

December 2019

## Enforcement of Civil Liability for Nonsupport in the State of Wyoming

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### Recommended Citation

James R. Mothershead, *Enforcement of Civil Liability for Nonsupport in the State of Wyoming*, 8 Wyo. L.J. 227 (1954)

Available at: <https://scholarship.law.uwyo.edu/wlj/vol8/iss3/9>

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child, we submit that the interests of the child should be paramount, even though in extreme cases the neglect of the child is involuntary.

*Summary of Suggested Statutory Changes*

In the light of the foregoing, it is suggested that the following changes be made in the Wyoming Statutes relating to the adoption of abandoned children:

(1) That a statutory definition of what constitutes abandonment be formulated which pertains to all children under 18 years of age, and includes in particular the specification of a minimum period of time beyond which so-called "temporary" abandonment be presumed to be permanent—in order to give the court some encouragement to make a finding of abandonment, and to protect such a finding from the reappearance of parents who suddenly develop the whim to reclaim their children.

(2) That a special proceeding leading to a decree or finding of abandonment or termination of parental rights, based upon notice to parents, and including a hearing, be established.

(3) That Sections 58-206 and 58-207 be amended so as not to apply to:

- (a) Adoptions based on abandonments judically ascertained in proceedings outlined in (2) above, or
- (b) Adoptions in which existing statutes authorize organizations and persons other than parents to consent to the adoption in loco parentis.

(4) That the statutes pertaining to the adoption of orphan children (particularly 58-213 and 58-609[4]) be harmonized and made uniform.

(5) That the words "deserted" in 58-113 and 58-501 be changed to "abandoned", and that the references to abandonment in all existing Statutes be made uniform (e.g., "entirely abandoned" in 58-108, "abandoned children, whose parentage is unknown" in 58-609[4], "abandoning their children, without providing for their support and education" in 58-213).

(6) That the conflict in the definitions of dependent children—at least so far as abandoned children are concerned—set out in 58-606 and 25-101 be resolved.

(7) That there be a declaration of legislative policy to the effect that in an adoption proceeding, the welfare of the child shall be the primary consideration, with consent of the parents as secondary.

ARTHUR F. FISHER

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ENFORCEMENT OF CIVIL LIABILITY FOR NONSUPPORT  
IN THE STATE OF WYOMING

The scope of this article is restricted to a discussion of the civil enforcement of the obligation of parents to support their children when the defaulting parent is still residing in the state of Wyoming or at least has

attachable property therein. The enforcement of the same civil liability of a defaulting parent who is residing outside the state is discussed in another article in this issue dealing with the Uniform Enforcement of Support Act. Before discussing legislation dealing with the enforcement of the parental duty of support, it is necessary to determine the nature of the duty, the history of its enforcement, and the legislative background of our statutes dealing with the nonsupport problem in our own state.

The duty of a parent to support his children was well recognized at common law. The duty, as Blackstone described it, is a "principle of natural law; an obligation, says Puffendorf, laid on them not only by nature herself, but by their own proper act in bringing them into the world."<sup>1</sup> Such a duty, it would seem, would be deemed sacrosanct, and any deviation from it would warrant strong punitive measures, or at least would command reinforcement of that duty by way of civil enforcement. Instead, the courts of equity refused to enforce this duty and held it to be a mere moral obligation, independent of statutory enactment.<sup>2</sup> The rather specious rationale of this non-enforcement of the duty seems to be that performance of the duty was better left to the impulses of nature since it was secured by the strength of natural affection and thereby made human laws unnecessary.<sup>3</sup> As one would suspect, this type of reasoning completely excluded any possibility of there being any legal means by which a natural father might be compelled to support his illegitimate child, since such a child was said to be *filius nullius*, i.e. the son of nobody.<sup>4</sup>

Some early American courts adopted this rather harsh common law conception of a parent's duty to support his children.<sup>5</sup> Fortunately, most later American courts adopted the view that the duty to support was not only moral but was also an enforceable, legal obligation.<sup>6</sup> This changed conception of the parental duty to support children has given rise to several important consequences concerning (1) the defaulting parent's liability to third persons supplying necessaries for the maintenance of the children, (2) the children's right to sue for support and maintenance and (3) the mother's right to sue for necessaries furnished out of her own separate estate and for the future support and maintenance of the children.

