

Family Law Section

NEWSLETTER

Summer 2002

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NECESSARIES AND PRE-PETITION SUPPORT IN PATERNITY CASES: THE MODERN MALAISE DECIPHERED

by Alan W. Cohen, Attorney at Law

It is a common scenario: A woman who is the mother of a child born out of wedlock walks into your office. She has never lived with the natural father and has been the exclusive caretaker. The child is now five years old. She wants a paternity order and wants to know if she can make the dad reimburse her for expenses that the child has incurred. Thanks to the Missouri legislature, a once clear answer is not as clear. Now, the answer is "it depends." It depends on the judge, on notice to the father, on surprise and on other factors.

The law is the law of necessities. In *Schubert v. Tolivar*, 905 S.W.2d 924, 927 (Mo. App. 1995), the court held that you can calculate the amount of necessities pursuant to Form 14. Then, in 1999, in *Martin v. Obiakor*, 992 S.W.2d 201 (Mo. App. 1999), the court qualified its *Schubert* ruling. At trial in *Obiakor*, the mother relied on the original version of § 452.340.9 (now .10) RSMo. *Id.* She did not present evidence of necessities, but relied exclusively on the statutory relief. *Id.* Rather, the mother presented evidence of incomes of the parties for the five-year period (averaged) along with the appropriate expenses in Form 14. *Id.*

In analyzing whether this ruling was cor-

rect, the Eastern District examined the wording of the statute. *Id.* at 203. Section 452.340.9 (1997) used to provide:

Under this or any other chapter, when a court determines the amount owed by a parent for support provided to his child by another person prior to the date of filing of a petition requesting support ... the court ... shall use the [child support] guidelines. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court ... There shall be a rebuttable presumption that the amount resulting from application of the guidelines ... constitutes the amount owed by the parent for the period prior to the date of the filing of the petition In applying the guidelines to determine a retroactive support amount when information as to average monthly income is available, the court ... may use the average monthly income of the non-custodial parent, as averaged over the period of retroactivity, in determining the amount of pre-

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sumed child support owed for the period of retroactivity. ... (*Emphasis added.*)

Id.

After applying Missouri's well-established principles of statutory construction, the Eastern District found that the words "In this or any other chapter" were clear and unambiguous. *Id.* at 203. The court held, therefore, that § 452.340.9 (1997) was applicable to actions under the Uniform Parentage Act. *Id.* at 204. It also held that in reliance on the statute, the petitioner could have either requested relief pursuant to the common law of necessities or rely on the statutory relief in her pleadings. *Id.* However, the party seeking such relief must make the choice between the two remedies in its pleadings. *Id.*

Yet *Obiakor* qualified its ruling by recognizing that the statute relied upon in *Obiakor* has been modified in a way that would affect its holding. As stated in *Martin v. Obiakor*, the legislature amended that section to read:

"Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, *other than a parent*, prior to the date of filing of the petition requesting support ... the court ... shall use the guidelines established to subsection 8 of this section." (*Emphasis added.*)

Id. at n.2. In examining the language, the phrase "other than a parent" clearly modifies the phrase "provided to a child by another person." Therefore, retroactive child support calculated pursuant to Form 14 is only available to third parties who have provided care.

Ironically, it was argued by the opposing side in *Obiakor* that the purpose of the statute was to determine state debt, payments of money that the state paid to the custodial parent. The statutory authority for reimbursement for state debt lies in § 454.465.1 RSMo. *State of Missouri v. Estrada*, 916 S.W.2d 443 (Mo. App. 1996). When there was no court order for support in effect, the state debt is limited to the amount of assistance the state provided, as set forth in § 454.465.1(2).

The language of the statute is clear and unambiguous:

For the purposes of ..., a payment of public assistance ... for the benefit of any dependent child, including any payment for the benefit of the caretaker of the child, creates an obligation, to be called "state debt", which is due and owing by the parent, or parents, absent from the home where the dependent child resided at the time the public assistance was paid."

The statute clearly makes the petitioner liable only for reimbursement to the state for any sums it paid for the non-custodial parent's minor child. Nevertheless, any claim the state makes for state debt is limited to the other parties' ability to pay. In *Jackson v. Rapps*, 947 F.2d 332 (8th Cir. 1991), the Eighth Circuit Court of Appeals determined that federal law required that the state use the federally mandated guidelines (i.e., Rule 88.01) in determining a non-custodial parent's obligation to pay "state debt." Therefore, if a non-custodial parent earned \$700 per month, and the custodial parent was receiving \$300 per month in AFDC payments, he only had to reimburse the state the amount his support would be on the guidelines, or \$50 per month (given the custodian's income at zero).

