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Domestic Relations—Post-Minority Child Support in Dissolution Proceedings—Childers v. Childers, 89 Wn. 2d 592, 575 P.2d 201 (1978)

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DOMESTIC RELATIONS—POST-MINORITY CHILD SUPPORT IN DISSOLUTION PROCEEDINGS—*Childers v. Childers*, 89 Wn. 2d 592, 575 P.2d 201 (1978).

A dissolution decree awarded custody of three minor children to petitioner wife and ordered respondent husband to provide support and pay expenses for each child's college education.[1] Upon the husband's appeal,[2] the Washington Court of Appeals held that the trial court had exceeded its authority in ordering the husband to provide child support beyond eighteen years, the age of majority.[3] The court of appeals concluded that under the 1973 Washington Dissolution Act[4] a parent owes a duty of support only during his children's minority and that trial courts are without authority to extend that duty in actions to alter the marital status.[5]

The wife appealed and the Washington Supreme Court reversed, holding that the 1973 Dissolution Act authorizes trial courts to order parental support to continue into a child's majority.[6] On the facts presented,[7] the court found no abuse of discretion in the trial court's

1. Dr. Childers was ordered to pay support of $150 per month to each of his three sons until "each son ceases to be enrolled in an accredited school, college or university as a full-time student pursuing a baccalaureate degree and ceases to be otherwise dependent upon the parties for support," and, furthermore, to pay for "tuition, books, and miscellaneous educational fees." Childers v. Childers, 15 Wn. App. 792, 793, 552 P.2d 83, 84 (1976). Any of the sons who elected to complete a baccalaureate degree would likely be twenty-one years old at graduation, three years older than the present age of majority. WASH. REV. CODE § 26.28.010 (1976).

2. Dr. Childers also appealed the trial court's order requiring him to support Mrs. Childers while she pursued a baccalaureate degree. The court of appeals sustained the trial court's order. Childers v. Childers, 15 Wn. App. 792, 796, 552 P.2d 83, 85–86 (1976). The doctor abandoned this appeal in the Washington Supreme Court. Childers v. Childers, 89 Wn. 2d 592, 594–95, 575 P.2d 201, 204 (1978).

3. Childers v. Childers, 15 Wn. App. 792, 794–95, 552 P.2d 83, 84–85 (1976).

4. WASH. REV. CODE ch. 26.09 (1976).

5. The court interpreted the Dissolution Act to mean that "the father may be required to support each child if (1) he owes such child a duty of support, and (2) the child is dependent upon him." Childers v. Childers, 15 Wn. App. 792, 794, 552 P.2d 83, 84 (1976). To construe the "duty of support" language in the Dissolution Act, the court cited prior Washington cases which followed the common law rule that "a parent owes a duty of support to his children only during their minority," the only exception being the continued duty to support "defective" children. *Id.* at 794–95, 552 P.2d at 84–85. Therefore, when the parents' common law duty of support terminated, so did the court's authority to order such support from the parties to the marital action.

6. Childers v. Childers, 89 Wn. 2d 592, 575 P.2d 201 (1978).

7. The husband was a medical doctor practicing in King County. At trial he was 53 years old and his wife was 45 years old. The wife's only work experience was as a wait-

post-minority support order,[8] including its provision for educational expenses.[9] In every case, the necessity for and amount of such support is a question of fact to be determined by balancing the child's desires and aptitudes with the parents' station in life and financial resources.[10]

Because of the increase in the number of dissolutions in the United States[11] and the importance of higher education,[12] there is a need to reconsider the extent of the parental duty of support and the authority of divorce courts to order child support for college education. While the number of jurisdictions sustaining a duty of college support has increased, few cases extend the obligation into the child's majority.[13] As a result of the *Childers* construction of the 1973 Dissolution Act, Washington law now authorizes trial courts to order post-minority child support for college education.

This note will first explore the purpose of child support and the changes in Washington law resulting in the court's construction of the Dissolution Act in *Childers*. Following an analysis of the *Childers* opinion, the remainder of this note will outline the present operation and scope of the child support provisions in the Dissolution Act and

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ress. The Childers' children lived at home and were not self-supporting at the time the decree was entered.

8. 89 Wn. 2d at 597–98, 575 P.2d at 205.

9. Pursuit of the college education was to begin immediately after high school and follow a regular continuous course of study, in the absence of unforeseen circumstances. 89 Wn. 2d at 605–06, 575 P.2d at 209.

10. 89 Wn. 2d at 598, 575 P.2d at 205. R.C.W. § 26.09.100 encompasses proceedings for dissolution of marriage, legal separation, declaration of invalidity, maintenance, and child support. WASH. REV. CODE § 26.09.100 (1976). *See* text accompanying note 30 *infra*. Nothing in the *Childers* opinion suggests that the decision would not apply to all types of proceedings possible under the Dissolution Act where support of a child is involved.

