The Phyllis Schlafly Report

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How ERA Will Hurt Divorced Women

Previous issues of the *Phyllis Schlafly Report* have dealt in detail with the rights enjoyed by a wife in an ongoing marriage which will be wiped out if the Equal Rights Amendment is ever ratified. This issue discusses the rights of the divorced woman.

The divorced woman does not have the extensive rights which our laws accord to a wife. By definition, when she ceases to be a wife, she no longer enjoys the rights of a wife. However, a divorced woman does enjoy certain important rights which she will lose if the women's lib amendment is ever ratified.

Custody of Children

The most important right a divorced woman has is the presumption of custody of her children. While not usually a matter of state law, this presumption of custody is a custom so firmly engrained into our legal fabric that it has the force of law. It is a fact that, unless the mother does not want her children or there is a substantial showing that she is morally unfit to have her children, she usually is awarded custody.

The custody of her children is vitally important to a mother as she goes through the traumatic experience of a divorce. The custody of the children is what enables her to secure a reasonably fair divorce settlement from her husband, who usually has the income-producing job.

The Equal Rights Amendment would mandate the courts to make their determination on the basis of equality, or equal rights to both sexes in all matters. Equality might mean that the courts would award one child to the mother and one to the father. Or, it might mean that the courts would award custody to the father in approximately half the cases, and order the mother to pay child support.

This has already happened where a local ERA has gone into effect. In a divorce case in Washington, D.C., on February 24, 1973, Superior Court Judge George W. Draper awarded the husband custody of his three children and ordered the children's mother to pay child support. He based his ruling on a little noticed change in the District of Columbia code (three years before) which mandates equality, plus what he called "the improved economic position of women generally in our society." In this case, both parents had government jobs earning about $17,000 per year.

So now the divorced woman has her job, but she has lost her three children, ages 9, 7 and 5. Any way the courts slice it, "equality" means a reduction of rights which women formerly possessed.

Child Support

The second important right now enjoyed by a divorced woman is the right to have the court compel her ex-husband to support her minor children. Either by statute, or by common law, or by case law, the father has always had the moral and legal obligation to support his minor children, regardless of whether the marriage has broken up, and regardless of whether they live with him or not. When a divorce takes place, love has usually gone out the window; but the duty to support the children remains, and this obligation is enforceable by the courts.

The Equal Rights Amendment, if ratified, would invalidate any law or court order which imposes the obligation of child support on the father because he is the father.

The states which have passed a *state* Equal Rights Amendment into their state constitution have given us a preview of what will happen nationally if ERA is ever ratified. Pennsylvania is one of these states. On March 26, 1974, the Pennsylvania Supreme Court handed down a decision in the case of *Conway v. Dana* which invalidated any presumption that the father, just because he is a man, has the liability for the support of his minor children. The Supreme Court listed all the previous Pennsylvania cases holding that "the *primary* duty of support for a minor child rests with the father." Then, the court stated that these cases "may no longer be followed" because "such a presumption is clearly a vestige of the past and incompatible with the present recognition of equality of the sexes." From now on, the court said, the support of children will be "the equal responsibility of both father and mother."

Thus, "equality of the sexes" emphatically means that the mother must share equally in the liability to provide the financial support of her children. They call this "equal rights" -- but for the divorced woman, ERA is truly the "Extra Responsibilities Amendment."

The full text of this Pennsylvania decision is printed on page 3 of this *Report*. We are fortunate that Pennsylvania has given us a preview of what ERA will mean -- before it is too late.

If ERA is ratified as part of the U.S. Constitution, will its effect on the obligation of fathers to support their children be retroactive? No one knows the answer to that

question for sure. But we do know that the U.S. House Judiciary Committee, in its majority report on ERA (Report No. 92-359), stated:

"In some cases it would relieve the fathers of the primary responsibility for the support of even infant children, as well as the support of the mothers of such children and cast doubt on the validity of the millions of support decrees presently in existence."