Since the parent's obligation to his children is legal, it is now generally held that a delinquent parent is liable to pay for the necessaries furnished by a third person to the minor child without any contract between the parent and the third person or any consent on the part of the parent.<sup>7</sup>

1. 1 Bl. Comm. 447.

2. *Bazeley v. Forder*, L. R. 3 Q. B. 559 (1868).

3. *Kelly v. Davis*, 49 N.H. 187, 6 Am. Rep. 499 (1870).

4. *Simmons v. Bull*, 21 Ala. 501, 56 Am. Dec. 257 (1852).

5. *Hunt v. Thompson*, 3 Scam. 179, 36 Am. Dec. 538 (Ill. 1841); *Hollingsworth v. Swendenborg*, 49 Ind. 378, 18 Am. Rep. 687 (1875).

6. *Dunbar v. Dunbar*, 190 U.S. 340, 23 S. Ct. 757, 47 L. Ed. 1084 (1903).

7. *Lufkin v. Harvey*, 131 Minn. 238, 154 N.W. 1097 (1915); *Owen v. White*, 5 Port. 435 (Ala. 1837).

The liability is based on either (1) an agency theory or (2) quasi-contract theory. Under the agency theory, the parent's neglect to perform his legal duty implies an authority to bind the parent, i.e. the third person acts as the parent's agent.<sup>8</sup> Under the quasi-contract theory, the third person, in supplying necessities, is considered as having conferred a benefit upon the parent because he is fulfilling the parent's duty of support. In conferring this benefit, there arises an implied-in-law contract between the parent and the third person to pay for these necessities in order to prevent unjust enrichment of the parent.<sup>9</sup>

As to an infant's right to enforce the parental obligation to support him, there is a split of authority. In those jurisdictions which do not permit an infant to enforce this right in equity, the basis of this incapacity to sue is the common law concept that the parent is only under a moral obligation to support his children.<sup>10</sup> These jurisdictions adhere to the rationale that such a bill in equity would disrupt family unity and harmony and also sweep away parental discipline.<sup>11</sup> However, in other jurisdictions which have permitted the infant to assert his right to support, the established principle is followed that "where a duty exists equity will provide a remedy for its violation."<sup>12</sup> The rationale of these decisions seems to be (1) that the parental obligation to support is legal;<sup>13</sup> (2) that in non-support cases the family relationship usually has already been dissolved or disturbed and its harmony shattered by the action of the father, i.e. there was no family life to be preserved;<sup>14</sup> and (3) that criminal liability is not adequate for the child since it "does not clothe the body nor satiate the pangs of hunger."<sup>15</sup>

It is now generally held that a mother can recover from the father the amount which she has expended from her personal estate for the necessary support of herself and her children.<sup>16</sup> This is also true in the case of the divorced mother where the divorce decree has made no provision for the support of the children,<sup>17</sup> even though the divorce may have been due to her fault.<sup>18</sup> The rationale is that the father's duty of support is independent of the parents' marital status.<sup>19</sup> An action in this situation would not have been possible at common law since a married woman could not sue her husband and did not own separate property. Today these legal disabilities have been removed by the Married Women's Acts permitting a

8. *Owen v. White*, 5 Port. 435 (Ala. 1837).

9. *Manning v. Wells*, 85 Hun. 27, 32 N.Y.S. 601 (1895).

10. *Rawlings v. Rawlings*, 121 Miss. 140, 83 So. 146 (1919).

11. *Ibid.*

12. *Schneider v. Schneider*, 141 F.2d 542 (D.C. Cir. 1944).

13. *McClougherty v. McClougherty*, 180 Va. 51, 21 S.E.2d 761 (Va. 1942).

14. *Green v. Green*, 210 N. Car. 147, 185 S.E. 651 (1936).

15. *Campbell v. Campbell*, 200 S. Car. 67, 20 S.E.2d 237 (1942).

