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LEGISLATION

NEW YORK UNIFORM SUPPORT OF DEPENDENTS LAW—ITS OPERATION TO DATE

The family is the basic unit of American society and the foundation upon which our culture rests. Membership in a family creates a relationship out of which arise certain rights and corresponding duties. One of such duties is the obligation of support. It is in the best interests of the state and the nation as a whole that this duty be enforced. Prior to the enactment of reciprocal support legislation, the methods of enforcing this duty against obligors who crossed state lines were cumbersome, expensive and rarely, if ever, utilized by those entitled to support.

At common law a husband had a duty to support his wife,¹ and a parent a duty to support his children.² However, since neither wife nor child could sue a husband-father, the duty of support was enforceable only through a third party.³ Moreover, it was not an indictable offense at common law for a husband to neglect to provide the necessities of life for his wife.⁴ Although today a husband-father may, under certain circumstances, be prosecuted criminally for non-support,⁵ this remedy, in and of itself, is not sufficient to accomplish the underlying objectives of support legislation, *viz.*, support of dependents and relief of the financial burden on the state. If he has fled the jurisdiction, the cost of extradition proceedings often discourages prosecution of the runaway husband-father.⁶ Furthermore, assuming a deserter is prosecuted and convicted, the net result is that the state merely has another individual to support out of public funds.

¹ *Sanford v. Karpinski*, 63 N.Y.S.2d 756, 759 (Sup. Ct. 1946) (dictum); III VERNIER, *AMERICAN FAMILY LAWS* § 153 (1935).

² *Van Valkinburgh v. Watson*, 13 Johns. R. 480 (N.Y. 1816) (per curiam) (dictum); *Santasiero v. Briggs*, 278 App. Div. 15, 18, 103 N.Y.S.2d 1, 4 (3d Dep't 1951) (dictum).

³ For example, a merchant who had supplied necessities to a wife or child. *Brown, The Duty Of The Husband To Support The Wife*, 18 VA. L. REV. 823, 843 (1932); IV VERNIER, *op. cit. supra* note 1, § 234 (1936).

⁴ III VERNIER, *op. cit. supra* note 1, § 162.

⁵ N.Y. PEN. LAW §§ 50, 480.

⁶ U.S. CONST. art. IV, § 2, cl. 2, provides that a person charged with a felony "who shall flee from Justice" shall be delivered up by one state to the state from which he fled. In many cases it is not true that an obligor has fled from justice. He may have entered another state to secure employment. See Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93, 94 (1951).

Prior to the passage of the New York Uniform Support of Dependents Law,⁷ the civil remedies available to a dependent were, for all practical purposes, limited to cases where a deserter was present within the jurisdiction.⁸ If a deserter left the state, but had property within the jurisdiction, a proceeding quasi-in-rem might have been employed and support received from the proceeds of the property.⁹ In the event that a deserter had not set up a new domicile in a foreign jurisdiction, a judgment could be rendered against him in an action commenced by process served personally without the state.¹⁰ This procedure, however, was inadequate to meet the exigencies of the situation since such a judgment is entitled to full faith and credit only as to past accrued amounts.¹¹ Further, it was hardly likely that a destitute dependent would have the finances necessary to travel to another jurisdiction for the purpose of instituting an action on that judgment.

New York Uniform Support of Dependents Law

The increasing mobility of our population, the enormous cost to the state due to expanding relief rolls,¹² and the inability of the law to effectively aid needy dependents led to the enactment of the New York Uniform Support of Dependents Law.¹³ Fundamentally, the New York law is a simple two-state operation whereby a dependent, who wishes to start an action against a person in another state who is liable for the petitioner's support, institutes a proceeding in the county of the state wherein he resides or is domiciled.¹⁴ The court certifies that the respondent cannot be served with process within the state and transmits the petition to the appropriate court of the responding state,¹⁵

⁷ Laws of N.Y. 1949, c. 807.