Alimony

The third important right of divorced women is alimony, when ordered by the court. Alimony is certainly not a right of *all* divorced women; it depends on the circumstances, the length of the marriage, and other factors. But is a benefit generally given to wives, not to husbands. The dictionary defines "alimony" as "an allowance paid to a woman by her husband or former husband for her maintenance, granted by a court upon a legal separation or a divorce or while action is pending." The majority of states give alimony to wives only and not to husbands. Such a preferential benefit to women could never be tolerated under ERA.

What will happen generally to alimony under ERA is what already has happened in Georgia, where on January 24, 1974 a court declared that all alimony payments are unconstitutional in Georgia. In the case of *Murphy v. Murphy,* the court held that alimony is unconstitutional because it discriminates against husbands.

Georgia does not have a state ERA -- the court merely got carried away with the new equality craze and held that alimony violates the Due Process and Equal Protection Clauses of the 5th and 14th Amendments. In a hundred years of prior litigation, no court had ever previously found that alimony was forbidden by the 5th and 14th Amendments.

That Georgia judge may be reversed on appeal; but his decision stands as a significant case of how judges often go far beyond what the law intends. This is the same kind of extrapolation of the law which the U.S. Supreme Court has been doing for the last 20 years. If the courts ever have ERA as a springboard, they may go as far afield as they have already gone with the busing and prayer decisions. Even without the Equal Rights Amendment, the courts are already ordering women admitted to men's saloons and girls admitted to Little League baseball.

The ERA proponents have been solemnly assuring us that, when confronted with a law which confers a benefit on women, the courts will extend that benefit to men rather than invalidating the benefit for women. The Georgia case proves again that this prediction is completely untrue. The Georgia court did *not* extend alimony to men -- it simply wiped it out for women.

The respected legal publication, *United States Law Week,* commented on this decision by saying: "Women's quest for equality proves to be a boon to 'liberated' husbands."

Support of Husband?

But *not* getting her children, and *not* getting child support, and *not* getting alimony, is not the end of the harm which ERA will do to the divorced woman. The effect may be worse still, when a mean husband goes to court to win his full equal rights under ERA. How this can happen is illustrated by a current case now in litigation in the St. Louis, Missouri Circuit Court: *Oakley v. Oakley.* Missouri does not have a state ERA, but its new no-fault divorce law ended the age-old requirement that the husband is always responsible to provide support for his ex-wife.

William Oakley is a male student in a freshman class at the St. Louis Municipal School of Nursing. He is suing his ex-wife for $100 a month support money for his remaining three years in nursing school, plus two years of studying the specialty he hopes to pursue, anesthesiology. He is also seeking custody of their two-year-old daughter, and an additional $100 per month in child support. Oakley's ex-wife earns about $375 per month as a clerk-typist.

It is anybody's guess who will win this case. The drafters of the new Missouri state law are expecting more and more men to start taking advantage of their new equal rights. The Oakley case is merely the first.

Effect on Senior Women

Of all classes of women, ERA is apt to hurt the senior woman the most. Consider the case of a wife in her fifties whose husband decides he wants to divorce her and marry a younger woman. This has become easier and more frequent, especially with no-fault divorce in many states.

If ERA is ratified, thereby wiping out the state laws which require a husband to support his wife, the cast-off wife will have to hunt for a job to support herself. *No matter* that she has made being a wife and mother her fulltime career for 20 to 30 years. *No matter* that she is in her fifties and unprepared to enter the competitive job market. *No matter* that discrimination against age deals her a double blow.

Thus, the most tragic effect of ERA can fall on the woman who has been a good wife for 20 or 30 years, and who can now be turned out to pasture with impunity. This is what equality means.

In 1973, the Virginia Legislature appointed a Task Force to study the effect which the Equal Rights Amendment would have on Virginia Law. The 97-page report was published on January 15, 1974. This report shows the adverse effect ERA would have on senior women. Present Virginia law requires children 17 or over to support their father if he is in need and is incapacitated, but requires them to support their mother if she is in need, no matter what her age or capabilities. The Virginia Task Force Report clearly states that this statute "accords unequal rights" and "hence it would not meet the requirements of the Equal Rights Amendment."

