his immediate needs, but also reasonable savings for sickness and for his own old age.[37] Complementing this principle is the general one that the court should be reluctant to make two paupers where before there was only one.[38] The courts, then, will try to avoid the imposition of liability where to do so would surely impair the reasonable savings of the child. On the other hand, it has been decided that a child cannot escape liability simply on the ground that he is currently expanding his business and needs all of his income for that purpose.[39] Such an argument is basically faulty since the taxpayers would bear the burden of supporting the parent while the child moved ahead in the business world.

An extensive review of decided cases on the question of "ability" would serve no useful purpose here since each case rests solely on its own

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32 Epler, *supra* note 30.

33 Epler, *supra* note 30. This report contains an excellent disucssion of the actual mechanics employed by the state agencies, a thorough treatment of which is beyond the scope of this article.

34 Nierengarten, *We Don't Believe in Relative Responsibility*, 8 PUBLIC WELFARE, 103-104 (1950).

35 County of San Bernardino v. Simmons, 46 Cal.2d 394, 296 P.2d 329 (1956).

36 Commonwealth v. Ruckle, 1 Pa. D.&C.2d 51 (1954); Commonwealth v. Campbell, 180 Pa. Super. 518, 119 A.2d 816 (1956); *In re* Diehle's Estate, 187 Misc. 196, 61 N.Y.S.2d 397 (Surr. Ct. 1946).

37 *In re* Diehle's Estate, *supra* note 36; *In re* Miller's Estate, 64 N.Y.S.2d 258 (Surr. Ct. 1946).

38 Commonwealth v. Ruckle, 1 Pa. D.&C. 2d 51,56 (1954,

39 Application of Machabee, 205 Misc. 85, 127 N.Y.S.2d 634 (County Ct. 1954); see also, Application of Rickey, 126 N.Y.S.2d 261 (County Ct. 1953) (daughter receiving monthly allotment from soldier husband deemed able to contribute to mother's support when shown that she was in the process of purchasing a new car).

merits. Even where the state has attempted to establish a stable definition of "ability" by the employment of a contribution scale there is always an implied condition that in cases of hardship the statutory scale will not be conclusive.[40] Without such a condition the statute would probably be held unconstitutional.[41]

Requirement of Relationship

There is also a conflict in the cases concerning the definition of "child" as that term is used in the statutes. It is generally agreed that a son-in-law is not liable for the support of his wife's parents.[42] This rule was established by an early English case which pointed out that the statute for the relief of the poor ". . . extended no farther than the law of nature went before, and the law of nature does not reach this case."[43] Following this precedent the courts have consistently retained a strict interpretation of "child" and will not hold a son-in-law responsible unless the statute specifically provides for such liability.[44] In a recent Pennsylvania decision the court decried the lack of moral responsibility on the part of a husband who would not pay the medical expenses of his mother-in-law, nor give his wife more than enough money to cover household expenses, fearing that she would give the excess to her mother; yet the court felt compelled to uphold the non-liability of the son-in-law.[45]

In accord with this view it has been ruled that a report of the earnings of the husband cannot be introduced into evidence in an action for support brought against his wife by her parents,[46] nor can a court force the division and sale of community property to provide the wife with the necessary funds to support her parent,[47] and where the husband and wife are tenants by the entireties there is no duty on the husband to account to the wife for half the rental value of the property as long as they are both living on the property.[48] Moreover a daughter does not have sufficient ability to support her parents if her only income is alimony payments, for it has been decided that forcing support payments from alimony would in effect, be compelling the ex-husband to support his

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40 San Bernardino County v. McCall, 56 Cal. App. 99, 132 P.2d 65 (1942).

41 Mallatt v. Luihn, 206 Ore. 678, 294 P.2d 871, 877 (1956) (dictum).

42 Application of Dunaway, 174 Misc. 735, 22 N.Y.S.2d 69 (County Ct. 1940); Alessandro v. Camelli, 47 N.Y.S.2d 237 (N.Y. Dom. Rel. Ct. 1944)

43 Rex v. Munden, 1 Strange 190, 93 Eng. Rep. 465 (1795).

44 Maricopa County v. Douglas, 69 Ariz. 35, 208 P.2d 646 (1949) (separate judgment against a wife for the support of her mother could not be satisfied out of the community property of the husband and wife); Grace v. Carpenter, 42 Cal. App. 2d 301, 108 P.2d 701 (1941).

