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STEPPARENTS' RESPONSIBILITY OF SUPPORT

Janet Mary Riley*

WHO IS A STEPPARENT?

There may have been a time when it was fairly safe to assume that a stepparent was one who had married a widow or a widower who had a child or children. This included an assumption of a previous marriage, and its termination by a death.

With the increase in divorce and remarriage¹—possibly including a series of sequential marriages—more and more men and women possess the status of stepparent though there was a divorce instead of death terminating the marriage of the parent of the child.

The very dictionary definition of a stepchild as the child of one's wife or husband by a former marriage assumed there had been a marriage in the past.² Yet with the increase of illegitimate births followed by marriage of the mother to a man other than the father of the child, more men may possess the status of stepfather though there was no previous marriage of the mother of the child.³ With the increase in births through new methods of procreation, more men and women may possess the status of stepparents who perhaps never contemplated such a relationship.⁴

Who, then, is a stepparent? The spouse of a parent of a child not his or her offspring is a stepparent.

How does one become a stepparent? One necessary factor is parent-

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1. In 1963, 66.31% of all terminated marriages ended by death and 33.69% by divorce. By 1979 only 42.77% terminated by death, while 57.23% ended by legal dissolution. For half a decade the ratio of marriages to dissolution has been about 2 to 1. The latest figures were 2,438,000 marriages and 1,219,000 divorces in 1981. The 2 to 1 ratio contrasts with 1930, when there were 6 marriages to every dissolution. Unif. Marital Prop. Act, prefatory note, 9A U.L.A. 19 (Supp. 1983).

2. Webster's New International Dictionary 2237 (3d ed. 1976); Black's Law Dictionary 1267 (5th ed. 1979).

3. Stepchildren may be defined differently for different purposes, e.g., Louisiana's Workers' Compensation Law includes stepchildren within the definition of "child," La. R.S. 23:1021(3) (Supp. 1984); but the unacknowledged illegitimate children of a deceased employee's wife by another man were held not to have been intended by the legislature to be included among those who could receive compensation for his death; they were not alleged to be members of his family nor dependent upon him. *Dangerfield v. Indemnity Ins. Co.*, 209 La. 195, 24 So. 2d 375 (1945). See also Annot., 90 A.L.R. 2d 583 (1963).

4. See generally Lorio, *In Vitro Fertilization and Embryo Transfer: Fertile Areas for Litigation*, 35 S.W. L.J. 973 (1982); Lorio, *Alternative Means of Reproduction: Virgin Territory for Legislation*, 44 La. L. Rev. 1641 (1984).

hood of the other spouse. But it is not clear that the blood⁵ parent must have married the other blood parent of the child, though this is usually the case when the potential stepparent marries the parent of a legitimate child. If there had been no marriage between the blood parents of the child, the spouse of one parent becomes the stepparent of an illegitimate child, that is, one born out of wedlock.⁶

Will the husband of a woman artificially inseminated by another man's sperm be classed as a stepfather? He is not the blood father and he is married to the mother, but in Louisiana if the husband consented to the insemination, he is irrebuttably presumed to be the legitimate father of the child, and therefore not a stepfather.⁷ This may not be true in some states.

The wife of a man whose sperm produced a child in a surrogate mother's womb will probably be classed as a stepmother though she intended to be considered the mother. A stepmother may be one to whose uterus an embryo has been transplanted after fertilization by her husband's sperm of another woman's egg, that woman having been a sort of "temporary" surrogate mother.⁸

Who is not a stepparent? An adoptive parent is not a stepparent, having voluntarily accepted responsibility for the adopted child in a manner specified by statute with resulting effects that vary from state to state, but which usually give the child a status similar in most respects to that of a child born to the parent.⁹ Foster parents are not stepparents, as they usually are not married to a blood parent of the child; they may be expected, however, to perform the duties of a parent.¹⁰ One who is presumed to be the legitimate parent of a child, and who is irrebuttably barred from disproving that presumption is not a stepparent; rather, such a person is charged with the full responsibilities of a blood parent.¹¹

A stepchild may or may not be living with his parent and stepparent. His living arrangements may be informal or may be dictated by a court

5. Though most writers speak of the "natural" parent and the "natural" child, this author has chosen to use the term "blood" parent and "blood" child, because until Act 607 of 1979 repealed Civil Code article 202, illegitimate children who had been acknowledged by their father were called natural children; others were "contradistinguished by the appellation of bastards." The term was also found throughout the Code before 1979, and remains in article 949 today. The term "blood parent" is used in article 214 concerning adoptions, and "blood . . . relations" in article 902 concerning successions.

6. Annot., 90 A.L.R. 2d 583 (1983); 10 Am. Jur. 2d Bastards § 69 (1963).

7. La. Civ. Code art. 188; cf. Ariz. Rev. Stat. Ann. 12:2415B (1982); Cal. Civ. Code § 7005(a) (West 1983); Tex. Fam. Code Ann. § 12.03 (Vernon 1975). See Unif. Parentage Act § 5, 9A U.L.A. 592 (1973).

8. See *supra* note 4.

9. E.g., La. Civ. Code art. 214.

10. 67A C.J.S. Parent and Child §§ 20, 154.

11. La. Civ. Code art. 188. See Cal. Civ. Code § 7005(b) (West 1983).

order of sole custody to one or the other of his parents or to another relative, joint custody to both parents, or custody to a foster home or an institution.

SCOPE OF THIS STUDY

After one has determined that he is in fact a stepparent, if he then searches the law for a description of his legal support responsibilities, if any, toward the child in question, his findings will vary from state to state.¹²

This paper primarily concerns the effect of the recently revised community property law of Louisiana¹³ on the support responsibilities of stepparents in this state. The very specific reimbursement articles in that revision¹⁴ alerted this author to the possibility that a person marrying a parent and years later divorcing that parent might discover that he had incurred what might be a huge debt to his former spouse upon divorce for support of his stepchildren who may not have lived in his household, and whom he may never have seen. A desire to bring this Civil Code article to the attention of stepparents and of counselors advising them initiated a search for stepparents' legal support responsibilities. At first this author questioned only whether such a duty, if it is to exist in Louisiana, should be direct and easy to find, instead of indirect and dependent upon the property system (that is, the matrimonial regime) adopted by the couple or imposed upon them by law. Not surprisingly, that narrow study soon extended into unexpected areas including how the matter is handled in other community property states and in common-law states without community property; the effect on the stepparent in some states of the child's probability of becoming a public charge; the effect of accepting the child into one's home; the distinction between court ordered responsibility on the part of the parent-spouse with or without custody or joint custody; the measure of support as affected by remarriage with its accompanying new responsibilities; and resulting policy questions.

As more and more families include his children, her children, and their children, it is hoped this article can aid in clarification of the resulting support responsibilities. Once the situation is more clearly viewed, policy decisions can be more equitably determined.

LOUISIANA—THE COMMUNITY REGIME

The new (as of 1980) Louisiana Civil Code article that stirred this

12. Annot., 75 A.L.R. 2d 1129 (1977). For matters other than support, see Berkowitz, *Legal Incidents of Today's "Step" Relationship: Cinderella Revisited*, 4 *Fam. L. Q.* 209 (1970) (treating workers' compensation, wrongful death, insurance, welfare, and descent and distribution—testate and intestate).

