

# Michigan Law Review

---

Volume 36 | Issue 6

---

1938

## PARENT AND CHILD - EFFECT OF ADOPTION ON DUTY OF: PARENT TO SUPPORT CHILD

Marcus L. Plant  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Family Law Commons](#)

---

### Recommended Citation

Marcus L. Plant, *PARENT AND CHILD - EFFECT OF ADOPTION ON DUTY OF: PARENT TO SUPPORT CHILD*, 36 MICH. L. REV. 1028 (1938).

Available at: <https://repository.law.umich.edu/mlr/vol36/iss6/22>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

PARENT AND CHILD — EFFECT OF ADOPTION ON DUTY OF PARENT TO SUPPORT CHILD — The defendant, father of the child whose support was in question, was divorced by the plaintiff, mother of the child, in 1927. At that time, with the consent of both parties, the maternal grandparents adopted the child. In 1931 the grandfather died insolvent, and in 1933 the grandmother remarried and left the state. In 1934 the plaintiff adopted the child, and brought suit against the defendant for its support. The court entered an order requiring him to pay ten dollars per week for that purpose. After compliance for several months the defendant stopped payment, and in contempt proceedings protested the validity of the original order. He was adjudged guilty of contempt and committed to jail. On appeal it was *held* that the adoption of the child had

not relieved the defendant of the duty to support it, and hence the lower court had properly ordered him to make the payments. *Dwyer v. Dwyer*, 366 Ill. 630, 10 N. E. (2d) 344 (1937).

Although the older English and American cases regarded the parent's duty to support the child as merely moral,<sup>1</sup> it is now generally held that this is a legal obligation.<sup>2</sup> The duty has been viewed by some courts as a concomitant of the right of the parent to the services and custody of the child,<sup>3</sup> but the stronger current of authority seems to consider it as grounded in the natural relationship existing between parent and child.<sup>4</sup> The former theory has had an important influence on the decisions of some of the courts with respect to the cessation of the father's obligation when a divorce decree gives a custody of the children to the mother.<sup>5</sup> However, when the support of an adopted child is in question, the terms of the statute making provision for the adoption of children have a greater influence than the theory followed by the particular jurisdiction. The statutes usually describe the effect of the change on the status of the child in general terms. It is commonly provided that the child shall be "to all intents and purposes" or "in every way" the child of the adoptive parents.<sup>6</sup> It seems clear that as between the natural parent and an adoptive parent who is able to support the child the latter has the primary obligation, and the

<sup>1</sup> *Mortimer v. Wright*, 6 M. & W. 482, 151 Eng. Rep. 502 (1840); *Gordon v. Potter*, 17 Vt. 348 (1845); *Kelley v. Davis*, 49 N. H. 187, 6 Am. Rep. 499 (1870).

<sup>2</sup> *Pretzinger v. Pretzinger*, 45 Ohio St. 452, 15 N. E. 471 (1887); *Porter v. Powell*, 79 Iowa 151, 44 N. W. 295 (1890); *Lufkin v. Harvey*, 131 Minn. 238, 154 N. W. 1097 (1915); *Simson Garment Co. v. Schultz*, 182 Wis. 506, 196 N. W. 783 (1924).

<sup>3</sup> *Brown v. Smith*, 19 R. I. 319, 33 A. 466 (1895); *Husband v. Husband*, 67 Ind. 583, 33 Am. Rep. 107 (1879); *Hall v. Green*, 87 Me. 122, 32 A. 796 (1895).

<sup>4</sup> "The duty of parents to provide for *maintenance* of their children, is a principle of natural law; . . . By begetting them, therefore, they have entered into a voluntary obligation to endeavor, as far as in them lies, that the life they have bestowed shall be supported and preserved. And thus children will have a perfect *right* of receiving maintenance from their parents." 1 BLACKSTONE, COMMENTARIES, 4th ed., 447 (1899); 1 JONES' BLACKSTONE, 636 (1915). *Van Valkinburgh v. Watson*, 13 Johns. (N. Y.) 480 (1816); *Doughty v. Engler*, 112 Kan. 583, 211 P. 619 (1923).

<sup>5</sup> The contest usually arises when the decree has made no provision for maintenance. A minority of the courts have held that the father is no longer under a duty to support, a number of the decisions being placed squarely on the ground that the father has been deprived of the right to custody and services of the child. *Finch v. Finch*, 22 Conn. 411 at 417 (1853); *Brown v. Smith*, 19 R. I. 319, 33 A. 466 (1895); *Hall v. Green*, 87 Me. 122, 32 A. 796 (1895). The majority rule requires continued support by the father, some of the cases announcing expressly, and some apparently going on the "inarticulate major premise," that the duty of the father is a natural one and is not related to the right to custody and service. *Plaster v. Plaster*, 47 Ill. 290 (1868). *Riggs v. Riggs*, 91 Kan. 593, 138 P. 628 (1914); *Desch v. Desch*, 55 Colo. 79, 132 P. 60 (1913).

