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NOTES

THE UNIFORM RECIPROCAL ENFORCEMENT
OF SUPPORT ACT

1. INTRODUCTION

The family is still the basic unit of American society. Its solidarity is built on the ties of mutual affection growing out of a common intellectual, moral and physical inheritance.¹ But when these ties fail to bind, the law must lend its aid. One of the most tangible ways for law to preserve the family is by the creation and enforcement of duties of support.² With the passage of time, the duties of support which the common law imposed on the father have been extended by statute to include adopted and illegitimate children³ and even to those in whom he stands *in loco parentis*.⁴ The duties of the husband to support the wife have been made more stringent by giving her the right to sue for separate maintenance,⁵ the right to compel him to pay suit money,⁶ and other rights flowing from statutes on such collateral matters as homestead,⁷ family allowance,⁸ workmen's compensation⁹ and wills.¹⁰ As an example of these extensions in North Dakota it has been held that a husbandly father has the duty to support his wife and children even though the wife's well-to-do relatives might see that they did not starve, and also that the husband has a duty of support to his family that is prior to making arrangements for payment of his debts.¹¹ Also a father's duty to support his family has been held to supersede the use of his own income for his own living expenses.¹² There has been a general ineffectiveness in approaching the problem of how to handle enforce-

1. For a general discussion of the importance of the family, see Elliott and Merrill, *Social Disorganization* ch. 1.

2. Under the early common law the wife did not have the ability to see court action.

3. Vernier, *AMERICAN FAMILY LAW* § 234.

4. *In re Lutz' Estate* 107 N.Y.S. 2d 388, 392 (1951); *Brody v. Jones and Laughlin Steel Corp.*, 145 Pa. 602, 21 A.2d 437, 438 (1951).

5. N.D. Cent. Code § 14-05-26 (1961); *accord*, *Savre v. Savre*, 77 N.D. 242, 42 N.W. 2d 642 (1950).

6. N.D. Cent. Code § 14-05-23 (1961), but see *Bailey v. Bailey*, 22 N.D. 553, 134 N.W. 747 (1912).

7. N.D. Cent. Code § 14-05-25 (1961); *accord*, *Rosholt v. Mehus*, 3 N.D. 513, 57 N.W. 783 (1894).

8. N.D. Cent. Code § 14-05-24 (1961); *accord*, *Williams v. Williams*, 70 N.D. 278, 293 N.W. 802 (1940); see also; *Hagert v. Hagert*, 22 N.D. 290, 133 N.W. 1035 (1911).

9. N.D. Cent. Code § 65-05-21 (1961).

10. N.D. Cent. Code § 15-04.09, 10 (1961).

11. *Heller v. Heller*, 81 N.W. 2d 124 (N.D. 1957).

12. *Rice v. Rice*, 87 N.W. 2d 408 (Neb. 1958).

ment of support when the father had abandoned the family and fled the jurisdiction of the domicile court.¹³ This is constitutionally a state problem,¹⁴ and so the problem was first effectively undertaken by the legislature of New York which passed the UNIFORM SUPPORT OF DEPENDENTS LAW in 1949.¹⁵ The next year after a review of the general problem, the National Conference of Commissioners on Uniform Laws drafted the UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT. By 1955 all jurisdictions had passed the act as well as Guam, Puerto Rico, and the Virgin Islands.¹⁶ In North Dakota it was first put on the books by the 1951 legislature,¹⁷ and its present form is in section 14-12 of the North Dakota Century Code. Its use in the larger counties of the state has been of a limited nature,¹⁸ but with the expected population increase in the next few years are a few points of interpretation that should be dealt with.

The purpose of the Act in general is to improve and extend, by reciprocal legislation, the enforcement of duties of support and to make uniform the law with respect thereto.¹⁹ With the increasing mobility of the American population the problem of interstate enforcement of duties of support became acute. A deserting husband was beyond the reach of process in the state where he had abandoned his family and the family had no means of following him. Welfare departments, saddled with the burden of supporting destitute families, were often prevented from enforcing the duties of support by decisions holding that the duty existed only as to the obligee within the state of the complaint. Thus the primary function of the Act was, and still is, to obtain support from a deserting father irrespective of his domicile.²¹

2. EXTRADITION CONSIDERATIONS

Part of the actual enforcement of the Act is by criminal

13. The Council of State Governments stated in their manual, **The Support of Dependent Wives and Children** that there is no effective civil remedy to enforce the support of abandoned wives or children where a father absconds to another state.