45 Commonwealth v. Goldman, 180 Pa. Super. 337, 119 A.2d 631 (1956). The court did not require the wife to seek gainful employment because she had a primary duty to remain at home and care for her infant daughter.

46 Grace v. Carpenter, 42 Cal. App.2d 301, 108 P.2d 701 (1941).

47 Maricopa County v. Douglas, 69 Ariz. 35, 208 P.2d 646 (1949): Grace v. Carpenter, *supra* note 46.

48 Kullman v. Wyrtzen, 266 App. Div. 802, 41 N.Y.S.2d 682 (2d Dep't 1943).

ex-mother-in-law, and if he was not liable for such support while he was married he certainly should not be liable after the marriage is dissolved.[49]

Since married daughters rarely have sufficient independent income to qualify them for liability under the statute, the exemption of sons-in-law virtually eliminates the possibility of recovering contributions from this source. This interpretation seems sound, despite the apparent injustice toward the wife's parents, for to hold otherwise would render the husband liable for two sets of parents, a burden which could prove extremely burdensome. However, in at least one state there is currently a movement to enforce liability against sons-in-law.[50]

Whether an illegitimate child is liable for the support of his needy parents is another question upon which the courts are divided. In *Commonwealth v. Campagna*,[51] the court held that the terms "child," "children," and "parents" referred only to a legal relationship, and thus an illegitimate child has no legal duty to support his paternal grandfather. A New York court adopted the opposite conclusion on the ground that state statutes had eliminated the distinction between illegitimate and legitimate children.[52] However, five years later this decision was questioned in *Castellani v. Castellani*,[53] where the court found no such distinction in the statute that would put an illegitimate child on the same level as a legitimate child and render him responsible for his parent's support. The Louisiana Civil Code provides that an illegitimate child owes reciprocal duties to his parents, and these duties are those established by nature and humanity.[54] While the question at hand is not clearly defined in the cases, it can be said with reasonable certainity that an illegitimate child will generally not be responsible under the statute.

However, an adopted child is generally responsible for the support of his needy foster parents, and the courts again consider only the legal relationship involved in interpreting the statute.[55] Following this rationale it seems clear that an adopted child will no longer be responsible to his natural parents.[56]

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49 County of Contra Costa v. Lasky, 43 Cal.2d 506, 275 P.2d 452 (1954).

50 Chicago Daily Sun-Times, Mar. 27, 1957, p. 24, col. 1.

51 40 Pa. D.&C. 478 (1940).

52 Lee v. Smith, 161 Misc. 43, 291 N.Y.Supp. 47 (N.Y. Dom. Rel. Ct. 1936).

53 176 Misc. 763, 28 N.Y.S.2d 879 (N.Y. Dom. Rel. Ct. 1941), *aff'd mem. sub nom.*, Capaldo v. Capaldo, 263 App. Div. 984, 34 N.Y.S.2d 400 (1st Dep't 1942).

54 LA. CIV. CODE ANN. art. 239 (West 1952).

55 Couteau v. Couteau, 192 Misc. 736, 77 N.Y.S.2d 113 (N.Y. Dom. Rel. Ct. 1948); Commonwealth v. Chiara, 60 Pa. D.&C. 547 (1947) (decided under a statutory construction act which provided that "child" included children by adoption).

56 See Betz v. Horr, 276 N.Y. 83, 11 N.E.2d 548 (1937). The natural father of an adopted child was not liable for the child's support even though the adoptive parent was destitute and the child was destined to become a ward of the state.

57 IND. ANN. STAT. § 3-3001 (Burns Supp. 1955) (Child not liable unless supported by a parent up to age 16 if male and 17 if female); N.J. ANN. STAT. § 44.1-141 (Supp. 1956) (child not liable if deserted during minority); PA. STAT. ANN. tit. 62 § 1973 (a) (Purdon Supp. 1956) (child not liable if abandoned for ten year period during minority).

