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## FAMILY LAW — Holding a Male Statutory Rape Victim Liable for Child Support. *State ex rel. Hermesmann v. Seyer*, 847 P.2d 1273 (Kan. 1993).

In *State ex rel. Hermesmann v. Seyer*,<sup>1</sup> the Kansas Supreme Court upheld the decision of the trial court by ruling that an adolescent father should be held jointly and severally liable for child support, although he was the victim of the statutory offense of indecent liberties with a child.<sup>2</sup> In determining the father's child support obligation, the court held that once the issue of paternity was decided, a father had a clear duty to support his child.<sup>3</sup> The court reasoned that neither the mother's criminal acts nor the father's youth should absolve the father from his financial obligation to his offspring.<sup>4</sup>

It is a precept of modern family law in the United States that fathers have a duty to provide for their minor children.<sup>5</sup> Just as biology dictates that a male is physiologically necessary for procreation, courts have held that paternal participation in supporting the child is an obligation which arises from natural law.<sup>6</sup> In recent years, courts have not hesitated to extend the obligation of child support to adolescent

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1. 847 P.2d 1273 (Kan. 1993).

2. *Id.* The crime of indecent liberties with a child encompasses the offense formerly known in Kansas as statutory rape. *Id.* at 1276. The author frequently uses the term "statutory rape" in this Note, as it is a more familiar term than "indecent liberties." The relevant part of the statute states: (1) Indecent liberties with a child is engaging in any of the following acts with a child who is under 16 years of age: (a) sexual intercourse. KAN. STAT. ANN. § 21-3502 (II.A Supp. 1991).

3. *State ex rel. Hermesmann*, 847 P.2d at 1277-78.

4. *Id.* at 1279.

5. *Keller v. Guernsey*, 608 P.2d 896 (Kan. 1980). It is stated that "[t]he duty of a parent to provide for minor children is now one universally recognized." *Id.* at 901.

6. *Id.* at 901 (citing 1 WILLIAM BLACKSTONE, COMMENTARIES 447).

fathers.<sup>7</sup> In *State ex rel. Hermesmann*, however, the historical concept of paternal duty collided with two well-established judicial principles: the state's interest in protecting minors and the desire to punish the perpetrator of a crime rather than the victim.<sup>8</sup>

Traditionally, Kansas courts have not hesitated to order fathers to pay child support in cases where paternity has been established.<sup>9</sup> Never before, however, had a Kansas court considered a case in which the child was conceived during the statutory rape of the father.<sup>10</sup> Shane Seyer was twelve years old when he became sexually involved with his sixteen-year-old baby sitter, Colleen Hermesmann.<sup>11</sup> At the time his child was conceived, Shane was only thirteen years old.<sup>12</sup> Because Shane was under sixteen years of age at the time of the sexual relationship, Colleen was adjudicated as a juvenile offender for committing the statutory offense of indecent liberties with a child.<sup>13</sup> Under a plea agreement, Colleen later stipulated to the lesser offense of contributing to a child's misconduct.<sup>14</sup>

In 1991, the Kansas Department of Social and Rehabilitative Services (SRS) sought reimbursement from Shane for all assistance that SRS had provided to Colleen on behalf of her daughter, Melanie.<sup>15</sup> After an administrative hearing, Shane was adjudged the father of the child.<sup>16</sup> The hearing officer did not require Shane to reimburse SRS for previous expenditures or to pay for expenses associated with the birth of the child.<sup>17</sup> However, the officer ordered Shane to pay child support from the date of the hearing forward.<sup>18</sup>

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7. See, e.g., *In re Paternity of J.L.H.*, 441 N.W.2d 273 (Wis. Ct. App. 1989) (holding fifteen-year-old boy liable for child support).

8. See *State ex rel. Hermesmann*, 847 P.2d at 1273.

9. See, e.g., *Huss v. DeMott*, 524 P.2d 743, 745 (Kan. 1974) (holding that a father's obligation to support applies whether children are legitimate or illegitimate).

10. *State ex rel. Hermesmann*, 847 P.2d at 1276.

11. *Id.* at 1274.

12. *Id.*

13. *Id.* at 474.

14. *Id.* The court rejected the state's implication that the plea agreement prevented Shane from alleging that "he was a 'victim' of statutory rape." *Id.* at 1276. The court reasoned that the facts of the case established the existence of all the elements of the statutory offense of indecent liberties with a child. *Id.* Thus, Colleen's stipulation to a lesser offense did not preclude Shane from arguing that "he was a 'victim' of statutory rape." *Id.*

15. *State ex rel. Hermesmann*, 847 P.2d at 1274.

16. *Id.* at 1275.

