The Duty to Support Minor Children Does Not Extend to the Estate of a Deceased Parent, but Ends at That Parent's Death: Benson ex. rel. Patterson v. Patterson

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The Duty to Support Minor Children Does Not Extend to the Estate of a Deceased Parent, But Ends at That Parent's Death: Benson ex. rel. Patterson v. Patterson

The Pennsylvania Supreme Court held that the obligation to pay child support does not survive the parent obligor's death, such that the estate of the deceased parent owes no duty of continued support to the decedent's minor children.


Wiley Stanley Patterson died of cancer on August 1, 1999, leaving behind him two minor children, Stanley Jr. and Aaron.1 The young boys remained in the custody of their respective mothers both prior and subsequent to their father's death.2 Prior to his death, the Dauphin County Court of Common Pleas, Domestic Relations Section, entered orders requiring Patterson to make weekly payments in support of Stanley and Aaron.3 The court then terminated these support orders upon Patterson's death, and his estate satisfied all arrearages.4 The children's mothers filed actions against the estate in the Orphans' Court, seeking continuation of the previously-enacted child support payments until their children reached the age of majority.5

1. Benson ex rel Patterson v. Patterson, 830 A.2d 966, 967 (Pa. 2003). Wiley Stanley Patterson, Jr. was born on March 25, 1984, to Cheryl Benson, and Aaron Patterson was born on September 10, 1991, to Leona Lewis. Patterson, 830 A.2d at 966. Of the five children Patterson fathered during his lifetime, these two were born out of wedlock. Id.

2. Patterson, 830 A.2d at 966.

3. Id. Patterson never actually made these court-ordered support payments during his lifetime. Id. He did, however, make relatively small cash bequests of $20,000 to Stanley and $1,000 to Aaron in his will. Benson ex rel. Patterson v. Patterson, 782 A.2d 553, 554 (Pa. Super. Ct. 2001). Patterson's estate at the time of his death, as noted on his Pennsylvania Inheritance Tax Return, was valued at $1,099,534.21, the result of a $2.5 million automobile accident-related personal injury settlement he had received one year before his death. Benson, 782 A.2d at 554.

4. Patterson, 830 A.2d at 967. Arrearage is defined as "an unpaid or overdue debt." BLACK'S LAW DICTIONARY 83 (7th ed. 2000).

5. Patterson, 830 A.2d at 967. The children's mothers also sought an increase in the child support payments due to Patterson's receipt of the personal injury settlement and his death. Id. The court's resolution of the issue regarding continuation of the payments, however, precluded it from addressing this latter issue. Id. at 970.
The Orphans' Court dismissed the complaints, reasoning that "there was no case law or legislative duty of support imposed on an estate of a deceased parent to support a minor child." The court relied on Garney v. Estate of Hain in support of this finding. Stanley and Aaron's mothers immediately filed an appeal to the Superior Court, which upheld the trial court's decision.

While the mothers of Patterson's children sought to distinguish the facts of Garney from their own case, and thereby show that the trial court's reliance on that case was misplaced, the Superior Court determined that no significant distinction existed and Garney indeed was controlling. The Superior Court also recognized the split of authority in the case law of other jurisdictions with regard to whether a child support order made during a parent's lifetime creates an obligation upon his estate to continue that support for his minor children upon the parent's death. Those jurisdictions subscribing to the common law approach hold that "absent either a contractual obligation or a statutory provision, the duty to provide child support under a court order terminates automatically upon the death of the payor parent.

In contrast, some jurisdictions have advocated an approach more modern than that of the common law. These jurisdictions have found that because the original purpose for which the support order was enacted — the welfare of the child — continues past the parent's death, and because it is a "well-established principle that a parent's duty to support a minor child is absolute," the obligation to pay child support survives the parent's death and must be assumed by his estate. The Superior Court further expressed concern regarding the consequences that would accompany the imposition of an obligation of continued support upon the deceased parent's estate. It therefore affirmed the trial court's
ruling while simultaneously revealing an idealistic hope that the Supreme Court and the legislature would revisit the issue.\textsuperscript{16}

The Supreme Court of Pennsylvania granted allocatur to determine whether, in the State of Pennsylvania, the estate of a deceased parent owes a duty of continued support to the decedent's minor children when there was an existing support order in place at the time of decedent's death, such that the Orphans' Court erred in holding that Patterson's estate owed no such duty.\textsuperscript{17}

