

Comment,
POST-MAJORITY EDUCATIONAL
SUPPORT FOR CHILDREN IN THE
TWENTY-FIRST CENTURY

I. Introduction to Post-Majority Support

Simply put, two incomes are better than one. As more money comes in, more resources become available. With more resources, a family's standard of living will increase. The problem is that not all families are fortunate enough to be blessed with two incomes. Whether due to the death of a spouse, divorce, or one parent's inability to work, single income families will inevitably suffer in the absence of a second income. "An unfortunate fact of economic life is that a family cannot live as cheaply divided as it can together."¹ As a result of losing a second income, the standard of living to which a family has become accustomed is often lowered, leaving the court to divide an already limited amount of resources.²

Although child support awards are intended to provide for the children's needs, these needs are not always met when children get older. Whereas a court order may be well-suited to meet the particular needs of a family when the children are young, as the children grow older and their needs change, the court order is often no longer able to achieve the desired effect it once had. Numerous problems arise, and these problems only intensify as children approach the age of majority. A recent article appropriately titled "Cost of Raising Your Child" states that the total cost of raising a child from birth to eighteen is \$183,510.³

While these costs are relatively fixed when children are younger, they often increase exponentially as children grow

¹ Epoq Legal Solutions, Child Support Issues, http://www.divorcelawinfo.com/intro/child_support_issues.htm (last visited Oct. 26, 2008).

² *Id.*

³ BabyCenter, Cost of Raising Your Child, <http://www.babycenter.com/cost-of-raising-child-calculator> (last visited Oct. 26, 2008). Figures are based on the U.S. Department of Agriculture's 2006 Annual Report, "Expenditures on Children by Families," and calculated for a child raised in the Midwest by two parents and an annual household income between \$38000 and \$64000.

older. With each passing year, children become more involved in activities both in and out of school, which can become very expensive. As children grow older, they need new clothes, and not only new clothes, but name-brand clothes. A number of expenses also increase, including food, school supplies, and activity fees. According to a 2007 survey by the National Retail Federation, families will spend an average of \$108.42 on footwear, \$94.02 on school supplies, and \$231.80 on clothing and accessories on back to school shopping alone.⁴ As children enter their teenage years, they become more mobile, thus incurring additional expenses. These expenses soon may include paying for a cell phone, providing money for social activities and going out with friends, and, for a fortunate few, a vehicle and all the expenses that go along with insuring and maintaining it. In 2007, the average cell phone plan alone (not including the phone itself or the cost to activate it) was \$73 per month, a number that has continued to increase in recent years in large part to advances in technology.⁵ Further, since declining to \$829 in 2005, the average cost of automobile insurance has increased in each of the past three years.⁶ Again, this is just the cost to insure the vehicle, and does not include the price of the vehicle, the cost to maintain it, or the cost of gas.

While parents may be able to somewhat control these expenses, there are a number of expenses that are simply out of one's control.⁷ As is often the case, the custodial parent is stuck having to account for these expenses on his or her own. While parents may be able to adjust to these expenses without a change in child support, one expense that they may not be able to accommodate is the cost of their children's college tuition. Tuition alone at a four-year public university, for example, is \$6,185 for

⁴ National Retail Federation, Back to School Spending This Year to Top \$18 Billion, http://www.nrf.com/modules.php?name=News&op=viewlive&sp_id=342 (last visited Oct. 29, 2008).

⁵ JD Power and Associates, 2007 U.S. Wireless Mobile Phone Evaluation Study (Vol. 2), <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2007271> (last visited Oct. 29, 2008).

⁶ Insurance Information Institute, Auto Insurance, <http://www.iii.org/media/facts/statsbyissue/auto/> (last visited Oct. 29, 2008).

⁷ Bankrate, Inc., The High Cost of Raising a Teenager, <http://www.bankrate.com/brm/news/pf/20060217a1.asp> (last visited Oct. 26, 2008).

an in-state student.⁸ For private four-year universities, that number is an astonishing \$23,712.⁹ These numbers, although on the rise, do not even take into account the additional expenses of room and board, books, fees, etc. According to the 2007 College Board report, students enrolled in a public four-year university spent an estimated \$988 in the 2007-2008 school year on books and supplies.¹⁰ Over that same time, the average cost of room and board is an additional \$7,404 per year.¹¹ Students also incur an average of \$911 in transportation expenses per year and an average of \$1,848 per year for what are often labeled as either “miscellaneous” or “other” fees and expenses.¹² When these expenses are totaled, the student is faced with an average cost of \$17,336 per year for public in-state students.¹³

Upon reaching the age of majority, children in many states become emancipated and the non-custodial parent is relieved of the court ordered financial burden of supporting his or her child. The same is true in many cases for non-custodial parents of special needs children. Because of this harsh reality, many states now have laws that require parents to provide for their children’s post-majority support.

