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Casenotes: Domestic Relations — Support of Stepchildren — Obligation to Support Stepchild Held to Be a Debt, Not a Legal Duty, and Therefore Stepparent's Contempt of Court for Default in Support Payments Cannot Be Punished by Imprisonment. *Brown v. Brown*, 287 Md. 273, 412 A.2d 396 (1980)

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DOMESTIC RELATIONS — SUPPORT OF STEPCHILDREN — OBLIGATION TO SUPPORT STEPCHILD HELD TO BE A DEBT, NOT A LEGAL DUTY, AND THEREFORE STEP-PARENT'S CONTEMPT OF COURT FOR DEFAULT IN SUPPORT PAYMENTS CANNOT BE PUNISHED BY IMPRISONMENT. *BROWN v. BROWN*, 287 Md. 273, 412 A.2d 396 (1980).

I. INTRODUCTION

One of the most controversial aspects of domestic relations law in the United States today is that of child support and the enforcement of child support orders. To compel the performance of these orders, many states allow courts to imprison those who have defaulted in support payments and who are therefore in contempt of court.¹ Maryland's position on this method of enforcement is controlled by article III, section 38 of the Constitution of Maryland, which prohibits imprisonment for debt.² In its original form,³ this prohibition extended to such obligations as child support and wife support because they were considered debts.⁴ Amendments added in 1950⁵ and 1962,⁶ however, excluded orders and decrees for payment of wife support, alimony, illegitimate child support, and dependent child support from the section's definition of a debt. The justification for this exclusion was that these obligations were considered legal and moral duties and therefore were not debts.⁷ By removing these obligations from the protection afforded to debts under the Constitution of Maryland, the equity courts of Maryland were given the power to enforce such support and alimony decrees by imprisonment.⁸

In *Brown v. Brown*,⁹ the Court of Appeals of Maryland concluded that a stepchild was not a "dependent child" within the meaning of article III, section 38 because, unlike a dependent child, a step-

1. Annot., 172 A.L.R. 869 (1948). See, e.g., *Wells v. Wells*, 358 A.2d 648 (D.C. 1976); *State ex rel Stanhope v. Pratt*, 533 S.W.2d 567 (Mo. 1976); *Mitchell v. Mitchell*, 270 N.C. 253, 154 S.E.2d 71 (1976).

2. MD. CONST. art. III, § 38. Section 38 reads:

No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a wife or dependent children, or for the support of an illegitimate child or children, or for alimony, shall not constitute a debt within the meaning of this section.

3. MD. CONST. of 1851, art. III, § 44.

4. See text accompanying notes 32-49 *infra*.

5. Law of March 28, 1950, ch. 15, § 1, 1950 Md. Laws 249 (embodied in MD. CONST. art. III, § 38).

6. Law of April 6, 1962, ch. 121, § 1, 1962 Md. Laws 387 (embodied in MD. CONST. art. III, § 38).

7. *Brown v. Brown*, 287 Md. 273, 283, 412 A.2d 396, 401 (1980).

8. *Id.* at 282, 412 A.2d at 401.

9. 287 Md. 273, 412 A.2d 396 (1980).

child was not "entitled to support by virtue of a legal duty."¹⁰ Based on this conclusion, the court held that a stepparent's obligation to pay support for his stepchild, according to the provisions of a separation agreement incorporated into a divorce decree, is not a legal duty but rather a "debt for which the constitution affords him immunity from incarceration."¹¹ The court also reaffirmed its previous position¹² that imprisonment is generally not an available remedy of equity courts for the enforcement of money decrees,¹³ except of course for the exceptions stated in section 38.

This casenote discusses the historical background of imprisonment for debt, its abolition in the United States, and the evolution of exceptions to the rule prohibiting imprisonment. It also surveys the policy reasons behind the exceptions that were made part of the Constitution of Maryland by the passage of the 1950 and 1962 amendments to article III, section 38. Finally, the *Brown* decision is analyzed and the remedies now available for nonsupport of stepchildren are examined.

II. FACTUAL BACKGROUND

Ronald K. Brown and Joyce A. Brown were divorced on October 22, 1976.¹⁴ Incorporated into the divorce decree was a previously executed separation agreement in which Ronald Brown agreed to pay for the support of his stepchild.¹⁵ Mr. Brown soon fell into arrears in the support payments. In a contempt proceeding brought against Mr. Brown for failing to make these payments, he was adjudged to be in contempt of court and was sentenced to 179 days in jail. From this sentence he appealed. Prior to the consideration of the case by the court of special appeals, the court of appeals granted certiorari.¹⁶

III. HISTORICAL DEVELOPMENT OF IMPRISONMENT FOR DEBT

A. *Imprisonment for Debt*

Imprisonment for debt had already acquired a long and checkered history in Europe before its adoption in the American colonies. In early Rome, a debtor was arrested in the initiation of a creditor's action to assure his appearance at trial.¹⁷ If creditors

10. *Id.* at 283, 412 A.2d at 402.

11. *Id.* at 284, 412 A.2d at 402.

12. *See Dickey v. Dickey*, 154 Md. 675, 141 A. 387 (1928).

13. 287 Md. 273, 287, 412 A.2d 396, 403 (1980).

14. *Id.* at 275, 412 A.2d at 397.

15. *Id.* The child was born to Joyce A. Brown prior to the marriage of the parties.

16. *Id.* at 276, 412 A.2d at 398.

