Winter 1981

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**FINN OR KERN? DOES A FLORIDA DISSOLUTION COURT POSSESS AUTHORITY TO COMPEL CHILD SUPPORT OF HEALTHY, MAJORITY-AGE CHILDREN WHO ARE ATTENDING COLLEGE?**

**LAWRENCE A. KELLOGG**

In 1973, the Florida legislature lowered the age of majority from twenty-one to eighteen.¹ It also enacted section 743.07, which provides that, prospectively, eighteen year old persons “shall enjoy and suffer the rights, privileges, and obligations” of those persons who are twenty-one.² This portion of the legislation is limited by a proviso which allows “any court of competent jurisdiction” to require support for a “dependent person” over age eighteen, and for a “crippled child.”³ In other words, a court can require support for

1. Act of July 1, 1973, ch. 73-21, 1973 Fla. Laws 59 (current version at Fla. Stat. § 1.01(14)(1979)).

   Rights, privileges, and obligations of persons 18 years of age or older.—
   
   (1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.
   
   (2) This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years; and any crippled child as defined in chapter 391 shall receive benefits under the provisions of said chapter until age 21, the provisions of this section to the contrary notwithstanding.
   
   (3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.


3. Act of July 1, 1973, ch. 73-21, 1973 Fla. Laws 59 (current version at Fla. Stat. § 743.07(2)(Supp. 1980)). It is provided that “crippled child” shall be defined “as in chapter 391.” However, Fla. Stat. ch. 391 (1979) contains no definition of crippled child. Formerly, that chapter defined “crippled child,” in part, as follows:

   391.01 Definition of “a crippled child.”— “[A] crippled child” is defined as any person of normal mentality under the age of twenty-one years whose physical functions or movements are impaired by accident, disease or congenital deformity, regardless of whether or not such impaired physical functions or movements are due to an orthopedic condition; it shall include children suffering from any disease
some persons over the age of eighteen even though they are legally adults. 4

Section 61.13, Florida Statutes, 5 provides that a court, in a dissolution of marriage proceeding, may require either or both parents "owing a duty of support" to provide for any or all marital children. In addition, a dissolution court possesses continuing jurisdiction to modify the amount or terms of ordered support payments. 6 In a series of appellate decisions, Florida courts have grappled with whether section 743.07 empowers a dissolution court to award child support under section 61.13 to the parent with custody of an adult "dependent person."

Before the age of majority was lowered to eighteen, the question whether single parents of offspring in college could be awarded child support was rarely raised because parents could be required to educate their minor children, 7 and because most offspring attending college have almost graduated by the time they reach twenty-one. 8

With legal majority now routinely preceding economic auton-
omy, the issue has become whether the phrase "dependent person" includes those offspring who are attending college, and, if so, whether a dissolution court is empowered to require parental support for them. These issues have been resolved by Florida courts in three differing, but related postures. First, it has been determined that a court may not award involuntary child support which lasts beyond the age of eighteen; a separate determination of dependency is required for adult offspring. Second, the courts have split over the propriety of support which is initially awarded to a parent of a healthy adult offspring who is found to be a "dependent person." Third, the courts have disagreed about modifying a child support order at the time of the child's majority in a manner which reflects the child's dependent status.

A primary definitional issue raised by section 743.07 is what constitutes a "dependent person." The appellate decisions have unanimously held that offspring with physical or mental disabilities are dependent. The courts do not agree about healthy offspring who are economically dependent because they elect to pursue a college education.

Parents have an obligation to "nurture, support, educate, and protect" their children. In many states, this duty has been interpreted to include the provision of a college education. Some Florida courts have assumed that the duty to educate does not extend to providing a college education to one's adult offspring. Although parents may be morally obligated to support an adult child in college, some courts reason that they are not legally so obligated. To courts which distinguish between legally-imposed obligations and those imposed by custom or morality, the absence of a statutory duty creates an insurmountable obstacle to any construction of section 743.07 which would indicate that a dissolution court possesses power to require parental support for an adult offspring.

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10. See, e.g., Finn v. Finn, 312 So. 2d 726 (Fla. 1975); White v. White, 296 So. 2d 619 (Fla. 1st Dist. Ct. App. 1974).
11. See, e.g., Finn v. Finn, 312 So. 2d 726 (Fla. 1975); White v. White, 296 So. 2d 619 (Fla. 1st Dist. Ct. App. 1974).
12. See, e.g., Perla v. Perla, 58 So. 2d 689 (Fla. 1952).
14. Finn v. Finn, 312 So. 2d 726, 730 (Fla. 1975).
who is dependent because of his college attendance. The objection is that such power would enable a dissolution court to accomplish indirectly what it is incapable of accomplishing directly: divorced parents would be obligated to assist in the payment of the adult child’s college expenses, while married parents would have no similar obligation.

This comment will examine the statutory and case authority dealing with a dissolution court’s power to award support to dependent adult offspring and will review the law with respect to whether attendance at college renders a child who has reached majority “dependent” for the purposes of section 743.07.

I. THE CONFUSED AND CONFLICTING CASELAW

The Florida District Courts of Appeal have been very reluctant to compel parents of a dissolved marriage to provide their children with a college education. As a result, the Florida Supreme Court’s clear teaching on this point has been ignored or distinguished as dicta.

The First District Court of Appeal’s decision in White v. White is a good illustration of the proposition that the provision of a college education, while helpful, is not included within the parent’s legal obligation to support his offspring. In 1969, a final decree of divorce was entered by the dissolution court (without an express termination date) which provided that the father pay child support. The child reached age eighteen in 1972, and in 1973, after the passage of section 743.07, the father stopped support payments, contending that the child was now an adult. After the mother procured an order to show cause why the father should not be held in contempt for failure to comply with the court’s support order, the dissolution court ordered the father to continue making support payments, reasoning that the child was unemployed and attending junior college and therefore “dependent” regardless of majority. The father appealed, and the first district reversed, holding that attendance at college does not render one a “dependent person.”

19. Id. at 620. The order was subsequently modified in 1970 and 1971 as to the amounts required to be paid. These modifications also did not provide for a termination date. Id.
20. Id. at 621. The trial judge stated that “in the court’s opinion, (the son) is entitled to a college education at the expense of his parents.” Id.
21. Id. at 623. As authority, the court relied upon Carmody v. Carmody, 230 So. 2d 40 (Fla. 1st Dist. Ct. App. 1970). In Carmody, the court held that a father had no duty to
The court reasoned that the legislature intended support to continue only when the adult children are dependent because of physical or mental deficiencies.\(^\text{22}\) Prior caselaw was examined in which various courts held that parental support beyond the age of majority is predicated upon the child's state of dependency caused by some physical or mental disability.\(^\text{23}\) In addition, the court determined that the language used by the legislature in section 743.07 specifies that a court may only order support payments for physically or mentally impaired adult children.\(^\text{24}\)

Policy considerations played an important role in the district court's decision. Although providing the means to obtain a college education was determined by the court to be a "laudable" parental contribution, it was not held to be a legally enforceable parental obligation. Since a child cannot bring suit against his married parents to force them to provide a college education, the court reasoned from an underlying equal protection premise that the mere fact of divorce should not operate to create an otherwise nonexistent parental obligation for a subclass of divorced parents.\(^\text{25}\) This

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support a child in college because the child's "disabilities of non-age" had been removed. 230 So. 2d at 41. The court also relied upon Register v. Register, 230 So. 2d 684 (Fla. 1st Dist. Ct. App. 1970). In Register, the court stated that whether a child should be allowed support during college is a discretionary decision that depends on various factors which "continue to exist until a dependent child reaches his or her majority." 230 So. 2d at 684. Accord, Robertson v. Robertson, 312 So. 2d 247 (Fla. 3d Dist. Ct. App. 1975), Ruhnau v. Rahnau, 299 So. 2d 61 (Fla. 1st Dist. Ct. App. 1974).

