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**PARENT AND CHILD—WORKMEN'S COMPENSATION CLAIMED BY DELIN-  
QUENT CHILD—**By their guardian Amos and Ernest Freestone, both under  
16 years of age at the beginning of this action, seek to recover workmen's  
compensation for the death of their father, Alonzo, which occurred in the

course of his employment by appellant. At the time of his death Alonzo was partially supporting Ernest who was in the custody of his mother after she had secured a divorce from Alonzo; but he was contributing nothing to the support of Amos, who a short while before had been committed to White's Manual Labor Institute at Wabash as a delinquent. The Industrial Board awarded compensation to the two sons in unequal parts, on the theory that each was partially, but not wholly dependent on the father. In an appeal from these awards the employer contends that Amos is not entitled to compensation because he was not dependent on his father at the time the father died, but that the county (LaPorte) was paying for his support at the Wabash Institute. *Held*: award as to Amos reversed, as to Ernest affirmed. *Advance Rumley Co. v. Freestone et al.*, Appellate Court of Indiana, July 2, 1929, 167 N. E. 377. On rehearing the award as to Ernest also was reversed and the whole case sent back to the Industrial Board. September 13, 1929, 167 N. E. 633.

By section 38 of the Workmen's Compensation Act, as amended in 1919, Acts 1919, p. 165, c. 57; section 9483, Burns' Ann. St. 1926, it is conclusively presumed that a child under 18 years of age is wholly dependent for support upon the parent with whom he is living at the time of the parent's death, or upon whom the laws of the state impose the obligation to support such child, although he may not be living with the parent at the time. After he had been deprived of the custody of his son (Amos), was the parent under any legal obligation to support him? If a father is deprived of the custody of his child by order of the court the common law duty to support ceases, unless otherwise provided for by statute or judicial decree. *Creeley v. Creeley*, 258 Mass. 460, 155 N. E. 424.

But the statute under which Amos was committed to the manual labor institute (section 1705, Burns' 1926; Acts 1903, p. 516, c. 237) provides that if a child is committed to the care and custody of any institution, other than a state institution, the court may require the parent to pay in whole or in part for the support of such child while it is in such institution. In this instance the lower court failed to order the father to pay any part of Amos' support. This was a judicial determination that he was relieved of his legal duty to support so long as the decree depriving him of the custody of his child was in force. And this decree had not been revoked at the time of the father's death.

Among the cases which follow the reasoning of this decision is *Western Indiana Gravel Co. v. Erwin, Guardian*, 84 Ind. App. 26, 149 N. E. 185, which held that children whose custody was awarded to the mother on divorce of the parents, and who lived with and were supported by her without an order of the court requiring the father to support them, were not dependent so as to be entitled to compensation on the father's death. It has been held that an insane wife of a workman, cared for at public expense, is not a dependent entitled to compensation, *Roberts v. Whaley*, 192 Mich. 133, 158 N. W. 209. "The right to the custody and services of the child, and the obligation to support and educate, are reciprocal rights and obligations, unless otherwise fixed by judicial decree." *Ramsey v. Ramsey*, 121 Ind. 215, 23 N. E. 69; *Husband v. Husband*, 67 Ind. 583.

A dissenting opinion contends that when a child is sent to an institution, other than a state institution, although the court fails to order the

father to contribute anything to its support, the legal obligation to support remains with him unless he is expressly excused from the obligation. This interpretation of the statute (Burns' 1926, Sec. 1705, *supra*) is based on the theory that the legal obligation to support is not shifted until it is removed by a legal proceeding, *Leibold v. Leibold*, 158 Ind. 60, 62 N. E. 627; and the fact that he was deprived of his child's custody does not serve to relieve him of that duty, *Spade v. State*, 44 Ind. App. 529, 89 N. E. 604. Also, *Guthrie v. Conrad*, 133 Iowa 171, 110 N. W. 454, which held that the incarceration of a minor child in a state hospital for the insane without the father's consent did not relieve him of liability for its support. The minority opinion further points out that even though the father was not fulfilling his legal obligation to support at the time of his death, dependency is established, for the law does not limit dependency of minor children, living apart from their parents, to cases where support was being furnished, or contributions made, at time of the workman's death. It is sufficient if there is a probability of support forthcoming. *Honnold on Workmen's Compensation*, Vol. 1, sections 82, 266, Parent and Child. Most of the cases cited in support of the dissenting opinion were cited also in the majority opinion, or were held not to be in point because a statute governed the decision, or for some other reason.