17. W. HUNTER, INTRODUCTION TO ROMAN LAW 968 (2d ed. 1885).

secured a judgment against the debtor and it remained unpaid, the debtor could be imprisoned, sold into slavery, or even cut into pieces proportionate to each creditor's claim.¹⁸ Imprisonment was an effective, coercive device to enforce payment of the judgment; slavery and death were measures used only if the debtor's property were insufficient to satisfy the judgment.¹⁹

A similar procedure of arrest at the initiation of a creditor's action existed in England prior to the Norman conquest.²⁰ The practice of imprisonment of the debtor to insure payment of a judgment disappeared, however, during the feudal period because it was inconsistent with the feudal concept that a vassal was required to serve his lord.²¹ When the feudal system dispensed with the requirement of the personal service of vassals, Parliament enacted statutes that once again permitted the arrest of a debtor to insure his appearance at trial.²² Under the Statute of Acton Burnell of 1283, a debtor could avoid immediate incarceration by embodying his obligation in a bond of special form which, upon default, entitled the creditor to levy upon the debtor's chattels.²³ Only if the chattels were insufficient to satisfy the debt could the debtor be imprisoned.²⁴ With the passage of the Statute of Merchants two years later, a creditor could have a debtor incarcerated without first proving that the debtor's chattels upon which the creditor could levy were insufficient to satisfy the debt.²⁵ Between the thirteenth and fifteenth centuries, the English common law developed two forms of legal process for imprisoning a debtor who had not agreed to embody his obligation in a bond: a writ of *capias ad respondendum* to bring the debtor into court and a writ of *capias ad satisfaciendum* to hold him until the judgment entered against him was satisfied.²⁶ The latter form of process was recognized by the colonial Maryland Assembly,²⁷ as it was in various ways by most of the colonies until reforms began sweeping the country in the 1830's.²⁸

18. W. BUCKLAND, *A TEXTBOOK OF ROMAN LAW* 618-20 (3d ed. 1966).

19. Note, *Present Status of Execution Against the Body of the Judgment Debtor*, 42 *IOWA L. REV.* 306, 306 (1957).

20. *Id.*

21. *Id.*

22. *Id.*

23. J. MOORE & W. PHILLIPS, *DEBTORS AND CREDITORS RIGHTS* 1-1 (1966).

24. *Id.*

25. *Id.* at 1-1, 1-2.

26. *Id.* at 1-2. See also 4 BLACKSTONE'S COMMENTARIES *281-82; 8 W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 229-33 (2d ed. 1937); F. POLLACK & F. MATTLAND, *THE HISTORY OF ENGLISH LAW* 596-97 (2d ed. 1898); Fox, *Process of Imprisonment at Common Law*, 39 *LAW Q. REV.* 46 (1923).

27. See Law of June 3, 1715, ch. 40, § 7, 1715 Md. Laws. Minor reforms in Maryland later required the creditor to pay eighty-seven and one-half cents a week for the support of his debtor while the debtor remained in prison, Law of Feb. 14, 1821, ch. 186, § 1, 1820 Md. Laws, and abolished imprisonment for women, Law of Feb. 26, 1825, ch. 206, 1824 Md. Laws 155.

28. Ford, *Imprisonment for Debt*, 25 *MICH. L. REV.* 24, 28-29 (1926).

By the 1920's, most states, by statute or constitutional amendment, had abolished imprisonment for debt except in certain enumerated situations.²⁹ Imprisonment for debt was abolished primarily because it was such an ineffective enforcement tool. Imprisonment frequently failed to achieve the desired result because some debtors elected to remain in jail rather than to have their assets seized.³⁰ Further, it penalized the debtor's innocent dependents and deprived the community of the prisoner's labor.³¹

The original Constitution of Maryland did not specifically prohibit imprisonment for debt,³² but a provision added in the Constitution of 1851 provided that "[n]o person shall be imprisoned for debt."³³ Although this provision appeared to be clear and concise, the Court of Appeals of Maryland was soon called upon to interpret the meaning of the word "debt." First faced with that question in 1854, the court, in *State v. Mace*,³⁴ determined that a person could be imprisoned for failure to pay a fine imposed for violation of a public law.³⁵ The court stated that if the constitutional provision were given its "common sense interpretation,"³⁶ the term "debt" would be understood as an obligation arising other than from a court sentence for breach of the peace or commission of a crime.³⁷ The court found that the intention of the framers of the constitutional provision was to "relieve those who could not pay their debts, and not to shield from punishment persons who had violated the public law."³⁸ In another early case, *State v. Nicholson*,³⁹ the court of appeals held that imprisonment of a tax collector who defaulted in paying over the money he had collected was not a violation of the constitutional prohibition against imprisonment for debt.⁴⁰ The court in *Nicholson*

29. For a list of the various state constitutional provisions and statutes, see Note, *Present Status of Execution Against the Body of the Judgment Debtor*, 42 IOWA L. REV. 306, 307-08 nn. 15-23 (1957). The exceptions included willful torts, torts generally, fraud, libel or slander, breach of a fiduciary relationship, and absconding debtors. *Id.* at 308.

30. P. COLEMAN, *DEBTORS AND CREDITORS IN AMERICA* 9 (1974).

31. *Id.*

32. Article XXI of the original Declaration of Rights provided: "That no free man ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land." MD. CONST. of 1776, DECL. OF RIGHTS art. XXI.

33. MD. CONST. of 1851, art. III, § 44. In the constitutional revision of 1864, the section became art. III, § 37. In the constitutional revision of 1867, the section became art. III, § 38 as it remains to date. See A. NILES, *MARYLAND CONSTITUTIONAL LAW* (1915).