13. La. Civ. Code arts. 2325-2437.

14. La. Civ. Code arts. 2364-2369.

author's interest in the problem of stepparents' support responsibilities is article 2365, which states:

If separate property of a spouse has been used to satisfy a community obligation, the spouse, upon termination of the community property regime, is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used.

Reimbursement may only be made to the extent of community assets, unless the community obligation was incurred for the ordinary and customary expenses of marriage, or for the support, maintenance, and education of children of either spouse in keeping with the economic condition of the community. In the last case, the spouse is entitled to reimbursement from the other spouse even if there are no community assets.¹⁵

As of this writing, the article has not had the benefit of appellate level interpretation, but its wording is clear. Its first paragraph, in effect, excuses a spouse from a duty of reimbursement to the other spouse for *extraordinary* community obligations paid with separate funds unless reimbursement can be made from any remaining community funds; by contrast, its second paragraph requires that *ordinary* community obligations paid with one spouse's separate funds be reimbursed upon termination of the community from the other spouse's separate funds if community funds are insufficient. The article can be justified, if at all, by recognition that insofar as it governs support of children, it is a method of enforcing the new (1980) Civil Code article 2362¹⁶ which deems an alimentary obligation to be a community obligation. How that article came to be is chronicled below. But first, consider a scenario for which the denouement is enforcement of article 2365's requirement of reimbursement.

Young professional woman marries the father of children in the custody of their mother, his first wife. Husband, with extensive separate investments, exercises the privilege newly extended by Civil Code article 2339 to husbands since 1980¹⁷ of unilaterally executing an authentic act reserving to himself as separate property the fruits, revenues, and mineral rights produced from his separate assets. He avoids commingling such dividends, interest, rents, crops, and royalties with community assets by depositing them in a checking account in his name alone, designated as a separate account. He draws all checks for child support on that separate account. Community funds earned by the personal efforts of the spouses are used for other current expenses, leaving little to be divided upon termination of the second marriage. Upon divorce, husband seeks reimbursement from his second wife of one-half the value of all the checks he has

15. La. Civ. Code art. 2365.

16. La. Civ. Code art. 2362.

17. La. Civ. Code art. 2339.

been sending to the custodial parent for his children. There are insufficient community funds to repay him, hence young professional second wife will leave her first marriage saddled with a heavy debt to former husband to be paid from her future earnings in her professional practice.¹⁸

One wonders about motives. Why did he so scrupulously pay child support only from his separate funds? Probably because he then assumed it was his separate obligation. Why does he now decide he wants reimbursement? Probably because he has just learned that it is available to him at this unhappy time, or possibly as a bargaining chip to persuade his second wife to agree to something he wants: perhaps custody or joint custody of the child of the second marriage, or an agreement concerning that child's support or concerning alimony, or a partition settlement of a certain community asset he wants to keep. It may be vindictive, or perhaps he simply wants the money. In any event, such a duty imposed by law on a stepparent, it is submitted, was probably anticipated by neither spouse before or during the marriage. In fact, if the stepmother had searched Louisiana law to learn whether her marriage would constitute an assumption of responsibilities toward his children, she would have found nothing in the title of the Louisiana Civil Code, "Of Father and Child,"¹⁹ though that is the section that imposes reciprocal duties of support for ascendants and descendants related by blood, legitimate²⁰ or illegitimate,²¹ or by adoption.²² (Incidentally, there is no title "Of Mother and Child.") Had she searched in an old code, she would have relaxed when she found article 269, repealed in 1976,²³ in the title, "Of Minors, Of Their Tutorship and Emancipation."²⁴ It declared that "[u]nder the name *relation* are not included connections by affinity,"²⁵ and affinity is the "[r]elation which one spouse because of marriage has to blood relatives of the other,"²⁶ a definition which includes steprelatives.

If she had been sufficiently astute to suspect that, though the title on parent and child imposed no responsibility for stepchildren, the community property articles may affect her relationship not only to her husband, and his creditors, but also to his dependents, she would have discovered article 2362: "[a]n alimentary obligation imposed by law on a spouse is deemed to be a community obligation."²⁷ Learning that

18. La. Civ. Code art. 2365.

19. La. Civ. Code arts. 178-245.

20. La. Civ. Code art. 229.

21. La. Civ. Code arts. 239-40.

22. La. Civ. Code art. 214.

23. La. Civ. Code art. 269, repealed by 1976 La. Acts, No. 429, § 2.

24. La. Civ. Code arts. 246-385.

25. La. Civ. Code art. 269, repealed by 1976 La. Acts No. 429, § 2.

26. Black's Law Dictionary 80 (4th ed. 1951).

27. La. Civ. Code art. 2362.

"alimentary" is the adjective form of alimony or sustenance,²⁸ and in spite of the general public's misunderstanding that alimony is for former spouses only, she would have found Civil Code article 230 which defines it: "[b]y *alimony* we understand what is necessary for the nourishment, lodging and support of the person who claims it. It includes the education, when the person to whom the alimony is due, is a minor."²⁹ She would have learned that the duty of such support is reciprocal between relatives in the ascending and descending lines,³⁰ and that "[f]athers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children."³¹ She would have wondered whether "their children" refers to the children of the marriage, or instead means that by marrying, the spouses contract to support each other's children though not of that marriage, and she would have decided that conclusion would be improbable as the article refers to "fathers and mothers." Although she is about to marry a father, she is not yet a mother, and his children are not her descendants from whom she could expect reciprocal support in the future. Just to be sure, she would have searched and found the last article in the Civil Code,³² with definitions of terms including children³³ and family.³⁴ Though both definitions were amended in 1979 and that of children amended again in 1981, both old and new definitions would have satisfied her that his children are not hers, and that a family in a limited sense signifies father, mother, and children, and she is not a mother.

When she found Civil Code article 2345³⁵ she would have been satisfied that her *separate* property was immune from her prospective husband's creditors, for it permits satisfaction of both separate and community obligations during a community regime only from community property and from the separate property of the spouse who incurred the obligation. She would have noted the similarity of that article to the first paragraph of article 2357,³⁶ applying the same rule at termination of the community. She would have noted that by her own act she could forfeit the immunity of her separate property and expose it to her husband's separate creditors at termination of the community, but only by disposing of property of the former community for a purpose other than satisfac-

28. Webster's New International Dictionary 2304 (3d 1976).

29. La. Civ. Code art. 230; see generally La. Civ. Code arts. 227, 229, 231-234; on illegitimates, see generally La. Civ. Code arts. 240-244.

30. La. Civ. Code art. 229.

31. La. Civ. Code art. 227.

32. La. Civ. Code art. 3556.

33. La. Civ. Code art. 3556(8), as amended by 1979 La. Acts, No. 607, § 1 & 1981 La. Acts, No. 919, § 2 (effective Jan. 1, 1982).

34. La. Civ. Code art. 3556(12), as amended by 1979 La. Acts, No. 711, § 1.

35. La. Civ. Code art. 2345.

36. La. Civ. Code art. 2357, para. 1.

tion of community obligations or by a written assumption of responsibility for one-half of the community obligations incurred by her husband.³⁷

She would have done her research well, insofar as it concerned possible burdening of her separate property in favor of her husband's separate creditors or even community creditors for debts incurred by him. Her separate property was safe from creditors except by her own act. She was not anticipating a divorce, so may not have researched claims for reimbursements between the spouses.³⁸ Her separate property could not be reached by her husband's creditors including her stepchildren, but if her husband supported them with *his separate property*, he could at termination of the community demand reimbursement of one-half of his separate funds thus expended. Although his obligation to support his children is deemed a community obligation, he could demand reimbursement not only from both halves of the community, but also from her separate funds.³⁹

If the community regime and the marriage in the scenario terminated not by separation from bed and board nor by divorce, but by the death of the husband, the husband's child will be his heir and will succeed to the property, separate and community, in the husband's intestate succession.⁴⁰ His stepmother will have a usufruct over the child's share of the community property, which usufruct will terminate when she remarries.⁴¹ Her debt to her husband is a heritable right of his separate estate.⁴² Hence the child who was supported by his father's separate property will upon his father's death have a right to be paid by his stepmother a sum of money equal to one-half of all the support payments made during his father's second marriage.

