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A Medical Partnership Owes a Duty to the Families of Its Patients to Exercise Ordinary Care to Prevent a Partner or Employee, Who Is Acting outside the Ordinary Course of Business, from Tortiously Interfering with Family Relations, While the Partner or Employee Is on the Premises of the Clinic or Purportedly Acting as a Representative of the Partnership Elsewhere.

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TORTS—ALIENATION OF AFFECTIONS—RIGHT OF ACTION—BASIS OF LIABILITY—A MEDICAL PARTNERSHIP OWES A DUTY TO THE FAMILIES OF ITS PATIENTS TO EXERCISE ORDINARY CARE TO PREVENT A PARTNER OR EMPLOYEE, WHO IS ACTING OUTSIDE THE ORDINARY COURSE OF BUSINESS, FROM TORTIOUSLY INTERFERING WITH FAMILY RELATIONS, WHILE THE PARTNER OR EMPLOYEE IS ON THE PREMISES OF THE CLINIC OR PURPORTEDLY ACTING AS A REPRESENTATIVE OF THE PARTNERSHIP ELSEWHERE. *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716 (Tex. Sup. 1971).

John Maclay filed this action for loss of consortium and affections against Dr. Earl J. Brewer, Jr., and Kelsey-Seybold Clinic (a medical partnership of which Dr. Brewer was a partner) alleging that Dr. Brewer conceived and entered into a scheme to alienate the affections of Mr. Maclay's wife and as a direct result of Dr. Brewer's actions, Mrs. Maclay's affections for Mr. Maclay were alienated in April or May, 1967. In his petition, Mr. Maclay also alleged that the Clinic, after receiving notice of the alleged relationship between Dr. Brewer and Mrs. Maclay, failed to take any action. Thus, the plaintiff, in attempting to establish liability, relied upon the Clinic's breach of a duty to take action which arose when it learned of Dr. Brewer's acts. The Clinic conceded that it had gained knowledge of the existence of the improper relationship between Dr. Brewer and Mrs. Maclay in about April of 1967. The Clinic insisted, however, that the record established as a matter of law that it was not liable for the damages which were alleged to have resulted from Dr. Brewer's acts. This proposition was based on the affidavit by all the members of the executive committee, except Dr. Brewer, which stated that the partnership had done no act with the purpose, intent or design to alienate Mrs. Maclay's affections. The trial court sustained the Clinic's motion for summary judgment. On appeal, the court of civil appeals reversed the judgment in favor of the Clinic and remanded the cause for trial.¹ Held—*Affirmed*. A medical partnership owes a *duty* to the *families* of its patients to exercise ordinary care to prevent a partner or employee, who is acting outside the ordinary course of business, from *tortiously interfering with family relations*, while the partner or employee is on the premises of the clinic or purportedly acting as a representative of the partnership elsewhere.

The tort of alienation of affections has been characterized as an intentional tort.² A spouse's cause of action is based upon a willful

¹ *Maclay v. Kelsey-Seybold Clinic*, 456 S.W.2d 229 (Tex. Civ. App.—Houston [1st Dist.] 1970, writ granted).

² See, e.g., *Carrieri v. Bush*, 419 P.2d 132, 136 (Wash. 1966).

and malicious interference with the marriage relation by a third party, without justification or excuse.³ In order for a defendant to be held liable for interference with the marriage relation, the plaintiff must prove that the acts of the defendant were done knowingly and intentionally, for the express purpose of alienating the spouse's affections.⁴ In analyzing this requirement, it may be said that in order for the defendant to be held liable he must in some way have acted affirmatively.⁵ "Inaction is not enough to subject one to liability for alienation of affections."⁶ Also, in connection with the requirement that the defendant must have acted intentionally for the very purpose of affecting the marital relation, the courts generally agree that mere *negligent* conduct which results in the alienation of affections of a spouse will not be sufficient to subject a defendant to liability.⁷ To establish this character of action the plaintiff must also prove that there has been a loss of affections,⁸ which is to say the love, society, companionship and comfort of the spouse.⁹ In addition, the complainant must establish the fact that the defendant's conduct was the controlling or procuring cause of the loss of affections.¹⁰

In contrast with these basic principles regarding the tort of alienation of affections is the theory of liability espoused by the court in the case of *Kelsey-Seybold Clinic v. Maclay*.¹¹ The majority states that the

³ See, e.g., *Donnell v. Donnell*, 415 S.W.2d 127, 132 (Tenn. 1967).