By statutory enactment in three states a child is not liable to any parent who has deserted or abondoned him.[57] In New Jersey the effect of this provision has been diluted by a 1951 decision which found that the language of the statute was not met despite the fact that the father put the child in a home at the age of twelve and failed to adequately support him thereafter.[58] Opposed to this strict interpretation is a decision from New York, where the statute has no abandonment provision, to the effect that a father forfeited all moral claim for support from a daughter from whom he had been separated for twenty-three years.[59]

Right to Contribution

Where there is more than one child capable of supporting the parent the child against whom the judgment is rendered may often recover pro rata contributions from his able brothers or sisters.[60] This is just, especially where the other children have requested that one particular child undertake the support obligation.[61] An implied request may be found where the other children are aware that one of their brothers or sisters is supporting a parent.[62] Other cases hold that while a child who bestows voluntary benefits upon his parents cannot recover reimbursement from other children, a child who is coerced into doing so by force of law may be permitted to recover contributions from his brothers or sisters.[63] The result of these decisions is seemingly based on some form of constructive notice resulting from the legal compulsion—which notice is lacking where the support is voluntary.

The trend would seem to be in favor of requiring contribution as evidenced by the recent decision of *Mallatt v. Luihn*,[64] which seriously questioned the former leading California case, *Garcia v. Superior Court*.[65] The latter decision had stood as authority for the proposition that a child could not join other children as co-defendants or require contribution from them, as his obligation was several and not joint under the statute. Other indications of the trend are a recently enacted Delaware statute[66] requiring equal contribution from children and an Illinois statute[67] to the effect that liability is to be assessed proportionately.

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58 Slocum v. Krupy, 11 N.J. Super. 81, 77 A.2d 871 (1951).

59 *In re* Garrison, 171 Misc. 983, 14 N.Y.S.2d 803 (County Ct. 1939).

60 Mallatt v. Luihn, 206 Ore. 678, 294 P.2d 871 (1956).

61 Wyman v. Passmore, 146 Iowa 486, 125 N.W. 213 (1910). The court remarked, "There can be no doubt of the proposition that, where one of several children undertakes to keep a parent at the request of others, those at whose request the service is performed are under obligation to make reasonable compensation." 125 N.W. at 214.

62 See Shaver v. Brierton, 1 Ill. App. 2d 192, 117 N.E.2d 298 (1954).

63 Manthey v. Schueler, 126 Minn. 87, 147 N.W. 824 (1914); Wood v. Wheat, 226 Ky. 762, 11 S.W.2d 916, 918 (1928) (dictum); Muse v. Muse, 215 La. 238, 40 So. 2d 21, 23 (1949) (dictum).

64 206 Ore. 678, 294 P.2d 871 (1956).

65 45 Cal. App. 2d 31, 113 P.2d 470 (1941).

66 DEL. CODE ANN. tit. 13, § 501 (a) (Supp. 1956).

67 ILL. STAT. ANN. tit. 23, § 436-12 (Smith-Hurd Supp. 1956).

Proper Parties Plaintiff

When the parent brings the action himself, or the county on behalf of the parent, there is generally present no problem aside from showing the required "need" of the parent and "ability" of the child. The situation is otherwise where the county or some third party who has contributed support to the parent brings the action for reimbursement. The right of the county to recover reimbursement from a child is based on the assumption that the child has the primary duty to support the "needy" parent, and the county is only bound to give aid where the child fails in his duty.[68] Such reimbursement action by the county has been held constitutional.[69] It has been reasoned in several cases that a quasi contract exists between the child and the county.[70] It has also been decided that the county's right to reimbursement is a common law right and therefore no statutory authorization is necessary.[71] Recovery by the county may be allowed for future support payments as well as for past assistance.[72] This is the ordinary result under state statutes which provide for the forfeiture of certain weekly or monthly sums for as long as the child refuses to contribute directly to the parent's support.[73]

Of course the county can recover only if the child is shown to have the sufficient financial ability required, and such ability must have existed at the time the county furnished the aid.[74] Afteracquired property may not be used as a basis for recovery.[75] Nor will an action lie against the estate of a son who had no sufficient ability at the time the county supplied the aid.[76] Conversely, if the child had the ability at the time of the grant he is responsible to the county even though he does not have such ability at the time of trial.[77]

An able child has been held liable to a private institution for support furnished his parent.[78] In the absence of an express contract with the

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68 Los Angeles County v. Frisbie, 19 Cal.2d 634, 122 P.2d 526 (1942); Mendelsohn v. Mendelsohn, 192 Misc. 1014, 80 N.Y.S.2d 913 (N.Y. Dom. Rel. Ct. 1948); *In re* Garrison, 171 Misc. 983, 14 N.Y.S.2d 803 (County Ct. 1939); Mallatt v. Luihn, 206 Ore. 678, 294 P.2d 871 (1956).

