

## **BURSEY v BURSEY AND ANOTHER 1999 (3) SA 33 (SCA)**

### **Headnote : Kopnota**

Both divorced parents have, at common law, a duty to maintain a child of the dissolved marriage. The incidence of this duty in respect of each parent depends on their relative means and the circumstances and needs of the child from time to time. The duty does not terminate when the child reaches a particular age but continues after majority. A maintenance order at divorce is ancillary to and does not replace or alter the divorced parent's common-law duty to maintain a child but merely regulates the incidence of that duty. The effect of an order for the payment of maintenance by the father to the mother in respect of a child who has attained majority but is not self-supporting is simply that the maintenance payable to such child by his parents will continue to be paid to him by the mother who would recover under the Court's order the father's contribution to the common parental duty to support. Depending on the terms of the maintenance order, such order exists separately from the fluctuations of the incidence of the common-law duty to maintain but can be brought into harmony with that duty by a Court at any time. (At 36C/D - D, 36F/G - G/H, 37C - D/E and 38G/H - H.)

The order in casu had provided that the appellant had to pay maintenance for the child until he became self-supporting. Accordingly he had to do so in terms of the order even if that event only occurred after the child had already attained majority. (At 38C/D.)

The decision in the Eastern Cape Division in *B v B* confirmed.