Looking back at the original version of § 452.340.9 RSMo., and its amendment, the only person's income mentioned is that of the non-custodial parent. The court is directed to average the income figures only of the non-custodial parent during the period of retroactivity. Clearly, given the amendment, the legislature had intended the use of the statute only for "persons not parents." Other than the state, only a third party custodian could apply for retroactive support under § 452.340.10. In that instance, both parents would be non-custodial parents.

Part II

Can you get necessities in a paternity case?

First, let's define the term. Under the common law, "necessaries" was considered a "flexible and relative" term, "depending for its application the social position and situation in life of the infant, but in every case limited to things furnished of a character to be

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essential to the infant's bodily and mental needs." *Babb v. Fuehler*, 944 S.W.2d 331, n.2 (Mo. App.1997), (citing *Freiburghaus v. Herman Body Co.*, 102 S.W.2d 743, 745 (Mo. App. 1937)).

The application of "necessaries" to paternity cases is a questionable one. However, until the Supreme Court of Missouri hears argument on the applicability of "necessaries" in paternity cases, the law – at least in the eyes of our state's courts of appeal – is that it is indeed applicable. See *Schultz v. Haile*, 840 S.W.2d 263 (Mo. App. 1992), *Gorman v. Handlan*, 761 S.W.2d 289 (Mo. App. 1988), and *Babb v. Pfuehler*, *supra*. Nevertheless, historically, application is nonsensical.

As explained in *Swanson v. Swanson*, 464 S.W.2d 225 (Mo. 1971), a claim for necessities arising out of a marriage was quasi-contractual – i.e., an implied duty arising out of the marital contract that the husband would be primarily responsible to support children born of the marriage. Obviously, there is no such contract between two parents of a child born out of wedlock. Therefore, logically, there can be no such claim against the father of a child born out of wedlock. The father's duty did not exist in common law, and was created in Missouri under 14th Amendment Equal Protection grounds. See *R. v. R.*, 431 S.W.2d 152 (Mo. 1968). As explained in *Easley v. Gordon*, 51 Mo. App. 637 (Mo. 1892), historically, when a man married a woman, he agreed, through their marital contract, to provide support to the children born during the marriage. Therefore, given no express contract, the father had no duty to pay for past expenses of a child not born during lawful wedlock.

The distinction would probably survive constitutional analysis. It comports with the fact that even though the relationship between a parent and child is a constitutionally protected one, the father of a child born out of wedlock need not be treated in all respects as is the father of a child born in wedlock. See *Quilloin v. Walcott*, 434 U.S. 246 (1978), *Stanley v. Illinois*, 405 U.S. 645 (1972). Under equal protection analysis, there would be two classes, one with a contract and another without a contract. There is a clear reason to distinguish between the two that would easily

survive middle level scrutiny. *Id.* Further, equating the two would place Missouri in a position of recognizing a contract between two persons having sexual intercourse, a doctrine similar to common law marriage, something it has long refused to recognize. See *State v. Eden*, 169 S.W.2d 342 (Mo. 1943). Perhaps the distinction of the common law definition for third-party necessities would also survive constitutional scrutiny.

In 1892, the Supreme Court of Missouri, in *Easley v. Gordon*, 51 Mo. App. 637, 640 (Mo. 1892), found that English Common Law did permit a third-party legal action for maintenance of the child if the father knew where the child was, expressed no dissent (implied consent), and refused to maintain the child at his expense. Fathers of children who knew of and impliedly consented to their paternity would be liable, as would certain fathers of children born out of wedlock, but others would not.