Justice Eakin, writing for the majority,\textsuperscript{18} began his analysis by evaluating the relative facts of Garney, as had the Orphans' Court and Superior Court.\textsuperscript{19} While he acquiesced to the discrepancy noted by the mothers of Patterson's children between that case and the one before him,\textsuperscript{20} Justice Eakin ultimately affirmed the lower courts' decisions that Garney, which held that there was "no statutory authority for imposing the duty of support upon the estate of the decedent," was controlling.\textsuperscript{21} For, as the Superior Court had established, the distinction between the two cases was insignificant, as "a parent has a duty to support minor children even in the absence of a court order."\textsuperscript{22}

The majority then assessed the duty — or lack thereof — to support placed upon a deceased parent's estate by the actions of the Pennsylvania legislature.\textsuperscript{23} It noted the recent trend of legislative expansion of the duty of parents to support their children.\textsuperscript{24} But

\begin{itemize}
\item \textsuperscript{16} \textit{Id.} at 560.
\item \textsuperscript{17} \textit{Patterson}, 830 A.2d at 967. Allocatur is defined as "denot[ing] permission to appeal," as used today in Pennsylvania. \textit{BLACK'S LAW DICTIONARY} 59 (7th ed. 2000).
\item \textsuperscript{18} \textit{Patterson}, 830 A.2d at 966. The majority included Justices Castille and Saylor. \textit{Id.}

Chief Justice Cappy and Justice Nigro concurred and filed a separate opinion. \textit{Id.} Former Chief Justice Zappala did not participate in the decision. \textit{Id.} at 970.
\item \textsuperscript{19} \textit{Id.} at 967.
\item \textsuperscript{20} \textit{Id.} In Garney, there were no support orders already in place at the time of the father's death, as there were in this case. \textit{Id.} Patterson's children argued that because of this distinguishing factor, "an obligation of support existed in [their] case that was not present in Garney." \textit{Id.}
\item \textsuperscript{21} \textit{Id.}
\item \textsuperscript{22} \textit{Id.}
\item \textsuperscript{23} \textit{Patterson}, 830 A.2d at 967.
\item \textsuperscript{24} \textit{Id.} The conditional nature of this obligation under the common law has been, in recent years, made nearly mandatory. \textit{Id.} Justice Eakin cites \textit{Gross v. Oeler}, 594 A.2d 649, 651 (Pa. 1991), which forwarded the originally precatory language describing the parent's duty under the common law. \textit{Id.} In \textit{Gross}, the parent's duty to support his minor child was conditioned on the receipt of "love, affection, and assistance" from that child. \textit{Id.} Recently, however, that duty has become "well nigh absolute." \textit{Id.} (citing \textit{Sutliff v. Sutliff}, 489 A.2d 764, 771 (Pa. 1985)).
\end{itemize}
while Pennsylvania has enacted extensive support legislation, and has "judicially enforced support guidelines," the legislature has not gone so far as to extend that duty of support to the parents' estates.

The court noted that "no statute has directly or inferentially extended the obligation of [child] support beyond the death of the parent." Justice Eakin next revisited this court's decision in Blue v. Blue, in which it was determined that the court will decline to impose a duty itself that has not been imposed by the legislature, nor developed by the case law of Pennsylvania. The court in Blue opted instead to await the legislature's guidance, rather than creating duties and obligations by its own judicial pronouncement. Justice Eakin pointed out that the same reasoning must be applied in Patterson.

While the court was sympathetic to the continuing needs of the minor children of deceased parents, it promulgated deference to the legislature and was hesitant to act in a legislative capacity in which it did not belong. Justice Eakin was influenced by the fact that the legislature has not sat idly by, but has taken an active role in creating laws relative to child support in Pennsylvania. Because in so creating those laws the legislature has failed to enact one extending the duty of support to a deceased parent's estate, the judiciary has neither a right nor a duty of its own to do so.