34. 5 Md. 337 (1854).

35. *Id.* at 350-51.

36. *Id.* at 350.

37. *Id.* at 350-51.

38. *Id.* at 351; see *Ruggles v. State*, 120 Md. 553, 565, 87 A. 1080, 1084 (1913); *State v. Glenn*, 54 Md. 572, 604 (1880).

39. 67 Md. 1, 8 A. 817 (1887).

40. *Id.* at 3, 8 A. at 818.

drew a distinction between imprisonment for a debt and imprisonment for a breach of duty owed by a public officer.⁴¹

The court of appeals applied this distinction between debt and duty in a domestic relations context as early as 1928 when, in *Dickey v. Dickey*,⁴² it held that the obligation to pay alimony was a duty growing out of the marital relation and not a debt.⁴³ Thus, a husband found to be in default in making alimony payments could be imprisoned for contempt of court without violating the constitutional prohibition against imprisonment for debt. The court's decision, however, was limited to strict alimony and did not include wife support, which was deemed a contractual obligation, not a duty.⁴⁴ As a result of the *Dickey* decision,⁴⁵ Maryland firmly aligned itself with the majority of states, which have held that alimony is not a debt within the constitutional or statutory provisions prohibiting imprisonment for debt.⁴⁶

The Maryland courts had a more difficult time in determining the status of child support under the constitution. As early as 1927, the court of appeals recognized that a father was under a common law obligation to support his minor children.⁴⁷ Later, however, the court found the obligation of child support to be in the nature of a debt within the scope of the constitutional provision, and therefore the imprisonment of a father who defaulted on child support

41. *Id.*

42. 154 Md. 675, 141 A. 387 (1928).

43. *Id.* at 681, 141 A. at 390.

44. *Id.* The court was unclear in describing the distinction between strict alimony and support. It appears that strict alimony was limited to a provision by the husband for the wife's support that continued only during their joint lives or as long as they lived separately and apart. *Id.* at 678, 141 A. at 388. If a support allowance in a decree were the result of a previous agreement between the spouses or continued for a period of time other than for the joint lives of the spouses, it was considered wife support. *Id.* at 679, 141 A. at 389.

45. While *Dickey* is regarded as the first Maryland decision to apply the general rule that alimony is not a debt within the constitutional meaning of debt, the idea that the payment of alimony is a duty was not new. See *Mann v. Mann*, 144 Md. 518, 125 A. 74 (1924); *McCurlley v. McCurlley*, 60 Md. 185, 189 (1883); *Feigley v. Feigley*, 7 Md. 537, 563 (1855).

46. See Annot., 30 A.L.R. 130 (1924). See also D. STEWART, *THE LAW OF MARRIAGE AND DIVORCE* § 378 (1884) ("the obligation to pay alimony is a duty rather than a debt"). Other states recognizing the general rule include: Alabama, see *Murray v. Murray*, 84 Ala. 363, 4 So. 239 (1888); California, see *Livingston v. Superior Ct.*, 117 Cal. 633, 49 P. 836 (1897); Florida, see *Bronk v. State*, 43 Fla. 461, 31 So. 248 (1901); Illinois, see *O'Callaghan v. O'Callaghan*, 69 Ill. 552 (1873); Mississippi, see *Carper v. Carper*, 94 Miss. 598, 48 So. 186 (1909); Nebraska, see *Cain v. Miller*, 109 Neb. 441, 191 N.W. 704 (1922); and Virginia, see *West v. West*, 126 Va. 969, 101 S.E. 876 (1920).

47. *Blades v. Szatai*, 151 Md. 644, 647, 135 A. 841, 842 (1927) (this case dealt with a father's obligation to his natural son and therefore did not distinguish between a natural parent and a stepparent). See also 2 BLACKSTONE'S COMMENTARIES *446-49 (principle of "natural law" in England that parents have duty to support natural children).

payments was prohibited.⁴⁸ The rule that child support was a debt created many difficulties for the courts because alimony and child support were often joined in a single provision of a divorce decree.⁴⁹

B. The Maryland Constitutional Amendments of 1950 and 1962

Many inequities and hardships were created by the court's position that only strict alimony⁵⁰ was excluded from the constitutional prohibition against imprisonment for debt.⁵¹ The 1950 amendment to article III, section 38 solved many of these problems by declaring that agreements for wife support, dependent child support, and alimony, if decreed or approved by a court of competent jurisdiction, were not debts within the meaning of the constitutional provision.⁵² With the passage of this amendment, the technical distinction between alimony and support of a wife or dependent children was finally abolished. Consequently, all three types of support could be enforced by imprisonment of the defaulting person.⁵³

The constitutional amendment of 1962 added illegitimate children to the categories that did not constitute a debt within the