22. 296 So. 2d at 623.

23. The court cited Perla v. Perla, 58 So. 2d 689 (Fla. 1952). In Perla, the court held that because of the terms of a property settlement, a father had no obligation to contribute to the support of a 33 year old mentally retarded and spastic daughter. The court noted that while the agreement ended the father's obligation to the mother, it did not necessarily relieve him of a future direct duty to the daughter because of the parental duty to support a disabled offspring past the age of majority. 58 So. 2d at 689-70. See also Briggs v. Briggs, 312 So.2d 762 (Fla. 4th Dist. Ct. App. 1975)(absent dependency based upon physical or mental deficiencies, a parent has no obligation to contribute to his 23 year old son's college education); Fincham v. Levin, 155 So. 2d 883 (Fla. 1st Dist. Ct. App. 1963). In Fincham, the First District Court of Appeal stated that "most jurisdictions hold that where a child is of weak body or mind, unable to care for itself after coming of age, the parental rights and duties remain practically unchanged and the parent's duty to support the child continues as before." Id. at 884.

24. 296 So. 2d at 623.

25. Id. at 623-24. The court explained its "domestic whirlwinds" theory:

It is certainly desirable and laudable for parents to encourage their offspring to get a college education if he or she is college material. However, there are many parents who enjoy complete domestic tranquility but who do not, either from personal choice of inability or otherwise, give their children a college education. The fact that domestic whirlwinds cause a severance of the marriage does not enhance the rights of the children nor alter the obligation of the parents. Certainly if the parents were still married and enjoying domestic harmony a suit would not lie by
consideration appears to have been of equal importance to the court’s decision as its examination of prior case law and its determination of legislative intent.\textsuperscript{36}

Judge McCord dissented from the majority’s opinion on two grounds. First, he argued that the language of section 743.07(3) clearly indicates that the legislature intended the statute to have prospective application,\textsuperscript{37} and that therefore the statute does not operate to nullify the dissolution court’s support order upon the child’s reaching age eighteen.\textsuperscript{38} The only remedy available to the father, according to Judge McCord, was to petition the court to modify its order of support based upon the child’s independent status. Second, he argued, the word “dependency” is not limited to a determination of whether the child is mentally or physically disabled; the legislature did not prohibit consideration of a child’s quest for a college education during a court’s determination of the adult child’s dependent status.\textsuperscript{39}

Shortly thereafter, in \textit{Finn v. Finn},\textsuperscript{40} the Florida Supreme Court approved Judge McCord’s dissenting opinion in \textit{White}, and stated that enrollment in college does not “classify the son or daughter as utterly independent.”\textsuperscript{41} In \textit{Finn}, the trial court rendered a final judgment of dissolution in 1971, awarding the mother custody of twin boys and ordering the father to pay weekly child support. After the passage of section 743.07, the father discontinued support payments and the mother sought an order from the dissolution court enforcing the child support obligations contained in the final judgment. The court entered an enforcement order, noting that the

\textsuperscript{36} The importance of the court’s policy considerations is underscored by the express adoption of them by the Third District Court of Appeal in Kroger v. Kroger, 320 So. 2d 483, 484-85 (Fla. 3d Dist. Ct. App. 1975). \textit{See also} Genoe v. Genoe, 373 So. 2d 940 (Fla. 4th Dist. Ct. App. 1979).

\textsuperscript{37} \textit{See} note 2 supra.

\textsuperscript{38} 296 So. 2d at 624.

\textsuperscript{39} \textit{Id.} Judge McCord noted that:

The question of whether or not the offspring is satisfactorily pursuing an education to become better equipped for life and the reasonableness of such pursuit would be relevant to the question of his dependency. The legislature . . . used the words “dependent person.” It did not limit dependent persons to disabled persons or to disabled dependent persons, although it could have done so if it had intended such limited interpretation.

\textsuperscript{30} 312 So. 2d 729 (Fla. 1975).

\textsuperscript{31} \textit{Id.} at 730.
terms of the original judgment required the father to support the twins until their twenty-first birthday. It was also observed in the order that both twins were attending college and were not physically or mentally handicapped.83

The Third District Court of Appeal affirmed, holding that section 743.07 applied prospectively and would not nullify the father’s obligation to support his dependent children until they reached age twenty-one.84 It was implicit in the holding that the third district read “dependent person” as including more than just those who are mentally or physically disabled and that the twins’ attendance at college rendered them “dependent.”34

In approving the third district’s decision in Finn, the Florida Supreme Court held that the attainment of majority “does not automatically change a court order which either by its terms or by implication would be operative until the 21st birthday.”35 In this case, the implication that the support obligation existed until the twins reached twenty-one was inferred exclusively from the fact that the support order was issued prior to the passage of section 743.07. Such an inference would not be rational for support orders issued after the statute’s passage; rather, the implication would then be that the obligation terminates when the child reaches eighteen. This distinction is important because it was subsequently used by other courts to distinguish Finn.

The supreme court continued beyond its express holding, and

32. Id. at 727.
33. Finn v. Finn, 294 So. 2d 57, 59 (Fla. 3d Dist. Ct. App. 1974), aff’d, 312 So. 2d 726 (Fla. 1975).
34. The first district’s opinion in White attempted to distinguish the third district’s opinion in Finn by stating that the original support order in Finn contained an express provision requiring the father to support the twins until they reached twenty-one. As the Florida Supreme Court noted, this interpretation of the original Finn order was erroneous. 312 So. 2d at 729. In actuality, the appellate court in Finn held that the obligation to support the twins existed by the operation of law, which was unaffected by the later change in the age of majority brought about by § 743.07.
35. 312 So. 2d at 730. As support, the court cited Field v. Field, 291 So. 2d 654, 654 (Fla. 2d Dist. Ct. App. 1974)(trial court’s sua sponte modification of the termination of a child support order from age twenty-one to age eighteen was a misinterpretation of § 743.07), and Ackerly v. Ackerly, 296 So. 2d 66, 67 (Fla. 2d Dist. Ct. App. 1974)(“the mere fact that the child has reached the age of majority of 18 is not retroactive and does not terminate the pre-existing rights of the child”). See also Burgdorf v. Burgdorf, 372 So. 2d 988 (Fla. 2d Dist. Ct. App. 1979); Manganella v. Manganella, 359 So. 2d 26 (Fla. 3d Dist. Ct. App. 1978); Swallick v. Swallick, 351 So. 2d 1119 (Fla. 4th Dist. Ct. App. 1977); Adams v. Adams, 340 So. 2d 1290 (Fla. 3d Dist. Ct. App. 1977); Upchurch v. Ely, 333 So. 2d 538 (Fla. 1st Dist. Ct. App. 1976); Moss-Jacober v. Moss, 334 So. 2d 89 (Fla. 3d Dist. Ct. App. 1976); Rouse v. Rouse, 313 So. 2d 458 (Fla. 3d Dist. Ct. App. 1975); Rudnick v. Solomon, 311 So. 2d 385 (Fla. 3d Dist. Ct. App. 1975).
indicated that the term "dependent person" may have a broader definition than the one utilized in White, even for those orders rendered after the passage of section 743.07. Observing that a college education flows from the parent's duty to "nurture, support, educate and protect" his minor children, the court stated that "certainly enrollment in undergraduate classes in a college does not classify the son or daughter as utterly independent." In order to be dependent, the child must attend college in good faith, and must have an actual need for support which is beyond his ability to fulfill.