16. *DeBrauwere v. DeBrauwere*, 203 N.Y. 460, 96 N.E. 722 (1911).

17. *Riggs v. Riggs*, 91 Kan. 593, 138 Pac. 628 (1914).

18. *Rowell v. Rowell*, 97 Kan. 16, 154 Pac. 243 (1916).

19. *Alvey v. Hartwig*, 106 Md. 254, 67 A. 132 (1907).

wife to sue her husband and to own separate property.<sup>20</sup> The wife's recovery is usually based on one of two theories, very similar to those upon which a third person can recover for necessities provided for the support of minors. One theory is based on agency principles. This theory holds that the wife has implied authority to purchase necessities. While doing so, she is acting as her husband's agent in performing his duty of supporting his minor children. The third person, in so dealing with the mother, is in reality dealing with the husband. The wife, as her husband's agent, has a direct cause of action against her husband on a contract made in his behalf.<sup>21</sup> The second theory of the wife's recovery is a "quasi-contract" theory. This theory provides that when a third person supplies necessities, he confers a benefit on the husband. As a result, there arises an implied contract between the husband and third person. If the wife pays the husband's debt to the third person, she becomes subrogated to the cause of action which the third person had against the husband. This theory is sometimes referred to as the subrogation doctrine.<sup>22</sup>

The mother's right to enforce the father's duty to provide for future support of his children is a topic which is to be discussed at a later point in the article in connection with the parent's civil liability for nonsupport in Wyoming.

There are other illustrations of the present day trend towards enforcing the parents' duty to support. In the case of illegitimate children, many American courts have held that the father is under no obligation to support such children in the absence of statute.<sup>23</sup> However, one state court has broken with this common law precedent and has held that the father of an illegitimate child is under an enforceable nonstatutory duty to support that child.<sup>24</sup> Because of the older judicial decisions, many states have imposed a statutory duty on the father to support his illegitimate child. This has usually been done by (1) making specific references to illegitimate children in the nonsupport statute, by (2) legitimization statutes, or (3) by adoption of the Uniform Illegitimacy Law, as Wyoming has done. In the case of an infant who has his own separate estate, it has been held that a father is bound to support such infant if he be of ability to do so and no allowance will be made for that purpose out of the infant's property.<sup>25</sup> In case of bankruptcy, it has been held that a father was not relieved by his discharge in bankruptcy from his liability stemming from an agreement to pay his divorced wife a certain annual sum for the support of his children during their minority.<sup>26</sup> In the case of emancipation of a child due to the cruelty of a parent, it has been held that the parent is not relieved of his

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20. See note 16 supra.

21. *Sodowsky v. Sodowsky*, 511, Okl. 689, 152 Pac. 390 (1915); 26 Temp. L.Q. 459 (1953).

22. 26 Temp. L.Q. 459 (1953); *Adler v. Adler*, 171 Pa. Super. 508, 90 A.2d 389 (1952).

23. See note 4 supra.

24. *Daughty v. Engler*, 112 Kan. 583, 211 Pac. 619 (1923).

25. *National Valley Bank v. Hancock*, 100 Va. 101, 40 S.E. 611 (1902).

26. See note 6 supra.

liability for the child's burial services, even though he has no rights to the son's earnings.<sup>27</sup> One of the most extreme examples of how far the parental obligation of support has been extended is afforded by a New York case, *Betz v. Horr*.<sup>28</sup> In this case, the natural parent of the child was compelled to provide for his children when the adopting parent was unable to do so, even though a New York statute relieved the natural parent of all his parental duties to the child upon adoption. The court said that the legislature, in passing this statute, did not intend that the natural parent could shed his liabilities to such an extent that he could shift the burden of support to the state when the child was about to become a public charge. The effect of the decision was to make the adopting parent primarily liable for the support of the child and the natural parent secondarily liable for the same support.

As one can determine from the preceding discussion, there has been a growing concern on the part of the courts with the problem of nonsupport of children; and accordingly, the courts have become increasingly more humane and practical in the treatment of this serious problem. Legislatures, too, have responded to the growing problem by passing statutes which have not only defined the legal duty of the parent to support, but have also provided criminal and civil remedies against the defaulting parent. Thus, the courts' efforts to cope with this problem have been implemented by these statutes.