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48. *Knabe v. Knabe*, 176 Md. 606, 6 A.2d 366 (1939); *Bushman v. Bushman*, 157 Md. 166, 145 A. 488 (1929). The court's distinction between alimony and child support for purposes of the constitutional prohibition against imprisonment for debt placed Maryland clearly in the minority. See, e.g., *Hervey v. Hervey*, 186 Ark. 179, 52 S.W.2d 963 (1932); *Application of Martin*, 76 Idaho 179, 279 P.2d 873 (1955); *Stonehill v. Stonehill*, 146 Ind. 445, 45 N.E. 600 (1896); *Roper v. Roper*, 242 Ky. 658, 47 S.W.2d 517 (1932); *Slawski v. Slawski*, 49 Ohio App. 100, 195 N.E. 258 (1934); *Lear v. Lear*, 29 Wash. 2d 692, 189 P.2d 237 (1948).
 49. See *Knabe v. Knabe*, 176 Md. 606, 6 A.2d 366 (1939); *Cohen v. Cohen*, 174 Md. 61, 197 A. 564 (1938). For a discussion of the difficulties created by the distinction between alimony and child support, see 3 MD. L. REV. 93 (1938).
 50. For an explanation of strict alimony, see *La Chance v. La Chance*, 28 Md. App. 571, 346 A.2d 676 (1975) and note 44 *supra*.
 51. See, e.g., *Bauernschmidt v. Safe Deposit & Trust Co.*, 176 Md. 351, 4 A.2d 712 (1939) (court refused to treat as alimony an award of money granted by a California decree for separate maintenance and effective as alimony in California, holding that the wife was an ordinary contract creditor of the husband). Compare *Safe Deposit & Trust Co. v. Robertson*, 192 Md. 653, 65 A.2d 292 (1949) (court recognized that in certain instances a husband's interest in a spendthrift trust could be reached by his wife or children to support their claims against him for support) with *Hitchens v. Safe Deposit & Trust Co.*, 193 Md. 62, 66 A.2d 97 (1949) (separation agreement entitling wife to "permanent alimony" was insufficient to bring her within alimony exception of *Robertson*, thus making wife a contract creditor unable to reach spendthrift trust).
 52. The amendment added the following clause to art. III, § 38: "but a valid decree of a court of competent jurisdiction or agreement by decree of said court for the support of a wife or dependent children, or for alimony, shall not constitute a debt within the meaning of this section." MD. CONST. art. III, § 38 (1867, amended 1950, 1962).
 53. *Brown v. Brown*, 287 Md. 273, 282, 412 A.2d 396, 401 (1980); see *Kerr v. Kerr*, 287 Md. 363, 412 A.2d 1001 (1980); *Rand v. Rand*, 280 Md. 508, 374 A.2d 900 (1977); *Speckler v. Speckler*, 256 Md. 635, 261 A.2d 466 (1970); *Johnson v. Johnson*, 241 Md. 416, 216 A.2d 914 (1966); *Bradford v. Futrell*, 225 Md. 512, 171 A.2d 493 (1961); *McCabe v. McCabe*, 210 Md. 308, 123 A.2d 447 (1956); *Eigenbrode v. Eigenbrode*, 36 Md. App. 557, 373 A.2d 1306 (1977); *Crandall v. Crandall*, 14 Md. App. 476, 287 A.2d 326 (1972).

constitutional prohibition against imprisonment for debt.⁵⁴ This amendment, the result of a reform movement in Maryland to abolish criminal bastardy laws,⁵⁵ added enforcement power to the provisions of the Maryland Code that require support of one's illegitimate children.⁵⁶ Those provisions repealed the bastardy laws and provided for equity proceedings to determine paternity.⁵⁷

The 1950 and 1962 amendments appeared to solve the many problems of enforcing orders to support dependent and illegitimate children. In *Brown v. Brown*,⁵⁸ however, the court of appeals was confronted with a new issue — whether a “dependent child” includes a stepchild for purposes of article III, section 38 of the Constitution of Maryland.

IV. THE *BROWN* DECISION

In *Brown v. Brown*,⁵⁹ the court of appeals was presented with the sole issue of whether a divorce decree incorporating an agreement to pay support for a stepchild can be enforced by imprisonment for contempt of court.⁶⁰ To resolve this issue, the court first had to determine whether a stepchild is a “dependent child” within article III, section 38.⁶¹

In addressing this question, Judge Digges, writing for a unanimous court, first examined the intent of the framers of article III, section 38, as amended,⁶² by reviewing the history of imprisonment for debt, its abolition in Maryland, and the amendments to the constitutional provision.⁶³ The court found no intent on the part of the framers of the 1950 amendment to expand the non-contractual (legal)

54. The amendment added the following clause to the 1950 version of section 38: “or for the support of an illegitimate child or children.” MD. CONST. art. III, § 38 (1867, amended 1950, 1962).

55. *Brown v. Brown*, 287 Md. 273, 282 n.7, 412 A.2d 396, 401 n.7 (1980).

56. MD. ANN. CODE art. 16, §§ 66A—66P (1981).

57. See *Corley v. Moore*, 236 Md. 241, 203 A.2d 697 (1964).

58. 287 Md. 273, 412 A.2d 396 (1980).

59. *Id.*

60. *Id.* at 276, 412 A.2d at 398.

61. *Id.* at 282, 412 A.2d at 401.

62. Judge Digges noted that constitutional construction employs the same rules that are applied in statutory construction. *Id.* at 277, 412 A.2d at 398—99. Thus, the court must construe the enactment in a way that effectuates the intent of its framers. *Perkins v. Eskridge*, 278 Md. 619, 639, 366 A.2d 21, 33 (1976). The intent is first sought from the provision's terminology, with each word being given its ordinary meaning. *Harbor Island Marina v. Calvert Co.*, 286 Md. 303, 311, 407 A.2d 738, 742 (1979). If the words are not ambiguous, the court is prohibited from further inquiry. *Reed v. McKeldin*, 207 Md. 553, 560—61, 115 A.2d 281, 285 (1955). If the terminology is ambiguous, “it is permissible to inquire into the prior state of the law, the previous and contemporary history of the people, the circumstances attending the adoption of the organic law, as well as broad considerations of expediency.” *Perkins v. Eskridge*, 278 Md. at 640—41, 366 A.2d at 34 (emphasis omitted).

