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The Effect of the New Age of Majority on Preexisting Child Support Settlements

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THE EFFECT OF THE NEW AGE OF MAJORITY ON PREEXISTING CHILD SUPPORT SETTLEMENTS

I. Introduction

Since the enactment of the twenty-sixth amendment to the United States Constitution,[1] most states have passed legislation lowering the age of majority from twenty-one to eighteen.[2] A crucial problem is whether these statutes affect or should affect child support settlements which provide for support to the child until he or she reaches the age of majority. More specifically, the key question is whether children have a continuing right to support until age twenty-one under settlements resulting from divorce decrees and agreements made prior to the enactment of the new age of majority laws.

In determining the effect of the age of majority statutes on existing support settlements courts have considered the nature of the child support settlement, the language of statutes amending the age of majority, the existence in the state statutes of a "saving provision,"[3] and the intent of the parties as to the provisions of the support settlement. Lack of specificity and or clarity in the statutes or in the child support settlements has necessitated judicial resolution of the effect of the age of majority statutes on support settlements made prior to the effective date of the statutes. This Note will analyze the conflicts among state court decisions and indicate possible future trends.

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1. U.S. CONST. amend. XXVI, § 1 provides:
   The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. At the time this Note went to press, all but five jurisdictions have enacted legislation to change the age of majority from twenty-one to eighteen. Alaska, Nebraska and Wyoming have amended the age of majority to nineteen. *See* ALASKA STAT. § 25.20.010 (1965); NEB. REV. STAT. § 38-101 (1974); WYO. STAT. ANN. § 14-1.1 (Supp. 1975). Alabama and Mississippi have made no amendment and retain twenty-one as the age of majority.

3. These provisions are constructed to ensure that the age of majority amendments will not affect prior settlements, decrees, rights or obligations. *See* text accompanying notes 78-85 *infra*.

II. The Nature of Child Support Settlements

One major factor which has influenced the courts in determining the effect of the new age of majority laws on existing support settlements is the nature of the support settlement. Child support settlements may be divided into three basic categories: (1) those which result from judicial decrees issued by divorce courts; (2) those which are contained in property settlements or separation agreements; and (3) those which stem from prior agreements between the parties and are then incorporated into divorce decrees. Courts have generally used these distinctions as a basis for ascertaining the proper legal approach in deciding the effect of the new age of majority statutes on support settlements.

A. Judicial Decrees

Where there has been no prior agreement between the parties as to child support, the decisions are split as to the effect of the age of majority statutes on child support provisions mandated by judicial decrees; no trend in the law is discernable.

In *Waldron v. Waldron*[4] an appellate court of Illinois held that support had to be given until the child reached twenty-one. The court said that since the age of majority was twenty-one at the time of the decree, that was the age contemplated as the termination point for the support obligation. In *Strum v. Strum*[5] the Illinois court concluded that the divorce court's use of the term "minor" referred to age twenty-one.[6] The court reasoned that at the time of the decree the unequivocal meaning of "minor" was a male below age twenty-one.[7] Thus, use of that term could have but one meaning, the court intended support to continue until the child reached age twenty-one. The court in *Strum* went a step further by holding that the rights of the child to support were fixed and determined at the time of the decree and were not diminished by the amendment of the age of majority in Illinois.[8]

The key issue in both *Strum*[9] and *Waldron*[10] was the interpreta-

4. 13 Ill. App. 3d 964, 301 N.E.2d 167 (5th Dist. 1973).
5. 22 Ill. App. 3d 147, 317 N.E.2d 59 (4th Dist. 1974).
6. *Id.* at 150, 317 N.E.2d at 62.
7. *Id.*
8. *Id.*
9. *See Id.* at 147, 317 N.E.2d at 59.
10. *See* 13 Ill. App. 3d at 966, 301 N.E.2d at 170.

tion of the term "majority" in the decrees. The Illinois courts have consistently decided that "majority" refers to "age" rather than to "status," and that the meaning must be determined as of the time of the divorce decree rather than the time of the action.

