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DOMESTIC RELATIONS—SEPARATION AGREEMENT PROVISION FOR CHILD'S COLLEGE EDUCATION HELD BINDING IN AN ACTION FOR CHILD SUPPORT—BODEN v. BODEN

In 1960, Janet and James Boden executed a separation agreement in New York which provided that James Boden would pay $150 per month for the support of their only child, Janet Matthews Boden, who at the time was three years old. The agreement also obligated James Boden to "[p]ay for the college education of said child and to that end [to] cause a life insurance . . . policy in the principal sum of $7,500 to be written on his life, to mature 15 years from date hereof, and to pay all premiums thereon."[1] In 1961, the Bodens were divorced pursuant to a California decree which awarded custody of the child to her mother but made no provision for support for mother or daughter. The separation agreement was neither incorporated nor merged in the divorce decree.

James Boden faithfully discharged his obligations under the separation agreement. Nevertheless, when the daughter entered college, the mother brought an action in family court seeking reasonable support for the child, alleging that the father had failed to provide such support since June, 1975. The mother, who had not remarried but who had an income of $45,000, found the $7,500 provided by the insurance endowment policy plus the $150 monthly support payments to be wholly insufficient to cover the cost of her daughter's education at Yale University.[2] She asked the court to increase the father's support obligation to $15,170.99 per year. The father, who had remarried and who had an annual income of $43,000, argued that he had no obligation to provide anything more than had been agreed upon.

The Family Court, New York County, denied the mother's re-

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1. Boden v. Boden, 42 N.Y.2d 210, 211, 366 N.E.2d 791, 793, 397 N.Y.S.2d 701, 702 (1977) (quoting separation agreement between Janet and James Boden, May 16, 1960). The agreement continued as follows:

> The proceeds of such policy shall be used for the purpose of such college education . . . . Such policy shall provide that the proceeds are to be applied for such college education with the further proviso that if said child shall die, or shall attain the age of 21 years without having attended college, then the proceeds of such policy shall be paid to [James Boden].

Id.

2. The proceeds of the insurance policy were $1,875 annually. 42 N.Y.2d at 212, 366 N.E.2d at 793, 397 N.Y.S.2d at 703.

quest.[3] A divided Appellate Division reversed and awarded $250 per month.[4] In a unanimous decision, however, the New York Court of Appeals reversed the Appellate Division and reinstated the family court order. *Held:* While the courts do have the power to modify child support provisions in separation agreements, it is an abuse of discretion to do so without a showing that an unforeseen change in circumstances has occurred, or that the original agreement was not fair and equitable when made. *Boden v. Boden,* 42 N.Y.2d 210, 366 N.E.2d 791, 397 N.Y.S.2d 701 (1977).

The New York Family Court Act requires a parent to support his or her child,[5] and, as it is currently written, imposes this obligation primarily on the child's father.[6] While the mother's financial condition may properly be considered in a child support determination,[7]

3. Order entered in Fam. Ct., N.Y. Co., February 25, 1976.

4. Boden v. Boden, 55 A.D.2d 550, 389 N.Y.S.2d 848 (1st Dep't 1976).

5.

> The father of a child under the age of twenty-one years is chargeable with the support of his child and, if possessed of sufficient means or able to earn such means, may be required to pay for such child's support a fair and reasonable sum according to his means, as the court may determine.

N.Y. FAM. CT. ACT § 413 (McKinney 1975).

> If the father of a child is dead, incapable of supporting his child, or cannot be found within the state, the mother of such child is chargeable with its support where such child has not attained the age of twenty-one years and, if possessed of sufficient means or able to earn such means, may be required to pay for its support a fair and reasonable sum according to her means, as the court may determine. The court may apportion the costs of the support . . . between the parents according to their respective means and responsibilities.

Id. § 14.