This article will provide a history of child support laws and provide the general rule on the age of majority as it relates to child support. In doing so, this article will also provide two primary exceptions to the general rule, namely what are commonly referred to as the “education” and the “special needs” exceptions. This article will conclude by providing additional information on child support issues and how they relate to federal legislation such as Title IV-D and the Family Support Act, as well as child support’s relationship with motions for contempt.

⁸ CollegeBoard, Trends in Higher Education Series, 2007: Trends in College Pricing, http://www.collegeboard.com/prod_downloads/about/news_info/trends/trends_pricing_07.pdf (last visited Oct. 27, 2008).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

II. History of Child Support Laws

Historically, states required parents to provide their minor children with ‘necessaries’ until the children became self-supporting, reached the age of majority, or otherwise became emancipated.¹⁴ In 1844, the case of *Middlebury College v. Chandler* raised the interesting issue of whether college education should be considered a necessity.¹⁵ In what is largely regarded as the earliest reported United States case to even consider a college education in this light, the *Middlebury* court did not view a college education as a necessity.¹⁶ In concluding it was not a necessity, however, the *Middlebury* court did leave the door open by acknowledging that “necessaries were not limited to things which were strictly essential to support life (i.e., food, clothing, and medicine)” and held that although a college education was not a necessary in a legal sense, the court did hold that a common school education was necessary because “it was essential to one’s overall usefulness in society and the ability to transact business.”¹⁷ Nearly a century later, the *Middlebury* decision was reaffirmed in *Wynn v. Wynn*, an Ohio Court of Appeals case which held that the “parental obligation to furnish necessaries does not include a college education.”¹⁸ In concluding, the court held that it was the parents’ decision to send their children to college and “not the proper place for the court to interfere or substitute the court’s judgment for that of a parent.”¹⁹ Reaching a different conclusion than *Middlebury*, the Washington Supreme Court in *Esteb v. Esteb* held that “without a college education, a child would be severely restrained from pursuing most trades and professions because he would be forced to compete against people who possessed greater skills as a result of such higher education.”²⁰

¹⁴ Lindsay E. Cohen, *Daddy, Will You Buy Me a College Education? Children of Divorce and the Constitutional Implications of Non-custodial Parents Providing for Higher Education*, 66 Mo. L. REV. 187, 189 (2001).

¹⁵ *Middlebury College v. Chandler*, 16 Vt. 683 (1844).

¹⁶ *Id.*

¹⁷ Cohen *supra* note 14, at 190.

¹⁸ *Id.* at 190, citing *Wynn v. Wynn*, No. 441, 1928 WL 3177 (Ohio Ct. App. May 4, 1928).

¹⁹ *Id.*

²⁰ *Id.* at 191, citing *Esteb v. Esteb*, 244 P. 264 (Wash. 1926).

Until recently, parental support of one's children was "the exclusive province of the individual states."²¹ Left up to the individual states, the age of majority in most states prior to the enactment of the Twenty-sixth Amendment to the United States Constitution in 1971 was twenty-one.²² Upon the enactment of the Twenty-sixth Amendment, which reduced the voting age from twenty-one to eighteen, most states passed laws reflecting this change to the age of majority for most other purposes.²³ Lowering the age of majority from twenty-one to eighteen had a "major impact on family law litigation" and virtually eliminated child support throughout the child's college years.²⁴ In doing so, the enactment of the Twenty-sixth Amendment essentially created a controversy that continues to this day.

In recent years, child support orders have faced constitutional challenges, primarily on equal protection grounds. In *Blue v. Blue*, the Supreme Court of Pennsylvania held that "the courts could not order divorced or separated parents to support their child's post-secondary education due to the absence of statutory authority in this area."²⁵ The court reasoned that "while the common law recognized a parental duty to support a minor child, this duty terminated at eighteen," and further stated that, "only a high school education is necessary to prepare children to reasonably support themselves."²⁶ In response to this decision, the Pennsylvania General Assembly passed Act 62 of Pennsylvania Consolidated Statutes, "specifically authorizing courts to order support for college expenses where equitable."²⁷ While Act 62

²¹ Deborah H. Bell, *Child Support Orders: The Federal-State Partnership*, 69 MISS. L. J. 597 (1999).