11. Over the 21-year period from 1953 to 1974, the annual number of divorces and annulments in the United States has risen by 250%, while the number of children involved has increased by 333%. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, SOCIAL INDICATORS 1976, at 43 (December 1977).

12. Higher education has been increasingly considered to be a necessity for a full and useful life because of the demands of an increasingly complex world. Allison v. Allison, 188 Kan. 593, 363 P.2d 795 (1961) (action for increase in support payments). The *Childers* court quoted the following passage from a 1926 Washington opinion:

> "It cannot be doubted that the minor who is unable to secure a college education is generally handicapped in pursuing most of the trades or professions of life, for most of those with whom he is required to compete will be possessed of that greater skill and ability which comes from such an education."

89 Wn. 2d at 600, 575 P.2d at 206 (quoting Esteb v. Esteb, 138 Wash. 174, 182, 224 P. 264, 267 (1926)).

13. *See generally* Washburn, *Post-Majority Support: Oh Dad, Poor Dad*, 44 TEMP. L. Q. 319, 325 (1971).

discuss the impact the provisions might have upon custody of children.

I. BACKGROUND

A. Purpose of Child Support

In any action affecting the marital status of parents, child support may be proper ancillary relief; under the 1973 Dissolution Act such support will normally be entered as part of the dissolution decree.[14] The purpose of the support order is to ensure that children of the marriage[15] who are unable to support themselves at the time the decree is entered will receive the reasonable necessities of life.[16] Another function is to distribute the obligation of support equitably between the parents.[17] Thus, the Washington Supreme Court has stated that "an award to the mother for child support must be predicated upon the needs of the child and the contribution the mother is able to make, together with the ability of the father to pay."[18] The trial court retains continuing jurisdiction to modify support orders as the parents' financial capabilities and the child's needs change.[19] This approach gives the trial court the necessary flexibility to safeguard the welfare of the

14. WASH. REV. CODE § 26.09.050 (1976). *See generally* Rieke, *The Dissolution Act of 1973: From Status to Contract?*, 49 WASH. L. REV. 375 (1974). *See also* Holman, *A Law in the Spirit of Conciliation and Understanding: Washington's Marriage Dissolution Act*, 9 GONZ. L. REV. 39 (1973).

Parents are permitted to allocate support duties between themselves in a separation contract, but such a contract is not binding upon the court in a dissolution proceeding. WASH. REV. CODE § 26.09.070(3) (1976). Therefore, in every action for child support, the trial court has final responsibility, subject to appellate review, to fix the amount and purpose of any award of child support.

15. *See* note 29 *infra*.

16. *See* Puckett v. Puckett, 76 Wn. 2d 703, 458 P.2d 556 (1964) (no abuse of discretion by trial court in fixing child support at $450 per month for each child). In general, "reasonable necessities" is not a static concept. It is contingent on both continuing social redefinition and specific factors such as the parents' financial status and the abilities and capacities of the child. Haag v. Haag, 240 Ind. 291, 163 N.E.2d 243 (1959). For a fuller discussion of the idea of "reasonable necessities," see text accompanying notes 69-71 *infra*.

17. Garrett v. Garrett, 67 Wn. 2d 646, 409 P.2d 470 (1965). *See* Hinson v. Hinson, 1 Wn. App. 348, 461 P.2d 560 (1969).

18. Garrett v. Garrett, 67 Wn. 2d 646, 648, 409 P.2d 470, 472 (1965). Under present law, either spouse may be liable for child support. *See* text accompanying note 30 *infra*.

19. Herzog v. Herzog, 23 Wn. 2d 382, 161 P.2d 142 (1945). The Washington court has also noted that "[t]he court's jurisdiction to enforce support money judgments is predicated upon the continued dependency of the children in question." Ditmar v. Ditmar, 48 Wn. 2d 373, 374, 293 P.2d 759, 760 (1956).

child while assuring that the parents' financial health is not strained beyond reasonable limits.

B. Pre-1973 Law

Prior to the statutory lowering of the age of majority from twenty-one to eighteen years in 1971,[20] the Washington Supreme Court had recognized the duty of a noncustodial parent to provide support for *minor* children pursuing a college education.[21] Washington case law[22] and express language in the previous Divorce Act[23] precluded a state divorce court from directing a parent to provide child support after that child attained majority.[24] As long as the age of majority remained fixed at twenty-one years, the rule against post-minority support posed few problems. In most cases, economic independence or the completion of education was likely by age twenty-one.