14. U. S. Const. Amend. IV provides that powers not delegated to the United States government are reserved to the states and there is no mention of the present problem.

15. 65 McKinneys Cons. Laws of N.Y. § 2111 *et seq.* It is not inferred that other legislation did not precede this law but only that this was the first gleaning of a two-state suit.

16. 9C U.L.A.

17. 9C U.L.A. (Pocket Supp. 1955 p. 68-69).

18. N.D. Sess. Laws, Ch. 122 (1951).

19. Interview with Carlton Nelson, Grand Forks County States Attorney and Richard Boulger, Cass County Assistant States Attorney.

20. 9C U.L.A. § (prefatory note).

21. N.D. Cent. Code § 14-12-01 (1961).

procedure. Though a civil remedy is provided,²² the framers of the Act felt that the threat of actual extradition would be a powerful weapon in the case of shiftless obligors. However the interpretation of the two criminal provisions²³ have caused great diversity of application. Section 5 of the Act reads as follows:

"Interstate Rendition—The governor of this state may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to support any person in this state and may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state."

Section 6 of the Act reads as follows:

"Relief from the above Provisions—Any obligor contemplated by section 14-12-05 who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the court's of this state during the period of such compliance."

Four appellate courts have been confronted with the interpretation of these two sections.²⁴ The problem is whether or not the obligor can defeat the extradition proceedings of the obligee instituting the *ex parte* proceedings on his own rather than allowing the obligee to do it. Two courts granted jurisdiction,²⁵ and two refused it.²⁶ All four courts were interpreting identical statutes²⁷ and North Dakota's is identical also.²⁸ In each of these cases the petitioner-obligor contended that the obligor could initiate proceedings in a court of the responding state and thereby voluntarily submit himself to the court's jurisdiction and upon compliance with that court's order of support be relieved of extradition.²⁹ The California court rejected the obligor's contention on the grounds that the Support Act sets

22. N.D. Cent. Code § 14-12-07-25 (1961).

23. N.D. Cent. Code § 14-12-05-06 (1961).

24. Florida, Oregon, California, and Ohio.

25. Jackson v. Hall, 97 So. 2d 1 (Fla. 1957); Lefler v. Lefler, 344 P.2d 754 (Ore. 1959).

26. Ex Parte Floyd, 43 Cal. 2d 379, 273 P.2d 820 (1954); Sands v. Sands, 136 N.E. 2d 747 (Ohio 1956).

27. Cal. Civ. Proc. Code § 1160-61 (1955); Ohio Rev. Stat. Ann. § 88.061-.071 (1959 Supp.); Fla. State. Ann. § 88.061-.071 (1959 Supp.); Ore. Rev. Stat. § 110.051-.061 (1953).

28. N.D. Cent. Code § 14-21-05-05 (1961).

29. See footnote 25 *supra*.

out two alternatives to be followed;³⁰ namely, actual extradition, or initiation of civil proceedings in the initiating state by the obligee. The latter alternative was interpreted via section 2 of the Act by saying that the phrase "any other state" as used in section 6 was "any state in which proceeding pursuant to the proceeding in the initiating state is or may be commenced."³¹ The Ohio court followed this same general line of reasoning.³²

This is an extremely strict interpretation of the Act in my opinion and it seems the courts of Florida and Oregon reached a much more equitable verdict. In *Jackson v. Hall*³³ the Florida court allowed the obligor to comply with a support order made *ex parte* in the responding state and thus avoided extradition. Though they altered the definition of responding state as stated in the Act³⁴ their reasoning was as follows: The court felt that the purpose of the support act in both its civil and criminal aspects was to compel the obligor to support his dependents and not primarily to subject him to criminal punishment for his past offenses, and therefore there was no valid reason for refusing jurisdiction.³⁵ As to the procedural dearth in the Act in relation to this interpretation the Oregon court said, "It may be that the draftsmen of the Act, in recognition of the fact that families do not come to the critical juncture which is portrayed in the plaintiff's petition, in the absence of something abnormal, inserted in Section 6 of the Act so that the obligor can be relived from extradition if he wishes to stay where he has found employment and contribute to the support of his obligees a sum which the court rules is reasonable."³⁶ Also in the case of *Ex Parte Floyd*,³⁷ Justice Schauer's dissent states, "... the courts are not powerless to devise a fair and appropriate procedure to be followed and one which would permit the evidence of the obligee to be as fully presented to our courts as would be the case if the support proceedings are initiated in the home state of the obligee and followed by supplementary proceedings in California (the responding state)."