²² Leah duCharme, *The Cost of a Higher Education: Post-Minority Child Support in North Dakota*, 82 N.D. L. REV. 235, 237 (2006).

²³ *Id.*

²⁴ *Id.*

²⁵ Charles F. Willson, *But Daddy, Why Can't I Go To College? The Frightening De-Kline of Support for Children's Post-Secondary Education*, 37 B.C. L. REV. 1099, 1108 (1996), citing *Blue v. Blue*, 616 A.2d 628, 632 (Pa. 1992).

²⁶ *Id.* at 1109.

²⁷ *Id.*, citing 23 PA. CONS. STAT. ANN. § 4327 (West Supp. 1995) (stating that the statute specifically provided that "a court may order either or both parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation to provide equitably for educational costs of their child

was created to address a number of problems, it was never given the chance to see if it would resolve them. In *Curtis v. Kline*, a 1995 Pennsylvania Supreme Court case, the court used a mere rational basis test to find Act 62 unconstitutional, holding that “the statute violated the Fourteenth Amendment’s Equal Protection Clause.”²⁸ The court concluded that “there is no rational reason to treat the two sets of children differently and that the state cannot selectively empower only those from non-intact families.”²⁹ Unlike the constitutional challenges in Pennsylvania—the only state in which a parent has succeeded in challenging the law that imposes a duty to support one’s children beyond the age of majority—challenges in other states have proven to be unsuccessful.³⁰ The Missouri Supreme Court, for example, has upheld its statute against an equal protection challenge, finding that the statute, “rationally advances legitimate state interests by requiring financially capable parents to lend support to their children wishing to pursue higher education, and touches only upon economic interests.”³¹ Other states have applied similar tests in reaching the same conclusion.

While constitutional challenges to post-majority support have come to the forefront of family law in relatively recent times, the law began evolving in a dramatic fashion in the 1970s. Although family law matters were exclusively matters of state law, Congress began to intervene as a result of increased concerns for children in single-parent households who are not receiving the proper support they deserve, as well as concerns over the inequality and variation of support orders.³² Throughout the

whether an application for this support is made before or after the child has reached 18 years of age.”).

²⁸ *Id.*, citing *Curtis v. Kline*, 666 A.2d 265, 270 (Pa. 1995) (stating that the court reasoned that Act 62 divided a larger group – children needing assistance for post-secondary education costs – into two groups reflecting the marital status of their parents, children of intact families and children of divorced, separated or never-married parents).

²⁹ *Id.*

³⁰ Willson, *supra* note 25, at 1109.

³¹ Carol R. Goforth, *The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses*, 56 ARK. L. REV. 93, 105 (2003), citing *In re Marriage of Kohring*, 999 S.W.2d 228 (Mo. 1999).

³² Bell, *supra* note 21, at 598.

1970s and 1980s, Congress enacted a series of laws and firmly established a federal presence in family law.³³

III. Age of Majority and Termination of Child Support

After the enactment of the Twenty-sixth Amendment, many state legislatures lowered the age of majority to eighteen.³⁴ Today, in many states, a parent's legal duty to support his or her child simply ends upon the child reaching the age of majority or otherwise becoming emancipated, "unless the adult child is so mentally or physically disabled that he cannot support himself, or unless application for post-minority educational support is made before the child reaches the age of majority."³⁵ Missouri, for example, states that:

Unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child: (1) dies; (2) marries; (3) enters active duty in the military; (4) becomes self-supporting, provided that he custodial parent has relinquished the child from parental control by express or implied consent; (5) reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply; or (6) reaches age twenty-one, unless the provisions of the child support order specifically extend the parental support order past the child's twenty-first birthday for reasons provided by subsection 4 of this section.³⁶

In reasoning why support continues until the child reaches the age of majority, courts have often held that, "when the child reaches that age, the child no longer suffers from the disabilities that previously mandated court protection, such as the inability to manage affairs or enjoy civic rights."³⁷ However, as society continues to evolve, two exceptions to this rule have developed. The first is what is commonly referred to as the "education" ex-

³³ *Id.*

³⁴ duCharme, *supra* note 22, at 236.