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20. R.C.W. § 26.28.010, enacted in 1971, provides: "Except as otherwise specifically provided by law, all persons shall be deemed and taken to be of full age for all purposes at the age of eighteen years." WASH. REV. CODE § 26.28.010 (1976).

21. Esteb v. Esteb, 138 Wash. 174, 244 P. 267 (1926).

22. Baker v. Baker, 80 Wn. 2d 736, 742, 498 P.2d 315, 319 (1972); Sutherland v. Sutherland, 77 Wn. 2d 6, 459 P.2d 397 (1969); Evans v. Evans, 116 Wash. 460, 199 P. 764 (1921); Riser v. Riser, 7 Wn. App. 647, 501 P.2d 1069 (1972).

Washington case law recognized two exceptions to the rule against post-minority support. First, the Washington court recognized that, regardless of age, parents owed a continuing obligation of support for a mentally or physically handicapped child so long as support was necessary. Van Tinker v. Van Tinker, 38 Wn. 2d 390, 229 P.2d 333 (1951) (dictum); Schultz v. Western Farm Tractor Co., 111 Wash. 351, 190 P. 1007 (1920); Mallen v. Mallen, 4 Wn. App. 185, 480 P.2d 219 (1971) (dictum).

The second case law exception to the prohibition against orders of post-minority support permitted enforcement of support into majority when provided by a separation contract incorporated into a dissolution decree. In Smith v. Smith, 4 Wn. App. 608, 484 P.2d 409 (1971), a property settlement agreement incorporated into a divorce decree required financial support as long as the child attended college as a full-time student. The court of appeals in *Smith* concluded that the support provision of the agreement could be enforced according to its terms through normal contract remedies even though the obligations under the decree could not be enforced by contempt proceedings after the child reached majority. *See also* Bauer v. Bauer, 5 Wn. App. 781, 788, 490 P.2d 1350, 1353 (1971).

23. The Divorce Act of 1949 provided: "If the court determines that either party . . . is entitled to a divorce or annulment . . . [the court] shall make provision for . . . the custody, support and education of the *minor* children of such marriage." Divorce Act, ch. 215, § 11, 1949 Wash. Laws 698 (1949) (repealed 1973) (emphasis added).

24. The most frequently recognized basis for the rule was "the fact that there are minor children to be cared for as wards of the court." Ruge v. Ruge, 97 Wash. 51, 55, 165 P. 1063, 1065 (1917). When the child ceased to be a ward of the court at majority, jurisdiction terminated. *See generally* Note, *Child Support Extended,* 10 GONZ. L. REV. 933 (1975). In Ditmar v. Ditmar, 48 Wn. 2d 373, 374, 293 P.2d 759, 760 (1956), the court noted that "[t]he court's jurisdiction to enforce support-money judgments is predicated

After the age of majority was statutorily lowered to eighteen years, application of the rule against post-minority support would have adversely affected those children who, while adult by law, had not yet completed their education and consequently remained dependent on their parents for support.[25] If the lowered age of majority applied in this setting, the Washington court would have been in the anomalous position of having recognized the duty of some divorcing parents to

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upon the continued dependency of the children in question." The *Ditmar* court summarily concluded "attainment of majority" terminated dependency. *Id.* Implicit in the jurisdictional bar is the policy that a divorce court should be limited in its discretion to distribute a parent's present and future assets. However arbitrary and impractical, the rule against post-minority support served that end. Prior to 1973, the Washington court consistently rejected extension of the divorce courts' jurisdiction. *See, e.g.*, Sutherland v. Sutherland, 77 Wn. 2d 6, 459 P.2d 397 (1969); Herzog v. Herzog, 23 Wn. 2d 382, 161 P.2d 142 (1945).

25. The *Childers* court stated:

> [I]t should also be noted that not only college is at issue here. Most children have not graduated from high school by the time they reach their 18th birthday. Thus, the custodial parent, usually the mother, would be left with the full responsibility for the child's necessaries while the child is still in high school.

89 Wn. 2d at 601 n.3, 575 P.2d at 207 n.3.

The question whether the lower age of majority applied to the rule against post-minority support remains an unresolved issue in Washington. This is suggested by two factors: first, by the absence of any judicial precedent applying the lower age of majority to the rule against post-minority support, and second, by existing precedent which did not adopt a blanket application of the change in the age of majority to all rights associated with an age limitation or qualification. The issue remains significant if, under the 1973 Dissolution Act, a presumption of emancipation arises at the age of majority. *See* note 60 and accompanying text *infra*. Should such a presumption arise, it is questionable whether the lower age of majority would apply.