63. 287 Md. 273, 278—82, 412 A.2d 396, 399—401 (1980).

duty of child support to include stepchildren.⁶⁴ Applying the guideline laid down in *State v. Mace*⁶⁵ that the constitution be given a "common sense interpretation,"⁶⁶ the court accepted the position of Mr. Brown that his stepchild was not a dependent child within the meaning of section 38.⁶⁷ The court believed that the use of the modifying word "dependent" was a result of the recognition by the framers of section 38 that there may be a natural child of a parent "who, although still a minor, requires no support from the parent because the infant is emancipated . . . , or who, although an adult, is legally dependent upon that parent because he is incompetent, or otherwise incapable of caring and providing for himself."⁶⁸ Thus, it appeared clear to the court that "what was sought to be, and actually was, accomplished by the amendment was permission to enforce by imprisonment, if need be, the *legal* and *moral* obligation of support . . . that parents owed to their own children."⁶⁹ The court indicated that the legal duty to support one's own children does not ordinarily encompass stepchildren.⁷⁰

To buttress its interpretation of section 38, the court looked at the meaning of the word "child" as it had been previously defined by the courts of Maryland and other states.⁷¹ The court also noted that if the word "children" within the context of "dependent children" were intended to have a definition broad enough to encompass stepchildren it would also be broad enough to encompass illegitimate children and the 1962 amendment to section 38 therefore would have been unnecessary.⁷² The court believed that if it accepted Mrs. Brown's broad construction of the word "children," it would cause the phrase "or for the support of an illegitimate child or children," which was added in 1962, to be nugatory, a result that would be repugnant to recognized canons of constitutional interpretation.⁷³ In addition, the court examined how the legislature had defined the word "child" in the past and noted that when the legislature

64. *Id.* at 282, 412 A.2d at 401.

65. 5 Md. 337 (1854).

66. *Id.* at 350. By "common sense interpretation," the court meant "the sense in which it was understood by those who adopted it." *Id.*

67. 287 Md. 273, 283, 412 A.2d 396, 402 (1980); see Brief for Appellant at 6-11, *Brown v. Brown*, 287 Md. 273, 412 A.2d 396 (1980).

68. 287 Md. 273, 283, 412 A.2d 396, 402 (1980).

69. *Id.* at 282-83, 412 A.2d at 401 (emphasis in original).

70. *Id.* at 283-84, 412 A.2d at 401-02.

71. The court cited several sources that indicated that the common meaning of the word "child" is immediate offspring. *Id.* at 284, 412 A.2d at 402; see *Meisner v. United States*, 295 F. 866, 868 (W.D. Mo. 1924); *Billingsley v. Bradley*, 166 Md. 412, 419, 171 A. 351, 354 (1934); *Albright v. Albright*, 116 Ohio St. 668, 157 N.E. 760 (1927).

72. 287 Md. 273, 285, 412 A.2d 396, 402 (1980).

73. *Id.* at 285, 412 A.2d at 403; see *Reed v. McKeldin*, 207 Md. 553, 561, 115 A.2d 281, 285 (1955); *Groome v. Gwinn*, 43 Md. 572, 624 (1876).

intended the word to have other than its ordinary meaning, it was explicit in defining the scope of the word.⁷⁴

Mrs. Brown's contention that the stepfather stood in loco parentis to his stepchild and that as a result there existed a legal duty to support was summarily dismissed by the court.⁷⁵ The court reasoned that "any obligation between a child and one standing in place of a parent is necessarily not one owed by a parent to his own child, and therefore, . . . not a duty owed to a 'dependent child' within the purview of the 1950 amendment to section 38."⁷⁶ Finding that Mr. Brown had assumed only a contractual obligation, which was not addressed by the 1950 and 1962 amendments, the court held that nothing more than a debt was created, and therefore under the constitution he was immune from imprisonment.⁷⁷

In concluding its opinion, the court addressed a point not discussed by the parties, but utilized by the trial court. The chancellor had reasoned that even if Mr. Brown's obligation were a debt within the meaning of article III, section 38, imprisonment for contempt was still an available enforcement tool because of Mr. Brown's disregard of a direct order by the court to pay.⁷⁸ Following earlier precedent,⁷⁹ the court of appeals rejected the chancellor's rationale, concluding that when the decree only directs the payment of money, the equity court is without authority to imprison for contempt except in those circumstances outlined by article III, section 38.⁸⁰ The court reasoned that the 1950 and 1962 amendments to section 38, allowing imprisonment for nonsupport in certain enumerated instances, would have accomplished no change nor would they have granted the equity courts new power if the chancellors already had the power to imprison for contempt upon the disobedience of an order directing the payment of money.⁸¹ In support of its reasoning, the court noted that if the chancellor's conclusion were correct, the 1851 prohibition against imprisonment for debt would have applied only to actions at law.⁸² Such a conclusion, according to the court, is

74. 287 Md. 273, 285, 412 A.2d 396, 402 (1980); *see, e.g.*, MD. ANN. CODE art. 88A, § 45 (1979) (aid to families with dependent children); MD. ANN. CODE art. 27, § 35A (1979) (child abuse); MD. CTS. & JUD. PROC. CODE ANN. § 3-901(b) (1980) (wrongful death). *But see* MD. EST. & TRUSTS CODE ANN. § 1-205 (1974) (specifically *excludes* stepchildren).

75. 287 Md. 273, 286 n.8, 412 A.2d 396, 403 n.8 (1980).

76. *Id.* at 286, 412 A.2d at 403.