17. *Id.*

18. *Id.*

## STATUTORY RAPE VICTIM LIABLE FOR CHILD

Shane appealed the decision of the hearing officer to the District Court of Shawnee County.<sup>19</sup> On appeal, Shane contended that his failure to consent to the sexual relationship eliminated his paternal obligations.<sup>20</sup> SRS also sought review, asserting that the hearing officer's failure to require Shane to reimburse SRS was "arbitrary and capricious."<sup>21</sup> Moreover, SRS argued that the hearing officer had erred in allowing Shane to present evidence relevant to his defense of consent, as consent was irrelevant in a civil paternity case.<sup>22</sup>

The district court agreed with SRS and ruled that Kansas law was clear on matters of support and that "there [was] no discretion in the Court regarding liability."<sup>23</sup> The court issued a joint and several judgment against Shane and Colleen for \$7,068, the amount that SRS had expended on behalf of Melanie since her birth.<sup>24</sup> Additionally, the court directed Shane to pay child support in the amount of \$50 per month.<sup>25</sup> Shane appealed the district court's ruling to the court of appeals.<sup>26</sup> By its own motion, however, the case was transferred directly to the Kansas Supreme Court.<sup>27</sup>

On appeal, Shane raised three issues. First, was Shane, as a minor under 16, unable to consent to sexual intercourse?<sup>28</sup> Second, would it be contrary to sound public policy for a court to require a victim of statutory rape to pay child support?<sup>29</sup> Third, should Colleen, as the perpetrator of a sex crime, be solely responsible for the consequences of the sexual act?<sup>30</sup> After resolving these issues in favor of SRS, the court held that a father's status as a minor and a victim of a sex crime should not insulate him from liability for child support.<sup>31</sup>

In its ruling, the Kansas Supreme Court complied with precedent in this area of family law.<sup>32</sup> In 1956, the Supreme Court of Kansas

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19. *Id.*

20. *State ex rel. Hermesmann*, 847 P.2d at 1275.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *State ex rel. Hermesmann*, 847 P.2d at 1275.

26. *Id.*

27. *Id.*

28. *Id.* at 1275-77.

29. *Id.* at 1275, 1278-79.

30. *State ex rel. Hermesmann*, 847 P.2d at 1275, 1279.

31. *Id.* at 1279.

32. *See, e.g., Strecker v. Wilkinson*, 552 P.2d 979 (Kan. 1976) (holding that a father has an obligation to the state to support his child); *see also Grimes v. Grimes*, 295 P.2d 646 (Kan. 1956) (stating that a father has an obligation to support his child and "does not have a right to allow the child "to become a public charge").

stated unequivocally that a father had a duty to both the state and his children to provide support.<sup>33</sup> The *Grimes* court suggested that this obligation was a fundamental principle of the common law.<sup>34</sup> In 1985, the state legislature reaffirmed this duty when it passed the Kansas Parentage Act.<sup>35</sup> In his opinion in *State ex rel. Hermesmann*, Chief Justice Holmes relied on the portion of the Act that he interpreted as specifically acknowledging a minor's obligation to pay child support.<sup>36</sup>

Chief Justice Holmes was not forced to rely on Kansas precedent alone. As the rate of adolescent sexual activity and teenage pregnancy has risen nationally,<sup>37</sup> other states also have encountered younger fathers in family court. For example, in *Schierenbeck v. Minor*,<sup>38</sup> the Supreme Court of Colorado found that once paternity was definitively established, a sixteen-year-old victim of statutory rape could be held liable for support.<sup>39</sup> Illinois reached a similar conclusion in a case involving a fifteen-year-old defendant.<sup>40</sup> There, the defendant argued that public policy protected him from liability for child support.<sup>41</sup> In response to the defendant's argument, the court stated that public policy did not provide "blanket protection for reckless minors."<sup>42</sup> Furthermore, the court stressed that public policy mandating paternal support superseded the right of juveniles to be protected from their improvident acts.<sup>43</sup>

33. *Grimes*, 295 P.2d at 648.

34. *Id.* Until this century, the common law treated illegitimate children differently from those born in wedlock. Dwight A. Corrin, Note, *The Uniform Parentage Act: An Opportunity to Extend Equal Protection to All Kansas Children*, 19 *Washburn L.J.* 110 (1979). An illegitimate child was considered *nullius filius*, a child of no one, and parents were under no legal obligation to maintain the child. *Id.* Kansas was the first state to recognize that a father had a common-law duty to support an illegitimate child. *Id.* at 111.

35. KAN. STAT. ANN. §§ 38-1110 to 1131 (1985).

36. *State ex rel. Hermesmann*, 847 P.2d at 1273. The relevant part of the Kansas Parentage Act stated:

If a man alleged or presumed to be the father is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served on the parents or guardian of the minor and shall appoint a guardian ad litem who shall be an attorney to represent the minor in the proceedings.