In *Baker v. Baker,*[11] the decree provided support for a daughter until she shall reach the age of twenty-one. The Supreme Court of Washington held that the age of majority statute[12] would not affect the obligations under the prior decree. The court focused sharply on the need to provide for education of the child, a prime function of child support.[13] The court's holding that the divorced father was obligated to provide for his daughter's college education at least until she reached age twenty-one[14] demonstrates social awareness and sets a proper standard for future decisions. However, there is no evidence to date that the *Baker* reasoning has been followed.

The Michigan courts have been the source of much litigation as to the effect of the age of majority statute on existing divorce decrees. In *Barbier v. Barbier,*[15] the divorce decree provided that support would continue until the child reaches twenty-one years of age. After the age of majority was reduced to eighteen,[16] the husband moved to modify the decree and the wife asked the court for clarification.[17] The Michigan Court of Appeals held that the Age of Majority Act did not affect the prior decree.[18]

In *Price v. Price*[19] a divorce decree provided support for three

11. 80 Wash. 2d 736, 498 P.2d 315 (1972).

12. WASH. REV. CODE ANN. § 26.28.010 (Supp. 1975).

13. The purpose of child support is to help ensure the proper physical and educational growth of the child and to place the responsibility for such growth upon the parents rather than society. Today, a child has a legal right to be supported by his parents in every jurisdiction in the United States. It is also unquestioned that parents have always had the moral obligaton to support the children that they bring into the world. Early common law, however, appears to have placed only a moral duty upon parents to support their children, but the passage of statute 43 Eliz. c.2 in England in 1601 forced a legal obligation onto parents to provide support for their children. 1 W. BLACKSTONE, COMMENTARIES *447-48; Note, *Support of the Child,* 27 BROOKLYN L. REV. 284, 286-87 (1961).

14. 80 Wash. 2d at 742-43, 498 P.2d at 319-20. The public policy decision in *Baker,* demonstrates insight into the problems of divorce and exhibits sensitivity for the children of divorced parents. The Washington court has assessed the needs of the children especially in regard to educational expenses and suggests a viable solution to this problem for many cases.

15. 45 Mich. App. 402, 206 N.W.2d 464 (Div. 1 1973).

16. *See* MICH. COMP. LAWS ANN. § 722.52 (Supp. 1976).

17. 45 Mich. App. at 403, 206 N.W.2d at 465-66.

18. *Id.* at 405, 206 N.W.2d at 466.

19. 51 Mich. App. 656, 215 N.W.2d 756 (Div. 3 1974), *rev'd,* 395 Mich. 6, 232 N.W.2d 630 (1975).

children until age eighteen or until graduation from high school, whichever came later.[20] After the county court ordered the husband to finance his son's education, the Michigan Court of Appeals determined that since the Age of Majority Act made an eighteen year old an adult for all purposes, support could not be properly awarded to a child who has reached the age of eighteen.[21] The court was aware of the holding in *Barbier* but declined to follow that decision.[22] The Supreme Court of Michigan, however, reversed the appellate court and said that child support could be awarded on the ground that such was mandated by a saving clause in the Michigan Age of Majority statute.[23]

The intent of the divorce decree in *Barbier* was explicit — support would continue until the child reached twenty-one.[24] In *Price*[25] the language of the decree was equally clear — support would continue until each child reached eighteen or graduated from high school, whichever came later.[26] However, in *Allen v. Allen*[27] the language of the decree was ambiguous. The decree provided support for minors until twenty-one. The use of the terms "minors" and "twenty-one" caused no problem at the time of the decree when the age of majority was twenty-one.[28] However, the court in *Allen* determined that the terms now had different meanings. In overturning a lower court decision that payments should continue, the court concluded that the use of the term "21" was not intended as a reference to age but rather to the status of majority. Thus, the court held that the support obligation terminated at the age of majority which was now eighteen.[29]

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20. 51 Mich. App. at 660, 215 N.W.2d at 758.