⁸ N.Y. CHILDREN'S CT. ACT §§ 30-34; N.Y.C. DOM. REL. CT. ACT §§ 91-159.

⁹ N.Y. CIV. PRAC. ACT §§ 232, 1171-a.

¹⁰ *Id.* § 235.

¹¹ *Sistare v. Sistare*, 218 U.S. 1 (1910); *Lynde v. Lynde*, 181 U.S. 183 (1901) (by implication); *Barber v. Barber*, 62 U.S. (21 How.) 582 (1858); *Barber v. Barber*, 323 U.S. 77, 80 (1944) (dictum). Some state courts, however, have enforced decrees of future support through comity. See *Rule v. Rule*, 313 Ill. App. 108, 39 N.E.2d 379 (1942); *Ostrander v. Ostrander*, 190 Minn. 547, 252 N.W. 449 (1934); *McKeel v. McKeel*, 185 Va. 108, 37 S.E.2d 746 (1946).

¹² The amount expended by the states to support deserted dependents is \$200,000,000 a year. See Commissioners' Prefatory Note to the UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, 9A U.L.A. 74 (Supp. 1955).

¹³ N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2111 (hereinafter this statute will be referred to as the New York law). This law has also been adopted by Georgia, Illinois and Iowa.

¹⁴ *Id.* § 2116(a). The New York law applies equally to an obligor who is present within the state. *Id.* § 2116(b), *Hansen v. Hansen*, 207 Misc. 589, 142 N.Y.S.2d 248 (Child. Ct. 1955).

¹⁵ N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2116(c). "In the event that the court shall have before it satisfactory evidence that the respondent is

which state has a substantially similar or reciprocal law.¹⁶ The court of the responding state issues a summons¹⁷ to bring the respondent before the court.¹⁸ If the respondent enters a verified denial of the petition, the court of the responding state sends a transcript of the minutes to the court of the initiating state, showing the denials entered by the respondent.¹⁹ Upon receipt of the transcript, the court of the initiating state takes such proof as it deems proper and forwards a transcript of such proof to the court of the responding state.²⁰ The respondent has the right to reply to such proof and to cross-examine petitioner and petitioner's witnesses by deposition or written interrogatories. The petitioner is afforded this same right.²¹ If the court of the responding state finds that the petition is supported by the evidence, it will issue an order directing the respondent to furnish support.²² The support payments are paid into the court of the responding state and forwarded to the court of the initiating state, which in turn channels the payments to the petitioner.²³

Jurisdiction

While the only requirement for jurisdiction over the respondent is his *presence* within the state,²⁴ the test of jurisdiction over the petitioner is his *residence* within the state.²⁵ Section 2113 of the New York law provides that an obligor is liable for the support of a dependent "residing or found in . . . another state." The words "found in" can have no meaning in relation to jurisdiction over a petitioner in light of the minimum requirement of domicile or residence contained in Section 2115 which enumerates the circumstances under which an action is maintainable. If the words are given effect as defining the jurisdictional requirements for the petitioner, it would then be possible

not within the initiating state or cannot be served with process there, the summons and affidavit required herein may be omitted and the certificate shall contain a statement of the reasons for said omissions and the pertinent evidence supporting the same." Laws of N.Y. 1956, c. 150.

¹⁶ *Id.* § 2115.

¹⁷ For wilfully failing to appear, a respondent may be punished in the same manner as provided by law for such a violation in any other action cognizable by such court. *Id.* § 2116(j).

¹⁸ *Id.* § 2116(d).

¹⁹ *Id.* § 2116(f).

²⁰ *Id.* § 2116(g).

²¹ *Id.* § 2116(i).

²² *Id.* § 2116(k). A wilful failure to comply with an order may be punished by contempt in the same manner as provided by law in any other proceedings. *Id.* § 2116(m).

²³ *Id.* § 2116(l), (p).

²⁴ *Id.* § 2115. A non-resident who voluntarily enters a state as a party to litigation is not present in that state within the meaning of Section 2115. Cf. "Hodges" v. "Hodges," 202 Misc. 71, 108 N.Y.S.2d 286 (N.Y. Dom. Rel. Ct. 1951).