If the child has predeceased his father and there are no other descendants, the surviving wife will succeed to the deceased's share of the community property,⁴³ and she will owe reimbursement of the support payments to the heirs of his separate estate.

Although nowhere in Louisiana law are stepparents directly made separately responsible for support of stepchildren, at termination of their community regime they must repay to their spouse or his heir one-half of the separate funds the parent has used to fulfill the parental duty.⁴⁴ Support is a reciprocal duty⁴⁵ between parent and child, but is not legally

37. La. Civ. Code art. 2357, paras. 1 & 2.

38. La. Civ. Code arts. 2358, 2364-2369.

39. La. Civ. Code art. 2365.

40. La. Civ. Code art. 888.

41. La. Civ. Code art. 890.

42. La. Civ. Code art. 2365, comment (b); La. Civ. Code art. 1997, 1999.

43. La. Civ. Code art. 889.

44. La. Civ. Code art. 2365.

45. La. Civ. Code art. 229.

reciprocal to the stepparent from the child in his adult life; the stepparent's burden is not a consequence of a relationship to the child, but apparently is classed as an ordinary expense of marriage to be borne equally by both spouses at the end of the community, though the duty is not equal either at its origin or in its reciprocity.

This author has no knowledge of the legislative intent in enacting the reimbursement article for ordinary expenses and for support of children,⁴⁶ but was present at a meeting of the Joint Legislative Sub-Committee and its advisory committee when the 1978 predecessor⁴⁷ to article 2362 was drafted, declaring alimentary obligations to be community obligations.⁴⁸ The advisory committee brought to the attention of the legislators the then recent 1976 Louisiana Supreme Court opinion in *Connell v. Connell*.⁴⁹ When a husband sued for a partition of the property of their former community, the wife contended that the almost \$28,000 he had paid as child support to his first wife from the second community's earnings should be chargeable to the husband's half interest in the second community. The supreme court disagreed holding that the payments were not in discharge of a debt, but of an obligation, and that the obligation was one imposed by law rather than by the judgment, and was properly discharged from community funds.⁵⁰ Apparently some members of the advisory committee wished that precedent to be legislatively rejected in the revision. Instead, the legislators asked for copies of the opinion to be made available to them during the lunch break, and returned with a draft of an article legislatively confirming the *Connell* holding, deeming alimentary obligations to be community obligations.⁵¹ One legislator explained that if a husband knew that he would some day be required to

46. La. Civ. Code art. 2365.

47. La. R.S. 9:2852(G), repealed by 1978 La. Acts, No. 627.

48. La. Civ. Code art. 2362.

49. 331 So. 2d 4 (La. 1976).

50. 331 So. 2d. at 6. The same result—but based on a different rationale—occurred in California in *Marriage of Smaltz*, 82 Cal. App. 3d, 147 Cal. Rptr. 154 (1978). A second wife was refused reimbursement, to her or to the community, of \$16,200.00 of community funds used, allegedly without her consent, by her husband for spousal support payments to his former wife. Because the husband had no separate funds, the California court of appeal distinguished this situation from that in *Weinberg v. Weinberg*, 67 Cal. App. 2d 557, 63 Cal. Rptr. 13, 432 P.2d 709 (1967), in which the Supreme Court of California held that the marital community was entitled to partial reimbursement for the husband's use of community funds to meet the obligations of alimony for his former wife and child support, when the measure of his obligation had been based on both his community and separate incomes. The second community in *Weinberg* recouped that portion charged to his separate estate by determining his total separate and community incomes during the second marriage, including unrealized capital increases. The court stated that "[i]t would be unjust to plaintiff to allow defendant to preserve his separate estate by using only community funds to meet alimony and child support obligations totalling more than \$130,000 that were substantially based on his large separate income." *Id.* at 16.

51. La. Civ. Code art. 2362.

repay his wife or her heirs one half of the community money he was sending to his first wife for his children, he would have no incentive to save during the second marriage, as most of the savings would some day go to his second wife, not to him.

Only alimony for children has been emphasized thus far, as this article concerns stepparents' responsibility, but it is worthy of note that alimony is deemed to be a community obligation whether it is owed to children, to a former spouse,⁵² to parents, or to other ascendants and descendants. Moreover, the duty of providing support for designated people is imposed by law without a judgment; the court is only the means of enforcement. Reimbursement from the separate funds of the stepparent spouse is required only for those cases in which separate funds of the blood parent have been used to pay ordinary expenses of the marriage and alimony for children, not alimony for wives or ascendants.

Admittedly, the *Connell* case was not the first to relate alimony to community property. Other cases had found that a second marriage with creation of a new community regime constituted such a change of circumstances as to enable a father under a duty of support to pay a greater amount, because his new wife's income had become available for his use. Similarly, a mother has been refused an increase or required to take a decrease in child support because her second husband's income has enriched her.⁵³

LOUISIANA—THE SEPARATION OF PROPERTY REGIME

Not surprisingly, some couples have attempted to avoid having the measure of ability to pay alimony by one spouse enlarged by the earnings

52. Compare *Connell v. Connell*, 331 So. 2d 4 (La. 1976) and La. Civ. Code art. 2362 with *Patterson v. Patterson*, 417 So. 2d 419 (La. App. 1st Cir. 1982), in which alimony *pendente lite* was held to be the husband's separate debt [*sic*], not to be paid from the property of the community then in process of partition, because the community regime was dissolved retroactively to the date of filing suit. The community had ceased to exist when the payments were made. Hence, alimony to a first wife is a community obligation of a second community, but not of the recipient's former community.

53. In *Marcus v. Burnett*, 282 So. 2d 122 (La. 1973), both parents of three children had remarried persons who already had children. The first wife obtained an increase in child support but not as much as she sought.

[T]he court of appeal opinion expressly took into consideration the living expenses incident to the second marriage of Mr. Burnett (as well as his income and that of his second wife) in their determination of the amount of support for which he was liable. . . .

Moreover, this court has previously recognized that the income of a second wife is to be considered in determining the husband's obligation to support children of his first marriage. . . . It would be unfair to allow consideration of additional income made possible by a second marriage while disallowing consideration of the expenses of that marriage. . . .

. . . While Mr. Marcus has no legal obligation to support the children in ques-

of the other by electing not to have a legal community of acquets and gains. This technique did not succeed in *Finley v. Finley*⁵⁴ in 1974, but it did in *Alt v. Alt*⁵⁵ in 1983, both of which are appellate court cases arising in different circuits and during different eras of law. The Louisiana Supreme Court has acted on this matter only in refusing writs without comment in *Barnes v. Rosen*.⁵⁶

In *Finley*, the parties had stipulated that Mr. Finley and his second wife were living under a separate property regime, but the contract was not introduced and its terms were unknown to the court. Nonetheless, the court found that though such a contract may determine how expenses are to be shared, it was not necessary for the court to review its provisions as it "should not circumvent our policies governing the payment of child support,"⁵⁷ and that "it is indeed proper to consider the separate earnings of the second wife when those earnings are available for payment of expenses incidental to the second marriage."⁵⁸ Thus the father's child support payments to his first wife were increased by the first circuit⁵⁹ because of the stepmother's earnings, though the couple lived under a separate regime.