77. *Id.* at 288, 412 A.2d at 404.

78. *Id.* at 286, 412 A.2d at 403.

79. *See* *Yake v. Yake*, 170 Md. 75, 78, 183 A. 555, 556-57 (1935); *Bushman v. Bushman*, 157 Md. 166, 170, 145 A. 488, 492 (1929); *Dickey v. Dickey*, 154 Md. 675, 681, 141 A. 387, 390 (1928); MD. R.P. 685; C. PHELPS, JURIDICAL EQUITY § 84, at 110-11 (1894).

80. 287 Md. 273, 287, 412 A.2d 396, 403 (1980).

81. *Id.* at 287, 412 A.2d at 403-04.

82. *Id.* at 287, 412 A.2d at 404.

clearly at odds with both prior decisions of the court⁸³ and with the obvious intent of the framers of the 1950 and 1962 amendments to section 38, who, by the use of the equity term "decree," understood that ordinarily the section would apply in equity actions.⁸⁴

The court further buttressed its reasoning by examining Maryland Rule of Procedure 685, which outlines the mechanisms available to an equity court to enforce its decrees and orders.⁸⁵ Rule 685 was previously codified in article 16, section 222 of the 1951 Maryland Code.⁸⁶ That statute contained a clause expressly prohibiting imprisonment when the order only directed the payment of money.⁸⁷ The clause was deleted from Rule 685, which superseded the statute, because it was thought to be surplusage in view of article III, section 38.⁸⁸ The court thus believed that the rule impliedly excludes imprisonment for contempt when the decree only directs the payment of money.⁸⁹ It was noted by the court that the opinion should not be read as a "disparagement" of the employment of the powers available to equity courts by virtue of Maryland Rule 685.⁹⁰ In view of the arsenal of enforcement tools available to equity courts, the *Brown* court concluded that its decision should not hamper the equity courts' ability to enforce their decrees.

V. ANALYSIS

The court's holding in *Brown* that a stepchild is not a dependent child within the meaning of article III, section 38 is well-reasoned and in line with the majority of other states. Most states have consistently held, as did the Court of Appeals of Maryland, that a husband is under no duty to support a stepchild and that any obligation he assumes as a result of the child-stepfather relationship ends upon dissolution of the marriage.⁹¹ The court of appeals correctly rea-

83. See, e.g., *Bushman v. Bushman*, 157 Md. 166, 145 A. 488 (1929); *Dickey v. Dickey*, 154 Md. 675, 141 A. 387 (1928).

84. 287 Md. 273, 287, 412 A.2d 396, 404 (1980).

85. *Id.* at 287-88, 412 A.2d at 404.

86. The statute, originally enacted in 1860, was repealed in 1957 upon being superseded by Maryland Rule of Procedure 685.

87. MD. ANN. CODE art. 16, § 222 (1951) (repealed 1957).

88. 287 Md. 273, 287-88, 412 A.2d 396, 404 (1980).

89. *Id.* at 288, 412 A.2d at 404.

90. *Id.*

91. See, e.g., *Harrington v. Harrington*, 145 A.2d 121, 122 (D.C. 1958); *Wood v. Wood*, 116 Ga. 519, 143 S.E. 770 (1928); *McDowell v. McDowell*, 378 S.W.2d 814 (Ky. 1964); *Bunder v. Mains*, 139 Me. 231, 28 A.2d 734 (1942); *Parker v. Northomb*, 65 Neb. 308, 91 N.W. 395 (1902); *Falzo v. Falzo*, 84 N.J. Super. 343, 202 A.2d 192 (1964); *Peake v. Peake*, 205 Misc. 393, 128 N.Y.S.2d 631 (1954); *Sargent v. Foland*, 104 Or. 296, 207 P. 349 (1922); *Echols v. Echols*, 168 S.W.2d 282 (Tex. Civ. App. 1943). See also H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 6.2 (1968); 2 W. NELSON, *DIVORCE AND ANNULMENT* § 14.80 (rev. 2d ed. 1961); Berkowitz, *Legal Incidents of Today's "Step" Relationship: Cinderella Revisited*, 4 FAM. L.Q. 209 (1970); Note, *Stepchildren and In Loco Parentis Relationships*, 52 HARV. L. REV. 515 (1939).

soned, after examining similar legislative enactments, that the framers did not intend the term "dependent child," as used in the 1950 amendment to article III, section 38, to encompass stepchildren.⁹² The policy reason behind the passage of the 1950 and 1962 amendments was to provide enforcement power to equity courts that ordered support payments for those dependent and illegitimate children whose parents were under a common law duty to support them.⁹³ Stepparents are under no such common law duty.⁹⁴

The *Brown* decision further clarifies Maryland's position that stepchildren are afforded less protection than natural children. It is inequitable that Maryland, like so many other states,⁹⁵ has failed to provide adequate protection for stepchildren, but the court of appeals need not accept full responsibility for that fact. The court looks to the legislature and its intent before reaching its decisions, and the legislature has been remiss in addressing the status of stepchildren. Until the General Assembly offers some guidance as to the rights of stepchildren and the duties of stepparents, stepchildren in Maryland will only be provided support when a stepparent feels he has a personal, moral obligation — an obligation that, according to one court, can be "cast off at any time."⁹⁶

The *Brown* court's holding as to an equity court's power to imprison for the disobedience of a court order is inconsistent with the rule in many other states.⁹⁷ Relying on *Dickey v. Dickey*,⁹⁸ the Court of Appeals of Maryland held that when "a decree only directs the payment of money, a party defendant, who has been brought into court under process of contempt to compel the performance of such a

92. See text accompanying notes 61–70 *supra*. Most state courts follow the reasoning of the Supreme Court of Kansas that "[h]ad the legislature intended that stepchildren be included in [a statute] . . . words . . . could easily have been added." *Zeller v. Zeller*, 195 Kan. 452, 456, 407 P.2d 478, 482 (1965). *But see* MD. EST. & TRUSTS CODE ANN. § 1-205 (1974) (specifically excludes stepchildren).