²⁵ N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2115.

for a non-resident dependent to avail himself of the judicial machinery and administrative agencies of the state merely by entering the state for the sole purpose of commencing suit. It is doubtful that the legislature contemplated such a handling of support payments by the initiating state for the benefit of a dependent residing without the state. The words "found in," however, may have been used to cover a situation where the state is suing under Section 2115-a²⁶ to recover money expended by it in caring for a dependent abandoned within this state.²⁷

Choice of Law

It is not clear from the statute itself which law should apply in a given situation—the law of the initiating state or that of the responding state. Section 2113 declares that a person in one state is liable for the support of a dependent in another state "having substantially similar or reciprocal laws."²⁸ The problem of a conflict between the duties of support imposed by the initiating state and those of the responding state will not arise in the ordinary situation, since all states agree on the most common duties of support, *i.e.*, husband liable for wife, father liable for his children.²⁹ Section 2113, however, lists seven duties of support which provide fertile ground for conflict.³⁰

²⁶ "Whenever the state . . . is furnishing support . . . it shall have the same right to invoke the provisions of this act as the dependent to whom the duty of support is owed." *Id.* § 2115-a.

²⁷ One situation wherein the words "found in" may be applicable is a case where the state has provided support for an abandoned dependent who is neither domiciled nor residing within the state. For instance, a child ordinarily cannot establish a domicile or residence apart from its parents. See, *e.g.*, *People ex rel. McGrath v. Gimler*, 60 N.Y.S.2d 622 (Sup. Ct.), *aff'd mem.*, 270 App. Div. 949, 62 N.Y.S.2d 846 (2d Dep't 1946); *In re Cooper's Guardianship*, 65 N.Y.S.2d 643 (Surr. Ct. 1946).

²⁸ The procedure of the two states need not be identical; it is sufficient if the statutes are essentially the same in design and purpose. *Florence v. Florence*, 207 Misc. 177, 136 N.Y.S.2d 847 (Child. Ct. 1955); *Commonwealth ex rel. Shaffer v. Shaffer*, 175 Pa. Super. 100, 103 A.2d 430 (1954).

²⁹ For a tabulation of the duties of support in the forty-eight states, see *Summaries Of Basic Duties Of Support Imposed By State Laws*, 9A U.L.A. 79-91 (Supp. 1955).

³⁰ (a) Husband liable for support of his wife;
 (b) Father liable for support of his child or children under seventeen years of age;
 (c) Mother liable for support of her child or children under seventeen years of age whenever the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children;
 (d) Parents severally liable for support of their child seventeen years of age or older whenever such child is unable to maintain himself and is likely to become a public charge;
 (e) Wife liable for support of her husband if he is incapable of supporting himself;
 (f) Adult person liable for support of his or her parents;
 (g) Grandparent liable for support of his or her grandchild or grandchildren." N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2113.

For example, Section 2113(b) provides that a father is liable for support of his child under seventeen years of age. Suppose a dependent child eighteen years of age commences a proceeding in a jurisdiction where the law provides that a father is liable for children under twenty-one years and the petition is forwarded to New York as the responding state. Shall New York apply the law of the foreign jurisdiction? Suppose New York is acting as the initiating state, will it take jurisdiction over a proceeding in which the petitioner would not be entitled to support under New York law, but could get a support decree under the law of the state wherein the obligor resides, or is found? An indication of the answer to the latter question may be found in an examination of "*Vincenzo v. Vincenzo*,"³¹ the first case to arise under the New York law. The decision in that case brought to light a deficiency in the legislation which has since been remedied, but the court's reasoning as to jurisdiction over the dependent is still applicable to the law as presently amended. The proceeding was commenced in New York by a father against his five adult children, residents of New Jersey. In refusing to entertain the petition, the court held that since there was no duty imposed upon a child to support his parent under Section 3 of the New York law,³² it could not take jurisdiction. It would appear from this decision that a petitioner must meet the requirements of Section 2113 before the courts of New York will entertain jurisdiction. This conclusion is borne out by the fact that if the respondent enters a defense which raises a doubt as to the status of the petitioner, the responding state will return the proceeding to the initiating state for a determination of that status. Thus, where a respondent in Connecticut contested the legitimacy of a child, the Connecticut court returned the proceedings to the New York court to decide the question of legitimacy.³³

