

## Roe v. Doe: Child's Right to a College Education v. Parent's Right of Control (Mary Roe v. John Doe)

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## ROE V. DOE: CHILD'S RIGHT TO A COLLEGE EDUCATION V. PARENT'S RIGHT OF CONTROL

Antagonism created by the exercise of parental authority and adolescent resistance to such authority is not unique to today's parent-child relationships.<sup>1</sup> However, whereas in the past such family conflicts were settled within the family itself, remedies are now sought in legal actions initiated by independent off-spring<sup>2</sup> who insist that they be absolutely free to live according to their own values, but demand that parents provide for their support.

In the instant case of *Mary Roe v. John Doe*,<sup>3</sup> the petitioner, a twenty-year-old female college student, attending school away from home, decided, after living in a college dormitory, to reside off-campus. This move was contrary to her father's prior instructions. In addition to being placed on academic probation by the university, she had also experimented with drugs, including LSD and marijuana, although it appeared that she was not an addict. The father, a prominent attorney, upon learning of her off-campus residence, immediately terminated all support and directed that she return home. The daughter refused to comply with his wishes and, instead, sold her car and lived off the proceeds.

During the following summer, while she was living with the parents of a friend, the daughter commenced a support proceeding in the New York Family Court in which she alleged her father's refusal to and neglect in providing for her fair and reasonable support. The family court, in holding for the daughter, issued two separate orders: a temporary support order requiring that the father pay his daughter's tuition for the forthcoming semester as well as all reasonable medical expenses; and a final support order requiring that he pay \$250 per month in support until his daughter reached her twenty-first birthday. The father refused to comply with the court orders and, as a result,

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<sup>1</sup> The parable of the "Prodigal Son" leaving home only to return at a later date. *Luke* 15:1-32.

<sup>2</sup> Prior to 1969, under the holding of *Sorrentino v. Sorrentino*, 248 N.Y. 626, 162 N.E. 551 (1928), an interfamily suit based on the commission of a tort was prohibited by the courts on the assumption that such a suit would create discord in a family.

This prohibition was diluted by the New York Court of Appeals in *Gelbman v. Gelbman*, 23 N.Y.2d 434, 245 N.E.2d 192, 297 N.Y.S.2d 529 (1969), noted in 44 ST. JOHN'S L. REV. 127 (1969). In reversing *Sorrentino* the Court held that with the advent of insurance coverage such a suit would aid the cohesiveness of a family by affording the injured member a means of recovering his loss. See also *Balts v. Balts*, 273 Minn. 419, 142 N.W.2d 66 (1966); *Briere v. Briere*, 107 N.H. 432, 224 A.2d 588 (1966); *Goller v. White*, 20 Wis. 2d 402, 122 N.W.2d 193 (1963).

<sup>3</sup> 29 N.Y.2d 188, 272 N.E.2d 567, 324 N.Y.S.2d 71 (1971).

was ordered committed to prison for thirty days. After he posted a bond equivalent to the amount due, the commitment order was stayed pending appeal.

On appeal, the Appellate Division, First Department, modified the family court order<sup>4</sup> by directing that the father pay only those university and health bills that had arisen prior to November 30, 1970, the date of the family court's final order of \$250 per month support, and reversing the final order requiring payment of the \$250 per month. The Court of Appeals affirmed<sup>5</sup> the appellate division decision and held that when a minor of employable age and in full possession of her faculties, voluntarily and without cause, abandons the parent's home, against the parent's will, for the purpose of avoiding parental control, all rights to support are forfeited.<sup>6</sup> It also indicated that courts should be extremely reluctant to become involved in situations of this type, characterizing the family court's action in these affairs as an unwarranted intrusion based upon standards of decorum established by the Court of Appeals.<sup>7</sup>

Although the issue was novel in New York, the underlying principle that a minor forfeits all rights to support when he places himself beyond effective control of his parents can easily be traced back to the common law. Under the common law, a parent's duties to his legitimate off-spring were to provide for their maintenance, protection and education.<sup>8</sup> In *Roe* the Court of Appeals reaffirmed this premise by viewing a parent as chargeable with the discipline and support of his off-spring.<sup>9</sup> The Court also pointed out that these parental obligations are not terminated by the delinquent behavior of a minor child, even if such behavior is unexplained and persistent.<sup>10</sup> However, under the common law, the courts held that they did not have the power to enforce such "natural obligations."<sup>11</sup>

The facts presented in the instant case are unique in American jurisprudence. In the vast majority of cases in which child support is ordered, there is present some degree of family discord, such as divorce

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<sup>4</sup> *Roe v. Doe*, 36 App. Div. 2d 162, 318 N.Y.S.2d 973 (1st Dep't 1971).