Justice Eakin concluded by acknowledging the "allure" of the minority position that the estate of a deceased parent is obligated to continue child support payments, but ultimately rested his decision upon the historical guidance of Pennsylvania precedence and the "soundness" that this majority position offers. The court

25. Patterson, 830 A.2d at 967. The Domestic Relations Code, 23 PA. CONS. STAT. § 4321(2) provides: "Parents are liable for the support of their children who are unemancipated and 18 years of age or younger." 23 PA. CONS. STAT. § 4321 (1985).
26. Patterson, 830 A.2d at 967-68.
27. Id. at 968 (citing Garney, 653 A.2d at 21).
29. Patterson, 830 A.2d at 968.
30. Id. (citing Blue, 616 A.2d at 632).
31. Patterson, 830 A.2d at 968.
32. Id.
33. Id.
34. Id.
35. Id at 969. A number of states, including California, Montana, New Jersey, and West Virginia, have enacted laws or found circumstances wherein the estate has a duty to pay child support. Id.
36. Patterson, 830 A.2d at 969.
held that in the Commonwealth of Pennsylvania, the estate of a deceased parent owes no duty of continued support to the decedent’s minor children.37

Chief Justice Cappy authored a concurring opinion in which he expressed his support of the court’s decision to wait for the General Assembly to make a law regarding the duty of support owed by a deceased parent’s estate — and not to create one itself by judicial pronouncement — as the most prudent course of action.38

Justice Newman authored a dissenting opinion in which she advocated the minority position that circumstances exist wherein the estate of a deceased parent may be ordered to pay child support.39 She asserted that the majority’s reliance on Garney was improper because that case is distinguishable from Patterson, in that no support order existed at the time of decedent’s death in Garney as it did in Patterson.40 She argued that the court should not treat all such cases indiscriminately, pooling together cases that did and did not involve preexisting support orders, but rather, where there is a support order already in place in the case in question, the court should rely on a case that similarly involved such an order.41

Justice Newman next submitted that a support order is a “judicially imposed obligation,” such that where one already exists, it must be enforceable against even the deceased parent’s estate.42 She argued that the order should be treated the same as any other obligation, such that the minor children who are the recipients of that support would be able to “make a claim against the estate of the payor as would any other creditor.”43

Justice Newman also looked at the Domestic Relations Code,44 and noted that while it specifically states that the obligation to pay alimony ends at death, it does not address this issue with regard to child support.45 Such an inexplicit statute, she contended, allows for the inference that the legislature “intend[ed] for the estate of parents to serve as a source of support for minor children.”46

37. Id.
38. Patterson, 830 A.2d at 970 (Cappy, C.J., concurring).
39. Id. (Newman, J., dissenting).
40. Id. (Newman, J., dissenting).
41. Id. (Newman, J., dissenting).
42. Id. at 971 (Newman, J., dissenting).
43. Patterson, 830 A.2d at 971 (Newman, J., dissenting).
44. Id. (Newman, J., dissenting). Specifically, Justice Newman looked at § 4321(2) of the Domestic Relations Code, supra note 25. Id.
45. Patterson, 830 A.2d at 971 (Newman, J., dissenting).
46. Id. (citing Garney, 653 A.2d at 23) (Newman, J., dissenting).
Further, she submitted that the court should not sit by and await the action of the legislature, but rather, it should actively change the law on its own to implement this objective.\(^4\)

The basic tenet that a living father is obligated to support his minor children has long been the common law in the state of Pennsylvania.\(^4\) The "duty to support and maintain minor children is universally recognized as resting upon the parents of such children."\(^4\)\(^9\) By statute and even in its absence, parents "are under a legal as well as a moral duty to support, maintain, and care for their minor children."\(^4\)\(^8\) This is a fundamental obligation, binding the parent and continuing throughout the child's minority unless terminated or altered by a recognized circumstance.\(^4\)\(^5\) It is a duty owed not only to the minor child himself but also to society as a whole, and ultimately "derive[d] from natural law."\(^4\)\(^8\)

In *Gross v. Oeler*,\(^4\)\(^8\) the Pennsylvania Supreme Court identified the source from which the duty of support originally arose.\(^4\)\(^9\) It stated that "[a]t common law, the duty of a parent to support his child was conditioned upon a parent receiving love, affection and assistance from that child."\(^4\)