The case of *Ross v. Ross*³⁴ answers the question regarding the position of New York when acting as the responding state. In that case the petitioner was awarded alimony pursuant to a California divorce decree. The California reciprocal law³⁵ provided that the obligation to support "includes any duty of support imposed by any court order, decree or judgment . . . whether incidental to a proceeding for divorce . . . or otherwise."³⁶ The petitioner, relying on that section, commenced a proceeding in California. The petition was sent to New York as the responding state. The New York court dismissed the proceeding, holding that the petitioner was bound by the law of New York; since the New York statute did not provide

³¹ 197 Misc. 1027, 98 N.Y.S.2d 470 (N.Y. Dom. Rel. Ct. 1950).

³² Laws of N.Y. 1949, c. 807 (currently N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2113).

³³ See *In re Miller*, 114 N.Y.S.2d 304 (Child. Ct. 1952).

³⁴ 206 Misc. 1073, 136 N.Y.S.2d 23 (Child. Ct. 1954).

³⁵ CAL. CIV. PROC. CODE ANN. § 1650 (West 1955).

³⁶ *Id.* § 1653(6).

any corresponding duty to support an ex-wife, the court had no jurisdiction to grant relief.

It may be concluded from the statute itself and from the *Ross* and "*Vincenza*" cases, that a petitioner must be a party entitled to support under the laws of both the initiating and responding states. Such an approach, however, limits itself to the law of the jurisdiction wherein the respondent is *found*; it fails to take into consideration the whereabouts of the respondent during that period of time for which support is sought.³⁷ Apparently an obligor could live for a length of time in a reciprocal jurisdiction in which he would be under a particular duty of support, move to a reciprocal jurisdiction wherein no similar duty is imposed, and thereby escape liability entirely, both past and future.

The Uniform Reciprocal Enforcement of Support Act,³⁸ though providing substantially the same procedure as the New York law, differs in its approach as to the applicable law. Section 7 of that act provides that the duties of support which are applicable are those imposed under the law of the state wherein the obligor was present during the time for which support is sought. Such a solution obviates the possibility of an obligor leaving a state wherein a duty of support would be imposed and establishing a residence in another state, in order to avoid paying accrued support claims. It does, however, create a situation where a court may require payment in fulfillment of support obligations which are not otherwise locally enforceable. The advantage of the New York rule lies in the fact that a state need not enforce a duty of support which is contrary to its own public policy.³⁹ It appears, however, that under both laws an obligor could avoid payments for *future* support by moving to a jurisdiction which does not impose any duty upon him.

Until there is a uniform solution of the choice of law problem, conflict is bound to exist, especially between those jurisdictions which have adopted the New York law and those which have adopted the Uniform Act. For example, the New York law makes no provision for criminal enforcement, while the Uniform Act provides for a method of extradition of obligors.⁴⁰ Section 6 of that act, however, provides for relief from its extradition provisions where the obligor submits to the jurisdiction of the court and complies with its orders. In *Ex parte Susman*,⁴¹ the petitioner had complied with an order of a responding California court directing him, under the California uniform support law, to make payments for support of his children in

³⁷ See von Otterstedt, *Reciprocal Support Legislation*, CURRENT TRENDS IN STATE LEGISLATION 165, 241 (1952).

³⁸ This act has been adopted by forty-four states. See table in 9A U.L.A. 68 (Supp. 1955).

³⁹ See note 37 *supra*.

⁴⁰ UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 5.

⁴¹ 116 Cal. App. 2d 698, 254 P.2d 161 (1953).

