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10-1-1960

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### Recommended Citation

Marvin H. Gillman, *Maintenance and Support -- Father's Liability to Provide Child with College Education*, 15 U. Miami L. Rev. 108 (1960)

Available at: <http://repository.law.miami.edu/umlr/vol15/iss1/10>

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The court in the instant case determined that the hearing before the administrative board was not a judicial case, hence the case originated in the circuit court making it a "trial court."<sup>13</sup> It was the court's position that reason and logic supported this finding since proceedings before boards and commissions are often conducted without court decorum or regard for the rules of evidence. In this regard the court said:

Such proceedings before boards and commissions are so often conducted without regard to proper decorum or observance of the rules for introduction or consideration of evidence that the work of the circuit court consists largely in preparing an intelligent and orderly "case" for review by the appellate court.<sup>14</sup>

Hence, the court concluded that the case first entered the established judicial system in the circuit court, and, therefore, the precedent based on appeals from lower courts to the effect that the circuit court sat as an appellate court in review of lower court decisions was inapplicable.<sup>15</sup>

The legislative purpose in the creation of the district courts of appeal was to streamline and modernize the appellate system of the state. The number of administrative agencies is enormous. To restrict review from such bodies to the district courts to certiorari would thwart the very purpose of the district courts. Consequently, this determination by the supreme court that the circuit court sits as a trial court in review of administrative rulings, by enlarging the scope of the district court's review as a matter of right, fulfills the purpose for which the district courts were created. The citizen who seeks review of an administrative order now can be sure that review will not end with the circuit court nor will it depend upon certiorari to an overcrowded supreme court.

RAY E. MARCHMAN, JR.

## **MAINTENANCE AND SUPPORT — FATHER'S LIABILITY TO PROVIDE CHILD WITH COLLEGE EDUCATION**

A petition was brought by a divorced mother to increase the amount of child support payable by the divorced father so as to enable the child in the mother's custody to attend college. The lower court granted the increase. Held, *affirmed*: a minor child whose parents are divorced and

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13. ". . . where statutory administrative proceedings are had before administrative officers, boards, commissions, or other tribunals, with statutory appeals to the circuit courts, such proceedings do not appear in the judicial department of the state government as a judicial 'case' until they are brought to the circuit court . . ." *State v. Furen*, 118 So.2d 6, 8-9 (Fla. 1960).

14. *State v. Furen*, 118 So.2d 6, 9 (Fla. 1960).

15. Florida Appellate Rule 4.1 which provides that: "All appellate review of the rulings of any commission or board shall be by certiorari as provided by the Florida Appellate Rules" was found to be in conflict with the statutory provision of FLA. STAT. § 475.35 (1959), and thus without effect.

who is in the custody of the mother is entitled to receive financial support from its father for a college education when the father is financially able and the child is mentally qualified. *Pass v. Pass*, 118 So.2d 769 (Miss. 1960).

Under the common law and by statute, it is the primary duty of a father to give care, education and support to his minor children whether they be in his custody or not.<sup>1</sup> The extent of "education" under the common law was only that of a common school education and did not include college.<sup>2</sup> This view was founded on the thought that a common school education is a necessary, but a college education is not.<sup>3</sup> Under the modern view, when a divorce is involved, the amount of education which is a necessary has become looked upon as relative to the particular child and parent.<sup>4</sup> However, it should be noted that a minor child whose parents are *not* divorced cannot have a court order his father to provide him with a college education regardless of the child's mental capacity or the father's financial position.<sup>5</sup>

According to the majority of jurisdictions,<sup>6</sup> the child whose parents are divorced, if properly qualified for college and whose father is financially