Early nonsupport legislation seemed to be actuated by a desire to relieve social and public institutions of the burden of maintaining abandoned or indigent children who cannot be supported by their mother. For example, it was sometimes provided that if the child is about to become a public charge, the state will place the burden of support upon the family and relatives rather than upon the state.<sup>29</sup> Wyoming's first statute covering civil liability for nonsupport is an example of legislation embodying this particular philosophy. This statute, Wyo. Comp. Stat. 1945, sec. 58-215 (unamended), provides that if any person having the legal charge of a child, abandons such child so that he "shall become a charge upon the county", the absconding person shall become liable to a civil action by the board of county commissioners for support given to the child by the county.

Upon some consideration, it can be observed that this type of legislation leaves something to be desired. That "something" is a civil remedy which enables the mother, relative or other third person who is caring for the abandoned child to enforce the delinquent parent's duty of support. Such a civil remedy has not been neglected by the states. Many states have enacted various and diverse laws providing civil relief for persons caring for an abandoned child. Several typical examples of such legislation are

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27. *Huneycutt and Co. v. Thompson*, 159 N. Car. 29, 74 S.E. 628 (1920).

28. 20 N.Y.S. 500 (1936).

29. *Ibid.*

the Uniform Support of Dependents Act, the Uniform Illegitimacy Law, and the Uniform Enforcement of Support Act.

In light of this legislative and judicial background, what has Wyoming done to enforce the parent's duty of support?

- (1) In 1879, the legislature passed a statute<sup>30</sup> providing for civil liability in desertion cases. This is the same statute as just referred to.
- (2) In 1882, the legislature passed a statute<sup>31</sup> empowering the court to grant a support order as in divorce, upon the petition of the wife when both spouses are separated or living together and the husband refuses to support the wife and children or either.
- (3) In 1915, Wyoming adopted the Uniform Desertion and Non-support Act<sup>32</sup> which provides a criminal remedy against a delinquent husband who deserts and wilfully fails to support his child. The Act also provides that the court in its discretion shall make an order for payment of support to the wife in lieu of the criminal penalty. This Act applies only to fathers still in the state.
- (4) In 1929, the Uniform Illegitimacy Law,<sup>33</sup> providing for support of an illegitimate child, was passed.
- (5) In 1949, a statute was amended<sup>34</sup> so as to enable the courts to order parents of children committed to the State Children's Home to pay toward the care and support of such children.

It can be readily seen that up to 1950, Wyoming had recognized and responded to the compelling need for child support. Wyoming, as have all other states, has also participated in the Aid to Dependent Children program which is jointly financed by state and federal funds. The purpose of this program is to give a decent standard of living to those children that are deprived of support due to the death of a parent, or parent's absence from the home, or the parent's mental or physical incapacity.<sup>35</sup> At the end of 1952, the monthly average of ADC cases handled by county welfare departments in Wyoming was 531.<sup>36</sup> In both January, 1950, and March, 1952, it was found that out of 556 cases handled in each of these months, 45% of those cases were due to divorces, separations and desertions. This 45% represented over \$600,000 in a biennium of public welfare money expended.<sup>37</sup>

These statistics point out the need for more vigorous and effective

30. Wyo. Comp. Stat. 1945, sec. 58-215 (unamended).

31. Wyo. Comp. Stat. 1945, sec. 3-5919.

32. Wyo. Comp. Stat. 1945, sec. 9-803 to 9-808.

33. Wyo. Comp. Stat. 1945, secs. 58-401 to 58-425.

34. Wyo. Comp. Stat. 1945, sec. 19-202.

35. Report of Wyoming Taxpayers Association, Jan. 1953: "Aid to Dependent Children in Wyoming."

36. *Ibid.*

37. *Ibid.*

measures for enforcement of the parental obligation to support minor children. To further meet this challenging problem of support, the Wyoming legislature, in 1951, passed the Uniform Enforcement of Support Act to deal with the problem of the delinquent parent who removes himself to another state. However, there was left the problem of enforcing the parental obligation within the state. The old statute<sup>38</sup> dealing with civil liability for desertion was inadequate for this purpose. This is probably due to the great reluctance on the part of the county attorneys, who are not full-time officials, to assume the added burden of enforcement of the duty to support under this Act. This is particularly understandable in view of the many other duties imposed upon them by various statutes.