21. *Id.*

22. *Id.*

23. 395 Mich. 6, 10, 232 N.W.2d 630, 632-33 (1975). The court especially noted that its decision was consistent with other jurisdictions and cited to Daugherty v. Daugherty, 308 So. 2d 24 (Fla. 1975); Kirchner v. Kirchner, 465 S.W.2d 299 (Ky. 1971); Shoaf v. Shoaf, 14 N.C. App. 231, 188 S.E.2d 19 (1972); Baker v. Baker, 80 Wash. 2d 736, 498 P.2d 315 (1972). 395 Mich. at 10, 232 N.W.2d at 632.

24. 45 Mich. App. at 403, 206 N.W.2d at 465.

25. 51 Mich. App. 656, 215 N.W.2d 756 (Div. 3 1974).

26. *Id.* at 660, 215 N.W.2d at 758.

27. 63 Mich. App. 475, 235 N.W.2d 22 (Div. 1 1975).

28. It is arguable, though, that the use of the phrase "until 21" served to demonstrate the clear intent of the court in making the divorce decree.

29. 63 Mich. App. at 476, 235 N.W.2d at 22.

The Louisiana courts determined the effect of the new statute on divorce decrees in *Fellows v. Fellows.*[30] The Louisiana Court of Appeals chose to interpret the age of majority from the perspective of the legislature which defined "majority."[31] The court concluded that the Legislature requires support payments during the minority of the child, and that the obligation for a divorced parent to pay child support ends when the child reaches the new age of majority (eighteen).[32]

The reported opinions on the effect of the age of majority statutes on support obligations contained in divorce decrees are rather evenly divided, and no clear trend has emerged. Where the language of the agreement or the intent of the legislature is unclear, it would be more beneficial to society and more consistent with aims of child support to interpret the statutes in favor of the child so as not to affect the existing support obligations.

B. Separation Agreements and Property Settlements

Prior to obtaining a divorce, parents often reach agreements as to support for the children of the marriage. These settlements are usually found in separation agreements or in property settlements. There has been extensive litigation of the effect of the new age of majority statutes on these support agreements. The present trend of the law is to decide these cases through the application of contract law,[33] treating the support agreements as contracts between the divorced parties. Most courts hold that the new statutes have no effect on the rights and obligations derived from these contracts, and that support must continue until the child reaches twenty-one.[34]

The separation agreement in *Istnick v. Istnick*[35] provided that child support would continue until the age of majority was at-

30. 267 So. 2d 572 (La. Ct. App. 1972).

31. *Id.* at 575-76.

32. *Id.* at 576. It should be noted that the Louisiana Legislature was silent as to the application of the new age of majority statute on preexisting child support settlements. The Louisiana courts purport to narrowly construe the age of majority statute, however, the enactment lacks the specificity to permit clear compliance. *See also* Bernhardt v. Bernhardt, 283 So. 2d 226 (La. Supp. Ct. 1973).

33. *See, e.g.*, Istnick v. Istnick, 37 Ohio Misc. 91, 307 N.E.2d 922 (C.P. 1973); Collins v. Collins, 418 S.W.2d 739 (Ky. App. 1967).

34. *Id.*

35. 37 Ohio Misc. 91, 307 N.E.2d 922 (C.P. 1973).

tained.[36] Upon enactment of the Ohio law changing the age of majority to eighteen,[37] the divorced husband sought an order terminating the support obligation.[38] The court held that the agreement obligated the husband to provide child support until the child reached age twenty-one.[39]

The Kentucky courts have provided the forum for extensive litigation of the contractual nature of support agreements. In *Collins v. Collins,*[40] the court construed a contract which provided that support would continue until the age of majority.[41] The court found that the subsequent statutory change which lowered the age of majority to eighteen did not affect the obligation to provide support until age twenty-one.[42] This was clearly the intent of the parties[43] at the time of the contract.[44]

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36. *Id.*

37. OHIO REV. CODE ANN. § 3109.01 (Page Supp. 1975).

38. 37 Ohio Misc. at 92, 307 N.E.2d at 923.

39. *Id.* at 93, 307 N.E.2d at 925.