1. *Daily v. Parker*, 152 F.2d 174 (7th Cir. 1945); *Ingalls v. Ingalls*, 256 Ala. 321, 54 So.2d 296 (1951); *Barrett v. Barrett*, 44 Ariz. 509, 39 P.2d 621 (1934); *Bockman v. Bockman*, 202 Ark. 585, 151 S.W.2d 99 (1941); *Fagan v. Fagan*, 43 Cal. App.2d 189, 110 P.2d 520 (1941); *Hobbs v. Lokey*, 7 W. W. Harr. 408, 183 Atl. 631 (Del. 1936); *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933); *Ross v. Richardson*, 38 Ga. App. 175, 143 S.E. 446 (1928); *Richardson v. Richardson*, 72 Idaho 19, 236 P.2d 718 (1951); *Kohler v. Kohler*, 326 Ill. App. 105, 61 N.E.2d 687 (1945); *Harmon v. Harmon*, 116 Ind. App. 140, 62 N.E.2d 880 (1945); *Addy v. Addy*, 240 Iowa 255, 36 N.W.2d 352 (1949); *DeLong v. DeLong*, 271 Ky. 815, 113 S.W.2d 455 (1938); *State v. Borum*, 118 La. 846, 178 So. 371 (1937); *Dronin v. Snodgrass*, 138 Me. 145, 23 A.2d 631 (1941); *Sause v. Sause*, 194 Md. 76, 69 A.2d 811 (1949); *Sykes v. Smith*, 333 Mass. 560, 132 N.E.2d 168 (1956); *Benjamin v. Bondy*, 322 Mich. 35, 33 N.W.2d 651 (1948); *Haugen v. Swanson*, 222 Minn. 203, 23 N.W.2d 535 (1946); *Crum v. Upchurch*, 232 Miss. 74, 98 So.2d 117 (1957); *Smith v. Smith*, 231 S.W.2d 637 (Mo. App. 1950); *Daly v. Daly*, 21 N.J. 599, 123 A.2d 3 (1956); *Landes v. Landes*, 1 N.Y.2d 358, 153 N.Y.S.2d 14, 135 N.E.2d 562 (1956); *Lee v. Coffield*, 245 N.C. 570, 96 S.E.2d 726 (1957); *Schirtzinger v. Schirtzinger*, 95 Ohio App. 31, 117 N.E.2d 42 (1952); *Sheppard v. State*, 306 P.2d 346 (Okla. Crim. App. 1957); *Bartlett v. Bartlett*, 175 Ore. 215, 152 P.2d 402 (1944); *Commonwealth v. Bishop*, 185 Pa. Super. 362, 137 A.2d 822 (1958); *Haakon County v. Staley*, 60 S.D. 87, 243 N.W. 671 (1932); *Sinclair v. Sinclair*, 196 Tenn. 538, 268 S.W.2d 573 (1954); *Hulse v. Hulse*, 111 Utah 193, 176 P.2d 875 (1947); *White v. White*, 181 Va. 162, 24 S.E.2d 448 (1943); *Town of Bennington v. Telford*, 119 Vt. 397, 127 A.2d 275 (1956); *Robinson v. Robinson*, 131 W. Va. 150, 50 S.E.2d 455 (1948).

2. *Middlebury College v. Chandler*, 16 Vt. 683, 42 Am. Dec. 537 (1844).

3. *Ibid.*

4. *Esteb v. Esteb*, 138 Wash. 174, 244 Pac. 264 (1926).

5. 67 C.J.S. *Parent and Child* § 15 (1950).

6. *Rawley v. Rawley*, 94 Cal. App.2d 562, 210 P.2d 891 (1949); *Hale v. Hale*, 55 Cal. App.2d 879, 132 P.2d 67 (1942); *Strom v. Strom*, 13 Ill. App. 354, 142 N.E.2d 172 (1957); *Hart v. Hart*, 239 Iowa 142, 30 N.W.2d 748 (1948); *Refer v. Refer*, 102 Mont. 121, 56 P.2d 750 (1936); *Titus v. Titus*, 311 Mich. 437, 18 N.W.2d 883 (1945); *Payette v. Payette*, 85 N.H. 297, 157 Atl. 531 (1931); *Cohen v. Cohen*, 193 Misc. 106, 82 N.Y.S.2d 513 (Sup. Ct. 1948); *Briggs v. Briggs*, 178 Ore. 193, 165 P.2d 272 (1946); *Jackman v. Short*, 165 Ore. 626, 109 P.2d 860 (1941); *Atchley v. Atchley*, 27 Tenn. App. 124, 194 S.W.2d 252 (1945); *Feck v. Feck*, 187 Wash. 573, 60 P.2d 686 (1936); *Esteb v. Esteb*, 138 Wash. 174, 244 Pac. 264, 47 A.L.R. 110 (1926). *But cf.* *Deigarrd v. Deigarrd*, 114 So.2d 516 (Fla. App. 1959)

able, is entitled to a court order requiring his divorced father to provide him with a college education until the child reaches majority. The Washington court in *Esteb v. Esteb*<sup>7</sup> was the first to embark on this modern view. There the court took judicial knowledge of the increasing importance of a college education in today's world and held that the amount of education which is a necessary is relative to the child.

The courts of Indiana,<sup>8</sup> New Jersey<sup>9</sup> and Pennsylvania<sup>10</sup> have held steadfastly to the old common law view of education and restrict a divorced father's liability for his child's education to that of high school. In a recent Indiana case,<sup>11</sup> the court recognized the existence of a moral obligation on the part of a divorced father to provide a college education to his children so that their education may be complete, but refused to order him to do so.

In the instant case, one of first impression in Mississippi, the court in construing the Mississippi statutory<sup>12</sup> duty of a parent to provide its minor child with an education, gave great weight to the modern philosophy of the importance of a college education. Also in support of its decision, the court was of the opinion that the parent owes a duty to the *state*, as well as to the child, to educate thoroughly the minor child. Thus, a *college* education is not outside the scope of the parent's duty to educate. No mention was made by the court as to whether a college education is now looked upon in Mississippi as a necessary.