The bar on post-minority support was incorporated into the Divorce Act of 1949, when the age of majority in Washington was twenty-one years. Divorce Act, ch. 215, § 11, 1949 Wash. Laws 698 (1949) (repealed 1973). The age of majority was statutorily lowered to eighteen years in 1971. *See* note 20 and accompanying text *supra*. In the interim period before adoption of the Dissolution Act in 1973, the Washington court never clearly decided whether the new age of majority applied to R.C.W. § 26.08.110. The court in Baker v. Baker, 80 Wn. 2d 736, 498 P.2d 315 (1972) stated:

> Whether the legislation lowering the age of majority to 18 years applies, under R.C.W. 26.08.110, to support and education provisions in divorce decrees . . . is not properly before us at this time since the rights of the parties to this action are not affected thereby. We therefore do not decide that question.

Id. at 742, 498 P.2d at 319.

Moreover, legislative and judicial precedent demonstrates that attainment of majority has never automatically vested all rights associated with an age qualification. In Washington State Welfare Rights Organ. v. Washington, 82 Wn. 2d 437, 511 P.2d 990 (1973), the issue was whether the lower age of majority applied to Aid to Families with Dependent Children (AFDC) benefits, which are statutorily contingent on the children being "dependent." The court held that the two statutes operated independently of each other. The court reasoned that the two provisions were not inconsistent: R.C.W. § 26.08.110 established the legal age of majority; the "dependent children" provision pro-

support children pursuing a college education,[26] but being unable to order such support beyond a child's eighteenth birthday.

This problem demonstrates the inherent weakness in the rule against post-minority support: while it is desirable that the parental duty of child support terminate at some point, it is difficult to justify arbitrarily assigning a specific age for all cases.[27] Indeed, such a rule requires that support terminate on the occurrence of an event that bears little relationship to the child's needs.

C. *The Dissolution Act of 1973*

In 1973, the Washington Legislature substantially revised the existing Divorce Act, including all of the previous provisions concerning child support.[28] The Act now provides that in "entering a decree of dissolution . . . [t]he court shall consider, approve, or make provision for . . . the support of any child of the marriage entitled to support."[29]

While the Act does not specifically undertake to define "entitled to support," it does provide:

> In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for his support.[30]

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vided for AFDC benefits under specific conditions. Thus it seems apparent that the legislative proviso, "taken to be of full age for all purposes at the age of 18 years," may not have automatically altered the age qualification within the rule against post-minority support.

26. Esteb v. Esteb, 138 Wash. 174, 244 P. 267 (1926).

27. The age of majority was set in 11th-century England at twenty-one years because at that age a male could manage a suit of armor and heft a sword at the same time. Washburn, *supra* note 13, at 328 n. 53.

28. Revision of the Act was designed, *inter alia,* to eliminate the concepts of fault and guilt from marriage dissolutions. *See* Rieke, *supra* note 14, at 377.

29. WASH. REV. CODE § 26.09.050 (1976). The new Act maintains the "children of such marriage" limitation embodied in the previous act. *Id.* § 26.09.100. This limitation operates to prohibit actions under the Dissolution Act for support of stepchildren and illegitimate children. Parents are chargeable for the support of stepchildren until divorce. *Id.* § 26.16.205 (amended to include stepchildren in 1969). Although the Dissolution Act bars direct provision for the support of illegitimate children, the trial court may take cognizance of the child's needs and the state's interest that provision be made and adjust the parental obligations to allow support payments to such a child. *See* Heney v. Heney, 24 Wn. 2d 445, 459, 165 P.2d 864, 871 (1946).

30. WASH. REV. CODE § 26.09.100 (1976).

Conditions for termination of child support orders are also specified in the Act: "Unless otherwise . . . expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child . . . ."[31]

The child support provisions in the new Act reflect the general purpose of the Act: to eliminate the element of "fault" from dissolution considerations.[32] The 1973 Act repealed the post-minority support rule in the previous Act[33] but failed to answer the question raised by the parties in the *Childers* action: whether the post-minority child support prohibition contained in the previous Act had been carried into the new Act.

II. REASONING OF THE *CHILDERS* COURT

A. Statutory Interpretation

The Washington Supreme Court found from the language of the Dissolution Act that the legislature intended to remove the jurisdictional bar previously prohibiting an order of post-minority support in dissolution proceedings.[34] Thus, having established that an order of post-minority child support was not prohibited by the 1973 Dissolution Act, the court turned to the criteria enumerated in the Act to determine whether the trial court had abused its discretion by ordering support for the college education of the Childers' children.[35] The

31. *Id.* §26.09.170 (1976).