The fourth circuit rejected the *Finley* rationale in the *Alt* case.⁶⁰ It increased the father's support duties and refused his request to admit evidence of the income of the mother's second husband because her prenuptial contract provided for a separate property regime. The agreement was silent as to expenses of the marriage, so each spouse had to contribute in proportion to his or her means.⁶¹ Though the second husband, the stepfather, in fact had contributed to the expenses of the family home in which the children resided, the court would not conclude that this enhanced the mother's ability to support her children as she was not the recipient of any community income.⁶² The fourth circuit in *Alt* reasserted its holding in *Barnes v. Rosen*, in which it had refused to consider the mother's second husband's income in determining the measure

tion [his stepchildren, his second wife's children], this court simply will not blind itself to the reality that the mother [his first wife], who does have a legal obligation to support her children, has married a capable provider who has enhanced her opportunity to furnish a portion of the support of the children in her custody. . . .

. . . [T]he court should consider the totality of the circumstances involved.
282 So. 2d at 124-25.

54. 305 So. 2d 654 (La. App. 1st Cir. 1974).

55. 433 So. 2d 400 (La. App. 4th Cir. 1983).

56. 359 So. 2d 1133 (La. App. 4th Cir), cert. denied, 362 So. 2d 1120 (La. 1978).

57. 305 So. 2d at 657.

58. 305 So. 2d at 657.

59. 305 So. 2d at 654.

60. 433 So. 2d 400 (La. App. 4th Cir. 1983).

61. La. Civ. Code art. 2373.

62. 433 So. 2d at 402.

of her duty of support because it would not "go beyond"⁶³ a marriage contract creating a separation of property regime. The Louisiana Supreme Court refused writs in *Barnes*.

ABSTRUSE DISTINCTIONS

In a separation of property regime, expenses are distinguished from necessities in the 1980 revision of the law concerning matrimonial regimes. For necessities, spouses in a separate regime now are solidarily liable to creditors.⁶⁴ This is probably unchangeable by matrimonial agreement because it affects the rights of others.⁶⁵ For expenses generally, the spouses are responsible to each other as determined by their contract, or if it is silent concerning expenses, they are responsible to each other in proportion to their respective means,⁶⁶ apparently even during the marriage. But if they have a legal regime of community of acquets and gains, only at its termination are they responsible to each other for community expenses satisfied with separate property beyond the value of the remaining community property, that is, from separate property. The distinction in the latter case is not between necessities and expenses, but between community obligations in general, and community obligations "for the ordinary and customary expenses of marriage, or for the support, maintenance, and education of children of either spouse in keeping with the economic condition of the community."⁶⁷

POLICY QUESTIONS

It is evident that in Louisiana a stepparent has no responsibility of support directly toward a stepchild.⁶⁸ Yet his or her income and means have been a factor in measuring the amount of support a court will demand of the blood parent in a community regime,⁶⁹ although the circuits differ as to whether it should be a factor in a separate regime.⁷⁰ But it is clear that the stepparent has an obligation, not directly toward the child, but toward his or her spouse at termination of a community regime, to reimburse from separate property one half of the support expenses paid by the blood parent with separate funds.⁷¹

63. 359 So. 2d at 1135.

64. 433 So. 2d at 402; La. Civ. Code art. 2372.

65. La. Civ. Code art. 11.

66. La. Civ. Code art. 2373.

67. La. Civ. Code art. 2365.

68. "Mrs. Brechtel's present husband has no legal obligation to support her children from a previous marriage . . ." *LeBouef v. LeBouef*, 325 So. 2d 290, 294 (La. App. 4th Cir. 1975). "[N]either the stepmother nor the stepfather have any legal obligation to support the children." *Vinet v. Vinet*, 184 So. 2d 33, 35 (La. App. 4th Cir. 1966).

69. *Barnes v. Rosen*, 359 So. 2d 1133 (La. App. 4th Cir. 1978).

70. *Finley v. Finley*, 305 So. 2d 654 (La. App. 1st Cir. 1974); *Alt v. Alt*, 433 So. 2d 400 (La. App. 4th Cir. 1983); *Barnes v. Rosen*, 359 So. 2d 1133 (La. App. 4th Cir. 1978).

71. La. Civ. Code art. 2365.

Should a stepparent's responsibility differ depending on whether the couple has a community or a separate regime? Should a child's standard of living depend on whether or not one of his parents in a second marriage has contractually created a separate regime with or without a clause concerning expenses, or has created a modified community regime? Should a spouse of a parent be directly responsible for stepchildren, or clearly without responsibility, not only to the child but to the spouse, during and at termination of a community regime? Should the law be clear and easy to locate, instead of circuitous, indirect, and hidden in reimbursement rights of spouses at termination? These are policy questions not directly faced by the legislature. As more marriage partners become stepparents in today's society, what solutions can be offered?

PRACTICE IN OTHER STATES

No Duty

At common law, stepparents were under no duty to support their stepchildren.⁷² Of the forty-two states without community property, eighteen have not imposed a statutory duty of support on stepparents.⁷³ Several of them have recognized the fact of a child's dependence upon his stepparent as a basis for the child's claim for workers' compensation benefits upon the stepparent's death.⁷⁴ Tennessee gives a stepparent visitation rights by statute.⁷⁵ Many others have no reference to the step-relationship.

Duty in Loco Parentis

A few states that have not imposed a statutory duty toward stepchildren have held judicially that when a stepparent voluntarily acts toward a child as though he were a parent, such action constitutes the status *in loco parentis*, and thereafter the stepparent is obliged to continue to fulfill the usual obligations of a parent as long as he permits the child to remain in his home.⁷⁶ Perhaps the justification for investing a person related by affinity with the obligations of a blood parent is analogous to an estoppel concept—having permitted the child and the community to expect parental services, the stepparent is not allowed to frustrate these

72. C. Clark, *Law of Domestic Relations* (1968); *Annot.*, 75 A.L.R. 3d 1132 (1977), citing 59 Am. Jur. 2d, *Parent and Child* § 91 (1971).

73. Alabama, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas,² Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia.

74. *Ariz. Rev. Stat. Ann.* § 23-1064 (1983); Florida, Mississippi, Pennsylvania.

75. *Tenn. Code Ann.* § 36-837 (Supp. 1983).