In view of the ineffectiveness of the statute in question, the Wyoming Youth Council, during 1952, recommended the passage of an amendment to this old nonsupport statute in order to provide for more effective enforcement of the parental duty of support in desertion cases.<sup>39</sup> This amendment was substantially similar to another proposal which passed the state house of representatives unanimously in 1951, but died in the senate committee. In 1953, this recommended amendment was finally approved and passed by the state legislature in substantially the same form it was presented. This amendment now provides the basis of enforcement of the parental duty to support where the defaulting parent still resides in the estate or has attachable assets in the same. Let us now examine some of the provisions of this statute, as amended.

Paragraph (1) provides that any person legally responsible for the support of a child under 18 years shall be liable in a civil action if he "abandons, deserts, neglects or unjustifiably fails to support" the child. It also provides that "*it shall be no defense that such child was not or is not in destitute circumstances.*" (Italics ours.) This latter provision is an attempt to avoid the doctrine of *State v. Haworth*, 66 Wyo. 238, 208 P.2d 279 (1949). The court in that case determined that proof of a child's destitution was indispensable to conviction for desertion under Wyo. Comp. Stat., 1945, sec. 9-803, which makes it a crime for the parent to refuse to provide for the support of "his or her children under the age of sixteen years in *destitute or necessitous circumstances.*" (Italics ours.) This holding has the necessary result of rendering the parental obligation of support unenforceable in most cases, where the child is being cared for by the other parent, a charitable institution or other third person. As one court has aptly put it, "we would have this anomaly: A defendant, whose family, because of his violation of a penal statute, is being sheltered, fed, and clothed by sympathetic friends or charitable institutions, interposing this same charity as a shield to protect himself from the penalties which the law imposes for the violation of the statute under which he is prosecuted."<sup>40</sup>

38. Wyo. Comp. Stat. 1945, sec. 58-215 (unamended).

39. Biennial Report of the Wyoming Youth Council (Nov. 1952).

40. *State v. Bess*, 44 Utah 39, 137 Pac. 829 (1913).



In short, this decision defeats the very purpose of the statute, i.e to compel the parent to support his children through fear of criminal punishment if he defaults.

This *Haworth* case follows that line of decisions which adhere to the old "public charge" theory which has been previously mentioned.<sup>41</sup> This theory holds that the primary purpose of these criminal nonsupport statutes is to relieve the public of the necessity of supporting the wives and children of husbands who are able but neglect or refuse to do so. In short, the purpose is to protect the state against pauperism. As one court said, "so long as children are properly cared for, the state is not interested as to the source from whence the supplies come."<sup>42</sup>

It is surprising that the Wyoming Supreme Court construed the criminal nonsupport statute in this way. There is an abundance of authority which has construed the same or similar statutes relating to criminal nonsupport so as to render nugatory any defense which asserts that the child's wants are supplied by the generosity of third persons.<sup>43</sup> The theory underlying these latter decisions is that the statutes were not only intended to protect the state against public charges but also to provide support directly to the neglected wife and children.<sup>44</sup>

Proceeding to paragraph (2) of sec. 58-215 as amended, we find that the benefits of this Act extend not only to the parent furnishing support but also to any person, agency or institution furnishing support to the neglected child. In other words, any of these parties can maintain an action for support under this section. This paragraph further provides that if the child is wholly or partially supported by public welfare funds, and *if private counsel is not otherwise available*, the judge of the district court, upon the written request of the county welfare director, can direct the county attorney to file a petition and maintain this action. The effect of this latter provision throws the burden of civil enforcement of the duty to support primarily on private counsel, and very narrowly confines the duty of the county attorney to maintain this proceeding to those cases of actual destitution, e.g. ADC cases. This provision was adopted to meet the strenuous objection of the Wyoming County Attorney's Association against further enlarging the county attorney's already onerous burden of law enforcement with additional duties.<sup>45</sup>