40. 418 S.W.2d 739 (Ky. 1967).

41. *Id.* at 740.

42. *Id.*

43. In order to determine the intent of the parties the courts look to the language of the agreement. The interpretation of the language has always been a major point of contention since variance in interpretation may greatly affect the rights and obligations of the parties. The most enlightened judicial treatment of this issue may be found in Waymire v. Waymire, 10 Wash. App. 262, 517 P.2d 219 (Div. 3 1973). The court in *Waymire* agreed with the trial judge who stated:

> "As a practical matter, whether divorce decrees use the wording, 'age of twenty-one' or 'age of majority', depends upon the preferred language of the particular lawyer who wrote the decree, not the intent of the party or the judge. . . .
>
> . . .
>
> "Whatever the reasons why lawyers chose to use the different phraseology, I cannot order a father to pay support money for three additional years simply because, by the luck of the draw, he chose a lawyer who liked 'age of twenty-one' in his divorce papers. . . .
>
> "At the time of the entry of the decree in this case, the age of majority was twenty-one. This is what everyone had to have in mind and intend in using the phrase, 'age of majority'."

Id. at 264-65, 517 P.2d at 221.

44. 418 S.W.2d at 739-40. In Paul v. Paul, 214 Va. 651, 203 S.E.2d 123 (1974), the Virginia Supreme Court decided the question of the effect of the age of majority change on prior property settlements and support agreements similarly to the Kentucky courts. The Virginia court said, the basic rule in construction of contracts is that the law in force at the making of the contract determines the rights of the parties and will control. 214 Va. at 653, 203 S.E.2d at 125. The Virginia court went further and said that the rule of construction that laws are presumed to be prospective and not retrospective should govern, and the ascertained intent

The Kentucky courts have been quite strict in requiring proof of a contractual obligation for support. In *Blackard v. Blackard*[45] such proof was lacking. The separation agreement provided that support would continue until further orders of the court.[46] In examining the agreement the court found no contractual intent as to the termination of support.[47] Therefore, the court concluded that absent a contract with a clear expression of the parties' intention, the new age of majority law worked to terminate the obligation upon the eighteenth birthday of the child.[48]

In *Phelps v. Phelps*,[49] the support agreement provided that support would continue until the child became twenty-one years of age or married or otherwise became emancipated.[50] The husband terminated payment when his child reached age eighteen, basing his action on the new age of majority law.[51] The New Mexico court concluded that the child was emancipated by operation of law upon his eighteenth birthday and that the contractual obligaton was automatically terminated.[52]

The Kansas courts also treated a support agreement as a contract, and absent a clear intent in the agreement, they would not require

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of the parties to the agreement should be enforced. *Id.* As the court in *Paul* found clear evidence that the parties intended that support continue at least until the child reached age twenty-one, it held that the statutory change in the age of majority had no effect on the support obligation, in view of the established contract. *Id.* at 654, 203 S.E.2d at 125-26.

The Maryland court decided the issue of the effect of the age of majority change on preexisting support agreements in a manner similar to the Virginia court in Monticello v. Monticello, 271 Md. 168, 315 A.2d 520, *cert. denied*, 419 U.S. 880 (1974). It ruled that the written agreement of the parties will be treated as a contract and will be enforced. The court here attempted to overcome the barrier of ambiguous construction in support agreements by enumerating the most common terms used in reference to the duration or termination of support and saying they will be interpreted to have intended age twenty-one. It held:

> the use of phrases such as "infant" child, "minor" child, "during infancy," "during minority," "until attaining majority," or "until age of majority," in an agreement or in a decree relating to child support dated prior to 1 July 1973, must have meant . . . age twenty-one, in the absence of a clear expression of contrary intent . . . .

