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The Uniform Enforcement of Support Act in Wyoming

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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

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

Construction Company, he was a heavy drinker, and the family barely eked out an existence. He had not been heard of until yesterday, when Mrs. Doe learned from an acquaintance that he is now employed as a roughneck in the Rangely Oil Field in Colorado. From the time he left, she and the family have been on county welfare, and to supplement this meager income she has done small sewing jobs. She has received no support from her husband since he left, and is unaware that she has any remedy to compel payment of support from him, but came to the office because a friend suggested that she consult a lawyer."

Mrs. Doe's problem is an important one—to her and other women in similar situations, and to the State of Wyoming, which pays large sums each month to support such indigent families as this.

If you were the lawyer who had written the hypothetical memorandum we have just quoted, how would you advise your client, Mrs. Doe? Of course you might suggest that arrangements be made with a Colorado attorney, leading to the institution of an action against John Doe, the "runaway pappy", in Colorado. Problems of expense and delay would immediately arise, both difficult of solution in a typical case of this sort. In addition, there may be some difficulty in persuading a Colorado court to enforce a Wyoming non-support claim.¹

Fortunately, Mrs. Doe has another remedy. Both Wyoming and Colorado legislatures have adopted the Uniform Enforcement of Support Act,² which is directed at just such situations as have been described.

You would best serve her interests and the interests of her children by filing a petition³ in the District Court of the County in which Sagebrush is located, requesting therein that the court appoint you as counsel.⁴ The petition would set out the facts with respect to the Doe family and the defendant's (John Doe's) failure to support his family. If the petition appeared to indicate that John owed a duty of support, the Wyoming District Court would certify to that effect, and would send copies of the petition, the Wyoming Uniform Enforcement of Support Act, and its certificate to the District Court of the County wherein John is living in Colorado.⁵

As to the duty arising while John Doe resided in Wyoming, Mr. Mothershead's article on "Enforcement of Civil Liability for Nonsupport in the State of Wyoming", appearing in this symposium issue, should be consulted.

1. See 11 Am. Jur. 325.

2. Wyoming Session Laws, 1951, Chapter 86, and Wyoming Session Laws, 1953, Chapter 86, as amended. (These now appear as Wyo. Comp. Stats., 1945, Secs. 3-8101 to 8129. References to these statutes hereinafter will be made by section number only). Colorado Session Laws, 1951, Chapter 151, as amended by Colorado Session Laws, 1953, Chapter 229.

3. Sec. 3-8110.

4. Sec. 3-8111.

5. Sec. 3-8113.

The Colorado District Court would docket the case, appoint an attorney to represent John, set a time and place for a hearing, and obtain jurisdiction over John by service of process upon him in accordance with Colorado practice.⁶

John would then be presented with two alternatives: (1) he might not submit himself to the jurisdiction of the court, in which case extradition proceedings may be commenced in Wyoming under Section 3-8105 for *criminal* non-support, or, (2) if he did submit himself, and complied with the orders of the Colorado Court, extradition would be waived.⁷ If the Colorado court found a duty of support, then it could order John to support, or to reimburse the Wyoming Welfare Department for support which it had supplied to the Doe family, and could subject John's Colorado property (including his salary from the oil company) to the order.⁸ If all went well, Mrs. Doe could expect shortly to receive payments from John made to the Colorado court and transmitted through the Clerk of the Wyoming District Court;⁹ for if he failed to carry out the orders of the Colorado Court he could be held in contempt.¹⁰ The Colorado Court could require him to post bond or make a cash deposit to insure payments, and could order the payments to be made at specified periods to the clerk of the Wyoming Court.¹¹