32. *See* note 28 *supra.*

33. Divorce Act, ch. 215, § 11, 1949 Wash. Laws 698 (1949).

34. The court relied on three factors. First, the 1973 Act eliminated all reference to minority. The court found that a change was intended by the change in wording from the old support provision language, referring to "minor" children, to the new support provision, referring to "dependent" children. 84 Wn. 2d at 596, 575 P.2d at 204 (*referring to* WASH. REV. CODE § 26.09.100 (1976)). Second, R.C.W. § 26.09.110 authorized appointment of an attorney for a minor or dependent child; because the court found the term to be used in the disjunctive, dependent child could not mean minor child. *Id.* at 595, 575 P.2d at 204. Third, R.C.W. § 26.09.170 indicated that the courts could expressly provide a time other than emancipation of the child for termination of support. *Id.* at 596–97, 575 P.2d at 204–05. The court noted that the construction of R.C.W. § 26.09.170 adopted by the court of appeals would render the entire provision meaningless. *Id.* at 596–97, 575 P.2d at 205 (1978).

R.C.W. § 26.09.170 is virtually identical to the equivalent section of the Uniform Marriage and Divorce Act. The official comment to that section states: "Subsection (c) is designed to permit the . . . court to provide in the decree that the obligation of each parent to support the child will extend beyond the child's emancipation . . . ." UNIFORM MARRIAGE AND DIVORCE ACT § 316(c) (commissioner's note), *reprinted in* 9 UNIFORM LAWS ANNOTATED 455, 501 (master ed. 1973).

35. 89 Wn. 2d at 598, 575 P.2d at 205.

standards the court applied are those set out in R.C.W. § 26.09.100: that the children be "dependent" and that the parent owe them a duty of support.[36]

The *Childers* court gave both a general and a specific definition of dependency. The court found a "dependent" to be "one who looks to another for support and maintenance, one who is in fact dependent, one who relies on another for the reasonable necessities of life."[37] Whether a child is a dependent is a question of fact to be determined by all the circumstances of the particular case.[38] More specifically, the court noted that it was within the discretion of the trial court to find the Childers' children to be "dependents" based on their status as students pursuing a baccalaureate degree.[39]

The court found a parental duty of support based on the Washington family expense statute.[40] Relying on its decision in *Esteb v. Esteb*,[41] the court noted that the divorcing parents' duty had been previ-

36. *Id.* at 597, 575 P.2d at 205.

37. *Id.* at 598, 575 P.2d at 205.

38. The court stated:

> Age is but one factor. Other factors would include the child's needs, prospects, desires, aptitudes, abilities, and disabilities, and the parents' level of education, standard of living, and current and future resources. Also to be considered is the amount and type of support (*i.e.*, the advantages, educational and otherwise) that the child would have been afforded if his parents had stayed together.

Id.

The Uniform Marriage and Divorce Act enumerates the following factors to be considered by the trial court when ordering child support:

> (1) the financial resources of the child;
> (2) the financial resources of the custodial parent;
> (3) the standard of living the child would have enjoyed had the marriage not been dissolved;
> (4) the physical and emotional condition of the child and his educational needs; and the financial resources and needs of the noncustodial parent.

UNIFORM MARRIAGE AND DIVORCE ACT § 309, *reprinted in* 9 UNIFORM LAWS ANNOTATED 455, 494 (master ed. 1973).

39. The court reasoned as follows:

> [W]e think it reasonable to assume that a medical doctor, himself with years of higher education which brings him a higher than average income, would willingly treat his sons as dependents if they chose and showed an aptitude for college, but for the fact of the divorce. Where, as here, the children would have most likely remained dependent on their father past 18 while they obtained a college education, it is within the discretion of the trial court to define them as dependents for that purpose.

89 Wn. 2d at 598-99, 575 P.2d at 205-06.

40. "The expenses of the family and the education of the children . . . 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 . . . ." WASH. REV. CODE § 26.16.205 (1976).

41. 138 Wash. 174, 244 P. 264 (1926). *See* text accompanying note 21 *supra*.

ously extended to support for a college education. The court, however, was careful to emphasize that the duty to support was not absolute,[42] but rather depended on such circumstances as whether the duty imposed on the parent any significant hardship and whether the child showed aptitude.[43] The court found the duty to provide post-secondary support justified by the facts of the case.[44]

B. Constitutionality of the Post-Minority Support Interpretation

The court of appeals in *Childers v. Childers*[45] had considered, sua sponte, the constitutionality of an earlier decision which held that post-minority child support could be ordered under the Dissolution Act.[46] In the opinion of the court of appeals, such an interpretation of the Act violated the privileges and immunities provision of the Washington Constitution and the equal protection clause of the fourteenth amendment of the United States Constitution.[47] According to the court, the fact that married parents could legally terminate support for their children at majority while divorced parents could be compelled to provide post-minority support created a statutory class receiving disparate treatment. The court of appeals thought that the constitutional infirmity lay in the fact that no logical reason existed to "require divorced parents to support their children for an indefinite

42. 89 Wn. 2d at 600, 575 P.2d at 206, *citing* Golay v. Golay, 35 Wn. 2d 122, 123–24, 210 P.2d 1022, 1023 (1949).