The nature of that parental duty to support one's minor children today stands in marked contrast to its common law derivation.\(^4\)\(^6\) As early as 1835, the Supreme Court of Pennsylvania, in *In the Matter of Harland's Accounts*,\(^4\)\(^7\) maintained that a father is under a legal duty to support and maintain his children.\(^4\)\(^8\) In 1983, the majority in *Scanlon v. Scanlon* went further and eschewed that reciprocal, symbiotic nature of the duty as espoused by the court in *Gross* in favor of an interpretation that left it "well nigh absolute."\(^4\)\(^9\)

\(^{47}\) *Patterson*, 830 A.2d at 973 (Newman, J., dissenting).
\(^{49}\) 59 AM. JUR. 2D Support and Maintenance of Child § 45 (2002).
\(^{50}\) *Id.*
\(^{51}\) 67A C.J.S. Support, Maintenance, and Education § 156 (2002).
\(^{52}\) *Id.*
\(^{54}\) *Gross*, 594 A.2d at 651.
\(^{55}\) *Id.*
\(^{57}\) 1835 WL 2752 (Pa. Apr. 16, 1835).
\(^{58}\) *In the Matter of Harland's Accounts*, 1835 WL at 2752.
\(^{59}\) *Scanlon*, 457 A.2d at 102. The absolute nature of the duty was reemphasized two years later by the court in *Sutliff v. Sutliff*, 489 A.2d 764 (Pa. Super. Ct. 1985).
In Pennsylvania, this absolute duty was codified in 1985 in section 4321 of the Support Act.\textsuperscript{60} The relevant provision of that statute stated that "[p]arents are liable for the support of their children who are unemancipated and 18 years of age or younger.\textsuperscript{61} However, while the now absolute and statutorily imposed duty of parents to support their minor children was well-established, the nature of that same duty upon the death of the father lacked Pennsylvania authority on point.\textsuperscript{62}

In 1972, the Commonwealth of Pennsylvania adopted the common law of England regarding post-death child support.\textsuperscript{63} That common law clearly held that a father's "duty to support his minor child terminated at the father's death."\textsuperscript{64} At early common law, the father held complete control of and power over his children, and the mother was entitled to little more than "reverence and respect."\textsuperscript{65} In the infrequent event of divorce, the father invariably received custody of the children.\textsuperscript{66} The law terminating the duty of child support at the father's death essentially allowed him to disinherit his children at will, but the traditional practice of always placing those children in the father's custody effectively negated the danger of such disinheritance.\textsuperscript{67}

In the span of years from the 18\textsuperscript{th} century to the present time, this practice has changed, such that children now are regularly placed in the mother's custody.\textsuperscript{68} The common law that was a comment on the times in which it was developed and upheld thereby found itself in a new arena of changed circumstances.\textsuperscript{69} Thus, a number of jurisdictions have continued to hold that death of the parent extinguishes the duty of support, while others have

\textsuperscript{60} 23 PA. CONS. STAT. § 4321 (1985).
\textsuperscript{61} 23 PA. CONS. STAT. § 4321(2) (1985).
\textsuperscript{62} Brief on Appeal of Appellants at *12, Benson ex rel Patterson v. Patterson, 2002 WL 32163554, (Pa. Feb. 25, 2002).
\textsuperscript{63} Brief on Appeal of Appellants at *12, Patterson (citing 1 PA. CONS. STAT. § 1503 (1972). Section 1503(a) of the statute states the following:

The common law and such of the statutes of England as were in force in the Province of Pennsylvania on May 14, 1776 and which were properly adapted to the circumstances of the inhabitants of this Commonwealth shall be deemed to have been in force in this Commonwealth from and after February 10, 1777.

1 PA. CONS. STAT. § 1503(a) (1972).
\textsuperscript{64} Brief on Appeal of Appellants at *12, Patterson.
\textsuperscript{65} Id. at *12 (citing W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 441).
\textsuperscript{66} Brief on Appeal of Appellants at *12, Patterson.
\textsuperscript{67} Id. at *12-13.
\textsuperscript{68} Id.
\textsuperscript{69} Benson, 2002 WL at *13.
diverged from the common law and held that the duty survives death. The courts have considered several factors in
determining the effect of the death of the obligor parent on after-accruing child support payments, including justice, or equitable considerations, sometimes concluding that in the interests of justice or because of the particular equitable considerations presented, a child support obligation should not terminate on the death of the obligated parents, while in other cases, the opposite conclusion was reached.