271 Md. at 173-74, 315 A.2d at 523.

45. 426 S.W.2d 471 (Ky. 1968).
46. *Id.* at 472.
47. *Id.*
48. *Id.* at 472-73. *See also* Young v. Young, 413 S.W.2d 887 (Ky. 1967).
49. 85 N.M. 62, 509 P.2d 254 (1973).
50. *Id.* at 64, 509 P.2d at 256.
51. *Id.*
52. *Id.* at 65, 509 P.2d at 257.

child support beyond that mandated by law. In *Rice v. Rice*,[53] the Kansas Supreme Court stated, "where a greater liability for child support than that prescribed by law is sought to be imposed pursuant to contract, such intention must be clearly expressed in the contract."[54]

In determining the effect of the age of majority statutes on support obligations incurred through support agreements, courts look to the intent of the parties to the contract. Where that intent is unclear an interpretation in favor of the child is preferable, especially because the purpose of child support is to help ensure the physical and educational growth of the child. Courts, as in *Phelps*[55] and *Rice*,[56] have too often been insensitive to this consideration.

C. Support Agreements Incorporated Into Divorce Decrees

Support agreements between parties are often incorporated into divorce decrees to bring their provisions under the jurisdiction of the domestic relations courts. The courts have disagreed as to the effect of the change in the age of majority on prior support settlements later incorporated into divorce decrees.[57] The decisions are split and it is impossible to mark the direction of the law pertaining to this type of settlement.

Jungjohann v. Jungjohann[58] is a leading case for the jurisdictions that have held that the new age of majority statutes modify the rights of children under existing support settlements.[59] In *Jungjohann* the district court terminated the obligation of a father to pay support for his nineteen year old daughter after the enactment of legislation which reduced the age of majority to eighteen.[60] The property settlement which was incorporated into the divorce decree provided that support would continue under the settlement until the child attained the age of majority, not the specific age of

53. 213 Kan. 800, 518 P.2d 477 (1974).

54. *Id.* at 805, 518 P.2d at 481.

55. 85 N.M. 62, 509 P.2d 254 (1973).

56. 213 Kan. 800, 518 P.2d 477 (1974).

57. *Cf.* Jungjohann v. Jungjohann, 213 Kan. 329, 516 P.2d 904 (1973); Turner v. Turner, 441 S.W.2d 105 (Ky. 1969).

58. 213 Kan. 329, 516 P.2d 904 (1973).

59. *See, e.g.*, Schmitz v. Schmitz, 70 Wis.2d 882, 236 N.W.2d 657 (1975); Mason v. Mason, 84 N.M. 720, 507 P.2d 781 (1973).

60. KAN. STAT. ANN. § 38-101 (1973).

twenty-one.[61] The Kansas Supreme Court said that minority is a legal status rather than a fixed or vested right, and that a status which is created by the law may be subject to statutory limits or exceptions.[62] Finding that no contractual rights attached to the property settlement, the court held that the age of majority statute controlled and that the support obligation for the nineteen year old child terminated upon the enactment of the statute.[63]

The Tennessee court in *Whitt v. Whitt*[64] said that when a support agreement is incorporated into a decree, it loses its contractual nature.[65] The court then held that the provisions of the new age of majority statute[66] would control and found that the obligation to pay support terminated when the child achieved age eighteen.[67]

Several other courts, which have reached a similar conclusion, have relied on the wording of the agreement. In *Schmitz v. Schmitz*,[68] a divorced father discontinued support payments for his two children aged nineteen and twenty after the Wisconsin statute changed the age of majority from twenty-one to eighteen.[69] The Wisconsin Supreme Court held that the obligation for support had terminated upon the enactment of the statute.[70] The court found

61. 213 Kan. at 330, 516 P.2d at 905.

62. *Id.* at 332, 516 P.2d at 907.

63. *Id.* at 336, 516 P.2d at 909.

64. 490 S.W.2d 159 (Tenn. 1973).

65. *Id.* at 160.

66. TENN. CODE ANN. § 1-313 (Supp. 1976).

67. 490 S.W.2d at 160.