30. *Ev parte Floyd*, 43 Cal. 2d 379, 273 P.2d 820 (1954).

31. N.D. Cent. Code § 14-12-02 (3) (1961).

32. *Sands v. Sands*, 136 N.E.2d 747 (Ohio 1956).

33. *Jackson v. Hall*, 97 So. 2d 1 (Fla. 1957).

34. This is the interpretation of N.D. Cent. Code § 14-12-02 (3) (1961), allowing proceedings to begin in the asylum or responding state.

35. See footnote 33 *supra* at 7.

36. *Lefler v. Lefler*, 344 P.2d 754, 763 (Ore. 1959).

37. See footnote 30 *supra* at 323 (parentheses mine).

One criticism of this interpretation is pointed out by Professor Brockelbank in his book *Interstate Enforcement of Family Support*.³⁸ As previously stated, the threat of extradition as provided for in the Act was to be a deterrent to deserting fathers. However if the threat is to be real there must be an ability to jail the shiftless obligor who refuses to meet his obligations. I respectfully agree that the Florida and Oregon decisions take the "bite" out of the extradition provisions, but isn't the overriding purpose of the Act to provide for support of a dependent family? And if this is so how can you further this goal by removing an obligor from an asylum state causing him to lose what occupation he has obtained and thereby reduce his monetary ability to provide for support payments.

3. JUDICIAL INTERPRETATION

There is another facet of the Act that has been the cause of judicial interpretation in our neighboring state of Minnesota. They have added to their Uniform Act an amendment³⁹ that allows the conduct of the obligee to relieve the obligor from his duty of support. This is not such a radical departure from the ordinary Act; in fact it seems quite reasonable, but their use of it is a bit overextended. In *State of Ill. ex rel. Shannon v. Sterling*,⁴⁰ the court held that a husband did not have to pay support payments to his family because the wife had removed them from the state and thus deprived the husband of his visitation rights. The courts rely heavily on the liberal construction given to the statute.⁴¹ They said, "If the Act is to accomplish its purpose it must be given a liberal and flexible construction and application so that it may be adapted to the particular circumstances of the case."⁴² The court then, in the second part of its holding, said that the husband was not relieved of future payments if the trial court amends the divorce decree as to visitation rights. Thus in effect the court has allowed the alteration of a divorce decree through a support hearing and using the scope of the Act as its authority. The fact that a wife does not comply strictly with the provi-

38. Brocklebank, *Interstate Enforcement of Family Support* p. 21 (1960).

39. Minn. Stat. Ann. 518.44 (1) (1960).

40. 248 Minn. 266, 80 N.W.2d 13 (1956).

41. *Wheatley v. Mueller*, 288 S.W.2d 405, 409 (1956) which stated that without violating its language the act is to be construed to solve the problem of evil for which it is designed and to this end all reasonable doubts are to be resolved in favor of the applicability of the act to the particular case.

42. See footnote 40 *supra* at p. 22.

sions of a divorce decree,⁴³ or even takes the child to live with her in another state" has been held to not effect the duty of the father's support under case law prior to the enactment of the Uniform Act. In fact some cases held that after custody of the children has been taken away from the father by a divorce decree he has no right to dictate their residence, or refuse to pay support money because they are taken out of his jurisdiction⁴⁵ thereby defeating the visitation rights of the father.⁴⁶

Why should we be concerned with a problem of this type? As was pointed out in the preceding section on extradition proceedings, the legislative intent and procedural stipulations in the Act have a relative bearing on its use. The Minnesota court strained to allow the alteration of a divorce decree under the Act but have extended its interpretation further. In the case of *Holmes v. Holmes*,⁴⁷ the court found that the husband's lack of payment was studied, contemptuous, and deliberate and thus enforced the payments as well as suspended the visitation rights. What then is the scope and function of the Act? Is it to effect the payment of support from deserting fathers as stated in the introduction or is it to be judicially interpreted in the field of domestic relations to alter and affect divorce decrees. The answer seems self-evident.