From the sociological aspect, the decision of the Mississippi court is proper. However, from the legal standpoint, does it not create a disparity between children of divorced parents and those of "happily" married ones

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(by ordering the divorced father to provide a trust fund for his minor son's college education to be applied in the event of the father's death, the court, in effect, sanctioned the requiring of a father to provide a minor child with a college education beyond his majority, as the son was 18 years of age at the time of the divorce when the trust fund was established).

7. 138 Wash. 174, 244 Pac. 264 (1926).

8. *Haag v. Haag*, 163 N.E.2d 243 (Ind. 1959); *Hachat v. Hachat*, 117 Ind. App. 294, 71 N.E.2d 927 (1947); *Morris v. Morris*, 92 Ind. App. 65, 171 N.E. 386 (1931).

9. *Jonitz v. Jonitz*, 25 N.J. Super. 544, 96 A.2d 782 (1953); *Straver v. Straver*, 26 N.J. Misc. 218, 59 A.2d 39 (1948); *Streitwolf v. Streitwolf*, 58 N.J. Eq. 570, 43 Atl. 904 (1899).

10. *Commonwealth v. Wingert*, 173 Pa. Super. 613, 98 A.2d 203 (1953); *Commonwealth v. Cooke*, 34 Del. Co. 395 (Pa. 1946); *Commonwealth ex rel. Binney v. Binney*, 146 Pa. Super. 374, 22 A.2d 598 (1944). See also *Commonwealth ex rel. Stomel v. Stomel*, 180 Pa. Super. 573, 119 A.2d 597 (1956) (father, in a divorce proceeding, voluntarily agreed to provide a college education for one son who was enrolled in, but not yet attending, college; the court would not require the father to provide a college education to a second son who was already attending college and for whom the father had not agreed to provide such education).

11. *Haag v. Haag*, 163 N.E.2d 243 (Ind. 1959).

12. "The father and mother are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare and education, and the care and management of their estates. . . ." Miss. CODE ANN. §399 (1942).

in so far as a college education is concerned?<sup>13</sup> Perhaps through the use of *Pass v. Pass*<sup>14</sup> and the other cases of the majority view it represents,<sup>15</sup> the courts will find themselves free to order a financially-able father to provide a college education to his minor child deserving of such an education when the parents are "happily" married.

MARVIN H. GILLMAN

## REFUSAL TO TESTIFY ON CONSTITUTIONAL GROUNDS — DISCHARGE FROM STATE EMPLOYMENT

Petitioner, a temporary county social worker,<sup>1</sup> refused to testify about his political beliefs and associations before a sub-committee of the House Un-American Activities Committee. His refusal to answer was based on the first and fifth amendments of the United States Constitution. Pursuant to the provisions of a California statute,<sup>2</sup> which required state employees to testify before any investigating body when so ordered, and which made any state employee who refused to do so guilty of insubordination, petitioner was summarily discharged.<sup>3</sup> The California Court of Appeals upheld the dismissal.<sup>4</sup> By certiorari, petitioner challenged the constitutionality of the statute, claiming it to be in violation of the fourteenth amendment of the United States Constitution; contending his discharge from state employment for the exercise of a federal right was a denial of due process of law. *Held, affirmed* (5-3),<sup>5</sup> the statute is a reasonable exercise of the power of the state to regulate and supervise the conduct of its employees. *Nelson v. County of Los Angeles*, 362 U.S. 143 (1960).

Prior to the last decade, the question of the power of the states to discharge employees who refused to testify before investigating committees and bodies had not been before the United States Supreme Court, although numerous state cases had dealt with the problem. The state courts, with a few notable exceptions,<sup>6</sup> have upheld such dismissals. Most

13. See text accompanying note 5 *supra*.

14. 118 So.2d 769 (Miss. 1960).

15. See note 6 *supra*.

1. The opinion of the Court deals with petitioner Globe, a temporary county employee, only. The decision of the state court as to petitioner Nelson, a permanent employee, was affirmed without opinion by an equally divided court. Mr. Chief Justice Warren did not participate.

2. Cal. Gov't Code § 1028.1 (1953).

3. Los Angeles County Civil Service Rules § 19.07. (temporary employees are subject to summary dismissal at any time during their probationary periods.)

4. *Globe v. County of Los Angeles*, 163 Cal. App.2d 595, 329 P.2d 971 (1958).

5. Mr. Justice Clark wrote for the Court. Mr. Justices Black, Brennan and Douglas dissented. Mr. Chief Justice Warren did not participate.

6. *Board of Educ. v. Mass*, 148 Cal. App.2d 392, 304 P.2d 1015 (1956) (summary dismissal of state employee, who refused to testify reversed); *Opinion of the Justices*, 332 Mass. 763, 126 N.E.2d 100 (1958) (advisory opinion holding unconstitutional a proposed statute to discharge employees who refuse to testify.)