68. 70 Wis.2d 882, 236 N.W.2d 657 (1975). *See* Mason v. Mason, 84 N.M. 720, 507 P.2d 781 (1973); Whitt v. Whitt, 490 S.W.2d 159, 160 (Tenn. 1973). Although the result in *Whitt* is similar to those in *Jungjohann, Mason* and *Schmitz, i.e.*, that the obligation for support terminates when the child reaches eighteen, the decisions are distinguishable. In *Jungjohann* the Kansas court said there are no contractual rights attached to support settlements. 213 Kan. at 333, 516 P.2d at 908. In *Mason* the court did not address the issue of contractual rights at all. 84 N.M. at 720-24, 507 P.2d at 781-85. Therefore, it seems that the New Mexico court does not interpret support settlements to be contractual in nature. The Wisconsin court in *Schmitz* held that contractual rights do attach to support agreements at their making, however, subsequent to the statutory changes in the age of majority these rights are lost as to children over eighteen. 70 Wis.2d at 891, 236 N.W.2d at 662-63. In *Whitt* the Tennessee court said support settlements are contractual in nature and rights do attach. 490 S.W.2d at 160. The court said, however, upon incorporation of this settlement into a divorce decree contractual rights and obligations terminate and only rights under the decree continue. The court then held that divorce decrees are subject to modification by statutory changes. *Id.*

69. 70 Wis. 882, 236 N.W.2d 657 (1975).

70. WIS. STAT. ANN. § 52.01(1)(a) (Supp. 1976), *amending* WIS. STAT. ANN. § 52.01 (1957).

that the agreement's use of the phrase "minor children" was crucial, and held that the children no longer had any right to support when the law changed the age of majority. Reference in the agreement to "age 21," according to the court, was merely to be descriptive.[71]

In *Mason v. Mason*[72] the New Mexico Supreme Court examined a stipulation made part of a final divorce decree which provided for support of two children during "minority" or until they were "emancipated."[73] The court held that the children were emancipated by statute[74] and that the husband was relieved of his duty.[75] The court did not address the question of contractual obligation.

In *Turner v. Turner*,[76] the Kentucky Court of Appeals found that the support obligation was contractual in nature and it was the parties' intent that the contractual obligation to support not be affected by the statutory change in the age of majority.[77]

It is obvious that there is little agreement in the law as to the effect of the new age of majority on support settlements incorporated into divorce decrees. It is equally clear there is no consenus as to the approach in deciding the issue. If the incorporation can be viewed merely as a means of bringing the agreement within the jurisdiction of the domestic relations courts for the purpose of enforcement then the agreement may be treated simply as a contract between the parties.

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71. 70 Wis.2d at 889, 236 N.W.2d at 661.

72. 84 N.M. 720, 507 P.2d 781 (1973).

73. *Id.* at 721, 507 P.2d at 782.

74. N.M. STAT. ANN. § 13-13-1 (1976).

75. 84 N.M. at 723-24, 507 P.2d at 784-85.

76. 441 S.W.2d 105 (Ky. 1969).

77. *Id.* at 108. *See also* Worrell v. Worrell 489 S.W.2d 817 (Ky. 1973). The West Virginia Supreme Court of Appeals decided a similar case in Dimitroff v. Dimitroff, 218 S.E.2d 743 (W. Va. 1975). In *Dimitroff*, a support obligation, defined in an agreement and incorporated into a divorce decree by stipulation, provided child support would continue until the child reached twenty-one unmarried and emancipated. The court here did not apply the rationale of contractual obligations, rather it relied on the applicable saving provision, (W. VA. CODE ANN. § 2-3-1 (Cum. Supp. 1976)), holding that the support obligation continued until the child reached twenty-one. *See* Yaeger v. Yaeger, 229 N.W.2d 137 (Minn. 1975), where similar provisions were made by oral stipulation and later incorproated into a divorce decree.

In Jones v. Jones, 503 S.W.2d 924 (Tenn. Ct. App. 1973), an agreement incorporated into a divorce decree stipulated that child support would be paid until the child reached twenty-two. The Tennessee court found clear contractual intent that supported termination at age twenty-two, and that this provision was made independently from any statutory obligation, since at the time of the agreement the law required child support until the child reached twenty-one. *Id.* at 928-29. Thus, the court found that support should continue until the child reached twenty-two irrespective of the new age of majority law. *Id.* at 929.