93. *Brown v. Brown*, 287 Md. 273, 282–83, 412 A.2d 396, 401–02 (1980); see note 47 and accompanying text *supra*.

94. See H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 6.2 (1968); 2 W. NELSON, *DIVORCE AND ANNULMENT* § 14.80 (rev. 2d ed. 1961); Berkowitz, *Legal Incidents of Today's "Step" Relationship: Cinderella Revisited*, 4 FAM. L.Q. 209 (1970); Note, *Stepchildren and In Loco Parentis Relationships*, 52 HARV. L. REV. 515 (1939). See also MD. ANN. CODE art. 72A, § 1 (1978). Section one of article 72A is the codification of the common law duty to support one's children and has been held applicable to legitimate children only. *Williams v. Williams*, 18 Md. App. 353, 306 A.2d 564 (1973).

95. See note 91 *supra*.

96. *State ex rel. Hardesty v. Sparks*, 28 Tenn. App. 329, 336, 190 S.W.2d 302, 305 (1945).

97. See, e.g., *Usery v. Fisher*, 565 F.2d 137 (10th Cir. 1977) (applying Colorado law); *Harrison v. Harrison*, 239 Ark. 756, 395 S.W.2d 128 (1965); *Wells v. Wells*, 358 A.2d 648 (D.C. 1976); *Newell v. Newell*, 237 Ga. 708, 229 S.E.2d 793 (1976); *Singer v. Singer*, 52 A.D.2d 774, 382 N.Y.S.2d 449 (1976); *In re Clift's Estate*, 108 Utah 336, 159 P.2d 872 (1945); *Wisconsin Employment Relations Bd. v. Mews*, 29 Wis. 2d 44, 138 N.W.2d 147 (1965).

98. 154 Md. 675, 141 A. 387 (1928).

decree, may not be imprisoned.⁹⁹ Because the court found that the circuit court's order to pay support for a stepchild was only a money decree rather than a support order within the meaning of article III, section 38, imprisonment of Mr. Brown was not an available enforcement method when he defaulted.¹⁰⁰ Some states, however, apply a different rationale, which allows equity courts to imprison in such a situation. Those states utilize the same reasoning as the circuit court chancellor in *Brown*: "Contempt powers deal . . . with a far broader scope of cases than those that are just coupled with child support, contempt is the sanction for disobedience of a court order . . ." ¹⁰¹ Thus, if one is in contempt of a court order in those states, he may be imprisoned, not for the debt itself, but because of his disobedience of the court order. Such reasoning is not unreasonably harsh when one considers that incarceration is a coercive measure to be applied only when one willfully disobeys a court order. If the party subject to the court order can prove indigency or inability to pay, the measure is not applied.¹⁰²

Unlike those states that permit imprisonment for the contempt itself, the Court of Appeals of Maryland has limited the power of equity courts to imprison for contempt when money decrees are involved to those exceptions outlined in article III, section 38. The court in *Brown* took the position that chancellors have a wide array of enforcement tools by virtue of Maryland Rule of Procedure 685.¹⁰³ The advantage, however, of giving equity courts the authority to imprison for contempt of its orders is that it adds coercive power to the decrees. When imprisonment is the consequence of disobeying an order, that fact will influence the parties with respect to the agreement involved.¹⁰⁴ The knowledge that incarceration is not available as a coercive measure may encourage a party, such as a stepparent, to take on obligations of support he has no intention of carrying out.¹⁰⁵ If imprisonment were a possible result of default, parties would be more honest and cautious when entering into support agreements that do not fall squarely within the scope of article III, section 38.

As a result of the *Brown* decision, the court of appeals has

99. 287 Md. 273, 286-87, 412 A.2d 396, 403 (quoting *Dickey v. Dickey*, 154 Md. 675, 681, 141 A. 387, 390 (1928)).

100. 287 Md. 273, 288, 412 A.2d 396, 404 (1980).

101. *Id.* at 276, 412 A.2d at 398; *see, e.g.*, *Usery v. Fisher*, 565 F.2d 137 (10th Cir. 1977) (applying Colorado law); *Harrison v. Harrison*, 239 Ark. 756, 395 S.W.2d 128 (1965); *Wells v. Wells*, 358 A.2d 648 (D.C. 1976); *Newell v. Newell*, 237 Ga. 708, 229 S.E.2d 793 (1976); *Singer v. Singer*, 52 A.D.2d 774, 382 N.Y.S.2d 449 (1976); *In re Clift's Estate*, 108 Utah 336, 159 P.2d 872 (1945); *Wisconsin Employment Relations Bd. v. Mews*, 29 Wis. 2d 44, 138 N.W.2d 147 (1965).

102. *See* *McDaniel v. McDaniel*, 256 Md. 684, 695, 262 A.2d 52, 58 (1970).

103. 287 Md. 273, 288, 412 A.2d 396, 404; *see* text accompanying note 106 *infra*.

104. *Keltner v. Keltner*, 589 S.W.2d 235, 241 (Mo. 1979).