The definition of dependency fashioned in White was deemed by the supreme court to be "much too narrow." The court stated its belief that a college education is a necessary preparation for success in life, and that parental support for the attainment of a college degree should therefore be encouraged.

In this age of sophisticated technology and economic complexity with the necessity of development of special skills to qualify for pursuit of a trade, profession or to obtain employment, a person over 18 and less than 21 may indeed be dependent on the help of others to obtain what education and training is needed to be competitive in the economic system in which he must make his way. He and society have a right to expect his parents to meet that need to the reasonable extent of their ability to do so, and nothing in (section 743.07) says otherwise.

A. The Application of Finn and White to Subsequent Cases

After the decisions in Finn and White, the various Florida district courts of appeal split over whether a dissolution court has authority to order support of a healthy adult dependent child of a dissolved marriage. As will be shown, some courts have followed White and distinguished or ignored Finn, while others have followed Finn.

1. The First District's Approach

The first reported opinion which distinguished Finn was Dwyer
In 1969, a divorce decree was granted which required the father to support his two children indefinitely. After the older child became self-supporting and the younger child reached the age of eighteen, the father sought modification of the decree for the purpose of terminating support payments. The dissolution court terminated support for the older child, but ordered continued support for the college-bound younger child. The First District Court of Appeal reversed, holding that an adult offspring's attendance at college did not render him dependent.

First, it was noted that the dissolution court made no express finding that the younger child was dependent, as is required by both section 743.07 and Finn. Second, the language in Finn which contemplated that an adult offspring seeking a college education could be found dependent was dismissed as dictum. The White policy analysis, that divorce should not increase some children's right to be supported while in college, was extended beyond all logic. The court stated that if parental support can be required after parents divorce, but not while they remain happily married, "it would be for the benefit of the offspring of happily married parents to sow seeds of discord in order to be assured of parental support in pursuing a college education." Even if the judge's analysis was colorably related to reality, a child would indeed be callous to follow such a course. Moreover, the "seeds of discord" would necessarily have to fall upon fertile ground.

The Florida Supreme Court subsequently forced the first district to recognize that an adult offspring who attends college can be held to be dependent. In Crumpton v. Crumpton, a final judg-
ment of divorce entered in 1971 provided that the father was to pay child support until the court ordered otherwise. The trial court later issued an order stating that the father's support obligation would terminate upon the child's reaching her eighteenth birthday.\textsuperscript{47} The Florida Supreme Court issued an order remanding the case in light of Finn.\textsuperscript{48} On remand, the first district, per Judge McCord, reversed the trial court's order, noting that the order contained an express finding that the child was dependent because of her status as a full-time college student.\textsuperscript{49} Although it can be argued that the decision is tied to the prospective application of section 743.07 and that the result would be different had the decree been entered after 1973, it is clear that the first district's implication in Dwyer (that an offspring over age eighteen can \textit{never} be held to be dependent) has been repudiated by the supreme court. Possibly the court was subtly rejecting the first district's failure to follow the Finn definition of "dependency."

2. The Fourth District's Approach

The Fourth District Court of Appeal first addressed the issue of whether a dissolution court may require parental college support for healthy adult children in French v. French.\textsuperscript{50} The dissolution court had ordered the father to pay five hundred dollars per month for his adult children for as long as they remain "dependent" as full time college students.\textsuperscript{51} The fourth district reversed, holding that the students "do not become dependent in the eyes of the law because they are in college."\textsuperscript{52} It was observed that both offspring were "able-bodied" and employable.\textsuperscript{53} The implication of this observation is that they were not physically or mentally disabled.

The fourth district has strongly rejected the supreme court's implications in Finn, as is most clearly demonstrated in Kern v. Kern.\textsuperscript{54} In 1974, a final decree of dissolution was entered by the

\textsuperscript{47} Id. at 233.
\textsuperscript{48} Crumpton v. Crumpton, 330 So.2d 16 (Fla. 1976).
\textsuperscript{49} Crumpton v. Crumpton, 333 So. 2d 539, 540 (Fla. 1st Dist. Ct. App. 1976).
\textsuperscript{50} 303 So. 2d 668 (Fla. 4th Dist. Ct. App. 1974).
\textsuperscript{51} Id. at 669.
\textsuperscript{52} Id. The court also stated that "[t]here are many moral obligations both parents have to their children after they become of age, and providing college education when possible may be one of them. However, it is not a legal obligation." Id.
\textsuperscript{53} Id.
\textsuperscript{54} 360 So. 2d 482 (Fla. 4th Dist. Ct. App. 1978). It should be noted, however, that the fourth district had previously stated that "[t]he recent case of Finn v. Finn . . . seems to hold that dependency as a result of the bona fide pursuit of education may exist as to one
trial court which required the father to support his child. After the child reached majority, the mother sought modification of the decree in order to require the father to provide monthly child support during the child’s attendance at college. The modification was granted and the father appealed, contending that a dissolution court has no power to require a parent to support his adult children in college.55

The fourth district reversed, holding that a dissolution court has no power to modify a final decree to require support of a healthy adult child.66 It was reasoned that section 743.07 must be read in pari materia with section 61.13.67 Since section 61.13 implies that child support can only be required of those parents "owing a duty of support" to a child, the court fashioned a two-pronged test for determining a court’s power in a dissolution proceeding. First, a parent must owe a duty of support to the adult child, and second, that child must be dependent.68 Although an adult child attending college may be deemed dependent, the court flatly held that a parent has no obligation to provide a child with a college education.69

Although not cited as authority, the White policy analysis was again utilized as the basis for the court’s holding. It was observed that a divorce should not increase the obligation of the parent to contribute to his child’s college education. Indeed, the court pointed to unstated "constitutional infirmities" which would arise due to the state’s differing treatment.70

According to the fourth district’s opinion in Kern, a dissolution court has no jurisdiction to rule on a motion for modification which relates to the support of an adult child.71 It was reasoned that the power of a court to modify its order of support only exists for the period of time in which a parent owes a duty of support to the child. Unless the child is physically or mentally disabled, this duty terminates at the time the child reaches majority. Therefore,

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55. 360 So. 2d at 483.
56. Id. at 486.
57. Id. at 484. Section 61.13 provides, in part, that “[i]n a proceeding for dissolution of marriage, the court may at any time order either or both parents owining a duty of support to a child of the marriage to pay such support as from the circumstances of the parties and the nature of the case is equitable.” FLA. STAT. § 61.13(1) (1979)(emphasis added).
58. 360 So. 2d at 484.
59. Id. at 485.
60. Id. at 485 n.4.
61. Id. at 485.
the court possesses no authority to modify, in a dissolution proceeding, the support obligations of a parent to his healthy adult offspring. Thus, according to the fourth district, an ex-spouse may no longer utilize the continuing jurisdiction of a dissolution court to provide for support of an adult offspring. Rather, the dependent adult must himself establish the parent's obligation of support in a court of competent jurisdiction. A dissolution court does possess the power, however, to enforce an agreement between the parents which provides that a parent will continue to support his child past the age of majority.