³⁵ Support of Adult Child, 59 AM. JUR. 2D *Parent and Child* § 77 (2008).

³⁶ MO. REV. STAT. §§ 452.340.3-452.340.5 (2007) (subsection 4 references Missouri's "special needs" exception, holding that if a child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday; subsection 5 references Missouri's "education" exception).

³⁷ Willson, *supra* note 25, at 1102.

ception. Discussed more below, this exception generally holds that non-custodial parents may be ordered to provide support for college-aged children enrolled in an institution of higher education. The second exception, more commonly known as the “special needs” exception, addresses issues when a child is physically or mentally incapacitated from supporting him or herself. Both exceptions are detailed in the next two sections.

IV. The Education Exception

Of the many problems that may arise as children reach the age of majority, one that is becoming increasingly inevitable is the cost of post-secondary education. Although education in America has become increasingly essential in recent years, it is important to look back and see that this was not always the case. The question of whether a college education constituted a “necessity” at common law has been debated for years. As stated previously, parents were required “to furnish ‘necessaries’ for their minor children until such time as their children reach the age of majority, become self-supporting, or are emancipated.”³⁸ In the nineteenth century United States and well into the twentieth century, society became largely industrial, leaving behind its agrarian roots.³⁹ At this time, the law did not view education as a “necessity” in the legal sense. Industrial jobs soon became scarce as a result of foreign competition, the labor unions began losing their power, and production became more mechanized.⁴⁰ In its most basic sense, everything changed, and more people were left competing for fewer jobs.⁴¹ Education, for all practical purposes, had become a “necessity.” According to a 2008 article by the U.S. Census Bureau, “adults with advanced degrees earn four times more than those with less than a high school diploma.”⁴² The article claims that the average American worker

³⁸ Cohen, *supra* note 14, at 189.

³⁹ Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 *IND. L. REV.* 343, 345 (2001).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² U.S. Census Bureau, U.S. Department of Commerce, *One-Third of Young Women Have Bachelor's Degrees*, <http://www.census.gov/Press-Release/www.releases/archives/education/011196.html>, Jan. 10, 2008. *See id.* Table A-3,

will make \$41,412 per year, a number that has steadily increased in each of the past thirty years.⁴³ As a worker's level of education increases, so too does his or her earning capacity. Workers with less than a high school diploma, for example, earn an average of \$20,873 per year.⁴⁴ Upon earning a high school diploma, a worker's earnings will increase to \$31,071.⁴⁵ Those numbers continue to increase when the worker has attended at least some college. In fact, attending some college, and possibly earning an associate's degree, will raise that amount to \$34,650, and attaining a bachelor's degree will raise that number to \$56,788 per year.⁴⁶ Still further, those who have earned a master's, professional or doctoral degree make an average of \$82,320 per year.⁴⁷ It is clear that education has now become an economic necessity.

The college support debate continues to this day. Because support issues were governed by the laws of the individual states, each state, in its own discretion, was able to decide how to handle support issues within that state's borders. After the enactment of the Twenty-sixth Amendment, the individual states took action by either implementing statutes or through case law, and can now be divided into three categories of how they handle post majority support issues: 1) jurisdictions that compel support, regardless of the presence of an agreement by the parties; 2) jurisdictions that enforce support only upon a valid agreement by the parties; and 3) jurisdictions that will not compel support, regardless of an agreement by the parties.⁴⁸ Today, the states are divided, with roughly half of the states falling into each of the first two categories, and Alaska being the lone state in the third category.⁴⁹

When compared to what are considered "intact families," the incomes of single-parent families are consistently lower, which suggests that "financial difficulties are a major obstacle in

Mean Earnings of Workers 18 Years and Over, by Educational Attainment, Race, Hispanic Origin, and Sex: 1975 to 2006.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ duCharme, *supra* note 22, at 236.