III. Construction of the Statutes

An examination of the various statutes which have changed the age of majority from twenty-one to eighteen generally indicates a lack of specificity and a failure to demonstrate a clear intent as to the application of the statutes on prior child support settlements.[78] In order to avoid misinterpretation and to make clear that the intent was not to affect established rights under existing support settlements, several states have enacted saving provisions to supplement their age of majority acts.[79] These enactments generally provide that the new age of majority laws shall not be construed to alter, change, affect, impair or defeat any rights, obligations or interests accrued, incurred or conferred prior to the effective date of the particular act.[80] The purpose of these saving provisions is to lend stability to prior settlements and to afford a measure of security to those protected by the settlements.

The California courts have seen extensive litigation concerning the effect of the age of majority act and its accompanying saving provisions[81] on existing support settlements. In *Atwell v. Atwell*[82] the California Court of Appeals concluded that the legislature employed the term "age of majority" to refer to twenty-one and over in agreements and instruments made prior to the effective date of the statute and to refer to eighteen and over subsequent to the effective date. The court then said that child support orders will not be affected by the new legislation if the original decree was made prior to the effective date of the statute.[83] The states which have

78. Other states have gone to great lengths to insure clarity. For example in 1974 the New York legislature passed fifty-three bills designed to lower the age of majority to eighteen, effective September 1974. The result of this method of legislation is that legislative intent is clear; the new age of majority will apply only where specifically mandated by the enactments. It is noteworthy that the New York Domestic Relations Law was not modified as to statutory support obligations; the law continues to require child support until twenty-one. N.Y. DOM. REL. LAW § 32-2 (McKinney 1964). For a discussion of the New York enactments, see Comment, A *Survey of the Statutes Affected by the Reduction of the Age of Majority in New York*, 39 ALBANY L. REV. 493 (1975).

79. *See, e.g.*, CAL. CIV. CODE § 25.1 (West Supp. 1976); CONN. GEN. STAT. ANN. § 1-1e (Supp. Pamphlet 1976); DEL. CODE ANN. tit. 1, § 701 (1974); FLA. STAT. ANN. § 743.07 (West Supp. 1976); GA. CODE ANN. § 74-104.1 (1973); MICH. COMP. LAWS ANN. §§ 722-54 (Supp. 1976); R.I. GEN. LAWS § 15-12-2 (Supp. 1974); W. VA. CODE ANN. § 2-3-1 (Add. Supp. 1976).

80. *Id.*

81. CAL. CIV. CODE § 25.1 (West Supp. 1976).

82. 39 Cal. App. 3d 383, 114 Cal. Rptr. 324 (Ct. App. 1974).

83. *Id.* at 388, 114 Cal. Rptr. 327. This holding was followed in Lungstrom v. Lungstrom,

enacted saving provisions[84] generally have held that the statute should be construed only prospectively and that existing support settlements in force before the effective date of the act are not affected.[85]

In jurisdictions without saving provisions, courts have reached a contrary result finding a legislative intent to modify rights under existing support settlements. In *Jungjohann v. Jungjohann*,[86] the court said that infancy is a status created by the law and subject to statutory limits or exceptions.[87] The court then held that the age of majority statute changed the rights of children under prior support settlements.[88] While the Kansas court held that the age of majority statute should be applied prospectively, it said that the statute may affect prior settlements.[89] The court achieved this result by reasoning that the statute is not applied retrospectively if it does not affect rights accrued prior to its effective date.[90] In sum, if the statute does not reach back to make a person an adult from and after his eighteenth birthday but only operates from and after its effective date, July 1, 1972, then the application is prospective and valid.[91] Thus under the theory in *Jungjohann* the obligation to continue support to a child over eighteen is terminated only as of July 1, 1972.[92]

The rationale which pervades these decisions is best illustrated in *White v. White*[93] where the Florida court, in a case not falling under the saving provision of the Florida statute, held the obligation for

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41 Cal. App. 3d 158, 115 Cal. Rptr. 825, 826 (Ct. App. 1974), where the court said the purpose of *Atwell* was to allow preenactment child support to continue unabated until the former age of majority is reached. The clearest statement made by the California courts on the issue is in Phillips v. Phillips, 39 Cal. App. 3d 723, 725, 114 Cal. Rptr. 362, 363 (Ct. App. 1974), where the court said the legislature specifically stated in any order or direction of a court affecting child support entered prior to the effective date of this act a reference to minority shall be deemed a reference to the age of twenty-one years.