*State ex rel. Hermesmann*, 847 P.2d at 1273 (quoting KAN. STAT. ANN. § 38-1117 (1985)).

37. See generally Julie Kosterlitz, *Split Over Pregnancy*, THE NAT'L J., June 21, 1986, at 1538 (revealing that the percentage of sexually active teens has increased dramatically since the "sexual revolution" of the 1960's).

38. 367 P.2d 333 (Colo. 1961).

39. *Id.* at 335.

40. See *J.S. v. Williams*, 550 N.E.2d 257 (Ill. App. Ct. 1990).

41. *Id.* at 258.

42. *Id.*

43. *Id.*

Similarly, the Wisconsin Court of Appeals unequivocally rejected the argument that the father's status as a victim of statutory rape should excuse his child support obligations.<sup>44</sup> As in *State ex rel. Hermesmann*, the Wisconsin court held that the mother's criminal acts were irrelevant in establishing a civil obligation to pay child support.<sup>45</sup> Interestingly, the Wisconsin court chose to address the issue of consent by attempting to minimize the fifteen year old defendant's status as a victim.<sup>46</sup> The opinion stressed that the defendant willingly participated in "hugging, kissing, petting and other acts leading to intercourse."<sup>47</sup> This argument was echoed in *State ex rel. Hermesmann*<sup>48</sup> where Chief Justice Holmes noted Shane's apparent consent to his sexual relationship.<sup>49</sup> The Chief Justice made this observation despite his previous statement that the issue of consent was immaterial in the offense of statutory rape.<sup>50</sup>

As recent opinions demonstrate, judges have minimized adolescent males' status as rape victims by emphasizing that certain behavior indicates consent.<sup>51</sup> Yet, the original purpose of statutory rape laws was to protect juveniles by rendering them legally incapable of consenting to sexual intercourse.<sup>52</sup> Although these statutes historically applied only to females,<sup>53</sup> the vast majority of states now have statutes

44. See *In re Paternity of J.L.H.*, 441 N.W.2d 273 (Wis. Ct. App. 1989).

45. *Id.* at 275.

46. See *id.* at 276-77. From the defendant's statement to the police, the court inferred that the sexual act was voluntary. *Id.* at 276. Therefore, the court reasoned that "[i]f voluntary intercourse result[ed] in parenthood, then for purposes of child support, the parenthood [would be] voluntary." *Id.* at 276-77. The court added that this rule was applicable even when "the parenthood resulted from a sexual assault within the meaning of the criminal law." *Id.* at 277.

47. *Id.* at 275-76. The court also denied the existence of any "genuine issue of material fact . . . as to whether appellant's intercourse with L.H. was nonconsensual." *Id.*

48. See *State ex rel. Hermesmann*, 847 P.2d at 1277.

49. *Id.* Chief Justice Holmes wrote:

Although the issue of whether the intercourse was "voluntary," as the term is usually understood, is not specifically before us, it was brought out in oral argument before this court that the sexual relationship between Shane and his baby sitter, Colleen, started when he was only 12 years old and lasted over a period of several months. At no time did Shane register any complaint to his parents about the sexual liaison with Colleen.

*Id.*

50. *State v. Fike*, 757 P.2d 724, 727 (Kan. 1988). In *Fike*, Justice Holmes wrote, "indecent liberties with a child is solely dependant upon the child being under age 16; whether the child consents to the sexual activity is not an issue." *Id.*

51. See generally *In re Paternity of J.L.H.*, 441 N.W.2d 273 (Wis. Ct. App. 1989).

52. James McCollum, Note, *Gender-Based Classification Regarding Statutory Rape Law is Not Violative of the Equal Protection Clause of the Fourteenth Amendment*.—Michael M. v. Superior Court, 25 How. L.J. 341 (1982).

53. A few states continue to extend protection only to females, arguing that gender-based statutory rape statutes serve a legitimate state interest in preventing teenage pregnancy and

that protect both male and female victims of statutory rape.<sup>54</sup> Despite the gender-neutral rape laws that now exist in Kansas and elsewhere,<sup>55</sup> courts have perpetuated the perception that only females can be rape victims and only males can be sexual aggressors. Perhaps this attitude contributes to the reluctance of many courts to weigh moral culpability as a factor in assessing support obligations in cases involving male victims of sexual offenses.