43. 89 Wn. 2d at 601, 575 P.2d at 207.

44. *Id.*

45. 15 Wn. App. 792, 552 P.2d 83 (1976).

46. Melville v. Melville, 11 Wn. App. 879, 526 P.2d 1228 (1974), involved a dissolution decree, entered under the new Act, which ordered the husband to pay support for the child "until the age of 21 if the child was regularly enrolled in school." *Id.* at 880, 526 P.2d at 1229. The husband challenged the order on appeal, contending that the divorce court's jurisdiction terminated when the child reached eighteen years. The court of appeals affirmed the support order, concluding, "RCW 26.09.170 specifically confers upon a dissolution court jurisdiction to direct a parent to provide for the support and education of a child after it attains majority . . . ." *Id.* at 881, 526 P.2d at 1229.

The *Melville* court reasoned that although the previous Divorce Act prevented Washington courts from ordering post-minority support in an action to change marital status, Section 26.09.170 of the new Act was intended by the legislature to expand the courts' jurisdiction. In the *Melville* court's opinion, the phrase in the new Act "expressly provided in the decree" implied that a divorce court can prevent termination of the "emancipated" child's authorized support by entering post-minority support orders in the divorce decree. Therefore, while section 26.09.170 of the Dissolution Act does not specifically provide for post-minority support, the operation of the statute permits the court to do so.

47. 15 Wn. App. at 795, 552 P.2d at 85.

period into their majority while married parents are free to bid their children a fiscal farewell at age 18."[48]

The supreme court disagreed, finding that the classification of married and divorced parents resulted in no actual inequality, and that if it did, there existed a rational basis for the difference in treatment.[49] In family circumstances both economically and academically conducive to college education, the child would normally pursue the degree but for the dissolution. Therefore, by providing for post-minority child support in dissolution proceedings, trial courts were only providing the affected child with the benefits children of married parents retained. Moreover, the classification was justified by the legitimate state interests in minimizing the disadvantages—disruptions to home life, bitterness, and emotional turmoil—that a dissolution visits upon the "innocent" child, in insuring that children are properly provided for, and in promoting a well-educated citizenry.[50]

III. OPERATION OF THE CHILD SUPPORT PROVISIONS

The *Childers* decision was the Washington Supreme Court's first opportunity to articulate the standards the trial court must follow when exercising its support order authority under the Dissolution Act. The remainder of this note will outline the present scope and operation of the Act's support provisions in light of the *Childers* decision and suggest potential problems and possible guidelines for trial courts and parties to actions affecting the marital status.

The Dissolution Act makes possible two types of support obligations in dissolution proceedings: court-ordered support that terminates upon "emancipation" of the child,[51] and court-ordered support that continues beyond "emancipation" of the child when "expressly provided" for in the decree.[52]

48. *Id.* at 796, 552 P.2d at 85.

49. 89 Wn. 2d at 605, 575 P.2d at 209.

50. *Id.* at 601-05, 575 P.2d at 207-09. *See* Inker and McGrath, *College Education of Minors, Part I,* BOSTON B.J., May 1966, at 5.

51. R.C.W. § 26.09.170 also provides for child support provisions to terminate upon "the death of the parent obligated to support the child." WASH. REV. CODE § 26.09.170 (1976). It is beyond the scope of this note to examine termination of the support order upon death of the parent. *See* O'Neal v. Morris, 7 Wn. App. 157, 498 P.2d 362 (1972).

52. WASH. REV. CODE § 26.09.170 (1976).

A. Termination Upon Emancipation

As noted previously, R.C.W. § 26.09.170 states that unless the trial court expressly provides otherwise, emancipation of the child terminates provisions for support.[53] The Dissolution Act does not define the word "emancipation," but the doctrine of emancipation has been well developed in Washington common law.[54]

In general, emancipation of a child is the relinquishment by the parent of care, control, and custody of the child with the concomitant termination of the parental duty to support the child.[55] The doctrine represents the legal recognition that certain events, such as marriage, military service, or incarceration, may terminate the economic dependence the child has upon her parents and cause her to be emancipated "in fact" prior to reaching majority.[56] Upon reaching majority, the child is emancipated "by operation of law," thereby terminating the parental duty of support.[57]

As interpreted by the supreme court, the Dissolution Act alters this dual definition of emancipation by eliminating emancipation "by operation of law." The court was careful to note that emancipation, as used in the Act, was to be determined by factors *in addition to age*.[58] Moreover, the Act's reference only to emancipation "in fact" is conso-

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53. *See* text accompanyng note 31 *supra*.