A more important effect is the probability of procuring more vigorous enforcement of the duty to support, and hence a greater degree of relief to the supporting parent and welfare agencies in cases of destitution. This

41. See *Dalton v. State*, 118 Ga. 196, 44 S.E. 977 (1903); *State v. Thornton*, 232 Mo. 298, 134 S.W. 519 (1911).

42. *State v. Thornton*, 23 Mo. 298, 134 S.W. 519 (1911).

43. *State v. Bess*, 44 Utah 39, 137 Pac. 829 (1913); *State v. Waller*, 90 Kan. 829, 136 Pac. 215 (1913).

44. *State v. Moran*, 99 Conn. 115, 121 A. 277 (1923).

45. See note 39 supra.

provision also meets the criticism of those who contend that public welfare legislation smacks too much of socialism, in that the state and not individuals shoulders too much of the burden of mitigating the needs of the indigent and helpless. As to that rather limited number of cases where the child has become a public charge and private counsel is unavailable, it might be pointed out that the county attorney is already charged with the duty of giving free legal counsel to the party instituting the action. This provision is of particular benefit to those indigent people who are not able to wholly or even partially support the children in their custody. Thus, these people are not deprived of this statutory remedy because they are unable to procure counsel by virtue of their impecunious circumstances.

Paragraph (3) of the 1953 amendment provides that the action for support shall be brought in the district court of the county wherein the defendant resides, or may be found, or has attachable property.

Paragraph (4) provides for attachment proceedings to secure the plaintiff's judgment and to enable the plaintiff to maintain an action under this statute where the delinquent parent has either removed himself from the state or cannot be found. These are excellent provisions. This paragraph has even more significance when one considers the state Welfare Department's finding, in 1950, that the delinquent parent was out of state or his whereabouts unknown in about 70% of the ADC cases which were due to desertion, separation or divorce.<sup>46</sup> The attachment proceedings, under paragraph (4), are to be in conformity with Article 50, Chapter 3, Wyo. Comp. Stat. 1945, as amended. This means that paragraph (4) adds a new ground for attachment to Wyo. Comp. Stat. 1945, Sec. 3-5001. This ground, as stated by this paragraph, is "that the defendant has abandoned, deserted, wilfully neglected, or without just cause failed to provide for the support maintenance and education of a child under the age of 18 years for whose support he is legally responsible."

It should be pointed out that an undertaking is required to be executed by the plaintiff in accordance with Wyo. Comp. Stat. 1945, sec. 3-5003. What about an undertaking in those actions which the county attorney institutes on behalf of the parties who are unable to procure private counsel? Does the county attorney have to execute an undertaking? Under sec. 58-215, prior to the amendment, the undertaking was dispensed with in the attachment proceedings provided therein, but under this old statute this action was instituted by the board of county commissioners through the county attorney. The situation under the new statute is entirely different since, as mentioned before, the action is commenced by the county attorney on behalf of a destitute person who is the real party in interest and to whom the county attorney gives legal counsel. Therefore, it is not the county attorney who must execute the undertaking but the real party in interest, i.e. the destitute person seeking the relief money.

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46. See note 35 supra.

But, having arrived at this conclusion, we are confronted with the problem of how a person of destitute circumstances will be able to execute, by *sufficient surety*, an undertaking "in the sum equal to double the amount of the plaintiff's claim."<sup>47</sup> In the typical case, it would be difficult for such a plaintiff to find persons who would be willing to serve as surety to such an undertaking. It is submitted that the legislature did not give this phase of the problem adequate consideration.