There is a great deal of jurisprudence dealing with the issue of the obligation of child support on the estate of a deceased parent who has, prior to his death, contracted to support the minor child. An early Pennsylvania case discussing this issue was Stumpf's Appeal. In that case, the Pennsylvania Supreme Court discussed whether an executory contract between the decedent and the mother of his illegitimate child, by which the decedent was to provide for the maintenance and support of the child, was a continuing contract that bound the executors of his estate. Justice Sterrett, writing for the majority, proffered the rule that "to the extent of the assets that come to their hands, the personal representatives of a decedent are responsible on all his contracts." Thus, the common law principle that the obligation of support ends at death was altered when a contract was involved.

70. 14 A.L.R. 5TH 557 (1993). In general, where post-death support obligations have been extended to the parent's estate, certain exceptions have been made for instances where "state statute provides otherwise, where the court decree provides for the survival of the obligation, or where the parties have specified their intent that the obligation survive in an underlying contract, or separation agreement, subsequently incorporated in the decree." Id. at 557, §2(a). Where courts have held that the child support obligation survives the obligor parent's death, they often based this decision on the idea that a court "has continuing jurisdiction over such issues as support, which is not divested by the death of a party." Id.

71. Id.
72. In re Estate of Fessman, 126 A.2d 676, 678 (1956).
73. 8 A. 866 (Pa. 1887).
74. Stumpf's, 8 A. at 866.
75. Id. at 868.
76. Id.at 869. The 1933 Pennsylvania Supreme Court case of Huffman v. Huffman also held that where a father contracts to support his minor child, that contract is binding on his estate. 166 A. 570 (Pa. 1933). In Huffman, the father, in a written agreement between himself and his separated wife, agreed to pay for the support and maintenance of his minor children until they reached the age of majority. Id. at 571. The court agreed with Stumpf's holding that a portion of the father's estate should be utilized to satisfy the continuing contract he had entered into on behalf of his children. Id. at 572.
However, the courts generally discussed such situations involving contracts as a sort of aberration of the norm to which the common law applies. In *In re Estate of Fessman,* for example, the Pennsylvania Supreme Court, in 1956, acknowledged the principle that “a father, in absence of a contract, has no legal obligation to support his children after his death.” There, the father contracted with his former wife, in the form of a written letter, to provide for the support of their minor son. The majority accordingly held the principle that a father has no legal postmortem obligation to support his child inapplicable only because of the existence of that contract.

Apart from such circumstances where the father has bound himself by contract or similar means, the majority of jurisdictions have held that child support payments are not a continuing obligation enforceable against the deceased father's estate.

In 1957, the Supreme Court of Mississippi decided *Mahaffey v. First National Bank,* a case in which Mrs. Mahaffey brought an action against the estate of her deceased ex-husband for the continuation of the support payments for their minor son and daughter imposed upon him in the divorce decree. The court expressed its preferred rule in terms of the negative implications that a converse rule would have on the testamentary freedom and estate planning efforts of the decedent. The majority held that the father’s obligation to support his minor child terminated at his death absent some liability imposed by a contract or agreement, for “to hold otherwise would seriously impede the administration of the estates of decedents and delay the closing thereof and restrict the right of an individual in making disposition of his property by will.”

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77. 126 A.2d 676, 678 (Pa. 1956).
78. *Fessman,* 126 A.2d at 678.
79. *Id.* at 677.
80. *Id.* By contrast, despite contrary arguments made by the children’s mothers in *Patterson,* the majority there disregarded the existence of the support order in place and held that no such contractual obligation was entered into by Mr. Patterson. *Patterson,* 830 A.2d at 967.
81. *Patterson,* 830 A.2d at 968-69.
82. 97 So. 2d 756, 757 (Miss. 1957).
83. *Mahaffey,* 97 So. 2d at 757.
84. *Id.* at 767.
85. *Id.*
In 1960, the Kentucky Court of Appeals faced an identical issue to that of Patterson. The case before the court was Bowling v. Robinson, in which the mother of decedent's minor children brought an action for continuation of support payments from decedent's estate. The majority there further refined the extent of the postmortem support duty and decided that:

Unless there is a provision of the judgment to the contrary, the death of a parent who has been ordered to make payments for the support of his child automatically terminates the obligation with respect to periodic payments which would accrue after his death, and his estate is not bound for them.