6. The constitutionality of this allocation of the burden of supporting a child has recently been attacked on equal protection grounds. In Carole K. v. Arnold K., 85 Misc. 2d 643, 380 N.Y.S.2d 593 (Fam. Ct. N.Y. Co. 1976), Judge Dembitz, considering sections 413 and 414 of the Family Court Act together, read the latter section as providing that a mother becomes liable for support *only* if the father "is dead, incapable of supporting his child, or cannot be found within the state." As such, she held the sections unconstitutional. *Id.* at 645. Two weeks after the *Boden* decision, the Appellate Division unanimously imposed equal responsibility for support upon the parents by excising the portions of sections 413 and 414 that it found to be offensive to the equal protection clause of the United States Constitution. Carter v. Carter, 58 A.D.2d 438, 397 N.Y.S.2d 88 (2d Dep't 1977). Other courts have recognized the constitutional issue without addressing it. *See, e.g.,* Bauer v. Bauer, 55 A.D.2d 895, 390 N.Y.S.2d 209 (2d Dep't 1977).

7. Bauer v. Bauer, 55 A.D.2d 895, 390 N.Y.S.2d 209 (2d Dep't 1977); Lewis v. Lewis, 5 A.D.2d 674, 168 N.Y.S.2d 473 (2d Dep't 1959); N.Y. FAM. CT. ACT § 414 (McKinney 1975).

Some courts have directly compared parental incomes in evaluating the adequacy of a child support award. *See, e.g.,* Maderas v. Turner, 50 A.D.2d 770, 377 N.Y.S.2d 56 (1st Dep't 1975) (award decreased from $239.50 to $195 per month where mother earned $14,000 and father received only a limited income from Social Security and the Veterans Administration); Dicker v. Dicker, 54 Misc. 2d 1089, 283 N.Y.S.2d 941 (Sup. Ct., Kings Co. 1967) (father will not be required to pay his child's college tuition where his salary is $9,900 and the mother's is $12,670).

her statutory obligation is secondary.[8] Regardless of how the child support obligation is statutorily apportioned, however, a husband and wife may reallocate the burden between themselves via a support agreement.[9]

While binding upon both of the parents,[10] a support agreement does not bind the children, since they are not parties to it.[11] Thus, if an action is brought on behalf of a child alleging that he is being inadequately supported under the terms of such an agreement, a court, which has an obligation to advance and protect the rights of the children of divorced parents, will not be bound by the terms of the agreement.[12] In fact, section 461 (a) of the Family Court Act

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8. This unequal allocation of the burden of supporting a child was upheld by the New York Court of Appeals in 1973, in Maule v. Kaufman, 33 N.Y.2d 58, 304 N.E.2d 234, 349 N.Y.S.2d 368 (1973). There, in a five-to-two decision, the court allowed a mother to recover a child support deficit incurred over a seven-year period, even though she and the step-father had supported the child for those years. Undisputed testimony indicated that upon her remarriage the mother had demanded child support from the father, setting up an expectation of reimbursement. Thus, despite the mother's actual support of the child, the father's duty to support was found to be superceding. The mother's right to recoupment has existed in New York since 1924: "[A] wife who has applied her separate estate to the purpose of an obligation resting primarily upon her husband may now recover from him the reasonable amounts which she . . . expended out of her separate estate in discharge of his obligation." Laumeier v. Laumeier, 237 N.Y. 357, 365, 143 N.E. 219, 221 (1924).

Most of the New York cases have applied sections 413 and 414 to require a father to shoulder the responsibility of supporting his child if he is able to do so. *See, e.g.,* Drazin v. Drazin, 31 A.D.2d 531, 295 N.Y.S.2d 183 (1st Dep't 1968); Haslett v. Haslett, 25 A.D.2d 256, 268 N.Y.S.2d 809 (3d Dep't 1966); Brownstein v. Brownstein, 25 A.D.2d 205, 268 N.Y.S.2d 115 (1st Dep't 1966).

9. *See* Bleck v. Bleck, 1 A.D.2d 839, 148 N.Y.S.2d 786 (2d Dep't 1956) (payment of child's expenses); *cf.* Berland v. Berland, 47 A.D.2d 540, 363 N.Y.S.2d 111 (2d Dep't 1975) (payment of child's college tuition).

10. Stoddard v. Stoddard, 227 N.Y. 13, 124 N.E. 91 (1919); Johnson v. Johnson, 206 N.Y. 561, 100 N.E. 408, (1912); Eisen v. Eisen, 48 A.D.2d 652, 367 N.Y.S.2d 554 (2d Dep't 1975); *see* Hettich v. Hettich, 304 N.Y. 8, 105 N.E.2d 601 (1952); N.Y. GEN. OBLIG. LAW § 5-311 (McKinney 1978).