* * *

In general a great many of the complications that arise under this Act have been obviated by the action of the Uniform Commissioners when they drafted an amendment in 1958.⁴⁸ This is a great help since it spells out much more clearly the procedures as well as the interpretations to be used when working with the Act. However the process of incorporating it into all of the jurisdictions may be slow in coming, so an awareness of the aforementioned problems may be of some benefit for a time to come.

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43. *Kelly v. Kelly*, 38 N.Y.S.2d 344 (1942).

44. *Kane v. Kane*, 241 Mich. 96, 216 N.W. 437 (1927).

45. *Leighton v. Leighton*, 48 R. I. 195, 136 A. 443 (1927).

46. *Altschuler v. Altschuler*, 248 N.Y.S. 93 (1931).

47. *Holmes v. Holmes*, 255 Minn. 270, 96 N.W.2d 547, 555 (1959).

48. Brocklebank, *Interstate Enforcement of Family Support*, App. 1. (1960).

APPENDIX 1.

PROCEDURE FOR IN-STATE ENFORCEMENT OF SUPPORT

1. Ascertainment of the father's neglect of his duty of support.
2. Issuance of a neglect of child or family complaint.
3. Arrest by a judges warrant.
4. Defendant enters his plea:
 - a. If not guilty bail is set and the case held for trial.
 - b. If guilty then:
 - (1) Determination if the husband is capable of support.
 - (2) Wife is subpoenaed and her financial condition is established.
 - (3) The court usually sentences the defendant to one year in the County Jail which is suspended if he pays a certain amount into the court for the support of his family. The money is dispersed by the clerk of court and if the husband fails to comply with the order a bench warrant is issued for his arrest.

PROCEDURE FOR USE OF THE URESA WITH NORTH DAKOTA
AS THE INITIATING STATE

1. The initiating state petitions its court for an order that states a person residing in another state has a duty to support dependents in this state.
2. General procedure followed:
 - a. Petitioner fills out the petition before a notary public.
 - b. Testimony of the petitioner is taken.
 - c. Certificate of the court is prepared.
 - d. If the petitioner cannot pay the filing fee an affidavit is prepared stating such and an order is prepared for the judge's signature waiving the filing fee.
 - e. The states attorney then arranges a meeting with the judge who requires that the testimony be taken and sworn to in his presence.
 - f. The papers are then filed in quadruplicate with the clerk of the District Court who forwards three copies to the court having jurisdiction over the defendant.
 - g. The court also forwards a certified copy of our Act.
 - h. You then file a paupers affidavit if necessary.
 - i. As a practical matter you request a waiver of the filing fee in the responding state to save our petitioner the expense.
 - j. Notice of the issuance of the support order of the responding state is sent to you from them.

PROCEDURE FOR USE OF THE URESA WITH NORTH DAKOTA
AS THE RESPONDING STATE

1. Upon receipt of the papers from the initiating state the following procedure is used.
 - a. Issuance of a summons and delivery to a sheriff for service.
 - b. A hearing is held and the testimony of the defendant is heard.
 - c. The judge determines the payments that are to be made.
 - d. The order is served on the defendant who then makes his pay-

49. For a more detailed discussion of procedure see Boulger, **Non-Support and Related Matters**, a paper given at the 1960 States Attorney's Convention in Grand Forks.

ments either to the responding state court or directly to the petitioner.

- e. Failure to comply with the order constitutes contempt.

Comments:

Procedurally speaking the act falls short of perfection in its scope. For instance, the defendant can only be forced to provide support as long as he is in the jurisdiction of the responding state. Also there is no provision for the location of the father by the responding state unless the petitioner can give a good lead as to his whereabouts. Some states have obviated the latter problem though by setting up a separate division of their State's Attorney's offices specifically to deal with support matters.⁵⁰

50. *Ibid.*