76. *Franklin v. Franklin*, 75 Ariz. 151, 253 P.2d 337 (1953). See *Trotter v. Pollan*, 311 S.W.2d 723 (Tex. Civ. App. 1958); accord, *Neisen v. Niesen*, 38 Wis. 2d 599, 157 N.W.2d 660, 32 A.L.R. 3d 1047 (1970); Freed & Foster, *Family Law in the Fifty States: An Overview*, 17 *Fam. L. Q.* 365, 422 (1984).

expectations. It may instead be analogous to the position of a volunteer rescuer who, having begun the task, is expected to complete it without further injuring the one in need. Nonetheless, courts have not precipitately found stepparents to be *in loco parentis* without a clear history creating an atmosphere of reliance.⁷⁷

Statutory Duty

The states that have imposed a statutory duty of support upon stepparents do so with dissimilar kinds of statutes. A few have confirmed by statute the duties that arise from the voluntary status of *in loco parentis*, rather than depending on judicial precedent.⁷⁸ Thirteen states have imposed a direct duty of support resulting from the mere status of stepparent,⁷⁹ but many of these impose the duty for only so long as the marriage lasts.⁸⁰

Two states impose the duty of support upon a stepparent only if the stepchild is in need.⁸¹ There is a history to this approach. At one time, Aid to Families with Dependent Children was customarily refused if another person in the household was able to support the children, and several states amended their welfare laws to implement that so-called "man-in-the-house" rule. However, the Office of Family Assistance, Department of Health and Human Services, amended the regulations to provide that the right to AFDC could not be refused if there was a child deprived of parental support, except in relation to a natural or adoptive parent or a stepparent who is legally obligated to support the child under a state law of general applicability.⁸² Laws in several states were in conflict with this regulation.⁸³ For instance, in one state stepfathers were required to tender support, but stepmothers were not;⁸⁴ therefore the law was not one of general applicability, and aid could not be refused. Some of these

77. 59 Am. Jur. 2d, Parent and Child § 91 (1971).

78. Ark. Stat. Ann. § 57-633b; Hawaii Rev. Stat. § 577-4 (1976); Mont. Code Ann. § 40-6-217 (1983); N.C. Gen. Stat. § 50-13.4 (Supp. 1983); N.D. Cent. Code § 14-09-09 (Supp. 1983); Okla. Stat. Ann. tit. 10, § 15 (West 1966).

79. Del. Code Ann. tit. 113, § 501 (1981); Ill. Rev. Stat. ch. 68, § 51-52 (1966); Iowa Code Ann. §§ 252A.2-252A.3 (West Supp. 1983-1984); Mo. Rev. Stat. § 568.040 (1979); Neb. Rev. Stat. §§ 28-705 (1979), 43-512 (1978); N.H. Rev. Stat. Ann. §§ 546A:1 Subd. 4, 546A:2 (1976); N.J. Stat. Ann. §§ 9:6-1-9:6-2 (West 1976), 9:6-8.21 (West Supp. 1983); Or. Rev. Stat. § 109.053(1981); S.C. Code Ann. §§ 20-7-30, 20-7-40, (Law Co-Op. Supp. 1983); S.D. Codified Laws Ann. § 25-7-8 (Supp. 1983); Utah Code Ann. § 78-45-4.1 (Supp. 1983); Vt. Stat. Ann. tit. 15, § 291 (Supp. 1983).

80. Delaware, Iowa, Missouri, Oregon, Utah, and Vermont.

81. Alaska Stat. § 47.25.320 (1979); N.Y. Fam. Ct. Act art. 4, § 415 (McKinney 1983).

82. 45 C.F.R. § 233.90(a)(1) (1983). See *Duran v. New Mexico Dep't of Human Services*, 95 N.M. 188, 619 P.2d 1232 (1980).

83. E.g., *Ojeda v. Hackney*, 319 F. Supp. 149 (N.D. Tex. 1970) (concerning Texas).

84. *Gaither v. Sterret*, 346 F. Supp. 1095 (W.D. Ind. 1972). Cf. Ind. Code Ann. § 12-1-2-12 (Burns Supp. 1984), 12-1-2-13 (Burns 1981).

statutes may remain on the books⁸⁵ but cannot be used for their original purpose of furnishing an excuse for refusing aid, because in conflict with the federal regulations. Nonetheless, such statutes could be enforced against the stepparents if the child is in need.

Several states have adopted the proposed Uniform Civil Liability for Support Act,⁸⁶ but with local modifications. Several states impose criminal penalties upon stepparents who do not fulfill the statutory duty of supporting their stepchildren.⁸⁷

Community Property States—Equitable Division

Arizona

Arizona law permits a court in a proceeding for dissolution of a marriage to order parents to support a child born to or adopted by the parents.⁸⁸ The Arizona court declared that the article did not apply to the wife's children of a prior marriage who had not been adopted by her husband and thus should not affect his alimony obligation to her.⁸⁹ Since that decision, the statute was amended to permit a court in such a proceeding to "impress a lien upon the separate property of either party or the marital property awarded to either party to secure the payment of an allowance for child support or spousal maintenance or both."⁹⁰ Apparently, separate property can become such security only for the child born to or adopted by the owner of the separate property, though the statute refers to "either party."

Remarriage of parents did not justify reduction in a father's child support obligation, though he had thereby voluntarily incurred new debts and the mother's new husband's income was equivalent to the father's.⁹¹ However, the Arizona Workmen's Compensation statute permits stepparents to be regarded as parents, and stepchildren to be regarded as natural children if dependent.⁹² Nothing was located in the law of Arizona comparable to Louisiana's Civil Code article 2365, nor concerning necessities and education of the spouses' children.

85. Bruch, Management Powers and Duties Under California's Community Property Laws: Recommendations for Reform, 34 *Hastings L.J.* 229, 256 (1982) (referring to Cal. Civ. Code §§ 5127.5, 5127.6 (West 1983)).

86. California, Maine, New Hampshire, and Utah.

87. Hawaii Rev. Stat. § 709-903 (1976); Neb. Rev. Stat. § 28-705 (1979); N.J. Stat. Ann. §§ 9:6-2 (West 1976), 9:6-8:21 (West Supp. 1983); S.C. Code Ann. §§ 20-7-30, 20-7-40 (Supp. 1983).

88. Ariz. Rev. Stat. Ann. § 25-320 (West Supp. 1983-1984); see also Ariz. Rev. Stat. Ann. § 12-2451 (West 1982).

89. *Needel v. Needel*, 15 Ariz. App. 471, 489 P.2d 729 (1971).

90. Ariz. Rev. Stat. Ann. § 25-318 (West Supp. 1983-1984).

91. *Jorgensen v. Jorgensen*, 640 P.2d 202 (Ariz. App. 1981).

92. Ariz. Rev. Stat. Ann. § 23-1064 (West 1983). *Diesel Drivers v. Industrial Comm.*, 122 Ariz. 184, 593 P.2d 934 (App. 1979), *aff'd*, 122 Ariz. 116, 593 P.2d 670.

Idaho

Idaho imposes a duty of support on a father, a mother, and a child of a poor person.⁹³ There is no provision for support of children of the wife by a former marriage.⁹⁴ Stepparents are included in the definition of parent only in the Worker's Compensation laws, but a stepchild is classed as a child in that law only if actually dependent.⁹⁵ In implementing a court order against a parent in a proceeding for divorce or child support, "the court must resort, first, to the community property, then to the separate property of either party."⁹⁶ Apparently, this provision will apply regardless of which parent has custody. "The separate property of the husband is not liable for the debts of the wife contracted before the marriage."⁹⁷ "The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage."⁹⁸ A third person who supplies necessities for a child under a parent's charge may recover their reasonable value from the parent.⁹⁹ This approach could include a stepparent voluntarily supplying necessities while the child is in the custody of either parent, but the statute refers no more to a stepparent than to any other person. No provision for reimbursement between the spouses for other debts paid by spouses was located in Idaho law, probably because community property upon divorce is assigned as the court deems just.¹⁰⁰

One is guilty of a felony upon desertion of any child under age 16 "dependent upon him or her for care, education or support."¹⁰¹ This law apparently recognizes an *in loco parentis* position which could be created by a stepparent or any other volunteer, unless the statute will be interpreted to mean legal, not factual dependency.