⁴⁹ *Id.*

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affording higher education.”⁵⁰ These difficulties are never more apparent than when a child of a single-parent family wishes to enroll in college. “For children of single-parent families who are academically eligible for college, the situation worsens where the child and the custodial parent cannot afford the entire cost of college, particularly when the child is interested in a private education.”⁵¹ Private schools often take into account the non-custodial parent’s income when determining the child’s eligibility for financial aid.⁵² The end result is that the child’s scholarship and loan eligibility is reduced by the non-custodial parents’ income, regardless of whether the non-custodial parent wishes to contribute.⁵³

Parents are in a better financial position than their children and have more and greater resources. An eighteen year old student fresh out of high school has likely had little to no opportunities to build his or her credit or to save enough money to pay their own way through college. Children of divorced families, as well as their custodial parents, are less likely to be in a position to afford college due to the absence of a second income. These same children have an “even greater need for the education to offset some of the disadvantages stemming from the divorce.”⁵⁴

Not only are parents generally in a better financial position than their children, but also parents often want to put their children in a better position than they were (or are) in and give them a better life than they had. Anymore, a college education is an indispensable tool that will allow its holder to obtain and maintain a reasonably well-paid and secure job.⁵⁵ Once children are in college, parents are able to assist them by providing for their financial needs, thus creating a sense of stability that will allow the students to focus on their education as opposed to forcing them to balance school and work.

According to Professor John Langbein, “the character of family wealth transmission had changed dramatically in the late

⁵⁰ Willson, *supra* note 25, at 1109

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 1122.

⁵⁴ McMullen, *supra* note 39, at 366.

⁵⁵ duCharme, *supra* note 22, at 237.

Twentieth Century.”⁵⁶ Langbein claimed that today, middle class parents are passing wealth along not by amassing fortunes to be inherited by their children, but rather by investing in their children’s skills and education.⁵⁷ According to Langbein, “education is displacing inheritance” and “lifetime transfers are displacing succession on death,” thus leaving the “main form of inter-generational wealth transfer” to be accomplished through “parental investment in the education of their children.”⁵⁸

On the other hand, critics argue that parents should not be obligated to support their children beyond the age of majority. Using a similar argument to Langbein’s, opponents argue that since they are able to disinherit their children, they should be able to refuse to pay for their children’s college education.⁵⁹ While parents may want to assist their children, opponents do not believe that the law should be able to tell them how long they have to support their children. As set forth above in the Pennsylvania cases, critics question the constitutionality of imposing such a duty by arguing that parents of intact families are not obligated to provide post-majority support for their children, so why should divorced parents be obligated to provide additional support? Critics ask why parents’ marital status should affect their obligation to provide for their children, and question how courts justify ordering non-custodial parents to provide post-majority support for their child when married couples have no such obligation.⁶⁰

The Equal Protection Clause of the United States Constitution provides that “persons who are similarly situated in relation to a statute must be treated in the same manner.”⁶¹ Due to the fact that child support is not related to a suspect classification, “courts need only apply rational basis scrutiny when deciding if a statute awarding such support is constitutional.”⁶² Under rational basis scrutiny, a statute is constitutional if it is rationally

⁵⁶ McMullen, *supra* note 39, at 344; citing John H. Langbein, *The Twentieth Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 723 (1988).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Cohen, *supra* note 14, at 194.

⁶² *Id.*

related to some legitimate government interest. When considering post-majority child support, states have a “legitimate interest in protecting the welfare of children and society as a whole.”⁶³ Thus, with the exception of Pennsylvania, the argument that awarding post-majority child support is unconstitutional has been unsuccessful in most situations.⁶⁴

V. The Special Needs Exception

Historically, a parent’s legal duty to support his or her child simply ended upon the child reaching the age of majority.⁶⁵ While this is the common law rule, many jurisdictions provided an exception to this rule if the child is so physically or mentally disabled that they are unable to care for themselves upon reaching the age of majority.⁶⁶ Statutes, such as the one in Missouri, hold that the special needs exception arises when a child is “physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child’s eighteenth birthday.”⁶⁷ Like the education exception, the special needs exception provides for a continuation of child support beyond the age of majority for children. States again are given broad discretion in their application and enactment of this area of law, and these enactments are often guided by public policy concerns.

Raising a disabled child is a significant emotional and financial hardship on a family.⁶⁸ As Jiyeon Park points out, “28% of disabled children, ages three to twenty-one, are living in families whose total income is below the poverty threshold,” whereas “only 16% of children without disabilities in the same age group

⁶³ *Id.*

⁶⁴ *Curtis v. Kline*, 666 A.2d 265 (1995). Pennsylvania does however recognize the “special needs” exception. *See Style v. Shaub*, 955 A.2d 403 (PA Super. 2008).

⁶⁵ Support of Adult Child, 59 AM. JUR. 2D *Parent and Child* § 77 (2008).