After removing the issue of Colleen's wrongdoing from its discussion, the Kansas Supreme Court determined that Kansas law mandated that Shane be held liable.<sup>56</sup> In the opinion, the Chief Justice noted that the Kansas Parentage Act provided "no exception for minor parents regarding their duty to support and educate their child."<sup>57</sup> Yet, in at least one section of the Act, the state legislature gave the court great flexibility in allocating support obligations by stating that "the court may order the support and education expenses to be paid by *either or both* parents for the minor child."<sup>58</sup> Thus, the court seems to have misinterpreted the Act as demanding paternal support in every circumstance, although the Act indicates that both parents are not always obligated to financially maintain their child.<sup>59</sup>

The impracticality of requiring a thirteen-year old to pay child support was apparent to the Kansas Supreme Court.<sup>60</sup> Nevertheless, Shane Seyer was held jointly and severally liable with the child's

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protecting immature females from injuries resulting from sexual intercourse. See *Michael M. v. Superior Court*, 450 U.S. 464 (1981) (plurality opinion) (holding that California's gender-based statutory rape statute is sufficiently related to the state's purpose of preventing illegitimate pregnancy to pass constitutional scrutiny). The arguments against gender-based statutes were articulated by Justices Stevens and Brennan in their dissents in *Michael M.*, 450 U.S. at 493-99. Justice Stevens wrote that he regarded "a total exemption (from prosecution) for the members of the more endangered class as utterly irrational." *Id.* at 499-500. Justice Brennan agreed and stated:

Common sense . . . suggests that a gender-neutral statutory rape law is potentially a *greater* deterrent of sexual activity than a gender-based law, for the simple reason that a gender-neutral law subjects both men and women to criminal sanctions and thus arguably has a deterrent effect on twice as many potential violators.

*Id.* at 493-94 (emphasis in original).

54. McCollum, *supra* note 52 at 355.

55. *Id.* at 355 n.142.

56. *State ex rel. Hermesmann*, 847 P.2d at 1277.

57. *Id.*

58. *Id.* (emphasis added) (quoting KAN. STAT. ANN. 1992 Supp. § 38-1121(c) (1985)).

59. *Id.*

60. In its opinion the court wrote, "we call attention to the fact that no issue was raised as to the propriety of the judgment against a youngster who was still a full-time student when these proceedings were commenced." *Id.* at 1280.

mother and was ordered to pay \$50 per month in child support.<sup>61</sup> Before ordering Shane to bear this financial burden, the state would have been wise to consider carefully the consequences of imposing such a financial responsibility on a thirteen-year-old. The court may be forcing an adolescent into the working world prematurely. There is strong evidence that teen fathers who work often become high school drop-outs, limiting their future job opportunities and earning potential.<sup>62</sup>

If Shane had both a moral and legal duty to provide for his daughter, other child support arrangements might have been more feasible. For instance, the court could have considered the ages and wage-earning potential of both parents,<sup>63</sup> thereby placing, at least temporarily, the heavier burden on Colleen. This arrangement later could be modified when Shane reached the age of majority and the relative financial position of each parent was altered. By waiting until Shane completed his education, the state might have enabled Shane to become a more capable and reliable provider for his child.<sup>64</sup>

The young age of the father in *State ex rel. Hermesmann* may have seemed surprising, but statistics show a high rate of sexual intercourse among young teenagers.<sup>65</sup> From these statistics, one can infer that more child support cases involving adolescent fathers inevitably will flow into the nation's family courts. In determining child support obligations, courts must adapt to changing societal values and conditions. Judges should be wary of reinforcing traditional sex stereotypes, as these preconceptions can undermine a juvenile male's

61. *State ex rel. Hermesmann*, 847 P.2d at 1280. The trial court had also granted the SRS a joint and several judgment against Shane and Colleen in the amount of \$7,068, the amount the state welfare authorities had spent assisting Shane's child. *Id.* at 1275. In oral arguments before the supreme court, however, the SRS stated that it "had no intention of ever trying to collect its judgment." *Id.* at 1280.

62. When teenage mothers or fathers drop out of school their future job prospects and earning potential are significantly reduced. Kosterlitz, *supra* note 37, at 1539.

63. Many courts consider the financial condition of the parents before determining child support. See, e.g., *Sullivan v. McGaw*, 480 N.E.2d 1283, 1288 (Ill. App. Ct. 1985). Also, the Kansas Parentage Act, KAN. STAT. ANN. § 38-1121, provides in pertinent part:

(e) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

- (1) The needs of the child.
- (2) The standards of living and circumstances of the parents.
- (3) The relative financial means of the parents.
- (4) The earning ability of the parents.

64. See generally Kosterlitz, *supra* note 37.

65. *Id.*

status as a statutory rape victim. If future courts determine that both parents should be held liable, moral culpability and financial resources should be the principal factors considered in assessing responsibility.

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