84. *See* note 79 *supra*.

85. Monticello v. Monticello, 271 Md. 168, 315 A.2d 520, *cert. denied*, 419 U.S. 880 (1974); Vicino v. Vicino, 30 Conn. Supp. 49, 298 A.2d 241 (Super. Ct. 1972).

86. 213 Kan. 329, 516 P.2d 904 (1973).

87. 213 Kan. 329, 335-36, 516 P.2d 904, 909 (1973).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*; *see* Baker v. Baker, 217 Kan. 319, 537 P.2d 171 (1975); Stanley v. Stanley, 112 Ariz. 282, 541 P.2d 382 (1975).

93. 296 So. 2d 619 (Fla. Dist. Ct. App. 1974).

support ends at eighteen unless the child is physically or mentally incompetent or for other reasons unable to be independent.[94] The court stated that "[w]hen the legislature, in its infinite wisdom, emancipated eighteen year old children, it specifically provided that they enjoy and *'suffer'* the rights, privileges *'and obligations'* of persons twenty-one years of age and older."[95]

IV. Conclusion

There is little agreement as to the effect of the age of majority statutes on existing support settlements. Where the settlement derives from a divorce decree the direction of the law appears to be toward continuing the obligation to support until the child reaches twenty-one.[96] Where the settlement has resulted from and agreement between the parties, the courts have sought to find their express intent and have enforced contracts even where the obligation exceeded the statutory requirements. Where support agreements have been incorporated into divorce decrees, the decisions of the courts have limited the support obligation.

In determining the effect of the new age of majority statutes, it is also necessary to recall that the purpose of child support is to make the parent responsible for the proper development of the child so that he or she may become a productive member of society. Persons between the ages of eighteen and twenty-one are encumbered with numerous economic disabilities. Many are in college and are not earning income.[97] Those who do seek employment experience a far higher unemployment rate than the population generally.[98] Thus,

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94. *Id.* at 621, *citing* Perla v. Perla, 58 So. 2d 689 (Fla. Sup. Ct. 1952).

95. 296 So. 2d at 624.

96. In New York, for example, the change in the age of majority statute gave eighteen year olds, for the first time, the right to contract for insurance on their own, the right to settle an insurance claim on their own behalf without a guardian, and the right to be a director or trustee of a bank. However, the defense of infancy is no longer available for persons between the ages of eighteen and twenty-one. For a complete discussion of the effect of New York's new age of majority law on the rights of eighteen to twenty-one year olds, see Comment, *supra* note 78, at 493-94, 500, 509.

97. According to the United States Department of Labor's Bureau of Labor Statistics, 47 percent of all high school graduates in 1973 went directly on to college. Of those students, only about one-third worked or looked for work while going to school. MONTHLY LAB. REV., September 1974, at 50.

98. According to the United States Department of Labor's Bureau of Labor Statistics, 14.2 percent of those people between the ages of eighteen and nineteen seeking work in 1974 were unemployed. The unemployment rate for twenty to twenty-four year olds was 9 percent

while the laws of many states may treat eighteen year olds as adults, courts should remember that such persons may not have the financial capability of older individuals to support themselves.

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and for twenty-five year olds and older 3.6 percent. For 1973, the unemployment rates were 12.4 percent for eighteen and nineteen year olds, 7.8 percent for twenty to twenty-four year olds, and 3.1 percent for twenty-five year olds and older. MONTHLY LAB. REV., December 1975, at 81 (table 5).