New York. He was subsequently imprisoned in California under a warrant of extradition issued in a New York criminal proceeding for abandonment of the children. He sued in California for a writ of habeas corpus, relying upon the relief from extradition section of the California statute.⁴² The California court dismissed the writ holding that, since the New York law has no provision for criminal proceedings, it was not substantially similar or reciprocal with the California statute in respect to extradition relief. Therefore, such relief was not available to one held under a New York extradition warrant. The prime purpose of reciprocal legislation is to facilitate the ease with which support payments can be collected from errant obligors.⁴³ In the *Susman* case the absence of a relief from extradition provision in the New York law resulted in the forcible separation of an obligor from a source of income and placed the burden of support upon New York State—the very evils which the New York Support of Dependents Law seeks to avoid. It is submitted that a provision granting relief from extradition would bring the New York statute more in line with its stated objectives.

Constitutionality

The novel procedure of reciprocal support legislation, involving cooperation between two states, has given rise to constitutional objections.⁴⁴ Such arguments, however, have not met with success. One of the first attacks on reciprocal legislation was made in the Kentucky case of *Duncan v. Smith*.⁴⁵ The court there summarily dismissed the contention that such a statute violates the privileges and immunities clause of the Constitution, stating that: "there is no merit in this ground, because the Act grants the same privileges to citizens of other states as it does to citizens of Kentucky."⁴⁶ Neither is the procedure followed under the reciprocal laws a violation of due process.⁴⁷ Both the petitioner and the respondent have an opportunity to be heard in their own court, both have the right to testify and to cross-examine adverse witnesses.⁴⁸ Since proceedings for support have always been considered a matter cognizable in equity, the right to

⁴² CAL. CIV. PROC. CODE ANN. § 1661 (West 1955).

⁴³ N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2111 states: "The purpose of this uniform act is to secure support in civil proceedings for dependent wives, children and poor relatives from persons legally responsible for their support."

⁴⁴ For a discussion of the possible constitutional questions, see Brockelbank, *Is The Uniform Reciprocal Enforcement Of Support Act Constitutional?*, 31 ORE. L. REV. 97-110 (1952).

⁴⁵ 262 S.W.2d 373 (Ky. 1953).

⁴⁶ *Id.* at 373.

⁴⁷ *Smith v. Smith*, 125 Cal. App. 2d 154, 270 P.2d 613 (1954).

⁴⁸ See *Whittlesey v. Bellah*, 130 Cal. App. 2d 182, 273 P.2d 511, *cert. denied*, 350 U.S. 821 (1955).

trial by jury does not apply.⁴⁹ Similarly, because the action is civil in nature and not criminal, no right of confrontation exists,⁵⁰ notwithstanding the fact that in some jurisdictions the respondent may be required to post a bond and may be put on probation,⁵¹ thereby giving the proceedings a quasi-criminal character. The most general constitutional objection has been that the reciprocal laws violate Article I, Section 10, of the United States Constitution which provides that: "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State. . . ." ⁵² The simple answer to this objection is that the reciprocal law does not bear any aspect of an agreement between the states since each state is free to repeal or amend the law at any time.⁵³ Even if such law were found to be an "implied" compact between the states, it does not necessarily follow that such legislation is unconstitutional.⁵⁴ Compacts have been made between states without the consent of Congress.⁵⁵ The area of cooperation between the states has been broadened in recent years, and unless a compact between states is such that it impinges on the political powers of Congress, consent may be inferred from congressional silence.⁵⁶

Conclusion

The effectiveness of reciprocal support legislation can be measured in part by the amount of money which has been collected through its operation. That dependents are availing themselves of the New York law is manifested by the number of new cases under its provisions in the Family Division of the Domestic Relations Court of New York City. In 1955 that court tried a total of 3,423 cases under the New York law.⁵⁷ This is a significant increase over the 939 cases processed in 1951; in that year the Domestic Relations Court collected \$83,836.58.⁵⁸ In 1952 the court collected \$219,044.26;⁵⁹ in 1953,

⁴⁹ Commonwealth *ex rel.* Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

⁵⁰ Duncan v. Smith, 262 S.W.2d 373 (Ky. 1953); Freeman v. Freeman, 226 La. 410, 76 So.2d 414 (1954).

