

Honorable T. J. S. Waxter, Director, Department of Public Welfare (cont'd)

primary obligation upon the father to support his child.

Alvey v. Hartwig, 106 Md. 254, page 261 (1907)  
Hood v. Hood, 138 Md. 355, page 358 (1920)  
Hoggs v. Hoggs, 138 Md. 422 (1921)

But in the above cases and many others of an identical situation the question with which the court is concerned is a proceedings between husband and wife as to custody, agreements to support and relative ability to support. The whole line of cases establishes as axiomatic principles that a father must support his child regardless of any agreement between himself and his wife, that the welfare of the child is paramount, that the mother's means may be taken into account in fixing the sum which the father is to pay, etc. Although the subject is not specifically covered in any of these opinions, the courts, by calling the husband's obligation "primary" definitely imply that the mother certainly has a secondary obligation of support. The Court of Appeals in the case of Sause v. Sause, 69 A. 2d 811 (1949) reiterates the father's common law primary obligation but cites Article 72 A and the divorce statutes to show that a court may determine who shall have custody and who shall be charged for support.

The subject is fully discussed with many citations in 39 Am. Jur., Parent and Child, where it is said (par. 8) that the duty for support is joint resting primarily on the father but extending also to the mother. The general statement is also made (par.9) that in jurisdictions where modern statutes giving equal right to mother and father operate, there is a repudiation of earlier common law decisions where those decisions are inconsistent with the statute. (See, Article 72 A) In further discussing the effect of such a statute (par. 39) it is said that in jurisdictions where such a statute equally charging the parents is in effect, there is no longer a primary or secondary obligation but the duty of support depends on equitable apportionment.

We have no doubt that it is and will continue to be the policy of Maryland courts in civil cases to hold a mother fully responsible for the support of her child where the father is unknown, can not be found or unable to furnish such support. The citations to which you have directed us, such as Alvey v. Hartwig, Hood v. Hood, (supra.), deal primarily with the husband's obligation to his wife and through her to their children which rest upon an entirely different foundation than the direct parental obligation (Am. Jur. par 35); in fact the question of alimony figures largely in these decisions.