⁶⁶ Jeffrey W. Childers, *Hendricks v. Sanks: One Small Step for the Continued Parental Support of Disabled Children Beyond the Age of Majority in North Carolina*, 80 N.C. L. REV. 2094 (2002).

⁶⁷ MO. REV. STAT. § 452.340.4 (2008).

⁶⁸ Childers, *supra* note 66, at 2094, citing Jiyeon Park et al., *Impacts of Poverty on Quality of Life in Families of Children with Disabilities*, 68 EXCEPTIONAL CHILDREN 151, 152 (2002).

live in poverty.”⁶⁹ Proponents of the special needs exception believe that society should not bear the financial burden and be held responsible for those with relatives who are able to support them.⁷⁰ As is often the case when a child goes off to college, the custodial parent of a disabled child may suffer economic hardship in the absence of support from the non-custodial parent.⁷¹ While a disabled child may continue to receive Supplemental Security Income (“SSI”) benefits after reaching the age of majority, these payments may be lower than what he or she previously received when he or she was a minor, and do not even come close to covering the necessary expenses, forcing custodial parents to rely heavily on state support.⁷²

Another public policy consideration for imposing a duty to support one’s mentally or physically disabled children beyond the age of majority is the argument that “the duty of parents to provide for the maintenance of their children is a principle of natural law.”⁷³ States such as North Carolina have held as far back as 1947 that, “the dictates of humanity require that the obligation to support a disabled child does not terminate at the age of majority.”⁷⁴ In doing so, the court found that disabled children “may have the same need of support, care and maintenance after reaching the age of majority as before,” and that the duty of a parent to support continues until “the child can provide for his own maintenance.”⁷⁵ In addition to a moral duty to support one’s children, strong public policy would also suggest that parents are the “most fit and proper persons to provide support and maintenance for those needs.”⁷⁶

As one can expect, laws relating to post-majority support for special needs children are not without their problems. Problems arise in a number of different areas relating to disabilities and the special needs exception, including defining what even constitutes a special need. *In re Marriage of Ronen* presented this problem

⁶⁹ *Id.* .

⁷⁰ Childers, *supra* note 66, at 2094.

⁷¹ *Id.* at 2103.

⁷² *Id.* at 2102.

⁷³ *Id.* at 2100.

⁷⁴ *Id.*, citing *Wells v. Wells*, 44 S.E.2d 31, 34 (N.C. 1947).

⁷⁵ *Id.*

⁷⁶ *Id.*

to Kansas courts in 2001.⁷⁷ The trial court defined special needs as including the parties' children's sports, clubs and other extra-curricular activities, activities it would described as "usual and ordinary."⁷⁸ The appellate court, however, found the trial court's definition of a "special need" to contradict its holding, and reversed the trial court.⁷⁹ Alaska, in an attempt to define what should constitute a "special need" for child support purposes, thus entitling the adult child to post-majority support, held that the trial court must "(1) determine that the adult child is not capable of earning an income sufficient to provide for his or her reasonable living expenses and (2) that the adult child's mental or physical disability is the cause of his or her inability to earn that income."⁸⁰

Similar to the problem of defining what constitutes an institution of vocational or higher education, statutes attempt to resolve this issue by clarifying the definition of a special need by either enacting new legislation or by referring to definitions in other areas of their existing statutes. Missouri, for example, states that a parent's support obligation may continue past the age of majority if the child is "physically or mentally incapacitated from supporting himself."⁸¹ This definitional dilemma becomes problematic due to the advancement in medical technology and the discovery of more complex and previously undetected disorders. Whether physical or mental, what constitutes a special need is an ever-changing and evolving area of the law. Various methods may be used to establish the child's mental incapacity, including the use of expert testimony or by the probate court issuing letters of guardianship.⁸² Further, there must be a showing of the child's insolvency, and "the child's mental incapacity must impair the child's ability to become self-supporting; evidence of learning difficulties, lack of training, or disinclination to work is insufficient proof."⁸³

⁷⁷ *In re Marriage of Ronen*, 26 P.3d 1287 (Kan. Ct. App. 2001).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Ex Parte Cohen*, 763 So. 2d 253, 256 (Ala. 1999).

⁸¹ MO. REV. STAT. § 452.340 (2008).

⁸² *Child Support and Maintenance, Post-Majority Support*, Missouri CLE Family Law 14-27 (6th ed. 2004).