⁴ *Allen v. Lindman*, 148 N.W.2d 610 (Iowa 1967); *Wilson v. Aylward*, 484 P.2d 1003 (Kan. 1971); *Pederson v. Jirsa*, 125 N.W.2d 38 (Minn. 1963); *Lilligren v. William J. Burns International Detective Agency*, 160 N.W. 203 (Minn. 1916); *Hughes v. Holman*, 223 P. 730 (Ore. 1924); *McQuarters v. Ducote*, 234 S.W.2d 433 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.); *Williams v. Rearick*, 218 S.W.2d 225 (Tex. Civ. App.—Amarillo 1949, no writ); *Collier v. Perry*, 149 S.W.2d 292 (Tex. Civ. App.—El Paso 1941, writ dismissed judgment corrected); *Kahn v. Grothaus*, 104 S.W.2d 932 (Tex. Civ. App.—San Antonio 1937, writ dismissed); RESTATEMENT OF TORTS § 683, comment e, f at 471 (1938).

⁵ W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 124, at 877 (4th ed. 1971).

⁶ *McQuarters v. Ducote*, 234 S.W.2d 433, 434 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.), citing RESTATEMENT OF TORTS § 683, comment e at 471 (1938). See *Miller v. Miller*, 169 A. 426 (Md. Ct. App. 1933), where a wife sued her husband's mother and father for alienation of her husband's affections. The court said that the husband's father could not be held liable for alienation of affections. In reaching this result the court states that they have ". . . been referred to no case at common law . . . wherein the husband has been held responsible in cases of alienation of affection for the acts and words of the wife, solely because of his presence . . ." *Id.* at 432.

⁷ In *Lilligren v. William J. Burns International Detective Agency*, 160 N.W. 203, 204 (Minn. 1916), the court stated that it had found no case based upon negligence only in which damages for alienation of affections had been awarded.

⁸ *Allen v. Lindman*, 148 N.W.2d 610, 613 (Iowa 1967); *Pederson v. Jirsa*, 125 N.W.2d 38, 41 (Minn. 1963); *Lilligren v. William J. Burns International Detective Agency*, 160 N.W. 203, 204 (Minn. 1916); *McQuarters v. Ducote*, 234 S.W.2d 433, 434 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.).

⁹ W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 124, at 876 (4th ed. 1971).

¹⁰ *Lilligren v. William J. Burns International Detective Agency*, 160 N.W. 203, 204 (Minn. 1916); *Hughes v. Holman*, 223 P. 730, 734 (Ore. 1924); *Lisle v. Lynch*, 318 S.W.2d 763, 767 (Tex. Civ. App.—Fort Worth 1958, writ ref'd n.r.e.); *McQuarters v. Ducote*, 234 S.W.2d 433, 434 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.); RESTATEMENT OF TORTS § 683, comment i at 473 (1938).

¹¹ 466 S.W.2d 716 (Tex. Sup. 1971).

liability of the Clinic must rest, if at all, upon some theory akin to that recognized by the court in *Williams v. F. & W. Grand Five, Ten and Twenty-five Cent Stores*.¹² In *Williams*, under a master and servant relationship, the owner of the store was held liable for the acts of its manager, where the manager of the store was held to have participated in an assault on a patron by a private detective, by his presence and failure to lend protection when he could and should have protected the patron. In support of this proposition, the court cites the *Restatement* which provides that:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others . . . , if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, . . . and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.¹³