54. Foran v. Kallio, 56 Wn. 2d 769, 355 P.2d 544 (1960); Hines v. Cheshire, 36 Wn. 2d 467, 219 P.2d 100 (1950); American Prods. Co. v. Villwock, 7 Wn. 2d 246, 109 P.2d 570 (1941); Reedy v. Reedy, 12 Wn. App. 844, 532 P.2d 626 (1975).

55. *See* 59 AM. JUR. 2d *Parent and Child* §§ 93–100 (1971); H. CLARK, JR., DOMESTIC RELATIONS §8.3 (1968).

56. In Ditmar v. Ditmar, 48 Wn. 2d 373, 293 P.2d 759 (1956), the court noted:

> It follows that a mother cannot compel payments of support money for children whose dependency upon her has ceased by reason of death, emancipation by marriage, attainment of majority, service in the Armed Forces of the United States, adoption, incarceration in penal or other custodial institutions, or economic sufficiency resulting from earnings, gifts, or inheritance. In the absence of specific provisions to the contrary, there is a necessary implication in every decree for child support, that its binding effect shall extend into the future only for the period during which the children's dependency upon their custodian continues.

Id. at 374–75, 293 P.2d at 760. *See also* Anderson v. Anderson, 27 Wn. 2d 122, 177 P.2d 83 (1947); Troyer v. Troyer, 177 Wash. 88, 30 P.2d 963 (1954); Penney v. Penney, 151 Wash. 328, 275 P. 710 (1929); Poland v. Poland, 63 Wash. 597, 116 P. 2 (1911).

57. Reedy v. Reedy, 12 Wn. App. 844, 532 P.2d 626 (1975).

58. 89 Wn. 2d at 597, 575 P.2d at 205. The court also noted: "We find the common meaning of 'emancipate' in *Webster's Third New International Dictionary* (1971):
'1: to release (a child) from the paternal power, making the person released sui juris.'
It is not absolutely linked to majority."
Id. at 597 n.1, 575 P.2d at 205 n.1.

nant with legislative intent to eliminate minority status as a qualification for child support.[59]

The Washington Supreme Court's interpretation of the "emancipation" language in R.C.W. § 26.09.170 has significant bearing on the trial court's decision as to when termination of child support is appropriate. A child support order should terminate only when the child is emancipated "in fact," even if emancipation occurs after the age of eighteen. The attainment of majority should operate only to raise the presumption of emancipation—a presumption which can be rebutted by evidence of continuing reasonable dependency. The New Jersey Supreme Court held similarly in *Straver v. Straver:*

> There is no age fixed in the law when a child becomes emancipated. Prior to twenty-one there is a presumption against it, and the burden of establishing the status by competent evidence is on him who asserts it . . . . Even "arrival at the age of 21 years does not ipso facto result in emancipation. Arrival at majority is prima facie but not necessarily emancipation."[60]

B. Support Extending Beyond Emancipation

As noted previously, under the new Dissolution Act a support order will terminate upon emancipation of the child unless expressly provided otherwise in the decree.[61] This provision grants trial courts the authority to order support for activities of the child that, if the marital community had remained intact, would lie wholly within the discretion of the child's parents, for example, pursuit of a baccalaureate degree.[62] As noted by the *Childers* court, the Dissolution Act provides

59. *Id.* at 596, 575 P.2d at 204-05. At the present time it is not clear whether the judicial restriction of the emancipation doctrine to emancipation "in fact" in support proceedings might affect the duty of married parents to provide child support. There has been no case confronting that issue since the age of majority was lowered to eighteen years.

60. Straver v. Straver, 59 A.2d 39, 41 (N.J. Ch. 1948) (quoting Goldstein v. Goldstein, 134 A. 184 (N.J. Misc. 1926)).

61. WASH. REV. CODE § 26.09.170 (1976).

62. When a trial court in a dissolution proceeding makes provision for the minimal child support required of every parent (*i.e.*, nurture *per se*), the court assumes no special protective role. It acts as any court of proper jurisdiction would when presented with a parent, married or divorced, delinquent in his or her child support obligation. When the parents seek to alter their marital status, the *locus parentis* shifts from the parents to the dissolution court. The primary concern of the court becomes the welfare of the child, and it seeks to mitigate as far as possible the detrimental impact of dissolution upon the child. Thus, the court, acting *in loco parentis,* may extend the parental duty of support

that such extended support can be ordered only when the child is "dependent" and the parents owe a "duty of support."[63] When the trial court provides for support that does not terminate upon the child's emancipation, an initial showing of dependency is easily established. In cases of support for the pursuit of a college education, the child is often dependent on his parents simply because of his voluntary absence from the job market. Regardless of the self-imposed quality of the dependence, the child nevertheless remains "dependent" on the parents for support. Moreover, the *Childers* court provided that the trial court could characterize as dependent for support purposes[64] children who would likely remain dependent on their parents past eighteen while they pursued a college education. The test of the reasonableness of the child's dependency, for example, whether pursuit of a baccalaureate degree should be permitted at all, does not arise until the court considers the question of the parental duty of support.