A contract between husband and wife providing for the wife's support is binding unless it is unfair, in which case it will be void in equity. Tirrell v. Tirrell, 232 N.Y. 224, 133 N.E. 569 (1921); Fales v. Fales, 160 Misc. 799, 290 N.Y.S. 655 (Sup. Ct., N.Y. Co. 1936). This would appear to be the derivation of the "fair and equitable" standard applied by the Court of Appeals in *Boden* to child support—not alimony.

11. *See In re* Wosnitzner's Estate, 47 A.D.2d 402, 366 N.Y.S.2d 653 (1st Dep't), *appeal dismissed,* 37 N.Y.2d 919, 340 N.E.2d 749, 378 N.Y.S.2d 389 (1975); Schiller v. Mann, 44 A.D.2d 686, 353 N.Y.S.2d 816 (2d Dep't 1974); Moat v. Moat, 27 A.D.2d 895, 277 N.Y.S.2d 921 (3d Dep't 1967); Kulok v. Kulok, 20 A.D.2d 568, 245 N.Y.S.2d 859 (2d Dep't 1963).

12. The Third Department has stated:

> When matrimonial difficulties result in broken homes, the courts are mandated to provide for the children's support, custody and welfare "as justice requires." . . . [T]hat mandate may or may not be complied with if the court in every instance gives blind adherence to what the parties have decided be-

specifically states that a parental duty to support a child can be neither eliminated nor diminished by a separation agreement, and it vests the family court with the power to issue a support order if one has not previously been made.[13] section 461(a) delineates no standard, such as changed circumstances, for issuing such an order, but instead refers to the parental duties set forth in sections 413 and 414.[14] Thus, as long as the father is living and is not yet subject to a court order for his child's support, a previously written separation agreement should pose no obstacle to the issuance of such an order upon application by the mother or by another acting on the child's behalf. This does not mean that such an agreement is irrelevant, however. In determining the proper allocation of the support obligation between a mother and father, it may be reasonable for a court to defer to the agreement, if its provisions for child support are adequate.[15] If they are not, a court should disregard the agreement and issue an order for support according to an independent determination of both the child's needs and the financial abilities of the parents.[16]

Where an action is brought to modify a support order that has already been issued, section 461(b) applies.[17] This would include a

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tween themselves. In any event it is safe to say that such agreements will be subject to the closest and most careful scrutiny.

Van Dyke v. Van Dyke, 278 A.D. 446, 448, 106 N.Y.S.2d 237, 240 (3d Dep't 1951) (citation omitted).

13. For the text of sections 413 and 414, see note 5 *supra*. Section 461(a) states:

> A separation agreement, a decree of separation and a final decree or judgment terminating a marriage relationship does not eliminate or diminish either parent's duty to support a child of the marriage under sections four hundred thirteen and four hundred fourteen of this article. In the absence of an order of the supreme court or of another court of competent jurisdiction requiring support of the child, the family court may entertain a petition and make an order for its support.

N.Y. FAM. CT. ACT § 461(a) (McKinney 1975).

14. *See* note 13 *supra*.

15. *See* Cohen v. Cohen, 28 Misc. 2d 558, 212 N.Y.S.2d 809 (Sup. Ct., Bronx Co. 1961). The adequacy standard is derived from section 413 of the Family Court Act: "a fair and reasonable sum according to [the father's] means." N.Y. FAM. CT. ACT § 413 (McKinney 1975).

16. This would appear to follow from the rule that a child's right to support cannot be diminished by an agreement between his or her parents. *See* notes 11-13 & accompanying text *supra*.

17.

> If an order of the supreme court or of another court of competent jurisdiction requires support of the child, the family court may
>
> (i) entertain an application to enforce the order requiring support; or
>
> (ii) entertain an application to modify such order on the ground that changed circumstances requires such modification,
>
> unless the order of the supreme court provides that the supreme court retains exclusive jurisdiction to enforce or modify the order.