In applying its theory of liability to the facts in the *Kelsey-Seybold* case, the court declared that if and when the partnership received information from which it knew or should have known that there might be a need to take action, it was under a *duty* to use reasonable means at its disposal to prevent any partner or employee from improperly using his position with the Clinic to work a tortious invasion of legally protected family interests.¹⁴ A failure to exercise ordinary care in discharging that *duty* would subject the Clinic to liability for damages proximately caused by its *negligence*.¹⁵ The court in conclusion, stated that the record in this case did not necessarily indicate that the Clinic was under a duty to act, for there was no proof as to when, where or under what circumstances the misconduct, if any, on Dr. Brewer's part occurred.¹⁶ Further, the rather meager information failed to indicate whether the Clinic could have done anything to prevent the damage when one of its partners, Dr. Kelsey, first learned of the

¹² *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 719 (Tex. Sup. 1971), citing *Williams v. F. & W. Grand Five, Ten & Twenty-five Cent Stores*, 116 A. 652 (Pa. 1922). See generally Note, 9 Hous. L. Rev. 152 (1971), for a comparison of the basis of liability in the *Williams* case and the *Kelsey-Seybold* case.

¹³ RESTATEMENT (SECOND) OF TORTS § 317, at 125 (1965).

¹⁴ *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 720 (Tex. Sup. 1971).

¹⁵ *Id.*

¹⁶ *Id.*

situation.¹⁷ However, the court pointed out that it did not affirmatively appear that the Clinic should have done nothing.¹⁸ In other words, the Clinic had failed to establish as a matter of law at the summary judgment stage that it was not liable under any theory fairly presented by the allegations in the plaintiff's petition.¹⁹

The dissent was unable to agree that the partners comprising the Kelsey-Seybold Clinic were even potentially liable.²⁰ In support of this position the dissent relies upon the basic principles applicable to the tort of alienation of affections. In applying these precepts to the instant facts, the minority cites *Lilligren v. William J. Burns International Detective Agency*²¹ which stands for the proposition that an action for alienation of affections is based on the intentional acts of the defendant or defendants, not merely the negligence of the defendant. The minority opinion points out that it is not enough that the acts be the result of negligent conduct. The negligent conduct in the instant case being that the other doctors of the Clinic were possibly negligent in not interfering with the intentional acts of Dr. Brewer.²²

The decision of the court in the *Kelsey-Seybold* case is clearly a case of first impression, both in this and other jurisdictions, in holding that *negligence or inaction* will give rise to a cause of action for the intentional²³ tort of alienation of affections. As a result of this finding, any person or entity occupying the position of master, in a master and servant relationship, may be held liable for *negligence* in failing to prohibit the alienation of affections caused by the acts of the servant who is the active participant.²⁴ It seems that the basic consideration is whether the tort of alienation of affections should be extended to persons or entities outside of those who actively, intentionally and maliciously participate in it and whose actions actually produce the alienation.²⁵

As a result of analyzing a portion of the majority's holding in the

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 720 (dissenting opinion).

²¹ 160 N.W. 203 (Minn. 1916), cited by *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 722 (Tex. Sup. 1971) (dissenting opinion).

²² *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 722 (Tex. Sup. 1971) (dissenting opinion).

²³ See *McQuarters v. Ducote*, 234 S.W.2d 433, 434 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.); *Carrieri v. Bush*, 419 P.2d 132, 136 (Wash. 1966).

²⁴ It should be noted in connection with the results of the holding in the *Kelsey-Seybold* case that the master is only liable when the actions of the servant meet two requirements: (1) The servant must be acting outside the scope of his employment; and (2) When the servant acts he must be upon the premises in possession of the master or upon which the servant is privileged to enter only as the master's servant. RESTATEMENT (SECOND) OF TORTS § 317, at 125 (1965).

²⁵ See *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 721 (Tex. Sup. 1971) (dissenting opinion).

Kelsey-Seybold case, it is clear that the court views a medical partnership as being under a duty.²⁶ In order to adequately treat the pronouncements of the court, an examination must be made in order to reveal the persons to whom this duty is owed and the nature of the duty. The majority declares that the Clinic owes a duty to the *families* of its patients to exercise ordinary care to prevent a *tortious interference with family relations*.²⁷ The court fails to expound upon the meaning it attaches to the word "family" and the phrase "tortious interference with family relations." Considering the fact that the meaning attached to these words will have great bearing upon the interpretation and effects of this decision, resort must be had to other sources in an effort to ascertain the meaning of the word "family" and the phrase "tortious interference with family relations."