Nevada

In Nevada, only the natural or adoptive parent of a dependent child is a "responsible parent"¹⁰² from whose resources a child should be maintained.¹⁰³ The Nevada Juvenile Court Act permits the court to direct orders to stepparents similar to those orders that could be directed to

93. Idaho Code § 32-1002 (1983).

94. *Smiley v. Smiley*, 46 Idaho 588, 269 P. 589 (1928).

95. Idaho Code § 72-102(7)(c) and (e) (Supp. 1983).

96. Idaho Code § 32-708 (1983). See *Fisher v. Fisher*, 104 Idaho 68, 656 P.2d 129, 132 (1982).

97. Idaho Code § 32-910 (1983).

98. Idaho Code § 32-911 (1983).

99. Idaho Code § 32-1003 (1983).

100. Idaho Code § 32-712 (1983).

101. Idaho Code § 18-401 (1979).

102. Nev. Rev. Stat. § 425.330 (1979).

103. Nev. Rev. Stat. § 425.340 (1979).

natural parents.¹⁰⁴ For example, a stepparent can be ordered to repay the county for support and services given to certain children.¹⁰⁵

Though "[n]either the separate property of a spouse nor his share of the community property is liable for the debts of the other spouse contracted before the marriage"¹⁰⁶ the community property to the extent of the husband's earnings was held to be subject to his contractual obligation to support his former wife and the child of his former marriage, out of due respect for the marital relationship which founded the obligation not terminated by divorce.¹⁰⁷ In granting a divorce, the court may set aside a portion of the property of either spouse for the support of their children.¹⁰⁸

Texas

Stepmothers are specifically mentioned in the Workers' Compensation and Crime Victims Compensation statutes of Texas as among those for whose benefit compensation for death from injury is intended.¹⁰⁹ Since stepfathers are not mentioned, the constitutionality of the provision under the Equal Protection clause is questionable.¹¹⁰

In the Family Code, "parent" includes only the mother, or the man to whom the child is legitimate, or an adoptive mother or father, with no mention of the step-relationship.¹¹¹ Such parent has the duty to support his or her minor child, and if the parent fails in this duty he is liable to any person who provides necessaries to the child,¹¹² who might, of course, be a stepparent.¹¹³ Nonetheless, if the stepparent has furnished necessaries voluntarily after placing himself *in loco parentis*, he may not be able to recover the cost from the non-custodial parent.¹¹⁴

"A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law."¹¹⁵ Except for tortious liability of either spouse, for which all community property is subject if incurred during marriage, community property under joint control or under the sole control of one spouse is subject to liabilities (apparently including child support) incurred by that spouse before or dur-

104. Nev. Rev. Stat. § 62.044 (1979).

105. Nev. Rev. Stat. §§ 62.301, 62.311, 62.321 (1979).

106. Nev. Rev. Stat. § 123.050 (1979).

107. Greear v. Greear, 303 F.2d 893 (9th Cir. 1962).

108. Nev. Rev. Stat. § 125.150(4) (1979).

109. Tex. Rev. Civ. Stat. Ann. art. 8306 § 8A (Vernon Supp. 1984).

110. Reed v. Reed, 404 U.S. 71 (1971).

111. Tex. Fam. Code Ann. § 11.01(3) (Vernon 1975).

112. Tex. Fam. Code Ann. §§ 4.02, 12.04(3) (Vernon Supp. 1984).

113. Cf. Drescher v. Morgan, 251 S.W.2d 173 (Tex. Civ. App. 1952).

114. Boyle v. Tully, 134 S.W.2d 500 (Tex. Civ. App. 1939).

115. Tex. Fam. Code Ann. § 5.61(a) (Vernon 1975).

ing marriage. But community property under one spouse's sole control is not subject to the other spouse's liabilities.¹¹⁶ Thus Texas not only protects a spouses's separate proeprty but also part of the community property from the other spouse's liabilities. The judge determines the order in which property subject to liability will be subject to execution.¹¹⁷

Upon divorce, the court orders a division of the estate of the parties (apparently both separate and community) as the court deems just and equitable, with regard for rights of the spouses and "any children of the marriage."¹¹⁸ Apparently this discretion eliminates any need for codal articles on reimbursement. There are many Texas cases on the subject, but none were located involving support of one spouse's child. The fact that Texas has no provision for spousal alimony has caused courts to consider future need for support in unequal divisions of property, but child support is to be determined by considering the needs of the child, not the division of the property.

Washington

Washington is the one community property state that has a statute concerning child support and stepparents:

The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. *Provided*, that with regard to stepchildren, the obligation shall cease upon the termination of the relationship of husband and wife.¹¹⁹

The provision may seem clear, but in a 1981 case the Supreme Court of Washington decided that the legislature had not intended the article to apply to the property of a stepparent married to the non-custodial parent. In *Van Dyke v. Thompson*,¹²⁰ the stepmother sought an injunction against the Department of Social and Health Services to prevent them from ordering her employer to withhold twenty-five percent of her wages to satisfy her husband's obligation to support his child of a prior marriage. She had been given neither a notice nor a hearing. She contended the statute should apply only to a stepparent in loco parentis when the parent has custody, and the court agreed. The court noted that the same year (1969) that the support statute had been amended to charge stepparents' property for expenses of the family, including stepchildren, the legislature had immunized earnings and accumulations of a nonobligated

116. Id. § 5.61 (b)-(d).

117. Id. § 5.62.

118. Id. § 3.63 (Vernon Supp. 1982-1983).

119. Wash. Rev. Code Ann. § 26.16.205 (West Supp. 1984-1985).

120. 95 Wash. 2d 726, 630 P.2d 420 (1981).

spouse from separate creditors of the obligated spouse, so that as to that purpose neither spouse should be construed to have any interest in the earnings of the other.¹²¹ The court considered the amendment to indicate that the legislature did not intend to eliminate the other immunity. Apparently the court considered support of a child in one's home as a community obligation and the support of a child by a parent without custody as a separate obligation that should not affect the earnings of the stepparent. Thus the court in effect divided the community, the parent's earnings apparently being reachable but not the stepparent's earnings.

As Washington is a state that permits discretionary equitable division¹²² rather than equal division at the end of the marriage, it, like other equitable distribution community property states, has little in the way of statutory requirements for reimbursement. The spouse of a custodial parent seemingly should not anticipate recovery of earnings spent for a child residing with the couple.

Washington's crime of family desertion or nonsupport¹²³ punishes failure to furnish necessities of life to a child or a stepchild, but with the same proviso as in the civil statute that the obligation ceases upon termination of the relationship of husband and wife.

Community Property States—Equal Division

California

"The law concerning liability for child support obligations in California is chaotic."¹²⁴ There are several conflicting statutes relating to the same subject matter with slight variations.¹²⁵ Very recent cases¹²⁶ may have solved some of the problems, but the statutes have not been amended¹²⁷ to conform to the needs indicated by extensive commentary.¹²⁸ Instead, a lengthy new article was added in 1983 to become effective July 1, 1984. It begins with a hopeful declaration that "[i]t is the intention of the Legislature in enacting this section to provide an additional, simplified

121. Wash. Rev. Code Ann. § 26.16.200 (West Supp. 1984-1985).

122. Id. §§ 26.09.050, 26.09.080.

123. Id. § 26.20.030.

124. W. Reppy & C. Samuel, *Community Property in the United States* 253 (1982).

125. Cal. Civ. Code §§ 196, 196a, 199 (West 1982), 4807, 5127.5, 5127.6 (West 1983).

126. *In re Marriage of Shupe*, 139 Cal. App. 3d 1026, 189 Cal. Rptr. 288 (1983); *Woods v. Woods*, 133 Cal. App. 3d 954, 184 Cal. Rptr. 471 (1982); *In re Marriage of Havens*, 125 Cal. App. 3d 1012, 178 Cal. Rptr. 477 (1981). Cf. cases cited supra note 50.