N.Y. FAM. CT. ACT § 461(b) (McKinney 1975).

situation in which a support order has been issued by a New York court pursuant either to section 461 (a) of the Family Court Act or to section 240 of the Domestic Relations Law, which vests the supreme court with discretionary power to include provisions for child support in a decree of separation, annulment, or divorce.[18] In addition, section 461 (b) would apply if a support order has been issued by a competent court of a foreign jurisdiction. Unlike section 461 (a), however, section 461 (b) does require a showing of changed circumstances before a court may issue a new order.[19]

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18. Section 240 provides in relevant part:

> In any action or proceeding brought (1) to annual a marriage, or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court *must* give such direction, between the parties, for the custody, care, education and maintenance of any child of the parties, as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child.

N.Y. DOM. REL. LAW § 240 (McKinney 1977) (emphasis added).

In contrast, section 236 of the Domestic Relations Law provides that "the court *may* direct the husband to provide suitably for the support of the wife . . . ." *Id.* § 236 (emphasis added). The hortative nature of section 240 may reflect a legislative concern that all children of divorced parents be judicially assured of support.

19. When courts have been faced with requests to modify a child support order, they have been unwilling to do so unless more than a minimal change of circumstances has been shown. The rationale for this rule is to limit to one occasion the court's consideration of any one set of facts. "This accords with the fundamental principle that litigation must have an end and that a court, having performed its function, may not lightly be asked to do it all over again." Kover v. Kover 29 N.Y.2d 408, 413, 278 N.E.2d 886, 887, 328 N.Y.S.2d 641, 643 (1972) (alimony case).

In various cases the Appellate Division has found the following changes to be insufficiently compelling to warrant the requested increases: a wife's higher tax bracket, *see* Halpern v. Klebanow, 21 A.D.2d 858, 251 N.Y.S.2d 170 (1st Dep't 1964); a child's advancing age, *see* Rubin v. Rubin, 31 A.D.2d 739, 296 N.Y.S.2d 733 (1st Dep't 1969); and inflation, *see, e.g.*, Rubin v. Rubin, 31 A.D.2d 739, 296 N.Y.S.2d 733 (1st Dep't 1969); Unger v. Schiff, 277 A.D.123, 100 N.Y.S.2d 981 (2d Dep't), *appeal dismissed,* 302 N.Y. 767, 98 N.E.2d 888 (1951). *But see* Coen v. Coen, 56 A.D.2d 810, 393 N.Y.S.2d 13 (1st Dep't), *appeal dismissed,* 42 N.Y.2d 966, 367 N.E.2d 654, 398 N.Y.S. 2d 148 (1977). Whether a father's increased income is a sufficient basis for modification is not entirely settled. The Second Department has found this to be a sufficient change of circumstances. *See* Eisen v. Eisen, 48 A.D.2d 652, 367 N.Y.S.2d 554 (2d Dep't 1975); Handel v. Handel, 32 A.D.2d 946, 304 N.Y.S.2d 76 (2d Dep't 1969), *aff'd,* 26 N.Y.2d 853, 258 N.E.2d 94, 309 N.Y.S.2d 599 (1970); Swerdloff v. Weintraub, 26 A.D.2d 826, 273 N.Y.S.2d 905 (2d Dep't 1966). The first Department requires, in addition, a showing that the child's needs have also increased. *See* Coen v. Coen, 56 A.D.2d 810, 393 N.Y.S.2d 13; Fensterheim v. Fensterheim, 55 A.D.2d 516, 389 N.Y.S.2d 13 (1st Dep't 1976); Klein v. Sheppard, 52 A.D.2d 532, 381 N.Y.S.2d 885 (1st Dep't 1976).

New York courts have recently suggested that where a court has incorporated the support provisions of a separation agreement into a divorce decree without having independently evaluated the adequacy of such provisions, a child is entitled to a de novo hearing as to their adequacy, irrespective of whether or not the circumstances have changed. *See* Steinmetz v. Steinmetz, 77 Misc. 2d 446, 353 N.Y.S.2d 619 (Sup. Ct., Nassau Co. 1974); Behren v. Behren, 72 Misc. 2d 70, 338 N.Y.S.2d 27 (Sup. Ct., Nassau Co. 1972) (parents divorced in Mexico); Weinel v. Weinel, 89 Misc. 2d 91, 391 N.Y.S.2d 795 (Fam. Ct., Rockland Co. 1977).