⁸³ *Id.*

The special needs exception is still a fairly modern concept, so many questions remain unanswered. Defining what constitutes a special needs exception is difficult, and so long as previously undiagnosed disorders continue to be identified and treated, this area will continue to evolve.

VI. Miscellaneous Issues Relating to Child Support

A. Settlement Agreements

One area that is outside of both the general rule and its exceptions is the area of settlement agreements. Settlement agreements are contractual in nature and allow for great flexibility in resolving disputes. As the general rule set forth above holds, a parent's legal duty to support his or her child simply ends upon the child reaching the age of majority.⁸⁴ To counteract this rule and the harsh consequences that may result from the cessation of support, parents may choose to reach an agreement that one of them will continue to support a child beyond the age of majority.⁸⁵ Statutes, such as the one in Missouri, hold that separation agreements are authorized for the purpose of promoting "the amicable settlement of disputes between the parties to a marriage."⁸⁶ These agreements may be very broad, and the parents have the ability to draft an agreement according to their own terms. A court may, upon a finding that the agreement is not unconscionable, may adopt and enforce the agreement, binding the parents through a court order.⁸⁷ In doing so, "the terms of the agreement set forth in the decree are enforceable by all remedies available for the enforcement of a judgment."⁸⁸ In *Boden v. Boden*, the court, after finding the parties' agreement was not unconscionable, held that the husband was bound by the terms of the parties' agreement.⁸⁹ Without an agreement, however, the

⁸⁴ Support for Adult Child, 59 AM. JUR. 2D *Divorce and Separation* § 77 (2008).

⁸⁵ Support for Adult Child, 24A AM. JUR. 2D *Divorce and Separation* § 1006 (2008).

⁸⁶ MO. REV. STAT. § 452.325 (2008).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Boden v. Boden*, 229 S.W.3d 169 (Mo. Ct. App. 2007).

trial court loses its powers and, absent extreme circumstances, cannot issue a support order once the child has reached the age of majority.⁹⁰

B. *Title IV-D – The Family Support Act*

Until recently, as mentioned above, a parent's duty to support his or her minor children was the "exclusive province of the individual states."⁹¹ State judges possessed wide-ranging discretion in awarding child support, and used a number of factors to determine such awards, such as the child's physical, emotional and educational needs, the parent's resources, and, among other things, the standard of living the parties were accustomed to (pre-divorce).⁹² Because different judges used their own discretion in assigning different weights to each of the factors, child support awards became very unpredictable and lacked consistency even within the state.⁹³ As a result of the inconsistencies, many single-parent households did not have support awards, while others had either seriously inadequate awards or awards that went into arrears, were underpaid, or were blatantly ignored.⁹⁴ Over the next twenty years, concern over lack of support for children in single-parent homes continued to increase and gain wide attention, which ultimately led Congress to enact a series of laws designed to create a strong federal presence in the otherwise "traditionally state-governed area of family law."⁹⁵

In the beginning, the Aid to Families with Dependent Children ("AFDC") program of Title IV-A of the Social Security Act provided the gateway for federal involvement in child support.⁹⁶ Originally created in the 1930s to "provide for widows and their children," four decades later, the program had evolved to primarily support "children in female-headed households where the father was absent, not deceased."⁹⁷

⁹⁰ Support for Adult Child, 24A AM. JUR. 2D *Divorce and Separation* § 1006 (2008).

⁹¹ Bell, *supra* note 21, at 597.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Bell, *supra* note 21, at 598.

⁹⁶ *Id.*; *see also* 42 U.S.C. §§ 601-617 (1991 & Supp. 1999).

⁹⁷ *Id.*

In 1974, in an attempt to require states to collect child support from absent fathers of children supported by the AFDC, Congress passed the Family Support Act, more commonly known as Title IV-D of the Social Security Act.⁹⁸ This act created the Child Support Enforcement Act and established the Federal Office of Child Support Enforcement.⁹⁹ In 1984, Congress, believing it lacked a “strong child support enforcement system,” strengthened its enforcement system by creating additional amendments to the act.¹⁰⁰ These enforcement tools included creating fixed formulas used to calculate child support, imposing sanctions, and allowing for income withholding against parents who fail to provide the required support.¹⁰¹ In 1988, additional amendments focusing largely on paternity issues were created and formed what is now regarded as “the cornerstone of the modern child support and welfare system.”¹⁰² Over the next decade, Congress enacted a series of acts aimed at stricter enforcement practices. Success rates, however, are difficult to measure. If measured by collections alone, proponents of the current system cite an increase in child support collections from \$8 billion to \$18 billion from 1992 to 2000.¹⁰³ However, if the goal of an enhanced child support enforcement system is to lower child poverty, then critics may view the system as a failure, especially when it comes to reducing poverty for welfare families.¹⁰⁴ Regardless of how it is measured, the current enforcement system will continue to change and adapt along with society, just as it has for the past thirty-five plus years.