Given the fact that Missouri is the only state to adopt a cause of action in common law for reimbursement of necessities between parents also creates a lingering doubt as to the legal basis for such an application. A summary of its creation is as follows:

1. No Duty Rule. Prior to 1968, Missouri followed the common law rule established in *Easley v. Gordon*, 51 Mo. App. 637 (Mo. 1892) that a natural father of a child born out of wedlock had no duty to support that child, and thus there was no cause of action to require him to pay child support. The mother was primarily responsible to support the minor child. *State v. White*, 248 S.W.2d 841, 843 (Mo. 1952).

a. Legitimate Defined. A legitimate child was one born during lawful wedlock or of a widow within ten months after the death of her husband, or born before the marriage of its parents, who afterward married, and receives the recognition of its father. *Gates v. Seibert*, 57 S.W. 1065 (Mo.) If conception occurred during a prior marriage, but the child was born during the later marriage, the child was considered the legitimate child of the second husband. *Bower v. Graham*, 225 S.W. 978 (Mo. 1920).

b. Necessaries. The *Easley* court found

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that under English Common Law, a father was bound to pay support to the mother of his illegitimate child only if there were "steps taken" under the statutes of Elizabeth, and that he was not bound to continue by-gone payments longer than he thought proper. *Easley*, 51 Mo. App. 637 (1892).

c. Third-Party Necessaries. The *Easley* court found that English Common Law did permit a third-party legal action for maintenance of the child, if he knew where the child was and expressed no dissent (implied consent), and refused to maintain the child at his expense. *Easley*, 51 Mo. App. at 640.

d. Oral Contract Unenforceable. The *Easley* court even refused to enforce an oral contract between the mother and putative father of a child born out of wedlock calling for the father to pay support for that child. The court denied enforcement on the grounds that it was without consideration. *See also Sponable v. Owens*, 92 Mo. App. 174 (1902). There was no consideration because the mother could not enter into an agreement with the natural father for a service that she was duty bound to perform. *Nine v. Starr*, 8 Or. 49 (1879). *See also* 20 ALR3d 500.

e. Compare the Marital Contract. When a man entered into a marital contract with a woman, he also, at English Common Law, agreed to be primarily responsible for supporting any children born during the marriage. *See Baston v. Sears*, 239 N.E.2d 62 (1968).

f. Doubtful Policy. The *Easley* court implied that, if it were not for English Common Law as precedent, "we should say that on principle children born out of wedlock have an equal claim on both their parents, and that the duty of both parents to support them must stand on an equal footing". Instead, it adopted the policy of English Common Law that "[t]o constitute a moral obligation the consideration of an express contract, so that it may be enforced by an action at law, there must have been some pre-existing legal obligation." 51 Mo. App. at 641.

g. Majority view. This common law no-duty rule remained the majority view at least through 1952 when the St. Louis Court of Appeals rejected another plea to reverse it in *Nelson v. Thompson*, 253 S.W.2d 516, 517

(St. L. 1952). *See also* 30 ALR 1069. By 1971, there were only two states that still held this view. *See Baston v. Sears*, 239 N.E.2d 62 (1968), *L.G. v. F O P*, 466 S.W.2d 41 (Tex. App. 1971).

2. No Rights Rule. At common law, the mother of a "bastard" child was considered its natural guardian, and thus she had a right of custody, care and control superior to the right of the father or any other person, unless it was otherwise expressly provided by statute. *State v. White*, 248 S.W.2d 841, 843 (Mo. 1952). Therefore, at common law, the father of a child out of wedlock had no rights and no duty.

3. No Implied Cause of Action. The courts of appeal in both the Kansas City and then St. Louis Districts rejected the argument that criminal responsibility created a civil duty of support to children born out of wedlock. In *James v. Hutton*, the Kansas City District commented that in the prior 17 years, the Missouri legislature had three times rejected bills that would create a civil determination of paternity. 373 S.W.2d 167, 169 (Mo. App. 1963). It commented that the legislature knew the distinction between criminal and civil liability, and rejected civil liability in favor of criminal liability. *Id.* at 168. Two years later, the St. Louis District refused to abandon the common law no-duty rule that the plaintiff called "repugnant to present day conceptions of legal, social and moral duties and obligations." *Heembrock v. Stevenson*, 387 S.W.2d 263 (St. L. 1965). The court, instead, deferred to the legislature to create a cause of action.

4. The Exception: Breach of Promise to Marry. Despite the no duty rule, a woman could collect child support in the form of damages from the father of her illegitimate child if the woman gave up her virginity as "consideration" in an action for breach of a promise to marry. *Liese v. Meyer*, 45 S.W.2d 282 (Mo. 1898), *Erwin v. Jones*, 180 S.W. 428 (Mo. 1915), *Rehg v. Giancola*, 391 S.W.2d 934 (St. L. 1965). As an affirmative defense, the defendant could plead the plaintiff's lack of chastity. 391 S.W.2d at 937. This is consistent with duty of support from the marital contract.