Boden was not an action to modify a decree of divorce, annulment or separation that had been rendered by a New York court; nor was it an action to modify a support order that had already been issued.[20] Under section 461(a), therefore, the Family Court was empowered to make an initial determination, independent of the agreement, of the daughter's needs. From its brief opinion it appears that the Appellate Division followed this approach.[21] The Court of Appeals, however, took a different tack. It acknowledged that a separation agreement could not constrain a judicial determination of an appropriate amount of child support, and indicated that such a determination required a consideration of the best interests of the child and the capabilities of the parents. It then stated, somewhat contradictorily:

> Where, as here, the parties have included child support provisions in their separation agreement, the court should consider these provisions as between the parties and the stipulated allocation of financial responsibility should not be freely disregarded. It is to be assumed that the parties anticipated the future needs of the child and adequately provided for them.[22]

Then, without any express finding as to either the daughter's needs or the financial abilities of the parents, the court focused on the terms of the separation agreement—an agreement that had been written seventeen years earlier. It pointed out that the agreement was fair and equitable when made, that it included a provision for child support which "the parties felt was adequate,"[23] and that there had been "no showing of an unforeseen change in circumstances."[24] Consequently, it concluded, the Appellate Division had erred in modifying the agreement's child support provisions.[25]

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20. The support provisions of the parties' separation agreement were neither merged nor incorporated in the California decree.

21. *See* 55 A.D.2d at 550-52, 389 N.Y.S.2d at 848-49.

22. 42 N.Y.2d at 212, 366 N.E.2d at 794, 397 N.Y.S.2d at 703.

23. *See* note 29 infra.

24. 42 N.Y.2d at 213, 366 N.E.2d at 794, 397 N.Y.S.2d at 704.

Whether the provisions did in fact express the intent of the parties would seem to be an open question. Since in 1960 $7,500 would probably have been adequate to pay for a private college education, the parties may have intended that the father pay for the entire cost of the daughter's education. In that case their intent would not have been realized. Perhaps the court believed that the parties had intended to allocate a fixed portion of the cost—namely, $7,500—to the father, and to assign to the mother a variable portion—any costs above $7,500. The problem of construction here could have been obviated by the parties' insertion of an automatic cost-of-living escalation clause.

24. 42 N.Y.2d at 213, 366 N.E.2d at 794, 397 N.Y.S.2d at 704.

25. The Court of Appeals stated: "The facts and circumstances here present did not warrant a modification of the child support provision of the separation agreement and

Did the court perhaps pay lip service to one criterion—a consideration of the circumstances of all the parties—but actually apply another —an examination of the equities of a contract at the time of its execution? The child's need for a college education, as evidenced in part by her academic ability, and the parents' substantial incomes would seem to constitute the relevant circumstances. In any event, the court did not confront the task at hand: the mother had petitioned the Family Court for an *initial* determination of the daughter's need and far an *original* support order based on that determination. The wording of section 461 (a) of the Family Court Act,[26] which would appear to provide the relevant law, is difficult to reconcile with either the Court of Appeals' concern about the fairness of the separation agreement and the intention of the parents or its requirement that an unanticipated change of circumstances be shown. Had the mother brought an action in the New York Supreme Court for an interpretation of the separation agreement, then an examination of the parties' intentions and the agreement's fairness might have been appropriate.[27] Had she petitioned the Family Court for a modification of a previously issued support order, then the "changed circumstances" test of section 461 (b) would have been appropriate.[28] Since neither was the case, however, neither consideration appears to have been immediately relevant.

At best, the actual rationale for the Court of Appeals' approach is unclear. Perhaps the court implicitly found that a college education is not a necessity for which a parent ought to be required to provide.[29] Or perhaps the court decided *sub silentio* that the agree-

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it was error for the Appellate Division to do so." *Id.* What is especially odd about this statement is that the Appellate Division had not modified the separation agreement; it had made an initial support determination: "[P]etitioner has demonstrated the need for reasonable child support in a monthly amount of $250 and to the extent that respondent makes support payments under the separation agreement, he defrays in part the obligation imposed by this determination." 55 A.D.2d at 551, 389 N.Y.S.2d at 849.

26. For the full text of section 461(a), see note 13 *supra.*

27. This was suggested by one of the dissenting justices of the Appellate Division. 55 A.D.2d at 552, 389 N.Y.S.2d at 849 (Kupferman, J., dissenting).