There are a number of other features of the Act worth special comment. If Mrs. Doe were disinclined to institute proceedings thereunder, the Welfare Department could do so.¹² The Act does not displace other remedies, but is supplemental thereto.¹³ The Doe proceeding could cover duties of support arising under Colorado law, during the period subsequent to John's removal to that state, as well as duties arising under Wyoming law while he was a Wyoming resident.¹⁴ Costs, fees, and stenographic expense connected with the proceeding may be imposed upon the defendant, or waived by the courts involved, although no filing fee is required to commence the action.¹⁵ If the Wyoming court believes John Doe may flee the Colorado jurisdiction, it may request (and the Colorado court may comply) that John be restrained from leaving the Colorado jurisdiction by appropriate process such as writ of *ne exeat*.¹⁶ (This is an excellent provision). Husband-wife testimonial privileges are made inapplicable to proceedings under the Act,¹⁷ otherwise the rules of evidence are those which

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6. Sec. 3-8117.
 7. Sec. 3-8106.
 8. Sec. 3-8120.
 9. Secs. 3-8123 and 3-8124.
 10. Sec. 3-8122 (c).
 11. Sec. 3-8122 (a) and (b).
 12. Sec. 3-8108.
 13. Sec. 3-8103.
 14. Sec. 3-8107.
 15. Sec. 3-8114.
 16. Sec. 3-8115.
 17. Sec. 3-8125.

bind the Juvenile Court.¹⁸ The extradition features appearing in Sections 3-8105 and 3-8106 are good, although even as modified by those sections extradition will still be somewhat complex. Section 10-2403 provides, for example, that an indictment or information shall accompany the request for extradition.

As of the date of this writing, forty-one states have adopted this or a similar Act¹⁹—all except Arizona, Florida, Mississippi, Nevada, New Mexico, Vermont, West Virginia, and the District of Columbia.

This Act traces its lineage back to 1910, when the Commissioners of Uniform State Laws adopted the Uniform Desertion and Support Act. This piece of legislation was passed by 24 jurisdictions, but its powers were circumscribed. Its sanctions were criminal only, and it did not reach husbands and fathers who had fled the state.

The present Uniform Enforcement of Support Act was adopted in Washington, D. C., in September, 1950, by the American Bar Association and the National Conference of Commissioners on Uniform State Laws. Wyoming's adoption came in 1951. The rapidity of its adoption indicates widespread recognition of the need for some solution of the "runaway pappy" problem. The amendments which were made in 1953 were primarily additions, and were adopted by many states (including Wyoming) upon the recommendations of the Commissioners on Uniform State Laws.

There have been several objections to the Act asserted on constitutional grounds. In November, 1953, the Court of Appeals of Kentucky considered many constitutional objections, and overruled them all, in the case of *Duncan, County Attorney v. Smith*.²⁰ As of the date of this writing the *Duncan* case appears to be the first and only case construing the Act which has been decided by a court of last resort. The constitutional objections raised and passed upon in the *Duncan* case are as follows:

(1) *That the Act is so vague, indefinite and uncertain as to be incapable of enforcement.*

In particular it was contended that the definition of "court" in section 2(4)²¹ fell within this category. The court made short shrift of this argument.

(2) *That the Act diverts funds for the benefit of private individuals.*

The Kentucky Constitution provides that taxes shall be levied and collected for public purposes only. To the same effect is Art. 16, Sec. 6 of the Wyoming Constitution. Those challenging the Act urged that, in requiring the County Attorney—a public official—to represent "private

18. Sec. 3-8126.

19. See 45 Ill. Law Review 252 (1950), concerning the New York type Act which has been adopted by several states.

20. 262 S.W.2d 373 (1953).

21. Sec. 3-8104 (4) of the Wyoming Act.

persons in private lawsuits" the Act works a diversion of public funds for private individuals. The court in answer said:

"The argument gives us no concern. The payment of public funds to needy individuals has been upheld as being for public purposes. *Bowman v. Frost*, 289 Ky. 826, 158 S.W.2d 945. It would seem to be immaterial whether aid to the needy takes the form of cash payments or of services by public officials. . . . Furthermore, if it is proper for public prosecutors to be required to maintain criminal prosecutions for desertion or nonsupport, there is no apparent reason why they cannot be required to assist in enforcing civil liability for support: In both instances the objective is to coerce the husband or father to comply with an obligation which otherwise would fall on the public generally."

In this connection it is proper to note that the Wyoming Constitutional provision forbidding the state or any subdivision to "make donations to or in aid in any individual, association or corporation" is immediately followed by the words "except for necessary support of the poor."

