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## FAMILY COURT OF AUSTRALIA in WESTERN AUSTRALIA

*In the Marriage of WEBB and WEBB*

McCall J

7 August 1978

**FAMILY LAW – ENFORCEMENT OF MAINTENANCE ORDER UNDER WESTERN AUSTRALIAN ACT – MAINTENANCE NOT PAYABLE UNDER THAT ACT IN RESPECT OF CHILDREN UPON REACHING 16 YEARS OF AGE – PROVISIONS OF FAMILY LAW ACT TO APPLY – WHETHER OBLIGATION TO PAY MAINTENANCE APPLIES UNTIL CHILD REACHES THE AGE OF 18 YEARS: FAMILY LAW ACT 1975, 76(2)(b); MARRIED PERSONS AND CHILDREN'S (SUMMARY RELIEF) ACT (WA).**

**HELD: Obligation to pay maintenance continues until child reached the age of 18 years.**

1. If an order is to have effect as if it had been made under the *Family Law Act*, this immediately refers to s76(2)(b) of the *Family Law Act* which provides for the maintenance of a child to continue until the child reaches the age of 18 years unless this court has made an order extending the obligation to pay maintenance beyond that time.

2. The effect of s3 and s76 in this case is to extend the period during which the obligation to pay maintenance continues until the child reaches the age of 18 years as distinct from the case of *Miller* where the effect of these provisions was to reduce the period of obligation from one beyond 18 years down to 18 years.

3. Accordingly, the obligation in this case continues until the child reaches the age of 18 years or unless the obligation has been terminated prior to that date by an application under s83 of the *Family Law Act* to either suspend or earlier discharge the maintenance and therefore, in my view, the summons is properly brought and should continue.

**McCALL J:** These enforcement proceedings relate to the enforcement of maintenance provided by an order of the Summary Relief Court in respect of a child who has now turned 16 years of age.

The *Married Persons and Children's (Summary Relief) Act* (W.A.) contained within its provisions a terminating provision whereby maintenance ceased to be payable pursuant to an order under that Act upon the child reaching the age of 16 years. However, pursuant to s3(2)(c) of the *Family Law Act*, a decree of a court of summary jurisdiction in a State made in proceedings for a separation instituted under the law of that State continued to have effect throughout Australia as if the decree had been made under this Act.

As I said in the case of *Miller*, if an order is to have effect as if it had been made under this Act, this immediately refers to s76(2)(b) of the *Family Law Act* which provides for the maintenance of a child to continue until the child reaches the age of 18 years unless this court has made an order extending the obligation to pay maintenance beyond that time.

In my view, the effect of s3 and s76 in this case is to extend the period during which the obligation to pay maintenance continues until the child reaches the age of 18 years as distinct from the case of *Miller* where the effect of these provisions was to reduce the period of obligation from one beyond 18 years down to 18 years.

Accordingly, in my view, the obligation in this case continues until the child reaches the age of 18 years or unless the obligation has been terminated prior to that date by an application under s83 of the *Family Law Act* to either suspend or earlier discharge the maintenance and therefore, in my view, the summons is properly brought and should continue.