Marquette Law Review

Volume 16
Issue 2 *February 1932*

Article 11

1932

Domestic Relations - Quasi-Contracts - Infants

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Repository Citation
C. J. Schloemer, *Domestic Relations - Quasi-Contracts - Infants*, 16 Marq. L. Rev. 137 (1932).
Available at: https://scholarship.law.marquette.edu/mulr/vol16/iss2/11

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DOMESTIC RELATIONS—QUASI-CONTRACTS—INFANTS. *Hoard* v. *Gilbert,* 238 N.W. 371. (Wis.). The plaintiff, as assignee, seeks to recover for the support and maintenance of defendant's infant child by plaintiff's assignor for a period of fifteen years. The defendant appealed from a ruling of the trial court on a question of pleading. The Court, in declaring the complaint insufficient, summarized the substantive law in this state on the question of the liability of a parent for the support of his infant child.

The liability of the parent must be predicated upon either an express of implied promise to pay for the support of his infant child. The defendant, in this case, made no express promise to pay for such support. The plaintiff must, therefore, allege facts from which the court can imply a promise.

The Court found after considering the Wisconsin cases that an implied promise may be predicated from facts showing the following situations:

First: Where the infant was forced to leave the parental home because of the "cruelty, neglect, or improper conduct of the parents." This rule is supported by dicta in Carpenter v. Tatro, 36 Wis. 297. The court there said that when the child was forced to leave his father's home because of cruel treatment the father is under legal liability to pay for the child's support. The reviewer can also see an unquestionable and irrefutable moral obligation on the part of such a parent to pay for the maintenance of his child.

Second: Where the parent, with full knowledge of the facts and without objecting thereto, approved of the support given to his infant child. In McGoon v. Irwin, 1 Pin. 526, the husband of the divorced wife of defendant sued for the sum spent in the support and education of defendant's infant child. The court held that when the parent permits a stranger to support his infant child, and in no way objecting thereto, he is presumed to know his obligations, and thus promises to pay for such services. In Gilley v. Dunwiddle, 98 Wis. 428, the mother obtained a divorce from the father of the infant. The order provided that the mother have the custody of the child until it was ten years of age. The father then demanded the custody of the child, and the mother, plaintiff in the suit, refused to give it up. The father then told the mother that he would not pay for the infant's keeping. The mother sued the father's estate for the amount of the child's support. The court held that a promise on the part of the father could be implied from the fact that he allowed the plaintiff to keep the custody of the child and necessarily support and maintain it.

Third: Where the parent has allowed a stranger to support the infant child, "and in no way objecting to the act, but rather assenting

thereto and advising therein." In McGoon v. Irwin, 1 Pin. 526, the court said, "And when a parent permits a stranger to maintain, support and instruct his children, in no way objecting to the act, but rather assenting to and advising therein, the law will presume that he knows his obligations, excepts the services, and assumes to pay." In Monk v. Hurlburt, 151 Wis. 41, the court ruled that the law will imply a promise where a parent, who has full knowledge of all the facts and circumstances, allows and approves of his infant child being furnished necessaries by a stranger.

It is evident therefore, that the parent cannot escape his legal obligation of supporting his infant child merely because he has not expressly promised to pay the costs of such support and maintenance. His liability can be predicated from a fact situation out of which it is possible for the court to imply a promise to pay for such necessaries. Such a fact situation must show a "knowledge of and assent to the furnishing of such support," or some "cruelty, neglect, or other improper conduct on the part of the parent" which compells the infant to leave the home of the parent.

Parenthood may have its pleasures, but it also has its obligations. Some of these cannot be ignored: the support of the infant child is such a one.

C. J. SCHLOEMER.

INSURANCE—CONSTITUTIONAL LAW—IMPAIRMENT—*Filipowski v. Springfield Fire & Marine Ins. Co.* 238 N.W. 828 (Wis.)—One Joseph Filipkowski insured his farm household furniture, some produce, and farm machinery in the total sum of $5350.00 for a period of five years. During the term of the policy the plaintiff temporarily removed to the city of Milwaukee taking with him part of his furniture. The agent then, made an attempt to reduce the coverage of the policy, and issued a rider to be attached to the policy and mailed it together with $13.50 to cover return premium as a result of reduction of coverage. Insured refused to accept the premium. Plaintiff returned from Milwaukee brought new furniture with him and sought reinstatement of first policy which defendant's agent refused to give, but offered a new policy in another company. Plaintiff and defendant's agent did not come to an agreement and plaintiff got a policy with another company. Property insured was destroyed by fire. Defendant denies liability on ground that the issuance to plaintiff of another insurance policy relieved it.

1. The policy sued on is in the usual standard form and contains a provision to the effect that this particular company shall not be li-