127. Bruch, supra note 85, at 253-60.

128. See, e.g., Note, *Domestic Relations—Stepparent is Liable for Support of Spouse's Children from Prior Marriage but Tax Returns Are Not Discoverable in Determining Extent of Liability—In re Marriage of Brown*, 21 Santa Clara L. Rev. 865 (1981).

method for the modification of child support awards."¹²⁹ Parties are to make available an income statement and state income tax returns.

An article in the California Civil Code had excused a stepparent from support of a stepchild, but this article was repealed in 1979.¹³⁰ Another statute was enacted in 1971,¹³¹ and another in 1979,¹³² which together aim to clarify that the community property interest of a parent in the income of his or her spouse is available to support any child who resides with the parent.

California is the only community property state which has adopted the Uniform Civil Liability for Support Act,¹³³ with its definition of child limited to "son or daughter" and of parent to include "either a natural parent or an adoptive parent,"¹³⁴ with a duty to support a "child."¹³⁵ In effect, the stepparent's money can be used to support a child whom he has no duty to support.

California requires equal division of community property upon dissolution of the marriage;¹³⁶ therefore, it regulates reimbursement for contribution to acquisition of property, if traceable, without interest and not to exceed the value of the property at the time of the division.¹³⁷

New Mexico

As the classification of separate debts in New Mexico's law does not mention child support, and as community debts are all others,¹³⁸ such debts for child support are to be satisfied first from community property, then from the residence, then from the separate property of the spouse who incurred the debt. But these priorities apply only while the spouses are living.¹³⁹

In a proceeding for dissolution of marriage, the court may set apart a portion of the property of the respective partners for the maintenance and education of their minor children,¹⁴⁰ and may vest title in it to a conservator.¹⁴¹ New Mexico is unique among community property states

129. Cal. Civ. Code § 4700.1 (West Supp. 1984).

130. Id. § 209 (West 1970) (repealed 1979).

131. Cal. Civ. Code § 5127.5.

132. Id. § 5127.6.

133. Id. §§ 241 (West 1982), 242 (West Supp. 1984), 243-245 (West 1982), 246 (West Supp. 1984), 247-254 (West 1982).

134. Id. § 241.

135. Id. § 242 (West Supp. 1984).

136. Id. § 4800 (West Supp. 1984).

137. Id. § 4800.2 (West Supp. 1984).

138. N.M. Stat. Ann. § 40-3-9 (1983).

139. Id. § 40-3-11.

140. Id. § 40-4-7(3).

141. Id. § 40-4-14.

in that it has no clearcut statute indicating whether upon termination the assets of the community should be divided equally or with discretion in the judge.¹⁴² Cases old¹⁴³ and recent¹⁴⁴ have required the court to divide it equally.

Louisiana

The effect of the Civil Code on stepparents discussed above is indirect and not likely to be noticed. But stepparents are more overtly recognized in other areas of Louisiana law. As is true in several states, Louisiana's Worker's Compensation statute provides death benefits for "legal dependents,"¹⁴⁵ then allocates the benefit among them, ranking children with the widow or widower,¹⁴⁶ and defining children to include stepchildren.¹⁴⁷ Louisiana's Income Tax law permits credits for dependents, defined to include specified step-relationships including stepson, stepdaughter, stepfather or stepmother.¹⁴⁸ Foster- and step-relationships are among those whose consent is sufficient in Louisiana's Medical Consent Law.¹⁴⁹ Louisiana's welfare statute concerning Aid to Families with Dependent Children imposes no support obligations on step-relatives, referring to them only to include them among those relatives in whose residence a dependent child seeking aid must be living while a full-time student deprived of parental support or care.¹⁵⁰ Aid may "meet the needs of the relative with whom a dependent child is living, and the spouse of such relative if living with him."¹⁵¹ The Department of Health and Human Resources can enforce and collect the support obligation owed by an absent parent to his child.¹⁵²

The Louisiana Criminal Code establishes a duty for either parent to support his or her child, but adds no extended definition of parent nor of child. Criminal neglect of family is the desertion or intentional non-support by a spouse of the other spouse, or by either parent of his or her minor child in destitute or necessitous circumstances.¹⁵³

Adoption by a stepparent is possible without the consent of the parent who is not his or her spouse under certain conditions.¹⁵⁴ The definition

142. W. McClanahan, *Community Property Law in the United States* 538 (1982).

143. *Sands v. Sands*, 48 N.M. 458, 152 P.2d 399 (1944).

144. *Michelson v. Michelson*, 86 N.M. 107, 520 P.2d 263 (1974).

145. La. R.S. 23:1231 (Supp. 1984).

146. La. R.S. 23:1232 (1964).

147. La. R.S. 23:1021(3) (Supp. 1984).

148. La. R.S. 47:79 (Supp. 1984).

149. La. R.S. 40:1299.55 (1977).

150. La. R.S. 46:231(C)(2) (1982).

151. La. R.S. 46:231A(3) (1982).

152. La. R.S. 46:236.1(B)(1) (1982).

153. La. R.S. 14:74 (Supp. 1984).

154. La. R.S. 9:422.1 (Supp. 1984).

of "parent" in Louisiana's Code of Juvenile Procedure is extremely broad, even including under certain circumstances whoever has actual custody of the child,¹⁵⁵ which surely could encompass a stepparent. Actual custody need not extend to holding oneself out as a parent.

Commonly called acting *in loco parentis*, that status is described without use of that phrase in a 1981 amendment to an article in the chapter of the Louisiana Civil Code on intestate succession. The new article changes the law in several respects; if the deceased leaves no descendants, his siblings succeed to his separate property subject to a usufruct in favor of his parents, defined for this purpose to include one "who has openly and notoriously treated the child as his own and has not refused to support him."¹⁵⁶ Given its position following phrases in the article mentioning legitimacy and codal methods of filiation, the quoted phrase is probably intended as a recognition of an additional method of proving filiation,¹⁵⁷ but the definitions of parent are listed disjunctively. It will be interesting to await a contention by a person unrelated to a deceased by blood or adoption that he has a right to a usufruct because he acted *in loco parentis* during the life of the deceased.

None of these Louisiana statutes would lead a stepparent to suspect that he or she had a duty to support stepchildren. The article in the Civil Code title on Matrimonial Regimes declaring all alimentary obligations to be community obligations¹⁵⁸ at least alerts the stepparent to give up hope of reimbursement for community funds spent on the spouse's child, but gives no hint of a burden on the stepparent's separate property. That burden is not one designed to ensure the child adequate support, but is instead directed to the spouse who supported his child with separate funds, and is collectible from the stepparent only if there was a community regime, and only at its termination.