(3) *That the Act is extraterritorial in its operation.*

The argument here was that the Act purports to give Kentucky courts jurisdiction outside the State, and to give foreign courts jurisdiction within Kentucky. The court replied that the Act, like all reciprocal legislation, merely provides what Kentucky courts may do in Kentucky, and that any powers exercised by foreign courts in other states are exercised by the reciprocal laws of such other states and not by virtue of the Kentucky Act.

"The Court of the initiating state exercises no jurisdiction over the respondent, but merely serves as a local agency of convenience for the court of the responding state."

The opinion pointed out that in any "ordinary action" a petition may be filed in a Kentucky court without the petitioner being physically present there.

(4) *That the Act constitutes a compact between States, and requires the consent of Congress under Art. I, Sec. 10 of the Federal Constitution.*

As to this contention the court observed:

"The simple answer to this is that the Act does not bear any of the aspects of an agreement or contract between Kentucky and another state. Kentucky is free to repeal the Act at any time. Furthermore, the Act does not constitute 'the formation of any combination tending to the increase of political power in the states' which was laid down as the measure of a compact in *State of Virginia v. State of Tennessee*, 148 U.S. 503, 13 S.Ct. 728, 734, 37 L. Ed. 537."

(5) *That the Act violates the privileges and immunities clause of Art. IV, Sec. 2 of the Federal Constitution.*

The court found no merit in this contention, because the Act grants the same privileges to citizens of other states as it does to citizens of Kentucky.

(6) *That the Act violates the equal protection clause of the Federal and State Constitutions.*

This ground of challenge was based on the grant of free representation to a dependent person when the obligor is in another state, but the absence of such grant when the obligor is in Kentucky. The court met it by finding that the practical difficulties involved in securing support from one residing in another state constitute a valid basis for granting free legal representation in that situation and denying it in cases where both obligor and obligee reside in the same state; i.e., these provision of the Act represent a reasonable classification. The court added that:

“. . . in the final analysis, the free legal representation is for the benefit of the public as a whole, and not of the particular dependent person.”

(7) *That the Act violates the state constitutional provision against a law being enacted to take effect upon the approval of any authority other than the legislature.*

The Act cannot take effect, it was argued, until some other state enacts a similar law. Here again is an objection which might be made to any reciprocal law, and which has been frequently answered by pointing out that a legislature may enact a law to take effect only when and if certain conditions arise. In this instance the condition is the enactment of a similar law by another state. The Kentucky law then becomes effective not by virtue of the voice of a foreign legislature, but by virtue of the legislative will of Kentucky.

The Kentucky constitutional provision involved in this contention appears to have no exact counterpart in the constitution in Wyoming.

(8) *That the Act violates the provisions of the Federal and State Constitutions forbidding criminal punishment without an opportunity to the accused to confront the witnesses against him.*

The Sixth Amendment to the U. S. Constitution was relied upon in this contention. The Kentucky and Wyoming constitutions contain similar provisions, that of Wyoming being Art. 1, Sec. 10. It was contended that certain of the penalties of the Act were in the nature of criminal punishment, in particular the provisions of what is Sec. 3-8122 (c) of the Wyoming Act, which confers power upon the court of the responding state to punish the obligor for contempt of court, in event he should violate any order of the court. To this the court replied that the proceeding is civil, not criminal, and that the contempt punishment is not for a crime, but only for the purpose of coercing compliance with the orders of the court. The Kentucky court pointed to the everyday use of the contempt process to enforce orders for support and alimony in divorce cases.

The list of constitutional objections in *Duncan v. Smith* seems exhaustive, and the answers given by the court convincing, with the possible exception of the make-weight observation of the court in answer to con-

tion (2) that "if it is proper for public prosecutors to be required to maintain criminal prosecutions for desertion or non-support, there is no apparent reason why they cannot be required to assist in enforcing civil liability for support." It is submitted that this statement is a non sequitur; however, the court's position on contention (2) is amply supported without it.