5. In 1968, in *__R v. __R*, 431 S.W.2d 152 (Mo. 1968), the Supreme Court of Missouri

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determined for the first time that there is a civil duty for a father of a child born out of wedlock to support that child.

6. In 1979, in *Mueller v. Jones*, 583 S.W.2d 222 (E.D. 1979) citing *R v. R*, as implying a requirement of equality as to support) the Eastern District, in a paternity proceeding for support, applied the rules governing dissolution proceedings to determine the proper amount of current child support so as not to discriminate against the illegitimate child.

7. In 1979, in *R.J. v. R.J.D.*, 588 S.W.2d 76 (Mo. App. 1979), the Eastern District Court of Appeals had before it an action that began as a paternity case, and ended up a bizarre probate matter after the defendant died prior to trial. Its "bootstrap" argument (on which it trips) is that 1) A father had the primary duty to support his legitimate children and was now liable to support his illegitimate children. 2) Monies spent by the mother or by a third person to provide for the child born out of wedlock are recoverable under the theory of quasi-contract. 3) Since an action lying in contract survives the death of the obligor, mother's claim would arguably survive for a claim against his estate.

8. In 1980, in *McNulty v. Heitman*, 600 S.W.2d 168 (Mo. App. 1980), the Eastern District Court of Appeals determined that there was a cause of action for reimbursement of necessities. Rather than examine the nature of the quasi-contractual theory, it simply found that there was a duty to support the child and thus, like children born out of wedlock, "it would be incongruous" to grant a right to support, but not grant to their mothers the right to reimbursement of necessities. *Id* at 172.

9. In 1985, the Southern District cited *Swanson* for the proposition that an action for necessities in a paternity proceeding was quasi-contractual in nature. *Parker v. Bruner*, 692 S.W.2d 379 (1985). In 1992, in *Payne v. Delp*, 821 S.W.2d 582, 584 (Mo. App. 1992) the Southern District cited, as the legal basis of affirming a judgment for reimbursement of necessities for a child born out of wedlock, her "quasi-contractual relationship with the child's father."

The Supreme Court of Missouri has never addressed this issue directly; however it has

cited *McNulty* in *State ex. rel Division of Family Services v. Standridge*, 676 S.W.2d 513 (Mo. 1984), a necessities case involving a child born during a marriage, in support of its holding that the father has the primary duty to support his child.

The next best argument for the party wishing to apply "necessaries" to paternity cases, as stated in the Western District opinion of *Schultz v. Haile*, 840 S.W.2d 263 (1992), exists in § 210.828.1 RSMo. of the Uniform Parentage Act:

"A parent's retroactive liability to another party for reimbursement of necessary support provided by that party to the child for whom a parent and child relationship is established under sections 210.817 to 210.852 is limited to a period of five years next proceeding the commencement of the action."

That provision seems to imply there is a cause of action under the Uniform Parentage Act for a claim for necessities. Further, in § 210.841.4 (RSMo.), which the legislature has never amended since the creation of the UPA in 1987, provides for additional confusion. After citing that the court may order reimbursement of birth expenses in subsection 3, the court, in subsection 4, cites a litany of the support the court can order:

Support judgments or orders ordinarily shall be for periodic payments. In the best interests of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of period payments of support. **The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.** (*Emphasis added*).

In *Schultz v. Haile*, 840 S.W.2d 263, 266 (Mo. App. 1993), the Western District determined that this language of the UPA was made in reference to the existing claim for necessities, and codified existing case law. It cited the principal of statutory construction that the legislature is presumed to be aware of existing declaration of law by the court when

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it enacts statutes pertaining to the same subject. *Id.* Thus, it is further presumed that the legislature enacted legislation in accord with the law of the courts. *Id.* It reasoned that if the legislature had intended to use another method of determining pre-petition support, it would have expressly done so in the UPA. *Id.*

How the law, again, has been changed. Section 210.841.3 (RSMo. 1987 – present) now states:

The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

The UPA was passed “to be applied and construed with the purpose of making uniform the law in respect to paternity.” *Snead by Snead v. Cordes by Golding*, 811 S.W.2d 391, 395 (Mo. App. 1991). Thus, the legislature, being aware of the common law, began specifying what portions of the common law it liked, and what it didn't.