69 Maricopa County v. Douglas, 69 Ariz. 35, 208 P.2d 646 (1949); Mallatt v. Luihn, *supra* note 68.

70 Tolley v. Maliswaski, 159 Misc. 89, 287 N.Y. Supp. 245 (Sup. Ct. 1936) (the New York welfare law provided: "any public relief received . . . shall constitute an implied contract."); *In re* Erny's Estate, 337 Pa. 542, 12 A.2d 333 (1940).

71 *In re* Reiver's Estate, 343 Pa. 137, 22 A.2d 655 (1941).

72 Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942).

73 *E.g.*, ALA. CODE ANN. tit. 44, § 8 (1940); COLO. REV. STAT. ANN. § 36-10-7 (1953); MINN. STAT. ANN. § 261.01 (1947); MISS. CODE ANN. § 7357 (1942).

74 Fuller v. Galeota, 271 App. Div. 155, 63 N.Y.S.2d 849, 852, (4th Dep't 1946) (dictum).

75 Turnboo v. County of Santa Clara, 301 P.2d 992 (Cal. 1956).

76 *In re* Morrissey's Estate, 183 Misc. 530, 49 N.Y.S.2d 464 (Surr. Ct. 1944) (son's estate consisted entirely of proceeds of life insurance).

77 Tolley v. Maliswaski, 159 Misc. 89, 287 N.Y. Supp. 245 (Sup. Ct. 1936).

78 Commonwealth v. Kotzker, 179 Pa. Super, 521, 118 A.2d 271 (1955). And see HAWAII REV. LAWS §12290 (1945), which specifically provides that private institutions can bring action against the child.

county, the action of the third person must be against the relatives, and not the county, except where the nursing aid furnished is of an emergency character.[79] However, a third person cannot recover from a child on the ground that he assumed the contractual duty of the child, where there is no statute permitting civil action against the child.[80]

Whether an undertaker can recover funeral expenses from a child is another issue upon which there is no unanimity of authority. A 1948 New York case ruled that no legal obligation existed toward the undertaker, and refused reimbursement.[81] An earlier case from the same state allowed recovery by an undertaker on the theory that the child had a *moral* obligation to reimburse the undertaker.[82]

Relationship of Other Compensatory Statutes

The use of the support statute is not confined solely to coercing the able child into supporting his parents or reimbursing the county. It has also affected cases involving actions under Wrongful Death, Workman's Compensation, Dram Shop Acts and, more importantly, state Old Age Assistance statutes.

A line of decisions under the Pennsylvania Workman's Compensation Act serves as an illustration of the usual elements present in these actions. It has been held that parents cannot sue as total dependents after the death of a contributing son if they have other legally responsible children to whom they may turn for support.[83] In the workman's compensation cases it has also been held that the earning capacity and legal obligation of the surviving children to their parents are matters to be considered by the compensation authorities before granting an award to the parents.[84] If the children are too young or of insufficient ability, they have no legal obligation to support the parent and, therefore, have not been considered as a source for the parent's support.[85]

To be dependent under workman's compensation statutes then, the parent must be needy and the child able. What is the result if the parent is only potentially needy or the child only potentially able? This is a question that has arisen under the Wrongful Death and Dram Shop Acts. The courts are agreed that where the child was already contributing to the needy parent, damages for future support will be upheld on the basis of the continuing legal obligation.[86] However, where the need or ability

79 Miller v. Banner County, 127 Neb. 690, 256 N. W. 639 (1934); see Marshall v. County of Nance, 163 Neb. 252, 79 N.W.2d 417 (1956).

80 Gardner v. Hines, 34 Ohio Op. 25, 68 N.E. 2d 397 (1946).

81 Rutecki v. Lukaszewski, 273 App. Div. 638, 79 N.Y.S.2d 341 (4th Dep't 1948).

82 *In re* Neville's Estate, 147 Misc. 171, 263 N.Y. Supp. 528 (Surr. Ct. 1933); see *In re* Connolly's Estate, 88 Misc. 405, 150 N.Y. Supp. 559 (Surr. Ct. 1914.)