In addition to problems of constitutionality the Act present various administrative problems. For example, any Uniform Act may run into difficulties caused by divergent interpretations by the different adopting states. Sometimes common law precedents stand in the way of uniform administration. There is some confusion arising from the co-existence of the Uniform Desertion and Support Act and the Uniform Enforcement of Support Act. The former is in operation in some few states and is commonly referred to as the New York type act.²² Support duties vary from state to state; some states enforce duty to illegitimate children while others do not; some jurisdictions require support of parents and others do not; a dozen states require support as between brother and sister; 17 states require a wife to support a husband under certain conditions. The duty to support children ranges from 14-21.²³

On the whole, there is much to be said in favor of this type of legislation. If every state having the Act will conscientiously enforce it, much can be accomplished. Prior to 1951, Mrs. Doe had at best a criminal remedy against her husband, which only indirectly produced results so far as actual money is concerned, and which was only intrastate in extent. Now, thanks to the Act, she has a direct, interstate method of enforcing payment of family support.

Desertions cost the United States at least \$205,000,000 in 1949—this is the amount paid out by relief agencies to support families whose breadwinner had left.²⁴ Other desertions not included in this relief figure would swell it substantially. In November, 1953, the figure for welfare payments in desertion cases in Wyoming was \$6,544, and affected 151 children.²⁵ Projecting these figures over a 12 month period, the total would be \$78,528. In 1950, the delinquent parent was out of the state, or his whereabouts unknown, in about 70% of the Aid to Dependent Children cases which were due to desertion, separation, or divorce.²⁶ If only a part of the national and state payments were recoverable, there would be considerable saving in money.

22. *Supra*, note 9.

23. As pointed out elsewhere in this issue, there appears to be a difference as to what is a dependent child in Wyoming; cf. Secs. 58-606 and 25-101, Wyo. Comp. Stat., 1945. If there is an implied repeal then 25-101 is the statute in force since it is later in date.

24. Statistical Abstract of the United States, p. 247 (1951).

25. Letter received by the writer from E. H. Scheuneman, Director of the State Department of Public Welfare of Wyoming, dated December 28, 1953.

26. Report of Wyoming Taxpayers Assn., "Aid to Dependent Children in Wyoming", January, 1953.

Even without the benefit of the Act, time and energy invested by prosecuting attorneys in *criminal* nonsupport cases will pay dividends. In the City and County of Denver, Colorado, for example, as a result of the assignment of a deputy prosecutor to such cases, nonsupport collections by the Probation Department increased from \$8,070 in 1949 to \$60,960 in 1953.²⁷ The District Attorney reported 497 cases had been filed against deserting fathers who failed to support their children during the period September 1, 1949 to September 1, 1953. During the same period, 295 fathers were arrested in 26 states other than Colorado. That this activity has produced a salutary effect upon Denver "runaway pappys" is evidenced by the fact that arrests of absconding fathers dropped from 54, during the four month period beginning with September 1, 1949, to 58 for the entire year of 1953.

It has been estimated that more than 25% of the children in orphanages in the U. S. as public charges are not orphans, but deserted children.²⁸ The connection between broken homes and juvenile delinquency has been too well established to require comment. The Act will tend to cut down all of these figures, and will tend to discourage desertions and reunite families. For all of these reasons it must be regarded as a major step in social legislation.

In Wyoming, activity under the Act has been slow to begin, but there are indications that those involved are becoming increasingly aware of its potentials. There have been as yet no decisions of the Supreme Court of Wyoming involving the Act. The writer has recently communicated with the nine district judges of the state, and has received replies from six of them. At the times of writing, none of the judges had decided a case under the Act, but there were a number of cases pending in most Districts. It is hoped that the Act will be used with increasing frequency. Through its use, those able but unwilling to meet their support responsibilities can often be "brought to time", with corresponding benefits to Mary Doe and the taxpayers.

ROGER MCKENZIE

27. *Rocky Mt. News* of February 23, 1954.

28. Zeinser, *Family Desertions: Some International Aspects of the Problem*, 6 *Social Service Review* No. 2 (1932).