<sup>5</sup> *Roe v. Doe*, 29 N.Y.2d 188, 272 N.E.2d 567, 324 N.Y.S.2d 71 (1971).

<sup>6</sup> *Id.* at 194, 272 N.E.2d at 571, 324 N.Y.S.2d at 76. See 67 C.J.S. *Parent and Child* § 16 (1950). The responsibility of parents terminates when a minor leaves home voluntarily or becomes emancipated.

<sup>7</sup> *Id.* at 193, 272 N.E.2d at 570, 324 N.Y.S.2d at 75.

<sup>8</sup> 1 W. BLACKSTONE COMMENTARIES 446.

<sup>9</sup> 29 N.Y.2d at 193, 272 N.E.2d at 569, 324 N.Y.S.2d at 74 (1971).

<sup>10</sup> *Id.*

<sup>11</sup> *Wellesley v. iDuke of Beauford*, 2 Russ. 3-23 (1827). But see *Wellesley v. Wellesley*, 4 Eng. Rep. 1080 (1828) where the chancellor felt he had the power to act for the benefit of the child.

or separation.<sup>12</sup> In the instant case, however, there was no divorce or separation of the parents; the father had remarried several times after the death of the daughter's mother.

Courts have generally recognized the duty of a parent to provide an education for his children.<sup>13</sup> For many years courts have imposed upon the father the responsibility of furnishing at least a minimum level of education, such as a grade or common school education.<sup>14</sup> It has usually been held when there has been no break-up of the family unit, it is the father's prerogative to decide the level of education he will furnish for his children and if he has decided that a college education is either unnecessary or an undue strain upon the family's finances, the courts have not interfered.<sup>15</sup> This precedent was followed to a certain extent in the instant case when the Court declared that it was the parent's natural right as well as his legal duty to control, to care for and to protect his minor children without judicial interference — absent evidence of the parent's misfeasance, neglect or arbitrariness.<sup>16</sup>

On the other hand, the courts have involved themselves with the question of the extent of a minor's education where there is evidence of family disharmony. In such cases, courts will generally require a parent to pay for a college education only when there has been either a separation or divorce and the minor no longer is in the father's legal custody.<sup>17</sup> In these situations, decisions have been based on the ground

<sup>12</sup> See, e.g., *Matthews v. Matthews*, 245 Ark. 1, 430 S.W.2d 864 (1968); *Maitzen v. Maitzen*, 24 Ill. App. 32, 163 N.E.2d 840 (1959); *Hart v. Hart*, 239 Iowa 142, 30 N.W.2d 748 (1948); *Barry v. Barry*, 291 Mich. 666, 289 N.W. 397 (1932); *O'Brien v. Springer*, 202 Misc. 210, 107 N.Y.S.2d 631 (Sup. Ct. Herkimer County 1951). *Contra*, *Blau v. Blau*, 199 Pa. Super. 467, 185 A.2d 804 (1962) (wherein the father was ordered to provide support even though there was no divorce, since he had expressly agreed to support the child).

<sup>13</sup> *Niewiadomski v. United States*, 159 F.2d 683 (6th Cir.), *cert. denied*, 331 U.S. 850 (1947); *Board of Educ. v. Purse*, 101 Ga. 422, 28 S.E. 896 (1897); *State v. Bailey*, 157 Ind. 324, 61 N.E. 730 (1901) (parent convicted of violation of state statute in not sending his child to school); *Division of Pub. Assistance v. Mills*, 391 S.W.2d 363 (Ky. Ct. App. 1965); *Santasiero v. Briggs*, 278 App. Div. 15, 103 N.Y.S.2d 1 (3d Dep't 1951); *Crawford v. District School Bd.*, 68 Ore. 388, 137 P.217 (1913) (father is charged by law with the duty of support and education of his children); *Gully v. Gully*, 111 Tex. 233, 231 S.W. 97 (1921). See also 67 C.J.S. *Parent and Child* § 15 (1950) discussing the duty and liability of a parent as to support and education.

