

40/78

## FAMILY COURT OF AUSTRALIA at WESTERN AUSTRALIA

*In the Marriage of MILLER and MILLER*

McCall J

7 August 1978

**FAMILY LAW – ORDER FOR MAINTENANCE MADE BY THE VICTORIAN SUPREME COURT UNDER THE MATRIMONIAL CAUSES ACT – MAINTENANCE IN ARREARS – ACTION TAKEN TO ENFORCE THE ORDER – ACTION TAKEN IN RESPECT OF CHILDREN OVER THE AGE OF EIGHTEEN YEARS – WHETHER SUCH ARREARS CAN BE RECOVERED: FAMILY LAW ACT 1975, S76(3).**

**HELD:** Arrears of maintenance in respect of child beyond the age of 18 years not recoverable.

1. 'Decree' by definition in s4 of the *Family Law Act* includes any judgment or order. By s76 of the *Family Law Act* any order for the maintenance of a child ceases to be in force when the child attains the age of 18 years. If, therefore, a decree made under the repealed act has effect as if the decree had been made under the *Family Law Act*, then the order for maintenance for the child must cease upon the child attaining the age of 18 years.

2. There is provision in s76(3) of the *Family Law Act* 1975 for an order for maintenance to continue in respect of a child beyond the age of 18 years. However, the meaning of the word 'court' for the purpose of s76(3) must be ascertained by reference to the definition section and that is 'a court exercising jurisdiction by virtue of this act'.

3. Accordingly, unless there is an order of a court exercising jurisdiction under the *Family Law Act* extending the period during which maintenance for a child is to be paid beyond the age of 18 years, then the order ceases to have effect upon the child reaching the age of 18 years. It follows that an order of the Supreme Court or any Supreme Court exercising jurisdiction under the *Matrimonial Causes Act* which purported to continue maintenance beyond the age of 18 years would be ineffective in view of the definition of 'court' contained in s76.

**McCALL J:** Before me in this enforcement list is a summons issued by the Collector of Maintenance of the State of Western Australia seeking to enforce arrears of maintenance, which arrears accrued pursuant to an order of the Supreme Court of Victoria made under the *Matrimonial Causes Act*.

The order made in Victoria provided for maintenance at the rate of \$5 per week for each of six children of the marriage. Two of these children are now over the age of 18 and, in fact, one is now 22 years of age and the other will be 21 years of age in October this year.

The arrears in respect of which the summons has been issued includes arrears for all children including those over the age of 18. The Collector seeks some direction from the court as to whether arrears in respect of children over the age of 18 can be recovered without an order in respect of their maintenance being made by this court pursuant to s76(3) of the *Family Law Act*.

In my view, arrears in respect of children over the age of 18 are not so recoverable. S3(2)(c) of the *Family Law Act* provides:

'A decree of the Supreme Court ... made before the commencement of this Act ... shall have or continue to have effect throughout Australia and, ... this Act applies to and in relation to the Decree as if the decree had been made under this Act.'

'Decree' by definition in s4 of the *Family Law Act* includes any judgment or order. By s76 of the *Family Law Act* any order for the maintenance of a child ceases to be in force when the child attains the age of 18 years.

If, therefore, a decree made under the repealed act has effect as if the decree had been made under the *Family Law Act*, then in my view the order for maintenance for the child must cease

upon the child attaining the age of 18 years.

There is provision in s76(3) for an order for maintenance to continue in respect of a child beyond the age of 18 years. However, in my view, the meaning of the word 'court' for the purpose of s76(3) must be ascertained by reference to the definition section and that is 'a court exercising jurisdiction by virtue of this act'.

Accordingly, in my view, unless there is an order of a court exercising jurisdiction under the *Family Law Act* extending the period during which maintenance for a child is to be paid beyond the age of 18 years, then the order ceases to have effect upon the child reaching the age of 18 years. It follows, of course, in my view that an order of the Supreme Court or any Supreme Court exercising jurisdiction under the *Matrimonial Causes Act* which purported to continue maintenance beyond the age of 18 years would be ineffective in view of the definition of 'court' contained in s76.

That being the case, in my view the arrears of maintenance in respect of the children in this case who have attained the age of 18 years are irrecoverable as the order now stands. Unless an order is made by a court exercising jurisdiction under this Act extending the maintenance beyond the age of 18 years, such arrears cannot be recoverable in enforcement proceedings.

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