The court argued that post-mortem child support payments were essentially self-defeating in terms of their supposed purpose — to provide for the continued support of minor children. For by providing continued support for certain children until their majority, the resources of the estate that may be needed, in some cases, to support other children (from other marriages) would be depleted. Thus the public policy of continued support would be frustrated, supporting some children at the expense of others.

Twenty-two years later, the Supreme Court of Alabama came to the same conclusion in Pittman v. Pittman. In that case, Mr. Pittman had been making periodic child support payments for his two minor daughters until he was killed in a plane crash. Prior to his death, Pittman had made his daughters irrevocable beneficiaries of life insurance policies to ensure their support in the event of his untimely death.

The majority held that the decreed provisions regarding child support "[did] not effectuate a vested right, but merely provide[d] periodic allowances for current and continuous support until ter-

86. 332 S.W.2d 285, 286 (Ky. 1960). This case was directly on point with Patterson, in that in both cases there was a court ordered support order in place, there were multiple children from different mothers, and the fathers provided for their minor children by means of bequests in their wills. Bowling, 332 S.W.2d at 286.
87. Id.
88. Id. at 285.
89. Id. at 286-87.
90. Id. at 287.
91. Bowling, 332 S.W.2d at 287.
92. Id.
93. 419 So. 2d 1376 ( Ala. 1982).
94. Pittman, 419 So. 2d at 1377.
95. Id. at 1378.
The father's action of making his two children the irrevocable beneficiaries of life insurance policies influenced the court's decision by tending to show the parties' belief that the support payments terminated at the father's death, and therefore the children would need some other form of support to meet their continuing needs.97

In 1992, the Pennsylvania Supreme Court addressed the role of the courts vis-à-vis that of the legislature with regard to the development and pronouncement of law in Blue v. Blue.98 Justice Zappala, writing for the majority, reasoned that “[s]ince our legislature has taken an active role in domestic matters through amendments and reenactment of the Divorce Code and the Domestic Relations Act, we feel the more prudent course is to await guidance from that body rather than creating duties and obligations by judicial pronouncement.99

The majority used that reasoning to address a parent's duty of educational support of his minor children.100 It acknowledged the imposition of such a duty by other states, but placed considerable weight on the fact that the legislature of Pennsylvania, although acting in other related capacities, has not done so itself, and opted instead to await that action.101 Justice Eakin adopted and applied that reasoning in Patterson.102 Like the issue of educational support, that of support continued from a deceased parent's estate has gone unaddressed by the Pennsylvania Legislature.103 As such, in accordance with the line of reasoning developed in Blue, the majority in Patterson observed deference to a legislature that has otherwise taken an active role in the arena of domestic relations.104

A few years later, the Pennsylvania Superior Court was called upon to interpret the Support Act, with regard to whether its pro-

96. Id. at 1381.
97. Id.
98. 616 A.2d 628 (Pa. 1992). Blue's revelation that the legislature had not imposed upon parents a legal duty of support related to higher education has since been superceded by statute, as noted in Grieve v. Mankey, 660 A.2d 1367 (Pa. Super Ct. 1994). Mankey notes that “[i]n response to [Blue's] invitation, the Pennsylvania legislature enacted 23 PA. CONS. STAT. § 4327 . . . which provides that a court may order parents to provide for their children's "postsecondary educational expenses." Mankey, 600 A.2d at 1367-68.
100. Id. at 630.
101. Id. at 632.
102. Patterson, 830 A.2d at 968.
103. Id.
104. Id.
vision of a child support obligation could be extended post-death. The vehicle for this statutory interpretation was *Garney v. Estate of Hain,* a case in which a woman brought an action against the estate of her former husband to provide child support for their three minor children. The issue facing the court there was whether, under Pennsylvania law, the estate could be required to pay child support in the absence of a court order or contractual agreement. The majority, reemphasizing the principles set forth in *Blue,* held that as “the legislature has declined to impose a duty of support on the estate of a divorced parent, and there is no case law to be cited in support of such a duty,” the court would not “legislate changes in the law which our legislature has declined to adopt.”