<sup>14</sup> *Middlebury College v. Chandler*, 16 Vt. 683 (1844). See generally 1 J. SCHOULER, *MARRIAGE, DIVORCE, SEPARATION, AND DOMESTIC RELATIONS* ch. 9 § 774 (Duty of Education) (6th ed. 1921).

<sup>15</sup> *Esteb v. Esteb*, 138 Wash. 174, 244 P.264 (1926).

Whenever a father has the custody of a child, the law presumes that he will provide for the child's education in the vocation for which it is best fitted and which will enable it to meet the conditions of modern life.

*Id.* at 184, 244 P. at 267.

<sup>16</sup> 29 N.Y.2d at 193, 272 N.E.2d at 570, 324 N.Y.S.2d at 75.

<sup>17</sup> *Maitzen v. Maitzen*, 24 Ill. App.2d 32, 163 N.E.2d 840 (1959); *Jackman v. Short*, 165

that the father may no longer be in a position to realize the educational requirements of his child, as well as the possibility that he might be less motivated by natural affection to provide a college education.<sup>18</sup>

However, the courts are not unanimous in finding a college education to be necessary, even where the parents are divorced or separated.<sup>19</sup> Some courts feel that a proper education is a "necessity" but will impose only a requirement of a grade-school education.<sup>20</sup> In the majority of cases, nevertheless, judges have gone further and presumed that support will be provided by the father during the entire period of high school unless the father clearly establishes that he is unable to furnish this additional expense.<sup>21</sup> Other courts have even expanded the requirement of support during high school and held that although a father is generally under no duty to provide a college education, he may be required to do so under certain circumstances.<sup>22</sup> Finally, some tribunals have held that a father is chargeable with providing that level of education which is consistent with his financial ability.<sup>23</sup>

Once a court has decided that a minor child is entitled to support until he completes his college education, there are two approaches used to enforce the father's support obligation. Either, the common-law definition of "necessary"<sup>24</sup> is expanded, or the courts utilize the powers

Ore. 626, 109 P.2d 860 (1941). See generally Bosley, *Child Support—Protecting the Child's Interest*, 4 FAMILY L. Q. 230 (1970).

<sup>18</sup> 138 Wash. at 176, 244 P. at 267 (1926).

<sup>19</sup> Halsted v. Halsted, 288 App. Div. 298, 299, 239 N.Y.S. 422, 424 (2d Dep't 1930). "Unlike the furnishing of a common school education to an infant, the furnishing of a classical or professional education by a parent to a child is not a 'necessary.'"

<sup>20</sup> Sisson v. Schultz, 251 Mich. 553, 232 N.W. 253 (1930).

<sup>21</sup> See, e.g., Matthews v. Matthews, 245 Ark. 1, 430 S.W.2d 864 (1968); cf. Golay v. Golay, 35 Wash. 2d 122, 210 P.2d 1022 (1949). See Inker & McGrath, *College Education of Minors*, 6 J. FAMILY L.Q. 230 (1966) (discussing the divorced father's emerging legal obligations).

<sup>22</sup> Dorman v. Dorman, 251 Ind. 272, 241 N.E.2d 50 (Ind. 1968), wherein the court applied the Indiana Annotated Statutes (1968). See IND. STAT. ANN. § 3-1219 (1968):

The court may require the father to provide all or some specified part of the cost of education of such child or children beyond the twelfth year of education provided by the public schools, taking into consideration the earnings of the father.

<sup>23</sup> Weingast v. Weingast, 44 Misc. 2d 952, 255 N.Y.S.2d 341 (Fam. Ct. Nassau County 1964). (Petitioner sought to obtain additional money to defray the expense of the child's college education. Today with a college education being a necessity the court looked at the father's financial ability and ordered him to pay the child's expenses.) See H. FOSTER & D. FREED, LAW AND THE FAMILY (New York) Ch. 23 (Child Support) (1966) [hereinafter FOSTER & FREED].