In its primary sense²⁸ and most common usage²⁹ the word "family" means a husband, his wife, and their children. The word conveys the impression of some relationship, blood or otherwise.³⁰ Similarly, "interference with family relations," refers to an interference with the rights of a member of the family in his relationship with any other member.³¹ Not all of these rights have received protection.³² Of the recognized types of interference, one has been given the name of "alienation of affections."³³

Judge Greenhill in his dissent finds it impossible to agree that the Clinic owes a duty to the *families* of its patients to prevent a *tortious interference with family relations*.³⁴ This disagreement is founded on a basic difference of opinion regarding the persons who are entitled to bring a cause of action for alienation of affections as a means of compensation for loss of the rights one had in his relationship with another. The dissent says that a cause of action based on alienation of affections is not one on behalf of the family. Rather, it is a cause of action for damages to the offended spouse only, which is maintainable as a direct result of his loss of the affection and conjugal relations of his spouse.³⁵ In support of its position the minority cites the Texas Court of Civil Appeals case of *Garza v. Garza*.³⁶

²⁶ *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 720 (Tex. Sup. 1971).

²⁷ *Id.*

²⁸ *Franklin Fire Insurance Company v. Shadid*, 68 S.W.2d 1030, 1032 (Tex. Comm'n App. 1934, jdgmt adopted).

²⁹ *Collins v. Northwest Casualty Company*, 39 P.2d 986, 989 (Wash. 1935).

³⁰ *Id.*

³¹ W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 124 (4th ed. 1971).

³² *Id.* at 873, 874.

³³ *Id.* at 876.

³⁴ See *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 721 (Tex. Sup. 1971) (dissenting opinion).

³⁵ *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 721 (Tex. Sup. 1971) (dissenting opinion).

³⁶ 209 S.W.2d 1012 (Tex. Civ. App.—Eastland 1948, no writ), cited by *Kelsey-Seybold Clinic v. Maclay*, 466 S.W.2d 716, 721 (Tex. Sup. 1971) (dissenting opinion).

As is demonstrated by the conflict between the majority and dissenting opinions in the instant case, there is a split of authority among the various jurisdictions on the question of whether a court should entertain an action for alienation of affections on behalf of the family, as a result of tortious interference with family relations. The right to bring a cause of action for alienation of affections has long been recognized in favor of the husband, and was accepted at common law by all the states except Louisiana.³⁷ At common law the wife had no cause of action analogous to that of the husband.³⁸ However, today in virtually all states³⁹ the wife is given the same rights and remedies as the husband, either by statute, or as a result of a more liberal interpretation of the Married Women's Acts in recognition of social changes.⁴⁰ As a result, the basic consideration is whether the third member comprising the family unit, the child, should also have this right of action.

The older common law gave the child no right to the "services" of a parent, as distinguished from his support. There were no cases dealing with any liability for alienation of the parent's affections. It is only within recent years that the question has even been raised.⁴¹

In accord with the modern trend of a more democratic idea of domestic relations,⁴² a child's right to bring action for the alienation of his parent's affections has been recognized in four jurisdictions heretofore.⁴³ However, it should not be overlooked that, at the same time, there is a trend in many more jurisdictions to limit, if not abolish, the right to bring a cause of action for alienation of affections. This trend is evidenced by the fact that, prior to the decision in the instant case, some thirteen jurisdictions including Texas had held that the child's action would not lie.⁴⁴ And, the adoption of the "heart balm" acts

³⁷ *Moulin v. Monteleone*, 115 So. 447 (La. 1927). See W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 124, at 876 (4th ed. 1971).

³⁸ W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 124, at 881 (4th ed. 1971).

³⁹ Maine has construed its particular statute to mean that an action may be maintained against a female defendant but not against a male. *Howard v. Howard*, 115 A. 259 (Me. 1921); *Farrell v. Farrell*, 108 A. 648 (Me. 1920).

⁴⁰ W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 124, at 881 (4th ed. 1971).