Judge DelSole, in somewhat of a critique of societal norms, stated that “[a]s divorce has become more prevalent . . . the importance of our child support laws has increased and caused them to undergo significant change.” He noted the consequent legislative trend toward enacting laws that cumulatively provided greater assurance for the support of minor children. Yet, while he used this rationale to advance his opinion that the legislative intent to continue the support obligation post-death should be inferred, he also acknowledged that the legislature, while creating all those laws, has still declined to speak on this issue. The court thus interpreted the Act as failing to mandate a continuing duty of support enforceable against the deceased parent’s estate.

107. *Id.*
108. *Id.* In this case, relied upon by the majority in *Patterson,* no support order was in place at the time of the father’s death. *Id.* In *Patterson,* although a support order already was existing, that discrepancy was held to be an insignificant distinction. *Patterson,* 830 A.2d at 967.
110. *Id.* at 22 (DelSole, J., dissenting).
111. *Id.* at 22-3 (DelSole, J., dissenting). Examples of such legislative action include 23 PA. CONS. STAT. ANN. § 4345(a) (2003), which provides that a parent may be held in civil contempt, fined, and even imprisoned up to six months for willfully failing to make child support payments; 23 PA. CONS. STAT. ANN. § 4348, which makes the court’s attachment of the payor parent’s wages routine rather than elective; and even 23 PA. CONS. STAT. ANN. § 4308, which provides that any lottery winnings of the payor parent are subject to use to fulfill support duties. *Id.* (DelSole, J., dissenting). 23 PA. CONS. STAT. ANN. § 4348 was amended in 2003, but such amendment is immaterial to the proposition for which the statute is cited. 2003 PA H.B. 1104 (SN).
112. *Id.* at 23 (DelSole, J., dissenting).
Thus, while the majority of jurisdictions have held that the duty of support ends at death, and the minority find it continuing past that point, the issue largely remains unresolved in Pennsylvania. The legislature has failed to address it in the statutes it has enacted, and the courts have declined to establish case law in an area avoided by a legislature to whom they generally defer. And so the legal axiom that a father's obligation to support his minor child does not extend to his estate but rather dies at his death — the common law of Pennsylvania since its creation — remains, for now, the settled state of the law.

Various jurisdictions have approached and argued this issue from several different angles. Law and theory, based on contract, estate planning, testamentary dispositions, historical developments, legislative action and stasis, and a number of other origins, have posited a variety of theses and justifications for turning the state of the law one way or the other. In Pennsylvania, that state of the law presently waits at a crossroad. It has gone quietly unaddressed by the legislature, and has not been determinatively mandated in case law. The most recent Pennsylvania case to be witnessed and decided by the judiciary, Patterson, resulted in a finding that the duty of child support terminates at the father's death. This decision, however, seems not to have been an unflinching assertion, but more a resigned resolution to defer to the legislature's inaction and side with the majority of states and the established progression of history.

Certain merit undeniably exists in the majority position, currently adopted by Patterson. The Pennsylvania Supreme Court's hesitancy to overstep its bounds and infringe on rights properly held by the legislature is practical and even commendable in the respect that it recognizes the scope of its own power. This premise that deference to the legislature is an appropriate course of conduct is sound, but only insofar as it does not act in contravention of progress and the purpose for which the law exists.

It is arguably the minority position, which finds the duty of child support a continuing duty and thus enforceable against the

114. Patterson, 830 A.2d at 968-69.
115. Id. at 968.
116. Id. at 969.
117. Id.
118. Id. at 968.
119. Patterson, 830 A.2d at 969.
120. Id.
deceased father’s estate,\textsuperscript{121} that seems to be the better position in terms of addressing the needs of the decedent’s minor children, who, by the circumstances of death, are now left, at least in part, unsupported.

First, the law must change so as to reflect the time and circumstances of which it is a part. Justice Cardozo has written, “[I]n the everyday transactions of life the average man is governed, not by statute, but by common law, or at most by statute built upon a substratum of common law, modifying, in details only, the common law foundation.”\textsuperscript{122} That governing common law by which Pennsylvania continues to abide is based on mores that have changed since the law’s inception. The prevalence of divorce and the current practice of placing children in the custody of their mother potentially increases the likelihood that a father will fail to provide for his children after his death.\textsuperscript{123} This danger that once could be brushed aside because of the historical placement of children with their father must now become a real consideration, and another safeguard is needed. For whereas in the 18\textsuperscript{th} century the common law rule was harmless and even equitable, when juxtaposed to present mores, its inherent danger is realized.