<sup>24</sup> See, e.g., 138 Wash. at 182, 244 P. at 267. "Where the college graduate of that day was the exception, today such a person may almost be said to be the rule." Calogeras v. Calogeras, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (Juv. Ct. 1959) (awards for a college education made in behalf of a child displaying sufficient capacity are within the contemplation of the common-law rule); Atchley v. Atchley, 29 Tenn. App. 124, 194 S.W.2d 252 (1946); Feek v. Feek, 187 Wash. 573, 60 P.2d 686 (1936).

granted to them under various divorce statutes to compel child support.<sup>25</sup>

Those courts which do not require support until a minor completes his college education generally rely upon a narrow interpretation of the term "necessary" to mean only those items which are dire necessities.<sup>26</sup> Courts which do require support during college years generally take the approach that a college education is "necessary" today in order to properly raise a child in our modern technological society; for it is believed that in order to advance in life, higher levels of education are now demanded.<sup>27</sup>

In addition to finding some degree of rupture in the family relationship, certain other factors must also be present before a parent is required to provide a college education. First, the child must be a minor;<sup>28</sup> second, he must be unemancipated;<sup>29</sup> third, the child must be in the legal custody of a third party;<sup>30</sup> fourth, the father must be financially able to furnish a college education; and fifth, the child should be able to successfully undertake a college-level education.<sup>31</sup>

<sup>25</sup> The common-law rule as to the liability of a father for necessities has been supplanted by statutory provisions. See *Jackman v. Short*, 165 Ore. 626, 109 P.2d 860 (1941). See also *Rawley v. Rawley*, 94 Cal. App. 2d 562, 210 P.2d 891 (Dist. Ct. App. 1949); *Hale v. Hale*, 55 Cal. App. 2d 879, 132 P.2d 67 (Dist. Ct. App. 1942); *Luques v. Luques*, 127 Me. 356, 143 A. 263 (1928); *Johnson v. Johnson*, 346 Mich. 418, 78 N.W.2d 216 (1956); *Pass v. Pass*, 238 Miss. 449, 118 So. 2d 769 (1960); *Stoner v. Weiss*, 96 Okla. 285, 222 P. 547 (1924); *Peck v. Peck*, 272 Wis. 466, 76 N.W.2d 316 (1956).

<sup>26</sup> "[I]t has been declared to be the law . . . that a college education is not included among the necessities which a parent is legally required to furnish." *Ford v. Ford*, 109 Ohio App. 495, 496, 167 N.E.2d 787, 788 (1959) (court granted support but did not state that it was for college expenses). *Morris v. Morris*, 92 Ind. App. 65, 171 N.E. 386 (1931); *Straver v. Straver*, 26 N.J. Misc. 218, 59 A.2d 39 (Ch. 1948); *Streitwolf v. Streitwolf*, 58 N.J. Eq. 570, 43 A. 904 (Ct. Err. & App. 1899).

<sup>27</sup> See *Calogeras v. Calogeras*, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (Juv. Ct. 1959) (court discusses competition with the Russians for ideological supremacy). See also *Payette v. Payette*, 85 N.H. 297, 157 A. 531 (1931); *Feek v. Feek*, 187 Wash. 573, 60 P.2d 686 (1936); *Esteb v. Esteb*, 138 Wash. 174, 244 P. 264 (1926). See generally *Annot.*, 56 A.L.R.2d 1207 (1957).

<sup>28</sup> *Genda v. Superior Ct.*, 103 Ariz. 240, 439 P.2d 811 (1968); *Rawley v. Rawley*, 94 Cal. App. 2d 562, 210 P.2d 891 (1968); *Dorman v. Dorman*, 251 Ind. 272, 241 N.E.2d 50 (1968); *Davis v. Davis*, 8 Mich. App. 104, 153 N.W.2d 879 (1967); *Cohen v. Cohen*, 6 N.J. Super. 26, 69 A.2d 752 (1949) (provides exception if child is crippled); *Robrock v. Robrock*, 167 Ohio St. 479, 150 N.E.2d 421 (1958); *Peck v. Peck*, 272 Wis. 466, 76 N.W.2d 316 (1956).

<sup>29</sup> See, e.g., *Gerk v. Gerk*, 259 Iowa 293, 144 N.W.2d 104 (1966) (although both children have left the father's home they continue to reside with the mother). See also *Codornz v. Codornz*, 34 Cal. 2d 811, 215 P.2d 32 (1950); *Broemmer v. Broemmer*, 219 S.W.2d 300 (Mo. Ct. App. 1949).

<sup>30</sup> *Refer v. Refer*, 102 Mont. 121, 56 P.2d 750 (1936); *Jackman v. Short*, 165 Ore. 626, 109 P.2d 860 (1941); *Feek v. Feek*, 187 Wash. 573, 60 P.2d 686 (1936); *Esteb v. Esteb*, 138 Wash. 174, 244 P. 264 (1926). See also *Inker & McGrath, College Education of Minors*, 6 FAMILY L.Q. 230 (1966).