Thus, if ERA is ratified, the aged and faithful mother, who has made her family her lifetime career, would have no legal right to be supported, but would be faced with having to take any job she could get if her husband and children did not voluntarily choose to support her.

Pennsylvania Child Support Case

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acquired employment provides a sufficient change in circumstances to warrant a modification of the original order.

The order of the court below is vacated and the matter is remanded for further proceedings consistent herewith.

Mr. Chief Justice Jones dissents believing that allocatur was improvidently granted.

Pennsylvania Child Support Case: *Conway v. Dana*

The sole issue presented by this appeal is whether the lower court abused its discretion in denying appellant's petition for reduction of an order of support awarded for the benefit of his two minor children.

Appellant, Warren B. Dana, filed a petition for reduction of a support order requiring him to pay $250 per month for support of his two daughters as well as an additional $50 per month toward orthodontist fees. The court below denied the petition and a timely appeal was taken to the Pennsylvania Superior Court. This appeal was discontinued and a second hearing was held below upon the petition for reduction. The court again refused to grant the petition and an appeal was taken to the Superior Court which affirmed the action of the court below in a per curiam opinion. Conway v. Dana, 221 Pa. Superior Ct. 827, -- A.2d -- (1972). We granted allocatur.

The appellant has predicated his request for a reduction upon the following material change of circumstances: A marked decrease in his income from approximately $12,400 per year to $10,600 per year, reducing his take-home pay to $625 per month. In addition, since the entry of the support order, the appellee, his former wife, has secured employment and receives a net salary of $700 per month.

A father has the responsibility to support his children (Hecht v. Hecht, 189 Pa. Superior Ct. 276, 150 A.2d 139 (1959) to the best of his ability: Commonwealth v. Cleary, 95 Pa. Superior Ct. 592 (1929). His capacity to support is determined by the extent of his property, his income, his earning ability and the station in life of the parties: See Commonwealth ex rel. O'Hey v. McCurdy, 199 Pa. Superior Ct. 115, 184 A.2d 291 (1962); Commonwealth ex rel. Weisberg v. Weisberg, 193 Pa. Superior Ct. 204, 164 A.2d 54 (1960); Hecht v. Hecht, supra; Commonwealth ex rel. Thompson v. Thompson, 171 Pa. Superior Ct. 49, 90 A.2d 360 (1952); Commonwealth ex rel. Goldenberg v. Goldenberg, 159 Pa. Superior Ct. 140, 47 A.2d 532 (1946); Commonwealth ex rel. Firestone v. Firestone, 158 Pa. Superior Ct. 579, 45 A.2d 923 (1946); and Commonwealth ex rel. Bowie v. Bowie, 89 Pa. Superior Ct. 288, -- Atl. -- (1926).

We recognize the obligation of the father to make personal sacrifices to furnish the children with the basic needs; however, the order should not be unfair or confiscatory. The purpose of a support order is the welfare of the children and not the punishment of the father: Commonwealth ex rel. Shumelman v. Shumelman, 209 Pa. Superior Ct. 87, 89, 223 A.2d 897, --(1966). See also Commonwealth ex rel. Arena v. Arena, 205 Pa. Superior Ct. 76, 207 A.2d 925 (1965); Commonwealth v. Camp, 201 Pa. Superior Ct. 484, 193 A.2d 685 (1963).

A review of the record impressed upon us that the burden of support became more onerous as a result of the reduction in the income of appellant. However, we do not find that this particular change of circumstances standing alone, created a situation so oppressive and unfair that a denial of the requested relief would warrant a finding of an abuse of discretion.

Appellant suggests that under our present law due regard is not given to the personal estate of the mother. He argues that the Equal Rights Amendment to the Pennsylvania Constitution mandates that we discard any presumption with respect to liability for support predicated solely upon the sex of one parent. It has been held that the *primary* duty of support for a minor child rests with the father (Commonwealth ex rel. Bortz v. Norris, 184 Pa. Superior Ct. 594, 135 A.2d 771 (1957); Commonwealth ex rel. Kreiner v. Scheidt, 183 Pa. Superior Ct. 277, 131 A.2d 147 (1957); Commonwealth ex rel. Silverman v. Silverman, 180 Pa. Superior Ct. 94, 117 A.2d 801 (1955)), and also that the income or financial resources of the mother are to be treated only as an attending circumstance: Commonwealth ex rel. Yeats v. Yeats, 168 Pa. Superior Ct. 550, 79 A.2d 793 (1951); Commonwealth ex rel. Barnes v. Barnes, 151 Pa. Superior Ct. 202, 30 A.2d 437 (1943); Commonwealth ex rel. Firestone v. Firestone, supra.