POLICY CONSIDERATIONS

Most people who marry those who already have children probably are fully aware at marriage that the children must be supported, and that the parents they are marrying have a legal and a moral obligation to support their children. They expect to share their new spouses' responsibilities as part of sharing the new spouses' lives. Such stepparents probably never search the law to learn their legal rights and never come to court with child support problems. This is especially true of those who share their new homes with their spouses' children. After a period of adjustment, they probably meld more or less into one family. It is probably almost

155. La. Code Juv. P. art. 13 (11).

156. La. Civ. Code art. 891.

157. The article is referred to as one "which permits a parent to establish filiation" in Spaht, *Developments in the Law, 1981-1982—Persons*, 43 La. L. Rev. 535, 537 n.13 (1982).

158. La. Civ. Code art. 2362.

as true of those who have frequent visitations from children who live with the other parent.

The problem is far more likely to become a legal matter when the stepparent never or seldom sees the child, or when there has been some personal unpleasantness between the spouses of the first and second marriages. But some who consult attorneys are simply and cautiously attempting to avoid future unpleasantness. Why is the problem more acute and of more frequent occurrence recently? And how does it happen to involve stepmothers more than stepfathers? Several trends have exacerbated the problem. In the past, when a man married a woman who had children, she usually had custody, he was the breadwinner, and he expected to receive her children into his home and support them. He voluntarily placed himself *in loco parentis*. If the marriage ended in divorce, he presumed that his responsibility had ended. If the marriage ended soon in the death of the mother, the children probably went to live with her relatives. When a woman married a man who had children, their mother usually had custody and their father may have been sending child support to her. As the husband was the breadwinner as well as the head and master of the new community regime,¹⁵⁹ the second wife (stepmother) had little or no control over their coowned property; if she felt some resentment, there was little she could do about it. Once married, it was too late to enter into a contract eliminating the community regime,¹⁶⁰ and unless she was self-supporting, a separate regime would not be to her advantage. Thus, they attained some degree of repose.

Today, wives, especially those without children, are likely to be employed, sharing in the duties of breadwinner. Resentment at use of community money for the support of the children of another woman, the prior wife, is more acute when it is not only coowned but co-earned. Since 1980 in Louisiana, spouses have been able to create a separate regime or a modified community regime by contract at any time during their marriage,¹⁶¹ resulting in the continuing search for solutions to problems that continue to irritate.

People are more mobile today, so that it is not unusual for the blood parents of the children to live in different communities, losing the personal contact of frequent visitation or incurring large airline bills for children traveling alone. There is an increase in custody awards in favor of fathers, and a slight increase in non-custodial mothers being ordered to send child support, a trend that can be expected to grow as fathers are aware that mothers are earning money and, with a new husband, living well. The result will be an increasing resentment by second husbands

159. La. Civ. Code art. 2404 (1972 Comp. Ed., in 17 West's La. Stat. Ann.—Civ. Code).

160. La. Civ. Code art. 1790 (1972 Comp. Ed., in 16 West's La. Stat. Ann.—Civ. Code).

161. La. Civ. Code art. 2329.

at their wives' sending money to another man. Disparity in living standards between the two families is obvious to the children who do visit, and causes bitterness, anger, and a sense of deprivation.¹⁶² Their resentment flows over to the parents.

Does Louisiana's unique article, unlike any in other community property states, aid by providing a legal solution to the problem, or will it intensify the problem by a poor solution? Admittedly, the problem of child support is serious. Few parents ordered to pay it continue to do so without constant returns to the court for enforcement, and most recipients give up trying to enforce it. Most court awards would be inadequate even if they were enforced.¹⁶³ Hence there is a temptation to require all stepparents to support all stepchildren just as though they were their own, simply as a means of finding one more source for support. Both Professor Bruch¹⁶⁴ and a Washington state court¹⁶⁵ have expressed fear that requiring stepparents to support stepchildren would discourage marriage and encourage informal cohabitation, contrary to public policy and lessening the strength of family units as the basis of society.

CONCLUSION

Louisiana's legislation is arbitrary and inconsistent. It defines a community obligation as one "for the common interest of the spouses or for the interest of the other spouse,"¹⁶⁶ then "deems" an alimentary obligation imposed by law on a spouse to be a community obligation.¹⁶⁷ A separate expression of the legislative will was necessary because it would be unlikely that alimony sent to a former spouse or to a child in that spouse's custody would have been interpreted as being for the common interest of the spouse of the second marriage nor for the stepparent, the other spouse. This author was appalled at the decision in *Connell v. Connell*¹⁶⁸ before the 1980 revision and wished it to be legislatively rejected, not confirmed, and would urge repeal of article 2362 so that alimentary obligations would be separate obligations because not for the common interest of the spouses. This change would not deprive the child of support from his parent's separate property and from the property of the new community,¹⁶⁹ but at termination of the community regime the parent spouse would owe reimbursement to the other spouse of one-half

162. Weitzman, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards*, 28 *UCLA L. Rev.* 1181, 1263 (1981).

163. *Id.* at 1253-60.

164. Bruch, *Developing Standards for Child Support Payments: A Critique of Current Practice*, 16 *U.C.D. L. Rev.* 49, 60 (1982).

165. *Van Dyke v. Thompson*, 95 *Wash.* 726, 630 P.2d 420, 423 (1981).

166. *La. Civ. Code art.* 2360.

167. *La. Civ. Code art.* 2362.

168. 331 *So. 2d* 4 (La. 1976).

169. *La. Civ. Code art.* 2345.

of the amount or value that the community property had at the time it was used.¹⁷⁰

If repeal of the article deeming alimentary obligations to be separate obligations does not occur, this author urges amendment of article 2365 to declare:

If separate property has been used to satisfy a community obligation, *including an alimentary obligation*, the spouse, upon termination of the community property regime, is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used. Reimbursement *need* only be made to the extent of community assets.

The balance of the article would remain as it is except for deletion of reference to obligations "for the support, maintenance, and education of children of either spouse."¹⁷¹ Thus the stepparent's separate property no longer could be burdened with obligations incurred by the other spouse, whether community or separate, except by his own action at termination¹⁷² or before. The stepchild should be supported only by his parents, so as not to add an unnecessary irritant to the marriage of his parent and stepparent.

No other state has imposed on stepparents' property interests as harshly as has Louisiana. As the Washington court said, requiring the earnings of the spouse of a non-custodial parent to be taken for child support "would place unwarranted stress upon a second marriage which is already faced with the tensions and demands both emotional and financial of dealing with children of the first marriage."¹⁷³ It is here recommended that the stepparent's property be unavailable to a stepchild regardless of whether the child lives with the couple. If this occurs, and love grows, law will not be an issue within the household, nor need it be.

"Cinderella Revisited" is the title of one law review article¹⁷⁴ and the subtitle of another.¹⁷⁵ A law review article defending the rights of Cinderella's stepmother could not have been forshawowed by the mood of that ancient tale. She might have been pleasanter had she not been so irritated by fear of her money being used for her husband's daughter. Let the law require that blood parents fulfill their parental duties, but it should allow the step-relatives to work out their relationships without added irritation. Cinderella will not be any the worse for it, and may be better.

170. La. Civ. Code art. 2364.

171. Cf. La. Civ. Code art. 2365.

172. La. Civ. Code art. 2357.

173. 630 P.2d at 423.

174. Comment, *Cinderella Revisited*, 10 *San Fern. V.L. Rev.* 103 (1982).

175. Berkowitz, *Legal Incidents of Today's "Step" Relationship: Cinderella Revisited*, 4 *Fam. L. Q.* 209 (1970).