<sup>6</sup> "Upon compliance with the foregoing provisions . . . the court shall make an order setting forth the facts and declaring that from that date such child, to all legal intents and purposes, is the child of the petitioner. . . ." Wash. Comp. Stat. (Remington, 1922), § 1698.

duty of the natural parent is at least suspended under any type of adoption statute.<sup>7</sup> But where the adoptive parent is dead or unable to carry out the obligation the matter is not so clear. In such a case the result would seem to depend upon the specific provisions of the adoption statute. Thus in New York, under a statute which expressly relieves the natural parent of all duties toward and responsibilities for the child, it has been held that the natural parent is released not only from the common-law duty but also from the duty imposed by statutes providing for the support of dependent relatives, despite the fact that the child was about to become a public charge.<sup>8</sup> On the other hand the Illinois statute,

"After the adoption of such child, such adopting father or mother shall occupy the same position toward such child, that he or she would if the natural father or mother, and be liable for the maintenance, education and every other way responsible as a natural father or mother." 2 Ind. Stat. (Burns, 1933), § 3-104.

In Pennsylvania, upon proof of the statements in the petition, and when the court is satisfied that the welfare of the child will be advanced by the adoption, "the court or judge shall make a decree so finding and reciting the facts at length, and directing that the person proposed to be adopted shall have all the rights of a child and heir of such adopting parent or parents, and be subject to the duties of such child." 1 Pa. Stat. (Purdon, 1930), § 4.

Some statutes seem only to make the child the heir of the adoptive parent. The effect of these is problematical. See 22 IOWA L. REV. 145 at 153 (1936). See also, 4 VERNIER, AMERICAN FAMILY LAWS 406 (1931).

<sup>7</sup> *Mitchell v. Brown*, 18 Cal. App. 117, 122 P. 426 (1912). The action was by the second husband of the mother of the child, against the estate of the adoptive parent for support furnished the child when the adoptive parent thought she was no longer able to care for it. The court said: (18 Cal. App. 125): "The natural mother of the child . . . lost all legal authority over it and was relieved from all legal obligations to maintain and support the child immediately upon the latter's adoption." Reference was made to Cal. Civ. Code (Deering, 1937), § 229 which expressly relieves the natural parent of the child from all parental obligations when the child is adopted. In *Greenman v. Gillerman's Estate*, 188 Mich. 74, 154 N. W. 82 (1915), the natural parent was allowed to recover from the adoptive parent for support furnished the child after adoption. In *Gross v. Gross*, 110 Misc. 278, 179 N. Y. S. 900 (1920), the stepfather adopted the children of the mother when he married her. At the time she was divorced from the natural father the decree provided that the latter should support the children, and in this action the court granted the motion by the natural father that this direction be stricken from the decree. He was held relieved of the obligation under § 114 of the New York Domestic Relations Law, *infra*, note 8.

<sup>8</sup> *Betz v. Horr*, 276 N. Y. 83, 11 N. E. (2d) 548 (1937). The proceeding was a petition by the legitimate daughter of the defendant who had been adopted but whose adoptive parent had died. Plaintiff, who had reached her majority, was industrially incapacitated and about to become a public charge. The court held that the defendant was not liable for contribution for her support. Plaintiff had invoked the New York Domestic Relations Court Act, § 101 (4), which provided, "The parents, the grandparents, the children, and the grandchildren of a dependent adult who has been a resident of the city at any time during the twelve months preceding the filing of the petition for his support, and who is unable to maintain himself and is likely to become a public charge are hereby declared to be severally chargeable with the support of such poor relative." N. Y. Laws (1933), c. 482, § 101 (4). The court relied

which was the basis of the decision in the instant case, abrogates the natural parent's rights over the child but is silent with respect to the duties of that parent.<sup>9</sup> It is not clear from the opinion that the child was about to become a public charge, although some indication of that possibility appears in a dissenting opinion filed by one judge in the intermediate appellate court.<sup>10</sup> Inasmuch as Illinois does not follow the view that the duty to support is correlative to the right to custody and services,<sup>11</sup> and as a previous decision under the same adoption statute held that it did not relieve the natural parent of the duty to support,<sup>12</sup> the case seems to be supported by authority as well as in accord with local policy.

*Marcus L. Plant*

on § 114 of the Domestic Relations Law which, after making provision for the adoption of children, contains the following statement: "Thereafter the parents of the person adopted are relieved from all parental duties toward, and of all responsibility for, and have no rights over such child. . . ." 14 N. Y. Consol. Laws (McKinney, 1916), § 114. The holding reversed *Betz v. Horr*, 250 App. Div. 457, 294 N. Y. S. 546 (1937), in which that court had taken the view that the legislature did not intend that the adoption statute should relieve the natural parents of their obligation when they were capable of discharging it, and impose it upon the public.

<sup>9</sup> The terms of the statute are as follows: "The natural parents of a child so adopted shall be deprived, by the decree, of all legal rights, as respects the child, and the child shall be freed from all obligations of maintenance and obedience as respects such parents." Ill. Rev. Stat. (1937), c. 4, § 8.

<sup>10</sup> *Dwyer v. Dwyer*, 286 Ill. App. 588 at 598, 4 N. E. (2d) 124 (1936): "public policy should not allow either parent able to support the minor child, to avoid this duty when the alternative is to make the child a charge upon the public."

<sup>11</sup> *Plaster v. Plaster*, 47 Ill. 290 (1868).

<sup>12</sup> *McNemar v. McNemar*, 137 Ill. App. 504 (1907). The natural parent was not allowed to recover from the adoptive parent for support which he had furnished to the child after adoption. The court said (at p. 507), "The statute governing adoption in our state . . . does not in terms or by implication attempt to relieve a natural parent from the duty he owes his child to care for and support him."