<sup>31</sup> *Hoffman v. Hoffman*, 210 A.2d 549 (D.C. Mun. Ct. App. 1965); *Pincus v. Pincus*, 197 A.2d 854 (D.C. Mun. Ct. App. 1964); *Maitzen v. Maitzen*, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959); *Johnson v. Johnson*, 346 Mich. 418, 78 N.W.2d 216 (1956); *Pass v. Pass* 238 Miss.

When a legal separation or divorce has occurred, courts generally assume a paternal attitude. After examining all of the relevant factors listed above, a judge will decide what the father would have done under the same circumstances and will act accordingly. In *Gerk v. Gerk*,<sup>32</sup> the Supreme Court of Iowa expanded the obligation to provide a college education, where there had been no divorce or legal separation but only a "de facto" separation. Therein, the mother had deserted the father and had wrongfully taken custody of the child. The father was ordered to furnish a college education for his minor child.

In *Roe v. Doe*, the family court ordered the father to provide support while the daughter attended college even though the father had legal custody of the child and there was no separation or divorce, or similar type of family discord present.<sup>33</sup> Both the appellate division and the Court of Appeals agreed that the father was not required to furnish support past the daughter's twenty-first birthday when the daughter had placed herself beyond effective control of her father.<sup>34</sup>

The chronological sequence of events in the instant case should be recalled in order to demonstrate that, although the appellate division and the Court of Appeals held that the daughter forfeited all right to support, the father was in fact obligated to furnish support for a certain period after his daughter abandoned her home. It should be remembered that the daughter moved off campus, sold her car, lived with friends during her summer vacation and brought suit in the family court. Moreover, she secured an order requiring her father to pay for the pending fall college term and to provide all reasonable medical expenses, and also obtained a subsequent order directing payment of \$250 per month. Both appellate courts upheld the first order and reversed the second, \$250 per month order. However, as these courts indicated, the actions of the daughter in moving off campus and failing to return to her father's home caused her to forfeit all right to support. Yet, it is curious to note that although the daughter took these actions prior to the pending fall college term and, thus, presumably, at this point in time forfeited all future support rights, the father was ultimately held liable for the expenses of the forthcoming term. It would appear more consistent for the appellate courts to have held that since

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449, 118 So. 2d 769 (1960); *Herbert v. Herbert*, 198 Misc. 515, 98 N.Y.S.2d 846 (Dom. Rel. Ct. N.Y. County 1950); *Esteb v. Esteb*, 138 Wash. 174, 244 P.264 (1926).

<sup>32</sup> 259 Iowa 293, 144 N.W.2d 104 (1966).

<sup>33</sup> The daughter's natural mother died when she was only three years old. In a certain sense it can be said, although the family court does not mention it, that the family unit of natural father, mother and child had, in fact, been disrupted by the death of the natural mother.

<sup>34</sup> 29 N.Y.2d at 193, 272 N.E.2d at 570, 324 N.Y.S.2d at 74.

the daughter forfeited all support rights prior to the start of the school year in September, 1970, the father was not obligated to pay the expenses of that term.

Although we have thus far exclusively focused upon the obligations of a parent to his off-spring, under the common law<sup>35</sup> it was clear that minors were subject to their parents' directions and were required to be obedient during their minority and to honor and revere their parents thereafter.<sup>36</sup> Under more recent case law, children are obligated to observe any reasonable regulation that parents may impose.<sup>37</sup> In addition, it has also been held that in return for their support obligations, parents are rightly entitled to the companionship and custody of their children.<sup>38</sup> In the instant case the Court of Appeals did not take issue with such precedent and reaffirmed the reciprocal obligations of minor children to their parents.<sup>39</sup>

Customarily, in the area of a third-party volunteer supplying necessities to a minor, the law is well settled, that it is irrelevant how derelict a father may have been in meeting his parental obligations, he is under no legal obligation, in the absence of a statutory enactment, to reimburse the volunteer for necessities he may have furnished, unless there is an express or implied obligation.<sup>40</sup> To allow a third party to intervene in the place of the parent would tend to undermine the parent's legal authority to correct any act of misconduct by his minor child.<sup>41</sup>

The appellate division's decision in the instant case pointed out that a parent is entitled to set reasonable standards, rules and regulations.<sup>42</sup> This principle was impliedly adopted by the Court of Appeals by citation to *Stant v. Lamberson*.<sup>43</sup> For *Stant* held that submission to reasonable restraints and habits of propriety, obedience and conformity to domestic discipline are required from the child under the principles of both natural and civil law.<sup>44</sup> Thus, the parent has the right, in the absence of caprice, misconduct or neglect, to demand of his child adherence to reasonable standards.<sup>45</sup> In this regard it is the father's

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<sup>35</sup> 1 W. BLACKSTONE COMMENTARIES 446, *supra* note 8.