⁵¹ N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2116(k).

⁵² Brockelbank, *Is The Uniform Reciprocal Enforcement Of Support Act Constitutional?*, 31 ORE. L. REV. 97, 98 (1952).

⁵³ See Duncan v. Smith, *supra* note 50.

⁵⁴ Bruce, *The Compacts And Agreements Of States With One Another And With Foreign Powers*, 2 MINN. L. REV. 500-16 (1918).

⁵⁵ For a list of interstate agreements without the consent of Congress, see Frankfurter and Landis, *The Compact Clause Of The Constitution—A Study In Interstate Adjustments*, 34 YALE L.J. 685, 749-54 (1925).

⁵⁶ Bruce, *supra* note 54, at 516.

⁵⁷ TWENTY-THIRD ANNUAL REPORT OF THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK 15 (1955).

⁵⁸ REPORT OF THE JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION 168 (1953).

⁵⁹ *Ibid.*

\$493,468.62,⁶⁰ and in 1954 the figure jumped to \$747,346.00.⁶¹ The cases processed in 1955 resulted in collections for dependents of \$1,198,937.76.⁶² Of this total, \$592,194.34⁶³ was collected by courts of other states as a result of actions initiated in New York.

Thus, there is no doubt as to the value of this interstate procedure. Its significance, however, lies not only in the fact that it has brought relief to persons who would otherwise, for all practical purposes, remain remediless; in a broader sense, its success has demonstrated the value of reciprocal legislation. Such legislation in other areas of the law will substantially prevent defendants from avoiding liability by the simple expedient of crossing state lines.



PUNISHING PARENTS IN THE CHILDREN'S COURTS

Punishing parents of delinquent and neglected children is hardly more civilized than burning witches, in the judgment of some writers.¹ This school of thought has created a straw man, a fantastic image of an opposite school—those who would punish for punishment's sake.²

⁶⁰ REPORT OF THE JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION 189 (1954).

⁶¹ REPORT OF THE JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION 281 (1955).

⁶² TWENTY-THIRD ANNUAL REPORT OF THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK 30 (1955).

⁶³ *Ibid.*

¹ "Parents need reassurance and strengthening, rather than criticism. . . . Our entire approach to parents should be one of interest and help, rather than of blame.' (Quoted from a report of its Executive Director Herschel Alt for the Child Guidance Institute of the Jewish Board of Guardians.)" *Citrin v. Belcastro*, 196 Misc. 272, 282, 91 N.Y.S.2d 275, 285 (Child. Ct. 1949) (quoted with approval). "Parents of delinquent children need help, not jails, fines or threats and punishment.'" *Id.* at 287 (statement of Mr. Maximilian Moss, in a public debate, January 11, 1949, quoted with approval).

² "I am weary of the old slogan in regard to juvenile delinquents: 'It is really the parents who are to blame. They should be punished.' Are not these unhappy parents already sufficiently punished? They have spent miserable years with themselves and with each other." Irene Kavin (Deputy Chief Probation Officer, Cook County, Chicago), *Family Dissension as a Factor in Delinquency*, YEAR BOOK OF THE NATIONAL PROBATION ASSOCIATION 76 (1946), cited in *Citrin v. Belcastro*, *supra* note 1 at 282, 91 N.Y.S.2d at 285. "We, in the Children's Bureau, have been much concerned about the way in which the idea that parents of children who come into court must be punished appears to be gaining ground throughout the country. Apparently no distinction is made between situations in which parents by deliberate and overt acts have contributed to the delinquency of their children and parents who have neglected to give their children guidance by reason of their own handicaps and limitations, to say nothing of situations in which the cause of misbehavior is beyond the control of parents, as, for