We hold that insofar as these decisions suggest a presumption that the father, solely because of his sex and without regard to the actual circumstances of the parties, must accept the principal burden of financial support of minor children, they may no longer be followed. Such a presumption is clearly a vestige of the past and incompatible with the present recognition of equality of the sexes. The law must not be reluctant to remain abreast with the developments of society and should unhesitatingly disregard former doctrines that embody concepts that have since been discredited.

In the matter of child support, we have always expressed as the primary purpose the best interest and welfare of the child. This purpose is not fostered by indulging in a fiction that the father is necessarily the best provider and that the mother is incapable, because of her sex, of offering a contribution to the fulfillment of this aspect of the parental obligation. The United States Supreme Court in rejecting an Illinois statute that presumed unmarried fathers to be unsuitable and neglectful parents observed:

"Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand": Stanley v. Illinois, 405 U.S. 645, 656-57 (1972).

We can best provide for the support of minors by avoiding artificial division of the panoply of parental responsibilities and looking to the capacity of the parties involved. Support, as every other duty encompassed in the role of parenthood, is the equal responsibility of both mother and father. Both must be required to discharge the obligation in accordance with their capacity and ability. Thus, when we consider the order to be assessed against the father, we must not only consider his property, income and earning capacity but also what, if any, contribution the mother is in a position to provide.

While we were impressed from the record with the careful and considerate treatment the parties received from the hearing court, we realize that the court was then proceeding under the former decisions of this jurisdiction. There is serious question what, if any, effect the fact of the mother's income had upon the decision. Combining the decrease in the father's income along with the additional income resulting from the mother's recently

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WOMEN OF INDUSTRY, INC.

God, Home and Country

A Non-Profit Organization

Founder:
Naomi McDaniel
225 Slayton Street
New Carlisle, Ohio

February 15, 1974

Dear Legislator:

May I point out to you what is behind the much-heralded reversal and recent endorsement of the Equal Rights Amendment by the National AFL-CIO Convention. This resolution was introduced by the Newspaper Guild, seconded by the Teachers Union -- and passed with no debate.

Women who work at desks or blackboards, where the heaviest loads they lift may be a pile of papers or a few books, are not representative of factory production workers who need protection of present laws, such as those limiting loads women must lift. The uninformed but noisy minority of ERA proponents -- smooth-talking college women who have never even seen a factory production line -- parrot the claim that some women can lift up to 75 lbs., and should have the "opportunity" to work alongside men.

In their eagerness to, perhaps, get their boss' job as office manager, they are most generous in giving away those precious distinctions so badly needed by their harder-working sisters on the assembly line. While they point out that mothers easily lift 50 lb. children, they do not realize or do not care that this is not like consistently lifting 50 lbs. on an assembly line all day long. We Women in Industry know better than anyone else that we are simply not physically equal to men, but ERA permits no distinction.

Due to the incessant agitation of a few women "libbers", some States like Ohio have already rescinded much protective legislation for women, yet other States still have not -- nor should they. But if the National ERA is ratified, every bit of protection for women workers will be abolished everywhere.

Colorado previously passed a State ERA, and on June 8, 1973, the Colorado court held in Colorado vs. Elliott that under Colorado's ERA, fathers no longer need support their families. So in addition to swelling tax-supported welfare, a National ERA would force more women into factory production jobs with no statutory workload limitations whatsoever.

For these reasons, and others too numerous to mention here, Women in Industry strongly opposes ERA.

Yours very truly,

(Mrs.) Naomi McDaniel
National President

The above is the text of a letter sent by Women of Industry to the Legislators in many States.

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