Finally, contrary to the teaching of Finn, the court stated that a parent is only obligated to support an adult child "in extraordinary circumstances as when the child suffers severe physical or mental incapacitation," and that a dissolution court is not the proper forum to enforce such an obligation.

The fourth district also held that a dissolution court has no authority to require a parent to provide his healthy adult child with a college education in Genoe v. Genoe. Genoe involved a final judgment of dissolution requiring the husband to provide $10,000 for each child's college education. The appellate court reversed that portion of the judgment, holding that "[a] parent is not responsible for support after a child reaches his eighteenth birthday, absent legal dependence, and since attendance at college does not render a child a legal dependent, courts have no authority to require parents to furnish their offspring such advanced education."

It is interesting to note that the opinion does not mention either Finn or Kern, and does not examine the various judicial definitions given to "dependent person." As authority for its proposition that attendance at college does not make an adult offspring dependent,

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62. Id. 63. Id. The court stated:
The award of child support, although made to the mother as the child's natural guardian, is solely for the benefit of the child, who, because of the disability of non-age, lacks the legal status to bring suit directly against his parent for support. Under Florida law, when a child reaches eighteen years of age, this disability of non-age is removed, and if an obligation of support exists, the child may proceed in his own right in a court of competent jurisdiction to establish such obligation.

Id. (footnote and citation omitted).
64. Id. at 486 n.6. 65. Id. at 486.
66. 373 So. 2d 940 (Fla. 4th Dist. Ct. App. 1979).
67. Id. at 941.
68. Id. at 942 (footnotes omitted).
the court cited Krogen v. Krogen. There, the third district adopted the White policy analysis, and distinguished Finn on the basis that its specific holding was merely that section 743.07 was not to be applied retroactively.

3. The Second District Follows Finn

In contrast to the other district courts of appeal, the second district has followed the Florida Supreme Court’s lead in recognizing a dissolution court’s power to require a parent to contribute to the support of an adult offspring who is enrolled in college. Like Finn, the second district defines “dependent person” more broadly than it has been defined in White and Kern.

This view has developed gradually over time. In Cyr v. Cyr, the second district took the first step in recognizing a broad definition of “dependent person.” The dissolution court included in its final judgment of dissolution a proviso for child support which obligated the father to support his minor child until age eighteen, or until the child “completes, [or] terminates [college], marries, or is deceased or reaches the age of 21 years.” Although the appellate court held that the trial court had no power to require child support beyond the child’s eighteenth birthday, it stated that section 61.13 empowers a court to modify the agreement after finding that the adult child is dependent. The implication of this dictum is

69. 320 So. 2d 483 (Fla. 3d Dist. Ct. App. 1975).
70. Id. at 484-85. The court stated that “for the benefit of the bench and bar of this State, this decision should be certified to the Supreme Court of Florida as passing upon a matter of great public interest.” Id. at 485 n.2. For some unknown reason, however, the decision was never reviewed by the supreme court.
71. The second district did not always follow Finn. See Kowalski v. Kowalski, 315 So. 2d 497 (Fla. 2d Dist. Ct. App. 1975). In Kowalski, a final judgment of dissolution was entered (presumably after the effective date of section 743.07) which required the father to support his seventeen-year-old son until the son reached age twenty-one or completed or discontinued his college education. Id. at 498. Approving White, the second district held that the court had no authority to require such support in the absence of the father’s agreement to support his son. Id. The court perceptively stated that “some of us may wonder why a father would expend the time, money and effort to complain to us because of an order compelling support of his son while the son attempts to secure a college education.” Id. See also Coalla v. Coalla, 330 So. 2d 802 (Fla. 2d Dist. Ct. App. 1976).
72. 354 So. 2d 140 (Fla. 2d Dist. Ct. App. 1978).
73. Id. at 140.
74. Id. The court cited as authority the Third District Court of Appeal’s decision in Baldi v. Baldi, 323 So. 2d 592 (Fla. 3d Dist. Ct. App. 1976). The factual situation in Baldi was similar to the one in Cyr in that the court ordered support payments for a minor child to continue until age 21. The third district held that although the trial court erred in ordering support payments past age 18, it could later modify the order based upon a finding of dependency. Id. at 593. Interestingly, the court stated that “the term ‘dependent’ is defined
that an adult college student could be adjudged dependent.

This implication became an express statement of approval in Rollings v. Rollings.\(^7\) The court there stated that "[t]here is authority in this state to require continuance of support of dependent progeny past the age of majority, and, in certain instances, when they attend college."\(^7\) The court held, however, that "under the facts of this case" (which were not set out in the opinion), the trial court erred in requiring a father to support his eighteen-year-old daughter.\(^7\)

In a most recent decision dealing with the question of what constitutes a dependent person, Nicolay v. Nicolay,\(^7\) the second district expressly rejected Kern and White and followed the broad definition of "dependent person" set out in Finn. In 1974, the dissolution court entered a final judgment of dissolution requiring the father to support his two minor daughters and awarding his wife permanent alimony. In 1977, upon the eldest daughter's reaching age eighteen, the ex-spouse requested that the father assist in providing for the daughter's college education. When he refused, she filed a petition for modification, which was later withdrawn after the father relented and agreed to provide support for one year.\(^7\) In 1978, the father petitioned for modification of his support obligations, alleging that his income had decreased. The mother counterpetitioned, requesting support for both adult daughters. The dissolution judge, finding that he had no power to require support for adults, denied the mother's petition. The mother then petitioned for modification of alimony, alleging a change in circumstances brought about by her daughters' college expenses. The dissolution court awarded the mother an increase in alimony, and the father appealed.\(^8\)

Mr. Nicolay's principal argument on appeal was that the dissolution court possessed no authority to require a divorced parent to provide a college education to his adult offspring.\(^7\) The court rejected this argument, and noted that "it has not been universally

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\(^7\) 362 So. 2d 700 (Fla. 2d Dist. Ct. App. 1978).
\(^7\) Id. at 701.
\(^7\) Id.
\(^7\) Id. at 700.
\(^7\) 387 So. 2d 500 (Fla. 2d Dist. Ct. App. 1980).
\(^7\) Id. at 500-01.
\(^7\) Id. at 501.
\(^7\) Id.
The court summarily examined the White and Kern analysis of the requirements of sections 743.07 and 61.13, and also summarily examined the supreme court's opposing analysis found in Finn and its progeny. In the court's view, the Finn analysis was more persuasive. It was noted that the posture of the case was an appeal from an alimony award rather than from a child support order or modification of an order. The court stated, however, that "there is no fixed rule forbidding an order of increased child support to finance a child's college education up to the age of twenty-one."

Contrary to Kern, the second district court ruled that dependency of an adult child can be determined by a dissolution court during proceedings to modify a child support order. The court's opinion implies that the dissolution court's authority to determine the dependency of a child exists only until the child reaches age twenty-one. The rationale is that the legislature's lowering of the age of majority was not intended to restrict any existing parental obligations to support their minor children in college. On the other hand, the prior obligation to educate a minor child until age twenty-one was not meant to be expanded or lengthened.