Confusing the picture more, in 1994 the legislature, immediately following the publication of *Schultze v. Haile*, passed an amendment to § 210.829.1, RSMo. HB 1491 and HB 1131 merged with SB 58 to add the following sentence: “Failure to join an action for reimbursement of necessities provided with an action brought under sections 210.817 to 210.852 shall not be a bar to subsequently bringing such an action for reimbursement of necessities provided.” Such language eliminates the doctrine of collateral estoppel, or issue preclusion, in referring to a separate action for necessities. *See State ex. rel. Haley v. Groose*, 873 S.W.2d 221, 223 (Mo. 1994). The key word is “join,” “Join” is defined in *Black's Legal Dictionary* as “to combine.” In procedure, it clearly references joinder of claims. Under Rule 55.06(a) of the Missouri Rules of Civil Procedure, a party is permitted to join independent or alternate claims for relief.

Further, logically, if the UPA contained an action for necessities, it would not be a separate claim. It would be the same claim, a claim for relief under the UPA; an action to establish paternity and a support obligation would be barred under the doctrine of *res judicata*. *See Lay v. Lay*, 912 S.W.2d 466, 471 (Mo. 1995).

As explained in *Lay*, *res judicata* applies “not only to points and issues upon which the court was required by the pleadings and proof to form an opinion and pronounce judgment, but to every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.” *Id.* (quoting *King Gen. Contr. v. Reorganized Church*, 821 S.W.2d 495, 501 (Mo. 1991)). The doctrine of *res judicata* takes on the character of the rule against splitting a cause of action. *Id.* Since an action for necessities is of the same nature as one for child support, it must be claim outside the UPA, and thus a common law claim for necessities.

Further still, and perhaps most important, the cause of action under the UPA is limited to two – one being to establish paternity under § 210.826 RSMo. and the other for a modification of an existing judgment under § 210.845 RSMo. *See P.L.K. v. D.R.K.*, 852 S.W.2d 366 (Mo. App. 1993). Therefore, once paternity is established, there can no longer be a cause of action under the Uniform Parentage Act other than a motion to modify. The provision under § 210.841, by its own language, exists only to empower the courts to enter judgment under an action to establish paternity. It is not a separate cause of action. Therefore, following logically, the 1994 amendment to § 210.829.1 must indicate that an action for necessities is a separate action, albeit a common law cause of action.

Therefore, it could be argued that the legislature is not authorizing relief, but recognizing that the courts of appeal have authorized such an action at common law. Further, Missouri stands alone in finding there is a common law cause of action for reimbursement of necessities. A diligent search indicates that no other state has followed the court of appeals' decision in *McNulty*, nor has the issue ever been raised. Rather, each state relies on its version of the Uniform Parentage Act or like statutes that provide for specific types of reimbursement. *See e.g., Trent v. Winningham*, 667 N.E.2d 1317 (Ill. 1996), *State v. Doe*, 41 P.2d 720 (Haw. 2001), and *Sisneroz v. Polanco*, 975 P.2d. 392 (N.M. 1999).

As to applications in pleading and practice,

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one should, in the very least, place an action for reimbursement as a separate count. In defending, one must gauge one's arbiter, as well as balancing the financial burdens, in deciding to take this one up to the Supreme Court.

Part III: Evidence and Discretion

A. What is a "necessary" and how do I prove it.

At the beginning of this section, I provided you with the judicial definition of "necessaries." In *Landoll v. Dovell*, 778 S.W.2d 846 (Mo. App. 1989) (*Landoll II*), the Eastern District Court of Appeals defined them as being for "food, clothing, medical and educational expenses." It expressly rejected in its definition such expenses as YMCA membership, vacation, cable television, pet expense and entertainment, as being unnecessary. *Id.*

As to presentation of evidence, I note that at the beginning of this article, I mentioned judicial discretion. Technically, there is none. In the case of *Gorman v. Handlan*, 761 S.W.2d 289 (Mo. App. 1988), the court reversed a trial court's judgment refusing to enter a judgment on behalf of a mother of a child born out of wedlock in a paternity proceeding. In that case, the court found that the mother had presented, virtually without contradiction from father, 500 exhibits such as canceled checks, receipts and bills detailing the necessary expenses for the child. *Id.* The court found that demand was not a prerequisite to a legal claim for reimbursement of expenses. *Id.* The court then held that the trial court erred in not awarding the mother these expenses, and remanded the case for determination of those amounts. *Id.* Therefore, the mother is just as legally entitled to reimbursement as a party to a judgment is entitled to reimbursement for uncovered medical expenses as set forth in a judgment. See *McCreary v. McCreary*, 954 S.W.2d 453 (Mo. App. 1997).