83 Mattis v. Arcadia Coal Co., 148 Pa. Super. 462, 25 A.2d 610 (1942).

84 Yurski v. Continental-Archbald Coal Co., 157 Pa. Super. 201, 42 A.2d 86 (1945).

85 Uber v. Bobo & Bango Coal Co., 157 Pa. Super. 412, 43 A.2d 385 (1945).

86 See New York Central R.R. v. Johnson, 234 Ind. 457, 127 N.E. 2d 603 (1955).

is non-existent at the time of the injury, but recovery is sought solely on the basis that it will arise at some future time, recovery will generally be denied.[87] No legal obligation comes into existence until the parents are actually in need of support.[88] The same result was attained in a decision under a Dram Shop Act, the court stating that potentiality of support being necessary in the future is not an adequate ground for recovery since the parent has to be indigent before the obligation arises.[89]

As a practical matter, the difficulty of proving future need on the part of the parent or future ability on the part of the child nullifies any attempt at recovery based upon the child's statutory duty toward his parents. Thus the legal obligation is of little use in these situations and, indeed, may even act as a detriment to the parents, since it may be used to decrease the amount of benefits recoverable by them under workman's compensation acts.

The advent of old age assistance has converted the statutory responsibility of children for needy parents into an extremely controversial issue.[90] The basis for many a child's refusal to support his parents is a belief that because his parents were taxpayers, the duty belongs to the state.[91] This attitude has led many agencies to avoid employing the statutory machinery until all attempts to obtain voluntary support for the parent have failed.[92] Notwithstanding this hands-off attitude of the agencies, the prevailing public opinion seems to be to the effect that the primary responsibility rests with the children and that the government should only step in with aid when the children are not able to perform or simply refuse to do so under any circumstances.[93]

This problem is more important now than ever before because of the increased cost of old age assistance. Many people feel that strict enforcement of the statutes would remove a considerable number of present recipients from the assistance rolls.[94] However, numerous agency directors disagree with this premise, contending that the administrative difficulties, plus the costs of carrying out court action against the children outweigh any possible reductions in assistance payments that might result from strict enforcement of the statute.[95] The Minnesota Committee on Aging has stated the existing controversy quite succinctly:

> The problem of securing support from legally responsible relatives is one of the more puzzling aspects of meeting dependency among our aging. There

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87 See Novak v. Chicago & Calumet Dist. Transit Co., 135 N.E.2d 1 (Ind. 1956); Simons v. Kidd, 73 S.D. 306, 42 N.W.2d 307 (1950).

88 Simons v. Kidd, *supra* note 87.

89 Robertson v. White, 11 Ill. App. 2d 177, 136 N.E.2d 550 (1956).

90 BOND, OUR NEEDY AGED 152, 153 (1954).

91 Nierengarten, *We Don't Believe in Relative Responsibility*, 8 PUBLIC WELFARE 103 (1950).

92 Laitinen, *Our Program of Relative Responsibility*, 6 PUBLIC WELFARE 204 (1948). And see Epler, *Old Age Assistance: Plan Provisions on Children's Responsibility for Parents*, SOC. SEC. BULL., April, 1954; CORSON & MCCONNELL, ECONOMIC NEEDS OF OLDER PEOPLE 179 (1956).

93 BOND, OUR NEEDY AGED 153 (1954).

94 BOND, OUR NEEDY AGED 256, 352-55 (1954).

95 BOND, OUR NEEDY AGED 315, 354 (1954).

> are some assertions that if relatives responsibility provisions in the law were strengthened or if the present regulations were more rigidly enforced, the public economic burden of our aging population could be very substantially reduced. There are others who hold that it is impossible, inadvisable or inequitable to try to enforce (them) at all, and that we should face reality and drop the provisions entirely. . . . [96]