Recently, the second district again held that a divorced parent may be obligated to support a healthy, majority-age child who is attending college. In Berger v. Hollander, a dissolution court refused to enforce a New Jersey judgment requiring the payment of child support arrearages. The court reasoned that it would violate equal protection to require a divorced parent to support a healthy

82. Id.
83. Id. at 502-05.
84. Id. at 505. The court noted that an alimony award may be increased, subject to the ex-spouse's ability to pay, when there has been a substantial change in her financial circumstances. Id. at 506. See Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980); Gensemer v. Gensemer, 383 So. 2d 913 (Fla. 2d Dist. Ct. App. 1980); FLA. STAT. § 61.14 (1979). Accordingly, the trial court did not commit error when it increased the award of alimony. 387 So. 2d at 506.
85. 387 So.2d at 505 (emphasis in original)(footnote omitted).
86. Id. at 506.
87. Id. at 505-06 n.5. See also Winikoff v. Winikoff, 339 So. 2d 262, 263 (Fla. 3d Dist. Ct. App. 1976) ("Florida law clearly holds that a parent's duty to support an adult child's education terminates at the age of 21"); Briggs v. Briggs, 312 So. 2d 762, 762 (Fla. 4th Dist. Ct. App. 1975) ("We do not interpret either § 743.07, F.S., or the Finn case as authorizing a court to require a parent to support a child over 21 years of age, whether for educational purposes or otherwise, unless the child is dependent as a result of physical or mental deficiencies").
88. 387 So. 2d at 505-06.
89. 391 So. 2d 716 (Fla. 2d Dist. Ct. App. 1980).
adult child attending college when a married parent has no such
duty of support.90 The second district reversed, holding that com-
ity compelled enforcement of the New Jersey judgment.91 Citing
Nicolay, the court stated that "neither the public policy of New
Jersey nor that of Florida is contravened by requiring a divorced
parent, under certain circumstances, to provide an adult child with
a college education."92

II. A DISSOLUTION COURT POSsesses AUTHORITY TO ORDER
SUPPORT FOR AN ADULT, DEPENDENT OFFSPRING

There is a dictum in Kern which states that once a child reaches
majority, a dissolution court loses jurisdiction to enforce or modify
an order relating to child support.93 The rationale is that child sup-
port is imposed upon the parent who is the child's "natural guard-
ian" solely for the benefit of the minor child, who is unable to
bring suit directly against the supporting parent.94 It is argued that
when a duty of support allegedly exists, only the adult child, who
has lost his natural guardian by operation of law, has standing to
sue to establish that duty.95

The Kern court cites Rudnick v. Solomon96 as authority for its
analysis of the capacity or standing issue. Rudnick, however, does
not directly support the court's conclusions. In that case, the natu-
ral guardian of an eighteen year old child died, and the father
thereafter sought to modify a support agreement which required
him to support the child until age twenty-one. The child's motion
to intervene was denied by the dissolution court and it also
granted the father's motion to modify the support agreement.97
The Third District Court of Appeal reversed, holding that the
child could intervene.98 Although Rudnick supports the proposi-

90. Id. at 718.
91. Id. at 719. The court defined comity as "the practice by which one court follows the
decisions of another court on a like question, though not bound by the law of precedence to
do so." Id. (citation omitted).
92. Id. (footnote omitted).
93. 360 So. 2d at 485.
94. Id. The court cited as authority Fla. Stat. § 744.301(1) (1979), which provides, in
part, that "[i]f the marriage between the parents is dissolved, the natural guardianship shall
belong to the parent to whom the custody of the child is awarded."
95. 360 So. 2d at 485.
96. 311 So. 2d 385 (Fla. 3d Dist. Ct. App. 1975).
97. Id. at 386.
98. Id.
gation of support, the possibility that the natural guardian also has standing to enforce that obligation is not ruled out. In fact, Rudnick is an example of a situation in which the jurisdiction of a dissolution court extended to the enforcement of an obligation to support an adult child.

The limits of judicial power in a dissolution proceeding to modify the support order for an adult dependent has been recently addressed by the Fifth District Court of Appeal in Fagan v. Fagan. In 1973, a final judgment of dissolution provided that the father was to provide child support “until such time as each of them becomes self-supporting, married or emancipated (by any other reason than by virtue of reaching the age of eighteen).” The judgment also provided that the father would pay for all expenses which accrued because of his son’s “mental disorders, disabilities or impairments.” After the son reached age twenty-one, the father terminated support payments and the mother sought enforcement of the support provisions of the final judgment. The dissolution court allowed enforcement, finding that the child was incapable of supporting himself, and the husband appealed.

On appeal, it was contended that dissolution is an improper forum to enforce child support payments to an adult dependent child. The fifth district rejected this contention and held that the provision in section 743.07 that support for dependent adult offspring can be required by “any court of competent jurisdiction” indicates that such support can be required by a dissolution court in an enforcement order.

Fagan is more persuasive than Kern. Since section 61.13 empowers a court which enters a final judgment of dissolution to exercise “continuing jurisdiction” to modify the child support provisions “when the child . . . has reached the age of 18 years,” the court must necessarily be empowered to determine at that time whether support should continue because of the adult child’s depen-

99. 381 So.2d 278 (Fla. 5th Dist. Ct. App. 1980).
100. Id. at 279. (Emphasis in original.)
101. Id.
102. Id.
103. Id.
104. See note 2 supra.
105. 381 So. 2d at 279-80. The court stated that “[c]learly, the dissolution court is empowered to order child support for a child beyond the age of 18, if he is dependent, and such court is the proper forum to determine whether the status of dependency has ended, after the child attains the age of 18 years.” Id. at 280.
106. See note 2 supra.
dency.\textsuperscript{107} Otherwise, the word “modify” would denote only a power to terminate. Continuation, the normal alternative, must be supported by a finding of “dependency.” If the child is found to be dependent, it follows that the court may also enforce child support provisions for such dependent adult offspring.\textsuperscript{108} According to the reasoning in \textit{Kern}, a dissolution court could determine the question of dependency upon a motion to terminate or modify child support for a child who has reached majority, but it could not enforce an obligation to support an adult child found to be dependent. Presumably, the child would have to enforce the obligation in a separate action or would be forced to request leave to intervene. Certainly, judicial economy would not be served by this requirement. Moreover, it is far-fetched to state, as the \textit{Kern} court does, that the custodial parent of a dependent adult offspring “has no pecuniary interest” in litigation to enforce a support obligation.\textsuperscript{109} If the dependent adult offspring is institutionalized, would the court find that the private institution has no pecuniary interest as a creditor in assuring that the parent complies with his duty of support? The notion that an adult is dependent necessarily implies that he is dependent on someone; he is incapable of existing independently.\textsuperscript{110} Most likely, the custodial parent\textsuperscript{111} is the person upon whom the offspring has been initially dependent. In fact, the custodial parent is also equally obligated to contribute to the adult child’s support.\textsuperscript{112}

\section*{III. The \textit{White} and \textit{Kern} Analysis is Defective}

In order to determine whether a parent can be required to support his adult children in college, it is necessary to examine the premises which are implied, as well as expressed, in the \textit{White} and \textit{Kern} line of cases. The \textit{White/Kern} analysis is defective in terms of the limited definition given to “dependent person,” the interpre-

\begin{tabular}{l}
\textsuperscript{107} 381 So. 2d at 279-80. \\
\textsuperscript{108} \textit{Id.} at 280. \textit{See also} George v. George, 360 So. 2d 1107 (Fla. 3d Dist. Ct. App. 1978), where the court held that a dissolution court’s finding that a minor child was dependent could be modified (or, by implication, enforced) upon petition to the dissolution court after the child reaches age 18. \textit{Id.} at 1110. \\
\textsuperscript{109} 360 So. 2d at 485. \\
\textsuperscript{110} “Dependent” is defined, in part, as being “unable to exist, sustain oneself, or act suitable or normally without the assistance or direction of another or others.” \textit{WEBSTER’S 3d NEW INT’L. DICTIONARY} (1976). \\
\textsuperscript{111} “Custodial parent” is used in the sense of the parent with whom the dependent child lives. \\
\textsuperscript{112} \textit{FLA. STAT.} § 61.13(1) (1979).
\end{tabular}
tation given to the supreme court’s decision in Finn, the policy considerations relied upon, and the fear of constitutional infirmity.

