

Parent and Child. Child, Support of. Father. Duty to Support Child. Divorce, Effect of on Duty of Parent to Child. Minor, Entitled to Support From Parent.

A father is liable for the support of his minor child after a divorce has been obtained at the suit of the wife, and the custody of the child awarded to her, though no provision was made in the decree for its maintenance.

Brazeley v. Forder, 3 Queens Bench, 559.

February 13th, 1914.

Hon. M. L. Rickman,  
Secretary Bureau of Child and Animal Protection,  
Helena, Montana.

Dear Sir:

I am in receipt of your verbal inquiry submitting the question:

"Is a father liable for the support of his minor child after a divorce has been obtained at the suit of the wife, and the custody of the child awarded to her and no provision is made in the decree of divorce for alimony or maintenance?"

"Marriage is a personal relation arising out of a civil contract," and it may be dissolved by a judgment of a court of competent jurisdiction. But the suit for such dissolution is between the husband and wife, and the dissolution of such marriage contract or relation does not change the relation existing between the parent and child. The child is not a party to the suit or action for divorce. It is both the natural and statutory duty of the father to support his minor child.

Sec. 3741, Revised Codes, provides in part:

"The parent entitled to the custody of a child must give him support and education suitable to his circumstances."

It may be that where the custody of a minor child in a divorce suit is awarded to one of the parents it is the primary duty of such parent to support and educate such child. However this may be, it does not dissolve or destroy the relationship existing between the father and the child, nor does it relieve him entirely of his duty to the support and education of his minor child. The question must, therefore, be answered in the affirmative to the effect that the father remains liable for the support and maintenance of his child notwithstanding the marriage may have been dissolved. In a very recent case the Supreme Court of Tennessee had under consideration a similar question and held that the father in such cases is liable. This case contained a general review of the authorities upon this subject, and is itself sufficient authority to sustain the proposition as to the liability of the father.

Evans v. Evans (Tenn.) 140 S. W. 745.

Yours very truly,

D. M. KELLY,

Attorney General.