Thus, in essence, if you provide the documentation, and the trial judge refuses your client an award for reimbursement, you can appeal. While this is impractical advise to most, experience dictates that trial judges'

opinions of the fairness and appropriateness of such an award varies from "Let's start from now" because "she shouldn't have waited to file this action" to "somebody paid to support this child, and it's not fair not to award her reimbursement of her 60 months' of expenses."

If your judge has the latter philosophy, you will note that documentation does not necessarily have to include bills, checks and receipts. In *Shadwick v. Byrd*, 867 S.W.2d 231, 235 (Mo. App. 1993) the Western District Court of Appeals, in affirming the judgment of the trial court awarding necessities, rejected the father's argument that mother's testimony was nothing more than "guesstimates." In that case, the mother presented a document setting forth her monthly expenses for food, clothing, housing, education and medical costs, and verified the documents through her testimony. *Id.* at 236. The mother did not keep any receipts, and insisted her calculations were very conservative. *Id.*

B. What percentage of the necessities can I get?

The final question is how much, or what percentage, of the total expenses can I get? If you apply the argument of *Schultz v. Haile*, 840 S.W.2d 263, 266 (Mo. App. 1993), the answer lies in § 210.841.4 RSMo., which states "the court can limit the father's liability ... to a proportion of the expenses already incurred that the court deems just." Applying this language, the mother could argue that the father should bear the brunt, if not all, of her listed expenses, because she cannot possibly equate all of her expenses. She might argue that she had to have a larger house or apartment, requiring a higher mortgage or rent and utility costs as a result of having the child. The father is left with only equitable arguments such as surprise and unfairness, something the courts of appeal have uniformly rejected. His only legal restraint is the five-year statute of limitations set forth in § 210.828.2, RSMo.

If you apply the argument that your relief lies in the common law, your argument is no longer that the father has the primary duty of support for a child. See *Standridge*, 676 S.W.2d 513 (Mo. 1984), *McNulty*, 600

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S.W.2d 168 (Mo. App. 1980). In *Williams v. Williams*, the Supreme Court implied that the common law finding that the father has the entire duty of support for a child would not stand up to 14th Amendment Equal Protection scrutiny. 510 S.W.2d 452 (Mo. 1974). The Court refused to address the constitutionality of the dissolution of marriage act that was in effect at the time of that case (stating that the father had the primary duty of support). Instead, it sidestepped the constitutional issues on the basis that the legislature that year amended the act to provide for gender neutral support obligations. In *Stanton v. Stanton*, 874 S.W.2d 493 (Mo. App. 1994), the Missouri Court of Appeals reversed all prior cases stating otherwise as unconstitutional, and as gender biased under the Equal Protection clause in Article I, Section 10 of the Missouri Constitution and the 14th Amendment to the United States Constitution. See also *Lodahl v. Papenberg*, 277 S.W.2d 548 (Mo. 1955).

On the basis of this ruling, the Missouri courts of appeal determined the allocation of an assessment for reimbursement of necessities should be based on the parties' ability to pay. See *Landoll v. Dovell*, *supra*. See also *A.V. v. G.V.*, 726 S.W.2d 782, 784 (Mo. App. 1987). In so determining, the court should look at the relative financial condition of each parent, including consideration of both

past and present earnings. *Landoll v. Dovell*, 778 S.W.2d at 848.

Finally, if you are defending a necessities case, you can take one of two positions. First, you can argue that *Schultze v. Haile* was wrong, and that necessities are limited to birth expenses and the like. Second, you can argue that there are no necessities available at all, or the court should adopt the *Easley* standard. If you choose the latter two, prepare to take the matter up to the Supreme Court.

Therefore, practically, depending on the facts, you could argue either way. But, as stated at the beginning, it all depends on your trial judge. Perhaps, given one bent on siding with your claim, you could argue the supporting side.

Part IV: Summary

As you can see from this article, the state of the law is, at best, confusing. Perhaps the legislature or Supreme Court will clarify the many issues in the near future.

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