A. The White/Kern Definition of “Dependent Person” is too Limited

In White, the first district summarily interpreted the use in section 743.07 of the term “dependent person,” in the grammatical vicinity of the term “crippled child,” to mean that the legislature intended that a parent be required to support only those adult children who are mentally or physically disabled. The implication is that the use of “crippled child” indicates that the legislature was focusing upon physical or mental incapacity which renders a person dependent.

The law as originally enacted, however, states that “[t]his section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years; and provided further that any crippled child . . . shall receive benefits.” It may be argued with equal or greater persuasiveness that the legislature, by its use of the words “and provided further,” intended that the phrase “dependent person” include more than mere physically or mentally disabled persons. As Judge McCord stated in his White dissent, the legislature could have used the term “disabled person,” rather than “dependent person,” had it so desired to limit the statute’s application.

The Kern interpretation requires that section 743.07 be read in pari materia with section 61.13. According to the court, this mandates a two-fold finding: (1) that the parent has a duty to support his adult children and (2) that the adult child is dependent; and while an adult child attending college may be characterized as dependent, there is never a duty to provide a child with a college education. The court stated that “[a]lthough a parent may suffer a moral obligation to assist children in acquiring an advanced education, we find nothing in either the jurisprudence or the statutes

113. 296 So. 2d at 619.
114. Act of July 1, 1973, ch. 73-21, 1973 Fla. Laws 59 (emphasis added)(current version at FLA. STAT. § 743.07 (1980)). Apparently, the words “provided further that” were mistakenly omitted when ch. 73-21 was originally published in the 1973 volume of Florida Statutes.
115. 296 So. 2d at 625. Judge McCord stated that the legislature “did not limit dependent persons to disabled persons or to disabled dependent persons, although it could have done so if it had intended such limited interpretation.” Id.
116. 360 So. 2d at 484.
of this state which makes such a moral obligation legally enforceable." 117

The assumption that a divorced parent has no statutory duty to support an adult offspring is erroneous. To the contrary, it can be argued that the legislature empowered courts to impose such a duty of support by enacting section 743.07. Section 61.13's recognition of a "duty of support" may be read to include the judicially-imposed parental support requirement that section 743.07 allows for a dependent adult offspring. If one accepts Judge McCord's reasoning that the legislature's use of the word "dependent" (rather than "disabled") indicates that the duty of support may extend to college students, it can be argued that the legislature contemplated that support of an adult offspring in college is indeed part of the "duty of support" which a dissolution court is empowered to satisfy under section 61.13.

On its face, section 743.07 is not at all limited to dissolution proceedings. Therefore, if a broad definition of "dependent person" is accepted, it may be argued that the section would allow a court "of competent jurisdiction" to require married parents to support their healthy adult offspring while attending college. This is the statutorily-imposed legal obligation which the court in Kern found to be absent. 118

In fact, there is authority from other jurisdictions which supports the proposition that a college education is a "necessary" which married parents are bound to provide. 119 Although this duty to provide a college education when a child is capable and the parent is financially able is arguably unenforceable against married parents, it is, nevertheless, a duty. As one commentator has stated:

Presently, while no courts have seen fit to inquire into the parents' exercise of discretion as to whether their children should have a college education as long as the marital relationship remains intact, the interruption or cessation of this relationship has prompted many courts to exercise their discretion and provide in the divorce decree, . . . that the father must provide the children with a college education. 121

The fourth district's presumption in Kern that a married parent is

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117. Id. at 485.
118. Id.
120. H. CLARK, JR., supra note 15, at § 15.1.
never legally obligated to provide an offspring with a college education may be erroneous, especially in light of the Florida Supreme Court's obvious views on the matter expressed in Finn.

Of course, the duty of support would not be mandatory. Section 61.13 provides that a dissolution court "may at any time order either or both parents owing a duty of support to a child of the marriage to pay such support as from the circumstances of the parties and the nature of the case is equitable." The statute only requires case-by-case determinations and not the sweeping legislative rejection of jurisdiction for all cases. Therefore, if the court finds that the parents are financially unable to render college support for their adult offspring, it need not order such support.

A "dependent person" should be broadly defined as "one who looks to another for support and maintenance," and "who relies on another for the reasonable necessities of life." This definition would include healthy adult offspring who are pursuing a college education in good faith and who possess "a need for help beyond [their] own reasonable capacity." Such a definition would not be unprecedented in Florida statutory law. For the purposes of the Department of Education's "aid to families with dependent children" program, a "dependent child" is defined as "any person under the age of 18, or under the age of 21 and still in school, who has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent." Here, the legislature has provided additional remedies for healthy adult offspring who are attending school.

A broad notion of dependency is also illustrated by the statutory obligations imposed by many states upon children for the support

122. FLA. STAT. § 61.13(1) (1979)(emphasis added).
123. See Golay v. Golay, 210 P.2d 1022 (Wash. 1949), in which the Washington Supreme Court stated that "[a] rich man, well able to pay, might very well be held from [sic] a college education of an extended and expensive sort. However, the father in this instance is not a rich man, and from the evidence in the record, can scarcely spare any money from [sic] his own needs." Id. at 1023. Accord, Childers v. Childers, 575 P.2d 201 (Wash. 1978).
See also Kujawinski v. Kujawinski, 376 N.E.2d 1382, 1390 (IIl. 1978).
125. Finn v. Finn, 312 So.2d 726, 730 (Fla. 1975).
127. FLA. STAT. § 409.2554(2) (1979)(emphasis added).
128. FLA. STAT. § 409.2551 (1979) provides, in part, that "it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies."
129. Although an opposing argument can be made, it seems apparent that the use of the word "school" contemplates that persons between the ages of 18 and 21 are attending college.
of their dependent parents.\textsuperscript{130} These “family responsibility” statutes are intended to shift the burden of support for elderly indigents from the state to certain named relatives.\textsuperscript{131} Although other relatives are sometimes included in the statutes, children are nearly always included as relatives who have a “family responsibility” to their parents.\textsuperscript{133}

Like the support obligation for adult dependent children, the elderly person must be “dependent” because of the absence of economic self-sufficiency caused by mental or physical disability, or, in some states, because of “social conditions causing unemployment.”\textsuperscript{135} In addition, the “family responsibility” obligation, like the support obligation in section 61.13, is generally contingent upon a judicial determination of the relative’s ability to pay.\textsuperscript{134} The amount of support which is required to maintain the relative is also a question of fact.\textsuperscript{136}

Related devices for shifting the burden of support for indigents from the state to relatives are legislative enactments requiring reimbursement to the state by responsible relatives for state aid distributed to the indigent.\textsuperscript{136} The two primary methods of reimbursement are enactments which directly impose the requirement on responsible relatives for the cost of maintaining indigent persons in state institutions\textsuperscript{137} and enactments which collect at death from the estates of public assistance recipients.\textsuperscript{138}