⁴¹ *Id.* at 886. The word "services" refers to the nature of the early common law action for alienation of affections. This cause of action was designed as a means of compensating the husband for the loss of his servant's "services." The child at early common law was given the status of a mere servant. *Id.* at 873.

⁴² There has been a transition in the concept of the family, which is now considered to be "a cooperative enterprise with correlative rights and duties among *all* members thereof." *Johnson v. Luhman*, 71 N.E.2d 810, 813 (Ill. App. 1947). (Emphasis added.)

⁴³ *Daily v. Parker*, 152 F.2d 174 (7th Cir. 1945); *Russick v. Hicks*, 85 F. Supp. 281 (W.D. Mich. 1949); *Johnson v. Luhman*, 71 N.E.2d 810 (Ill. App. 1947); *Miller v. Monsen*, 37 N.W.2d 543 (Minn. 1949).

⁴⁴ *Elder v. Mac Alpine-Downie*, 180 F.2d 385 (D.C. Cir. 1950); *Lucas v. Bishop*, 273 S.W.2d 397 (Ark. 1954); *Coulter v. Coulter*, 214 P. 400 (Colo. 1923); *Taylor v. Keefe*, 56 A.2d 768 (Conn. 1947); *Whitcomb v. Huffington*, 304 P.2d 465 (Kan. 1956); *Cole v. Cole*, 177 N.E. 810 (Mass. 1931); *Morrow v. Yannantuono*, 273 N.Y.S. 912 (Sup. Ct. 1934); *Henson v.*

(which abolish the cause of action for alienation of affections) in at least twelve states indicates a social policy contrary to the allowance of the child's action.⁴⁵

The courts of the various jurisdictions have announced varied reasons in support of their decisions either to allow or not to allow the child to bring an action for the damages he suffers as a result of the alienation of his parent's affections. Many of the cases which reveal an opposition to a cause of action in favor of the child specifically deny the power of the court to engage in such "judicial empiricism"⁴⁶ as that of creating a new cause of action. The courts, speaking through these cases, say that "[t]he 'excelsior cry for a better system,' in order to keep step with the new conditions and spirit of a more progressive age, must be made to the Legislature, . . ."⁴⁷ In all of the cases in which recovery has been permitted, the power to establish such a right of action has been based on the proposition that the common law is flexible enough to afford protection to what are presently regarded as family rights under our social standards and concepts of the family unit.⁴⁸ In addition, most of the cases in their argument against permitting recovery by the child insist that consortium, i.e., the conjugal right of a spouse, is the sole basis for the action of alienation of affections.⁴⁹ In reply, the court in *Johnson v. Luhman* declared that there is nothing in the position of a child at common law or in the statutes for the protection of minors which either specifically or by implication tends to limit or prohibit such a right of action.⁵⁰

The courts which have denied the child relief have raised many practical difficulties which would arise if the child were permitted redress. These practical difficulties have been said to include: the risk of increased extortionary litigation;⁵¹ the problem of determining damages, especially if there were several children whose damages might overlap;⁵²

Thomas, 56 S.E.2d 432 (N.C. 1949); Kane v. Quigley, 203 N.E.2d 338 (Ohio 1964); Garza v. Garza, 209 S.W.2d 1012 (Tex. Civ. App.—Eastland 1948, no writ); Scholberg v. Itnyre, 58 N.W.2d 698 (Wis. 1953). In three other courts the action has been held to be barred by the "heart balm" statutes. Rudley v. Tobias, 190 P.2d 984 (Cal. Ct. App. 1948); Kleinow v. Ameika, 88 A.2d 31 (N.J. Super. 1952); Katz v. Katz, 95 N.Y.S.2d 863 (Sup. Ct. 1950).

⁴⁵ See Taylor v. Keefe, 56 A.2d 768 (Conn. 1947).

⁴⁶ Garza v. Garza, 209 S.W.2d 1012, 1015 (Tex. Civ. App.—Eastland 1948, no writ).