Continuing on to paragraph (5) of sec. 58-215 as amended, we learn that (1) the measure of the plaintiff's recovery shall be the "reasonable value" of the support furnished to the child by the plaintiff; that (2) the court, in addition, may make other suitable order for the *future care and support* of the child. Referring now to the first provision, what would be the "reasonable value" of the support furnished? Does this "reasonable value" refer to the reasonable value of *all* the necessities provided to the child? Or, does it refer to the reasonable value of the delinquent parent's *share* of support which he *should* have contributed to the welfare of his child, but instead was furnished by the petitioner? It would seem upon a literal reading of this provision, that the former construction is intended. However, we encounter some difficulty in reconciling this construction with the Wyoming Supreme Court's dictum in *State v. Haworth* (supra) to the effect that parents of a child are under the *same* legal duty to support him; that in determining the amount the delinquent parent should contribute for support, "the proper inquiry is as to the child's need and the ability of *each* parent to furnish means for its support." This dictum would certainly support the second construction of the provision under discussion, since one parent is not entirely responsible for all necessities furnished to the child if the other parent is able to contribute to the child's support.

Let us now examine the second provision mentioned in paragraph (5) of sec. 58-215. This provision is rather unique among state statutes similar to sec. 58-215 in that it authorizes the court to make orders relating to the *future* support of the child. Its validity is amply supported by precedent in analogous situations. For example, a common situation in which the court can make an order for future support is in the case of divorce. Wyo. Comp. Stat. 1945, Sec. 3-5915 authorizes the court granting a divorce to make provision for the children's "present comfort and future wellbeing." Another situation where future support has been ordered by the courts is the one presented in those cases in which the divorced wife brings an action in equity against her ex-husband to compel him to pay future support, not previously provided for in the divorce decree.<sup>48</sup>

There is also the precedent of *Urbach v. Urbach*, 52 Wyo. 207, 73 P.2d 953 (1937). Here the husband and wife who were living apart had one

47. Wyo. Comp. Stat. 1945, sec. 3-5003.

48. Geary v. Geary, 102 Neb. 511, 167 N.W. 778 (1918).

child whom (along with the wife) the husband refused to support, even though he was able to. The wife instituted a divorce proceeding in which she prayed for support money and custody of the child. The district court *refused* the divorce but retained the case in order to dispose of matters relating to the child. The court eventually awarded the custody of the child to the wife and ordered the father to pay \$10 per month for the child's support. The Supreme Court, in upholding this action of the district court, held that the lower court had the powers of a court of equity to determine the custody of the child; and that it also had jurisdiction, by virtue of Wyo. Comp. Stat. 1945, sec. 3-5919 (*supra*), to entertain a proceeding by a wife to compel the husband to support the minor child when both husband and wife are separated. Here is a case where our Supreme Court approved an order for future support even though both spouses were still married. The situation embraced by sec. 3-5919 is very much akin to that covered by sec. 58-215. In the former, the husband has refused to support his wife and children when both spouses are separated. In the latter, the husband refuses to support his wife and children after he has deserted them. In both cases, the husband is living apart from his wife and children and refuses to support them. If the situation covered by sec. 3-5919 can be remedied by an order for future support, it would seem that, in light of *Urbach v. Urbach*, the situation covered by sec. 58-215 can also be remedied in the same manner.

In conclusion, sec. 58-215 represents the most recent attempt by the Wyoming legislature to effectively cope with the problem of an ever-increasing number of ADC cases, and the other problem of providing those who care for the children with an effective means of relieving themselves, to some extent, of the burden of support. This is in harmony with the current trend of assisting the supporting parent or third person with a means of reducing their burden of support. The trend, standing in sharp contrast with the reluctance of the old common law courts to enforce the parental duty of support, is indicative of the new responses of the legislatures and courts to changing social conditions. In making such responses, legislatures and courts have given new meaning and vitality to the statement of Justice Holmes that "the life of the law has not been logic; it has been experience."

JAMES ROBERT MOTHERSHEAD

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#### THE UNIFORM ENFORCEMENT OF SUPPORT ACT IN WYOMING

"Mary Doe consulted me today", the lawyer's memorandum read, "and told me the following story: Mrs. Doe said she was married and the mother of three children, Jimmy 7, Johnny 5, and Susie 1. Her husband, John, lived with the family here in Sagebrush, Wyoming, until a few months ago, when he left unexpectedly. Although he had a good job with the Buildem