Florida utilizes the latter method. Section 409.345(1), Florida Statutes,\textsuperscript{138} provides that the acceptance of public assistance creates a debt in favor of the state which is enforceable by filing a claim against the recipient’s estate within one year of his death.\textsuperscript{140} This requires the children or other relatives to indirectly pay for

\begin{itemize}
  \item \textsuperscript{131} H. Clark, Jr., supra note 15, at § 6.7.
  \item \textsuperscript{132} Id.
  \item \textsuperscript{133} Mandelker, supra note 130, at 516.
  \item \textsuperscript{134} Id. at 520-27.
  \item \textsuperscript{135} Id. at 528-32.
  \item \textsuperscript{137} See Annot., 75 A.L.R.3d 1159, 1160-61 (1977); Annot. 20 A.L.R.3d 363 (1968).
  \item \textsuperscript{138} Baldus, supra note 136, at 130.
  \item \textsuperscript{139} (1979).
  \item \textsuperscript{140} These claims have a class seven priority during payment of the expenses of administration and obligations of the estate. Id.
\end{itemize}
their dependent parent's support with the proceeds which would otherwise be passed to them as heirs or devisees.

B. Finn was Misconstrued in Kern

The assumption that the Florida Supreme Court does not contemplate an enforceable duty to support an adult college student is also erroneous. In Finn, the court stated:

A person over 18 and less than 21 may indeed be dependent on the help of others to obtain what education and training is needed to be competitive in the economic system in which he must make his way. He and society have a right to expect his parents to meet that need to the reasonable extent of their ability to do so, and nothing in [section 743.07(2)] says otherwise.\textsuperscript{141}

Kern construes Finn as support for the more limited proposition that the lowered age of majority does not abrogate a court's power to order child support for a dependent adult offspring, but implies that no duty exists under any circumstances to provide that offspring with a college education.\textsuperscript{142} This reading of Finn completely ignores the supreme court's obvious belief that a court may require a parent to provide his child with a college education.\textsuperscript{143}

C. Finn's Policy Considerations Have Been Neglected

The policy considerations underlying the Finn decision have been completely overlooked and ignored by White and its progeny. Finn recognizes that the age and qualifications required for entry into the labor force have extended family dependency relationships far beyond the circumstances which justified the old doctrine that the parental duty to educate does not include providing a college education.\textsuperscript{144} Economic success generally requires a degree from an

\textsuperscript{141} 312 So. 2d at 731 (emphasis added). See also Rollings v. Rollings, 362 So. 2d 700 (Fla. 2d Dist. Ct. App. 1978), where the second district stated that "[t]here is authority in this state to require continuance of support of dependent progeny past the age of majority, and, in certain instances, when they attend college." Id. at 701 (footnote omitted).

\textsuperscript{142} 360 So. 2d at 484.

\textsuperscript{143} This is underscored by the court's statement that:

It is recognized that a parent has the obligation to nurture, support, educate, and protect his minor children and the child has the right to call on him for the discharge of this duty . . . . If there is a duty to educate it would naturally follow that pursuits of college education by the offspring does [sic] not of itself negative a need for his parent's assistance.

\textsuperscript{144} 312 So. 2d at 730. See also Esteb v. Esteb, 244 P. 264, 267 (Wash. 1926).

\textsuperscript{141} 312 So. 2d at 731.
institution of higher learning. Intellectual and emotional fulfillment may require stimulation which can only be received in college. The state’s interest in developing a well-informed citizenry, as exemplified by the massive state system of primary, secondary and post-secondary education, is also promoted by the parental provision of higher education.

On the other hand, the first district in White only recognized that a parent should “encourage” his child to attain a college education. The fourth district in Kern stated that an advanced education is a “valuable asset,” but that a parent has no legal obligation to provide it to his child. The court in Dwyer v. Dwyer held that requiring a divorced parent to support his child, while not imposing the same requirement upon a happily married parent, would encourage children to attempt to destroy their parents’ marriage. These policy considerations are too myopic in scope and are not useful in modern times. For these reasons, they are not persuasive.

D. No Constitutional Infirmity Exists

The alleged constitutional infirmity alluded to in Kern must be examined. Interpreting section 743.07 as allowing a judge to award college support for an adult child could violate the equal protection provisions of both the United States and Florida constitu-

146. See, e.g., Pass v. Pass, 118 So. 2d 769 (Miss. 1960). In Pass, the Mississippi Supreme Court stated that higher education is necessary for the training of good citizens. A contrary view may have been justified in former times when the needs of the family, and of society, and of government were less exacting than they are today. But we are living today in an age of keen competition, and if the children of today who are to be the citizens of tomorrow are to take their rightful place in a complex order of society and government, and discharge the duties of citizenship as well as meet with success the responsibilities devolving upon them in their relations with their fellow man, the church, the state and nation, it must be recognized that their parents owe them the duty to the extent of their financial capacity to provide for them the training and education which will be of such benefit to them in the discharge of the responsibilities of citizenship . . . . We can see no good reason why this duty should not extend to a college education.

Id. at 773.
147. 296 So. 2d at 623. See also Sluder v. Sluder, 326 So. 2d 252 (Fla. 1st Dist. Ct. App. 1976), where the court noted that the White holding contemplated a moral parental duty to educate his child. “We did not hold nor infer [sic] that a father may not or should not aid his child, particularly in regard to the obtaining of an education.” Id. at 253.
148. 360 So. 2d at 485.
149. 327 So. 2d 74 (Fla. 1st Dist. Ct. App. 1976).
150. Id. at 75.
tions. The rationale of the argument is that the state has no reasonable justification for treating adult children of divorced parents differently than the adult children of married parents. Although it can be argued that section 743.07 may provide an adult child of married parents with an enforceable right to a college education, it will be assumed for the purposes of analysis that a distinction exists between the support obligation of married and divorced parents.

Strict scrutiny of such a distinction is improper because the United States Supreme Court has held that a dissolved marriage does not fall within the ambit of the right to privacy in "matters relating to marriage, procreation, contraception, family relationships, child rearing and education." Moreover, divorced parents are not a "distinct and insular minority" subject to special judicial protection through strict scrutiny of the alleged legislative classification touching upon them. Therefore, the legislative classification based upon marital status will withstand federal constitutional attack if reasonably related to a legitimate state purpose.

The alleged constitutional infirmity has been directly confronted by the Washington Supreme Court in Childers v. Childers. In that case, the court approved a decree of dissolution which provided, in part, that the father support his three sons past the age of majority while they attend college. A Washington court of appeals had reversed the original decision of the dissolution court, reasoning that both the United States and Washington constitutions would be violated because there is no reasonable ground for distinguishing between divorced and married parents.

A Washington statute provided, in part, that "the court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an

151. 360 So. 2d at 485. The constitutional provisions which are allegedly violated are U.S. CONST. amend. XIV and Fla. CONST. art. I, § 2.
152. 360 So. 2d at 485. See also Veron, Parental Support of Post-Majority Children in College: Changes and Challenges, 17 J. Fam. L. 645, 668 (1978-79).
153. See note 114 and accompanying text supra.
155. Veron, supra note 152, at 674.
156. Id. Veron states that "[t]he support obligation infringes on [the parents'] economic interests, which traditionally have been subjected to a reasonableness test." Id.
158. 575 P.2d at 209.
amount reasonable or necessary for his support." The dissolution court’s finding that the children were dependent was held not to be an abuse of its discretion, and it was also noted that divorced parents have a duty of support which includes, under the proper circumstances, a duty to provide their children with a college education.