Justice Cardozo believed that where circumstances have changed to such an extent that the “perpetuation of the rule would do violence to the social conscience,” that rule should likewise be changed.\textsuperscript{124} In her dissent, Justice Newman agreed with this proposition, stating that the common law should be adapted to “assure that a rule previously developed is not perpetuated when the reason for the rule no longer exists and when application of the rule would cause injustice.”\textsuperscript{125}

Second, the judiciary should not await legislative action, but create the law itself. The issue of the parameters of the duty of child support should be looked at primarily in terms of the objective involved — the welfare of the minor children. As long as cer-

\textsuperscript{121} Id.
\textsuperscript{122} Brief for Appellants at *15, Patterson (No. 682-1999) (citing CARDOZO, THE GROWTH OF THE LAW 136-37 (Yale Univ. Press) (1924)).
\textsuperscript{123} Patterson, 830 A.2d at 972 (Newman, J., dissenting). Obviously, there is the whole parallel issue of minor children who are in the custody of the father at the mother’s death. This author agrees that what has changed is not only divorce, but the post-divorce placement of minors with the mother. If at some point in the future courts were to recognize the equal right of the father to gain custody, this issue should be reviewed.
\textsuperscript{124} Brief for Appellants at *15, Patterson (No. 682-1999) (citing CARDOZO, THE GROWTH OF THE LAW 136-37 (Yale Univ. Press) (1924)).
\textsuperscript{125} Patterson, 830 A.2d at 973 (citing Hack v. Hack, 433 A.2d 859, 867 (Pa. 1981)).
tain children are not provided for at the expense of others — arguably the most viable concern of continuing the duty of support — the Pennsylvania Supreme Court should no longer hesitate to extend, by judicial pronouncement, the duty of support to the estate of a deceased parent.

The Pennsylvania Supreme Court should no longer leave the state of the law in stasis, but rather, it should rule upon the issue in a manner that serves the best interests of the minor children it was designed to protect. The judiciary has a higher duty than the legislature to assure that the purpose of the law is achieved. If the legislative branch is negligent in doing that, the judicial branch should not wait for the legislature to take action, but rather, it should assume more of a leadership role. In this particular case, the judiciary should be leading the way, not waiting for the legislature to take action.

Third, faith should be placed in the father's ability to take it upon himself to provide for his children after his death, and he should be allowed to do so. Where there is no viable alternative means of supporting the child except by the deceased father's estate, an overriding reason to defeat the common law rule and extend the support duty past death exists. However, an exception should be made where the father made his minor children irrevocable beneficiaries of life insurance policies, created support trusts for their benefit, or otherwise adequately provided for them in his will. Under such circumstances, the duty should be allowed to terminate at the father's death, especially where it appears, by the creation of these trusts/bequests/etc., to be the intention of the decedent that this be so. The obligation to pay support should not transcend the right of the father as testator to dispose of his property how and to whom he pleases, so long as his minor children are thereby provided for. This must be determined on a case by case basis, however, and at the court's discretion. For in situations like Patterson, where the father made only an insubstantial bequest to his son that would not support him throughout his minority, the support should continue from the estate once the funds of the bequest have been depleted.

126. See supra notes 86-92 and accompanying text.
127. See supra notes 93-97 and accompanying text.
128. Benson, 782 A.2d at 553-54. At the time of their father's death, Stanley Jr. was fifteen years old and Aaron was about to turn eight years old. Patterson, 830 A.2d at 966. Patterson left cash bequests of $20,000 to Stanley Jr., and only $1,000 to Aaron. Benson, 782 A.2d at 554. In 1998, the Dauphin County Court of Common Pleas had entered sup-
While it is admirable that the Pennsylvania Supreme Court wants to delineate the scope of their power, one must consider the possibility that they have, in fact, understated it, and that they have a duty to assure that the laws established by practice and by the legislature are extended to their full purpose rather than being constricted by excessive caution. It is also arguable that alternative provisions for the welfare of minor children, such as trust funds, life insurance policies, and bequests, would fully satisfy the obligation of the decedent to provide for minor children without infringement upon the estate. The courts must be careful to recognize their duty to provide not only a voice but a vision for the legislature. Their function is not merely to reiterate the narrative of law as it is legislated, but to breathe interpretive life into what otherwise would be a sterile and rigid document.

_Gina Mercurio_