105. *Id.* at 240.

expressly limited the enforcement of agreements to support stepchildren to those tools authorized by Maryland Rule of Procedure 685. Those tools include: sequestration of the real and personal estate and effects of the defendant; issuance of a *feri facias* against the lands, tenements, goods, and chattels of the defendant; attachment by way of execution against the lands, tenements, goods, and chattels of the defendant; and injunction.¹⁰⁶ The court did acknowledge that a contractual obligation such as the one found in *Brown* can also be enforced by means of an assumpsit action.¹⁰⁷

Because an order for the support of a stepchild is viewed in Maryland as a contractual obligation rather than a legal duty and therefore cannot be enforced through imprisonment by virtue of article III, section 38, the question remains whether the order can be enforced through the Uniform Reciprocal Enforcement of Support Act (URESA).¹⁰⁸ That act, adopted in all fifty states, plus Guam, the District of Columbia, Puerto Rico, and the Virgin Islands,¹⁰⁹ was designed to provide an additional method of enforcing spousal and child support orders on an interstate basis.¹¹⁰ Under the URESA, a petition to enforce a duty to support may be filed in any state regardless of where the person owing the duty resides.¹¹¹ The state in which the action is initiated must first make a preliminary finding of a duty of support¹¹² and then forward the petition to the state in which the obligor resides (responding state).¹¹³ The petition is then heard by the responding state.¹¹⁴

Under the Act, "duty of support" is intended to encompass any possible support duty created by a particular state,¹¹⁵ including those duties "imposed or imposable by law or by order, decree, or judgment of any court."¹¹⁶ In determining whether a duty of support exists, the applicable law is the law of the state where the obligor was present for the period during which support is sought.¹¹⁷ If the

106. Md. R.P. 685.

107. 287 Md. 273, 277, 412 A.2d 396, 398 (1980).

108. This act is codified in Maryland as MD. ANN. CODE art. 89C, §§ 1-39 (1979).

109. Fox, *The Uniform Reciprocal Enforcement of Support Act*, 12 FAM. L.Q. 113, 113-14 (1978).

110. *Id.* at 114.

111. *Id.*

112. *Id.* at 115.

113. *Id.* at 123.

114. *Id.* at 115; see UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 7, 14; MD. ANN. CODE art. 89C, §§ 7, 14(a) (1979). See also W. BROCKELBACK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 42-43 (2d ed. 1971).

115. Fox, *The Uniform Reciprocal Enforcement of Support Act*, 12 FAM. L.Q. 113, 116 (1978).

116. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 2(b); MD. ANN. CODE art. 89C, § 2(g) (1979).

117. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 7; MD. ANN. CODE art. 89C, § 7 (1979).

obligor incurred a duty in one state and then moved to a responding state that does not recognize such a duty, the responding state would be bound to enforce that duty only to the extent of any arrearages that accrued before the obligor moved to the responding state.¹¹⁸ Thus, if a party initiated an action to enforce a support order from a state that recognizes a duty to support one's stepchildren and Maryland was the responding state, Maryland would be under no legal obligation to impose any duty on the obligor that accrued after he moved to Maryland. Because a majority of states adopt the view, as Maryland did in *Brown*, that a stepparent owes no legal duty to support a stepchild, it is unlikely that the URESA would provide an adequate method of enforcing an order or decree to support a stepchild against an obligor residing in one of those states. A party attempting to enforce such an order therefore would be limited to enforcement of the order as a contractual obligation. As such, it should be recognized by other states under the full faith and credit clause.¹¹⁹

VI. CONCLUSION

As a result of *Brown v. Brown*, Maryland aligns itself with the majority view that a stepparent is under no legal duty to support a stepchild. Thus, an agreement to support a stepchild that has been incorporated into a divorce decree cannot be enforced by imprisonment because it does not fall within the exceptions to the constitutional prohibition against imprisonment for debt. In light of the increasing number of stepparent relationships, it is time for the legislature to define the rights of stepchildren and the duties and responsibilities of stepparents. Until such action is taken, any agreement to support a stepchild will be viewed as a contractual obligation. As such, the remedies available to enforce a contractual obligation to support a stepchild are limited to those authorized by Maryland Rule of Procedure 685 or an action in *assumpsit*. It also appears that an order to support a stepchild would not be enforceable in other states through the Uniform Reciprocal Enforcement of Support Act because most states, like Maryland, find no legal duty to support a stepchild.

In addition, the *Brown* court reaffirmed its position that imprisonment for contempt is unavailable when the decree only directs the

118. Fox, *The Uniform Reciprocal Enforcement of Support Act*, 12 FAM. L.Q. 113, 117 (1978). For example, the Arizona Attorney General has ruled that a Michigan duty imposed on children requiring them to support their indigent parents may not be imposed on an obligor found in Arizona. *Id.*

119. *Hampton v. McConnell*, 16 U.S. (3 Wheat.) 234, 235 (1818) (a judgment should receive the same effect in sister states that it enjoys in the state of its rendition).

payment of money, unless it falls within the exceptions of article III, section 38. The court's holding is inconsistent with the rule in many other states, which permits imprisonment for contempt, not for the debt, but for the willful disobedience of a court order. The rule allowing imprisonment appears to be well-reasoned and adds coercive power to court decrees. Further, it is not unreasonably harsh because a party may avoid being held in contempt by showing an inability to pay. If Maryland were to permit equity courts to imprison for the willful disobedience of their decrees, it would certainly have the effect of strengthening the position of equity courts and might additionally encourage parties to enter into agreements more honestly and carefully.

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