The distinction between the support requirements imposed upon divorced and married parents was then examined to determine whether it passed constitutional muster. The court held that the classification’s alleged “inequality” was reasonable and justifiable, and was therefore constitutional. Various justifications were advanced. First, it was noted that the state has an obligation to protect the “victims” of divorce. Second, it was observed that a divorced parent often will not provide the child with the amount of support that, but for the divorce, he would otherwise have provided. In addition, the court stated that the state had an important interest in developing a well-educated citizenry.

Similarly, two Illinois statutes that allow the provision of college support for adult offspring have withstood constitutional challenge. One statute provides that a court may compel parental support for education of any “minor, dependent or incompetent child” of a broken marriage. A related statute enables a dissolution court to

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161. 575 P.2d at 205. The court broadly defined “dependent” to mean “one who looks to another for support and maintenance, one who is in fact dependent, one who relies on another for the reasonable necessities of life. Dependency is a question of fact to be determined from all surrounding circumstances...” Id.
162. Id. at 206-07. See also Esteb v. Esteb, 244 P. 264 (Wash. 1926).
163. 575 P.2d at 209.
164. Id. at 207. The court cited a portion of the following passage from Washburn, Post-Majority Support: Oh Dad, Poor Dad, 44 Temp. L.Q. 319, 327-28 (1971):

A number of courts adopt the policy that a child should not suffer because his parents are divorced. The child of divorced parents should be in no worse position than a child from an unbroken home whose parents could be expected to supply a college education. Some courts have denied this rationale when faced with the apparent anomaly of compelling a divorced father to send his child to college, while parents who are still married cannot be compelled to do likewise. However, the judiciary’s protective attitude toward children of broken homes is sufficient grounds to distinguish the two situations.

165. 575 P.2d at 208-09. As authority, the court cited Esteb v. Esteb, 244 P. 264, 267 (Wash. 1926); and Underwood v. Underwood, 298 P. 318, 320 (Wash. 1931).
166. 575 P.2d at 208-09.

(d) The court may protect and promote the best interests of the children by setting aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general wel-
compel parental support for the education of an adult child. In *Kujawinski v. Kujawinski*, it was contended that these statutes violated equal protection in that they constituted an impermissible classification between divorced and married parents. These contentions were rejected on the basis that the imposition of an obligation to support adult offspring was "reasonably related to a legitimate state purpose." As in *Childers*, it was noted that a noncustodial parent may not support his children to the same extent that he would have had he not been divorced. Therefore, it was held that minimizing "any economic and educational disadvantages to children of divorced parents" was a legitimate legislative purpose.

fare of any minor, dependent, or incompetent child of the parties.

168. ILL. REV. STAT. ch. 40, § 513 (1975). This section is a clear delineation of a legislative purpose to provide for both disabled and dependent adult progeny:

The court may award sums of money out of the property and income of either or both parties for the support of the child or children of the parties who have attained majority and are not otherwise emancipated only when such child is mentally or physically disabled; and the application therefor may be made before or after such child has attained majority age. The Court [sic] also may make such provision for the education and maintenance of the child or children, whether of minor or majority age, out of the property of either or both of its parents as equity may require, whether application is made therefore before or after such child has, or children have, attained majority age. In making such awards, the court shall consider all relevant factors which shall appear reasonable and necessary, including:

(a) The financial resources of both parents.
(b) The standard of living the child would have enjoyed had the marriage not been dissolved.
(c) The financial resources of the child.

Id.

169. 376 N.E.2d 1382 (Ill. 1978).
170. Id. at 1389.
171. Id. See also *Kelsey v. Panarelli*, 363 N.E.2d 1363 (Mass. App. Ct. 1977). In that case, a Massachusetts appellate court declined to address a constitutional challenge to a statute which empowered a dissolution court to provide for support of an adult offspring. However, a concurring judge found that the statute represented a reasonable legislative attempt to secure to dependent children of broken homes advantages customarily made available to children of other homes and comparable age. In families that remain together, decisions by parents whether to terminate support when their children reach the age of majority are usually tempered by consideration of the educational and economic realities of our time and are in any event decisions jointly arrived at by the parents. There is nothing in the equal protection clause of the Fourteenth Amendment which bars the Legislature from making reasonable provision for cases where the familial decision making process has broken down.

Id. at 1365.
172. 376 N.E.2d at 1389-90.
173. Id. at 1390.
In addition to the justifications advanced in Childers and Kujawinski, it can be argued that children of broken marriages must be legally protected from the possible decrease in support engendered by a parent's subsequent marriage. If a parent remarries and begets subsequent offspring, he may be more likely to fulfill his legal and moral obligations to those children before he fulfills his similar obligations to the offspring of the dissolved marriage. This is especially true with respect to adult offspring, who are likely to have lowest priority in the parent's mind. For this reason, the law must interpose judicial protections of the right to parental support for the offspring of broken marriages, in appropriate cases.

It may be argued that this justification would constitute a burden upon the right to remarry in violation of the fourteenth amendment's equal protection clause. Recently, in Zablocki v. Redhail,174 the United States Supreme Court held that child support obligations which constitute barriers to remarriage must be justified by some "sufficiently important state interests."175 A Wisconsin statute required that a person may not remarry if he is in arrears in his support obligations.176 However, the Court stated that "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed."177 Florida has not enacted any statute which would significantly interfere with the decision to remarry. Likewise, a decision to remarry, with the concomitant responsibilities toward one's second family, should not be utilized to justify ignoring the duty to support one's prior family.

Florida's equal protection analysis mirrors the federal analysis and the analysis of other state jurisdictions. A legislative classification will be sustained unless it is arbitrary and erroneous.178 In fact, the Florida Supreme Court has recently stated that "[i]f the courts can conceive of any conditions which will warrant the classi-

175. Id. at 388.
176. Id. at 375.
177. Id. at 386 (citing Califano v. Jobst, 434 U.S. 47 (1977)).
178. See, e.g., Hunter v. Flowers, 43 So. 2d 435 (Fla. 1949), where the Florida Supreme Court stated:

Wide discretion is vested in the Legislature in making the classification, and every presumption is in favor of the validity of the statute. The decision of the Legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous.

Id. at 437.
fication made, they will not interfere to strike down the legislation as a denial of the equal protection of the laws." Therefore, the Childers and Kujawinski rationales can also be used to sustain the alleged classification between divorced and married persons.

CONCLUSION

Even though the Florida Supreme Court has indicated that the phrase "dependent person" should be broadly defined, the district courts of appeal continue to be in conflict. Until the supreme court issues a clear and precise answer to whether a dissolution court may award child support to a healthy adult offspring attending college, this conflict apparently will continue. If the supreme court clearly holds that section 743.07 empowers a court of competent jurisdiction to compel support for a healthy adult offspring, dissolution courts will then be enabled, under the proper circumstances, to order support of a healthy adult college-bound offspring of the marriage pursuant to section 61.13.

179. City of Miami Beach v. Frankel, 363 So. 2d 555, 559 (Fla. 1978)(quoting Riley v. Lawson, 143 So. 619, 622 (Fla. 1932)).

180. Although the constitutional issue was not directly addressed, the second district has recently reversed a dissolution court's holding that awarding child support for healthy, majority-age children would violate equal protection. Berger v. Hollander, 391 So. 2d 716 (Fla. Dist. Ct. App. 1980). See notes 89-92 and accompanying text supra.