<sup>36</sup> *Id.* 453.

<sup>37</sup> *Haskell v. Haskell*, 201 App. Div. 414, 194 N.Y.S. 28 (1st Dep't), *aff'd* 236 N.Y. 635, 142 N.E. 314 (1923).

<sup>38</sup> *White v. White*, 138 Conn. 1, 81 A.2d 450 (1951).

<sup>39</sup> 29 N.Y.2d at 193, 272 N.E.2d at 570, 324 N.Y.S.2d at 74.

<sup>40</sup> *Gotts v. Clark*, 78 Ill. 229 (1875); *McMillen v. Lee*, 78 Ill. 443 (1875); *French v. Benton*, 44 N.H. 28 (1862); *Freeman v. Robinson*, 38 N.J.L. 383 (1876).

<sup>41</sup> *In Re Carl*, 174 Misc. 985, 22 N.Y.S.2d 782 (Dom. Rel. Ct. N.Y. County 1940) (it is a parent's duty to correct any act of misconduct of his child).

<sup>42</sup> 36 App. Div. 2d 162, 318 N.Y.S. 975 (1st Dep't 1971).

<sup>43</sup> 103 Ind. App. 411, 8 N.E.2d 115 (1937).

<sup>44</sup> *Id.* at 412, 8 N.E.2d at 117.

<sup>45</sup> 29 N.Y.2d at 194, 272 N.E.2d at 570, 324 N.Y.S.2d at 75.



paramount right to supervise the education of his children.<sup>46</sup> It is worth noting that although the prior thrust of the law had been to place the main emphasis of support on the father, statutes have been adopted which provide that a married woman is a joint guardian of her children.<sup>47</sup> Thus, under such statutes both parents will have equal powers, rights and obligations with respect to the education of their off-spring.<sup>48</sup>

In the instant case, a father was relieved of his obligation to support his minor daughter once she abandoned his home and effectively placed herself beyond his control. However, the implication of this decision is not precisely clear in a situation in which a minor child has not abandoned his parents' home and has not placed himself beyond their effective control, yet, while remaining at home, insists on maintaining his own life-style, or drops out of school or, in general, refuses to obey his parent's commands. If a parent then terminates support for this recalcitrant minor by refusing, *e.g.*, to purchase warm clothing in the winter or to replace worn-out garments, it may be profitable to speculate on the prospects for judicial action. The Court of Appeals stressed, as a fundamental principle, that a parent must support even a delinquent minor child. So, it would appear that as long as the child remained at home the parent is legally obligated to support the child, his delinquency notwithstanding. But, if the parent failed to do so, would a court even entertain a support action? The Court of Appeals has very strongly stressed its reluctance to become involved in parent-child disputes which should be resolved by the parties. In the future, courts may interpret the instant case as a very strong and clear signal to avoid such family disputes, absent evidence of a clear and present danger, caused by the parent's dereliction of duty, to the minor's morals, health or welfare.

In any event, this decision must be viewed as a reaffirmation of the primacy of parental authority in establishing reasonable standards which must be obeyed by a child. Additionally, it should serve as notice to minors chafing under the yoke of parental restrictions, that to abandon a parent's house is to forfeit any legal right to support and, quite likely, even to a judicial hearing absent a showing of either actual or potential injury to the minor's morals or mental or physical condition.

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<sup>46</sup> *Griston v. Stousland*, 186 Misc. 201, 60 N.Y.S.2d 118 (App. T. 1st Dep't 1946).

<sup>47</sup> N.Y. DOM. REL. LAWS § 81 (McKinney 1964). See *FOSTER & FREED* § 23:3.

<sup>48</sup> *Marks v. New York*, 101 N.Y.S.2d 105 (Sup. Ct. Kings County 1950). Where the father abandons his family without providing for support the mother has the duty of supporting her child. *Ramon v. Ramon*, 34 N.Y.S.2d 100 (Dom. Rel. Ct. Richmond County 1942).