⁹⁸ *Id.*; see also Family Support Act, 42 U.S.C. §§ 651-669 (1994 & Supp. 1998).

⁹⁹ Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 345 (2005).

¹⁰⁰ *Id.* at 346.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*, citing Paul Legler, Annie E. Casey Found., *Low-Income Fathers and Child Support: Starting Off on the Right Track* 6 (2003).

¹⁰⁴ *Id.*; see also J. THOMAS OLDHAM, PREFACE TO CHILD SUPPORT: THE NEXT FRONTIER ix, ix-xiii (2000).

C. Contempt

While Congress had successfully managed to create a federal presence in the area of family law, the states still had a few remedies of their own. Should the non-custodial parent fail to perform his or her obligations as set forth in the court's order, the custodial parent is not without a remedy. If the non-custodial parent is in "default" for a specified period of time (generally thirty days) the custodial parent may file what is commonly referred to as a motion for contempt. A civil contempt proceeding is an additional remedy afforded by law and is auxiliary to the main action.¹⁰⁵ Should the non-custodial parent refuse to pay his or her obligated support amount, the court will hold a motion hearing and the non-custodial parent will be allowed to prove why he or she has failed to pay the requisite amount.¹⁰⁶ If the non-custodial parent is found to be in contempt, the case will be set for a sentencing hearing and the court will render its decision appropriately.

To be found in contempt, the following requisite elements must be met: first, the contemptuous party must have had knowledge of a court order or decree entered for the benefit of a party, and second, he or she must have intentionally violated such order or decree.¹⁰⁷ A party can also be found in contempt if he or she has "intentionally and contumaciously placed him or herself in a position so that he or she cannot comply with the court's orders."¹⁰⁸ In *Johnson v. Johnson*, the father, who was ordered to pay child support in the parties' divorce decree, was found in contempt after failing to pay the required support.¹⁰⁹ In finding that the father's previous efforts to pay were not made in good faith, the court held that "imprisonment for failure to pay child support was permissible if the father intentionally or contumaciously placed himself in the position where he was unable to pay child support."¹¹⁰

¹⁰⁵ Jeffrey A. Burns, 2A MO. PRAC., *Methods of Practice: Litigation Guide* § 37.4 (4th ed.), 2000.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Johnson v. Johnson*, 722 S.W.2d 136 (Mo. Ct. App. 1986).

¹¹⁰ *Id.*

VII. Conclusion

Societal evolution should reflect society as it is today—not fifty years ago, but now. In the event a parent is unable or unwilling to provide the necessary support for his or her child, there needs to be a system in place that can efficiently enforce these support obligations, yet not burden the state or the custodial parent. While the current child support system in place has strengthened its enforcement practices, it is certainly not without its problems.

As society continues to evolve, children will need to become better educated to survive in such an education-rich environment. Fifty years ago, college was unheard of for a majority of the population. Now, the question being asked at high school graduation ceremonies throughout the country is not “Are you going to college?” but rather “Where are you going to go to college?” The age of majority, whether it is set at eighteen, nineteen, or even twenty-two, should not be utilized as a cutoff point when it comes to awarding post-majority support. Providing children access to college for a couple of years, then taking that away from them does not help them, but rather hurts them by placing them in a vicious cycle of spiraling debt. A high school education is no longer all that is required to prepare children to reasonably support themselves in today’s society. People today need more than that. A four-year bachelor degree is what a high school diploma was twenty-five years ago . . . the piece of paper that allows one to make it past phase-one of the interview process. While a bachelor’s degree was once the exception and all but guaranteed a management position, a graduate degree has now become expected. To fully prepare children to reasonably support themselves in today’s society, children need to obtain a higher level of education than ever before, and parents should be obligated to support their children as the law, and society, necessitates.

Abraham Kuhl