R.C.W. § 26.09.100 provides that in every child support case before the trial court, the parental duty of support, *not* "dependency" of the child, is to be determined by a balancing of "all relevant factors."[65] When the trial court, acting *in loco parentis*,[66] seeks to extend child support beyond the mandatory nurture *per se*,[67] the central issue in every case is to what reasonable goals and purposes support should be applied. This determination should turn primarily upon the social, not individual, perception of the need for that goal.[68] Thus, support for college education can be ordered by the trial court because of the evolving social view that higher education is necessary to prepare a child adequately for the demands of modern society.[69] The *reasonableness* of the support goal depends upon the circumstances of the particular case before the court. Whether support for pursuit of a baccalaureate degree can be ordered turns on the child's aptitudes and interests and the parents' financial status and level of education.[70] Fi-

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beyond nurture *per se* to serve the best interests of the child. *See* Inker & McGrath, *College Education of Minors, Part II*, BOSTON B.J., June 1966, at 14–15.

63. *See* notes 36–44 and accompanying text *supra*.

64. *See* note 39 and accompanying text *supra*.

65. WASH. REV. CODE § 26.09.100 (1976).

66. *See* note 62 and accompanying text *supra*.

67. "Nurture *per se*" as used throughout this note refers to those minimal elements of child support, *i.e.*, food, clothing, shelter, that a parent cannot withhold from her child.

68. *See* Crane v. Crane, 45 Ill. App. 2d 316, 196 N.E.2d 27 (1964).

69. *See* text accompanying note 21 *supra*.

70. Garrett v. Garrett, 67 Wn. 2d 646, 409 P.2d 470 (1965); Gaidos v. Gaidos, 48 Wn. 2d 276, 293 P.2d 388 (1956).

nally, the *appropriateness* of the support purpose must be measured in light of the dissolution court's duty to minimize the disadvantages suffered by the children of broken homes[71] and the need to "perpetuate for the children . . . a standard of living in some degree compatible with that provided them before the divorce."[72]

IV. AN UNRESOLVED ISSUE: CUSTODY OF THE CHILD

In removing the post-minority support bar in actions affecting the marital status, the *Childers* decision raises difficulties in relation to custody of the child. For example, what degree of control may a noncustodial parent who has been ordered to provide a college education for her child exercise over the lifestyle of that child while he attends college?

The Washington Court of Appeals has held that the divorce court's jurisdiction in "child" custody proceedings terminates when the child reaches majority;[73] thus, parental and judicial control over the child's custody terminates. However, post-minority support can be compelled when the divorce court determines that college is in the best interests of the child and orders support "so long as the child is a full-time student."[74] This creates the prospect of a child of divorced parents receiving support for education with no attendant controls for as long as the child maintains the full-time status. Married parents have the discretion to make continued college support contingent on certain rules of behavior.[75] A divorced parent under the Dissolution Act may be ordered to provide college support, with the possibility that neither the parents nor the court may be able to exercise authority over the child's conduct or progress while at college. When a divorced parent refuses to continue paying college support unless he (or someone else) can exercise some control over the child attending college, the court will have to reexamine its interpretation of jurisdiction in child custody proceedings or reevaluate the terms of child support obligations to be imposed on the parent.

71. 89 Wn. 2d at 604, 575 P.2d at 208.
72. Puckett v. Puckett, 76 Wn. 2d 703, 706, 458 P.2d 556, 557-58 (1969).
73. Dickson v. Dickson, 12 Wn. App. 183, 529 P.2d 476 (1974).
74. Post-minority support awards for college education are often contingent on the child remaining a full-time student. *See, e.g.*, Childers v. Childers, 15 Wn. App. 792, 793, 552 P.2d 83, 84 (1976).
75. Roe v. Doe, 36 App. Div. 2d 162, 318 N.Y.S.2d 973 (1971).

V. CONCLUSION

Despite uncertainty in the application of R.C.W. § 26.09.100, the *Childers* decision is to be welcomed for its rejection of the rule against post-minority child support in dissolution proceedings. Washington trial courts may now fully consider the needs of the children of divorcing parents, unencumbered by the artificial and unrealistic rule that child support must end when majority is reached regardless of the child's status or needs. The *Childers* decision is a just accommodation of parental responsibilities and capabilities and the rights of their children in the diffiicult times accompanying a dissolution proceeding.

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