Where such laws are strictly enforced it has been shown that great savings result for the taxpayer. Cook County (Chicago), Illinois, which strictly enforces the statute, has proportionately less persons over 65 drawing old age assistance than 75 other counties in Illinois.[97] Slightly more than 10% of the people over 65 in Cook County receive old age assistance, while Louisiana, which declines from strict enforcement of its statute, has 60% of the same age group on relief.[98] In San Bernardino County, California, where the statute was enforced at the rate of four cases a month according to a 1954 survey, it was discovered that the administrative costs to the agency in bringing court action amounted to approximately $1,250 for a five month period, while the contributions received from the relatives in such actions during this same time amounted to $7,037.50.[99] In the latter county strict enforcement is regarded by county officials as the best means of being fair to relatives, accomplishing a saving for the taxpayers, and increasing the benefits to elderly persons.[100]

Another reason for strict enforcement of these statutes is the express provision in many old age assistance statutes to the effect that assistance will not be granted to needy old persons who have legally responsible children, whether they are actually contributing or not.[101] In Illinois the statute provides that the local supervisor of assistance may require a needy person to request legal action against his children before he will give him any financial assistance.[102] Apparently these statutes are based on the assumption that children will accept their duty if it becomes evident that the state will not.[103] While this position may be justifiable in many cases, it is not universally true and it seems doubtful that the added incentive to the children outweighs the manifest hardship imposed upon the parents.

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96 Minn. Comm. on aging, *Minnesota's Aging Citizens,* Jan., 1953, p.62, 63 (quoted in Epler, *Old Age Assistance: Plan Provisions on Children's Responsibility for Parents,* SOC. SEC. BULL., April, 1954, p.12).

97 Chicago Daily Sun-Times, March 15, 1957, p.35, col. 1-2.

98 *Ibid.*

99 BOND, OUR NEEDY AGED 201 (1954).

100 *Ibid.*

101 ALASKA COMP. LAWS ANN. § 51-2-23 (1949); CONN. GEN. STAT. § 1601d (Supp. 1955); DC CODE ANN. § 46-202 (1951); KY. REV. STAT. ANN. § 205.120 (7) (Baldwin 1955); MICH. STAT. ANN. § 16.428 (Supp. 1955); NEB. REV. STAT. § 68.202 (4) (Supp. 1955); N.J. STAT. ANN. § 44.7-5(b) (Supp. 1956); N.D. REV. CODE § 50-0703 (1943); WIS. STAT. § 49.22 (d) (1955).

102 ILL. ANN. STAT. tit. 23, § 436-12 (Smith Hurd Supp. 1956).

103 Epler, *Old Age Assistance: Plan Provisions on Children's Responsibility for Parents,* SOC. SEC. BULL., April, 1954.

Conclusion

Undoubtedly, the idea of *compelling* an able child to maintain the very persons who gave him life is a concept completely foreign to man's nature and repugnant to many people. But despite human nature we are faced with the increasingly difficult task of providing support for many of the aged, whose own able children refuse to assist them. First given legal recognition in the 17th century, the problem has reached alarmingly serious proportions today; even more troublesome proportions are destined for the not too distant future.

It is submitted that the most effective remedy for the social lag in this area, repugnant though it may be, is the strict enforcement of the relatives responsibility statutes against all able children, the logical persons to assume such burden of support. Widespread adoption of the UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT has made this approach more feasible than ever before. Enforcement of the statutes will not supply the love that should accompany the bestowals, but at least it will supply the bestowals. Though such grudgingly granted gifts will hardly lead to harmonious family life, the end result—support of the parents—will alleviate the demands of a critical social problem.

Rigid enforcement of the statutory obligation will also result in savings for the general public, since the state will then be relieved of a large part of its burden in providing old age assistance; in view of an aging population increasing at a rate unheard of in the history of the world, the saving to the state will be considerable.

Though strong arguments are posited to prove that the difficulties of administration outweigh the benfits to be gained from strict enforcement, experience has demonstrated that such is not the case. As the director of one of the largest welfare departments in the country has stated:

> There can be no question that when legally responsible relatives who are financially able are required to contribute to the support of their parents, and if the law is strictly enforced, then the amount of public aid expenditures for such purpose is greatly decreased.[104]

John P. Callahan

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104 Letter from Raymond M. Hilliard, Director of the Cook County (Chicago) Dep't of Welfare, to the *Notre Dame Lawyer*, March 28, 1957, on file in the Notre Dame Law Library.