28. *See* note 17 *supra.*

29. Claims for paternal support for college education have, in general, not fared well in the New York courts. Section 416 of the Family Court Act empoyers the Family Court to issue an order for support to provide necessaries, including "the expense of education." N.Y. FAM. CT. ACT § 416 (McKinney 1975). But although many courts have awarded support for college expenses, based on the child's talents, *see* Kaplan v. Wallshein, 57 A.D.2d 828, 394 N.Y.S.2d 439 (2d Dep't 1977); Weingast v. Weingast, 44 Misc. 2d 952, 255 N.Y.S.2d 341 (Fam. Ct., Nassau Co. 1964), or the parents' substantial financial resources and high station in life, *see* Kaplan v. Wallshein, 57 A.D.2d 828, 394 N.Y.S.2d 439 (2d Dep't 1977); Thaler v. Klein 55 A.D.2d 606,

ment in this case would most likely result in adequate support for the daughter, even if a private college education were a necessary part of that support. Since at the time she petitioned the Family Court the mother was earning $45,000 annually, it would not have been unreasonable to presume that she could and would bear any costs of her daughter's education that exceeded the $3,675 per year provided by the father under the separation agreement.[30] But if either of these two possible rationales is what actually motivated the court in *Boden,* then its holding should be narrowly limited to its peculiar facts. To conclude otherwise, to suggest that courts ought to accord any weight to separation agreements when making initial support determinations, absent a finding that the agreement adequately provides for the necessary support of the child, would directly contradict section 461 (a) of the Family Court Act as well as a considerable body of case law.[31]

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389 N.Y.S.2d 119 (2d Dep't 1976); Golden v. Golden, 37 A.D.2d 578, 323 N.Y.S.2d 714 (2d Dep't 1971); Herbert v. Herbert, 198 Misc. 515, 98 N.Y.S.2d 846 (Dom. Rel. Ct., N.Y. Co. 1950), most of the cases reflect a belief that absent unusual circumstances, a private college education is not a necessity which a parent ought to be ordered to provide, *see* Tannenbaum v. Tannenbaum, 50 A.D.2d 539, 375 N.Y.S.2d 329 (1st Dep't 1975); Hawley v. Doucette, 43 A.D.2d 713, 349 N.Y.S.2d 801 (2d Dep't 1973); Halsted v. Halsted, 228 A.D. 298, 239 N.Y.S. 422 (2d Dep't 1930); Wagner v. Wagner, 51 Misc. 2d 574, 273 N.Y.S.2d 572 (Sup. Ct., N.Y. Co. 1966), *aff'd,* 28 A.D.2d 828, 282 N.Y.S.2d 639 (1st Dep't 1967). Even those courts denying such support, however, consistently uphold the trial court's power to examine the facts of the case and to authorize such expenditures in its discretion. *See, e.g.,* Matthews v. Matthews, 14 A.D.2d 546, 217 N.Y.S.2d 736 (2d Dep't 1961); Hahn v. Hahn, 44 A.D.2d 913, 356 N.Y.S.2d 231 (4th Dep't 1974). Furthermore, a parent who voluntarily contracts by way of a separation agreement to provide educational support is thereby obligated to do so. Berland v. Berland, 47 A.D.2d 540, 363 N.Y.S.2d 111 (2d Dep't 1975); *see* Hawley v. Doucette, 43 A.D.2d 713, 349 N.Y.S.2d 801 (2d Dep't 1973); Halsted v. Halsted, 228 A.D. 298, 239 N.Y.S. 422 (2d Dep't 1930).

The New York Court of Appeals has never ruled on whether college can be a necessary under any circumstances. Other jurisdictions citing the child's ability as justification for college support include: Colorado, Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971); Mississippi, Pass v. Pass, 238 Miss. 449, 118 So. 2d 769 (1960); and Ohio, Calogeras v. Calogeras, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (Juvenile Ct. 1959). Jurisdictions examining the father's financial resources include: Colorado, Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971); Maryland, Groner v. Davis, 260 Md. 471, 272 A.2d 621 (1971); and New Jersey, Khalaf v. Khalaf, 58 N.J. 63, 275 A.2d 132 (1971).

30. $1,875 annually under the endowment policy plus $1,800 annually in monthly payments of $150.

31. *See* cases cited in notes 11 & 12 *supra.*