⁴⁷ Gowin v. Gowin, 264 S.W. 529, 538 (Tex. Civ. App.—Fort Worth 1924, writ granted), *aff'd* 292 S.W. 211 (Tex. Comm'n App. 1927, holding approved), *quoted by* Henson v. Thomas, 56 S.E.2d 432, 434 (N.C. 1949); Garza v. Garza, 209 S.W.2d 1012, 1015 (Tex. Civ. App.—Eastland 1948, no writ). See Elder v. Mac Alpine-Downie, 180 F.2d 385 (D.C. Cir. 1950).

⁴⁸ Daily v. Parker, 152 F.2d 174 (7th Cir. 1945); Russick v. Hicks, 85 F. Supp. 281 (W.D. Mich. 1949); Johnson v. Luhman, 71 N.E.2d 810 (Ill. App. 1947); Miller v. Monsen, 37 N.W.2d 543 (Minn. 1949).

⁴⁹ Coulter v. Coulter, 214 P. 400, 402 (Colo. 1923); Morrow v. Yannantuono, 273 N.Y.S. 912, 913 (Sup. Ct. 1934); Garza v. Garza, 209 S.W.2d 1012, 1015 (Tex. Civ. App.—Eastland 1948, no writ).

⁵⁰ 71 N.E.2d 810, 814 (Ill. App. 1947).

⁵¹ Taylor v. Keefe, 56 A.2d 768, 770 (Conn. 1947).

⁵² *Id.*

the danger of multiplicity of suits;⁵³ and the problem of determining the point in time at which a child would cease to have a right to sue.⁵⁴

The opinion of the court in *Miller v. Monsen*⁵⁵ furnishes a rebuttal to many of these proposed practical difficulties. As to extortionary litigation, it has been said that courts can be trusted to pick bad suits from good with fair accuracy, and in any case a plaintiff with a just claim should not be denied relief because of a possibility that others may use his case to impose on the courts.⁵⁶ In reference to damages, the *Miller* case says that redress should not be denied merely because of the difficulties that may be encountered in reckoning damages.⁵⁷ With regard to the argument that a multiplicity of suits would result from allowing children a cause of action, the *Miller* opinion furnishes a threefold reply. The court reasons that the frequent occurrence of a wrong is no argument against allowing an action to compensate the injured party.⁵⁸ Further, the opinion makes note of the fact that in the states where such actions have been allowed there has been no burdensome increase in such litigation by virtue of the fact that there are not enough such enticements to cause an increase.⁵⁹ Finally, the court makes an observation that the argument of multiplicity of suits is a vague statement commonly used as a subterfuge in opposing the adoption of new causes of action and that the argument has been rejected as being without justification.⁶⁰ With respect to the problem of determining the point in time at which a child would cease to have a right to sue, a solution is forthcoming in view of the statement that "[t]he group which could establish [a] real loss would be no larger than the number of minor children living at home at the time of the [alienation]."⁶¹

One final argument is posed by the declaration in *Henson v. Thomas* that since the parent commits no legal wrong against the child the third person inducing the parent's action incurs no greater liability.⁶² The reply is to the effect that there is a separate cause of action against the third person and furthermore that the parent's exemption from suit by his child is a policy based on public interest in the preservation of the family.⁶³ Once the family unit has ceased to exist the exemption has no further justification.⁶⁴

⁵³ *Id.*; *Morrow v. Yannantuono*, 273 N.Y.S. 912, 914 (Sup. Ct. 1934).

⁵⁴ *Taylor v. Keefe*, 56 A.2d 768, 770 (Conn. 1947).

⁵⁵ 37 N.W.2d 543 (Minn. 1949).

⁵⁶ Note, 20 CORNELL L.Q. 255, 256 (1935) (relied on as authority in *Miller v. Monsen*, 37 N.W.2d 543, 548 [Minn. 1949]).

⁵⁷ *Miller v. Monsen*, 37 N.W.2d 543, 546 (Minn. 1949).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Cf. Note, 20 CORNELL L.Q. 255, 257 (1935).

⁶² 56 S.E.2d 432, 434 (N.C. 1949).

⁶³ *Miller v. Monsen*, 37 N.W.2d 543, 547 (Minn. 1949).

⁶⁴ *Id.*