USING THE UNIFORM PARENTAGE ACT TO OBTAIN RETROACTIVE CHILD SUPPORT FOR MARRIED BUT SEPARATED CUSTODIAL PARENTS[1]

I. INTRODUCTION

In New Mexico, as in most states, the support and care of a child is considered a primary obligation that must be borne by "those who bring a child into the world."[2] It is among the oldest principles of law.[3] The child support obligation is to be shared equally[4] and does not end until the child reaches the age of majority.[5] It no longer matters if the child was born out-of-wedlock or to married parents.[6] By adopting the Uniform Parentage Act, [7] the New Mexico legislature has enacted a process that permits custodial married parents the right to retroactive child support back to the date of separation. Failing to do so would violate the equal protection clause of the Fourteenth Amendment and the strong public policy requiring parents to support their children.

Many in the legal community have typically followed the axiom that married custodial parents can receive retroactive child support only as far back as the filing date of the petition for dissolution of marriage. However, this article shows how married custodial parent's right to retroactive child is not limited by that date but can extend back to the date the parties separated. This is demonstrated by the following scenarios and a rigorous look at case and statutory law that supports this proposition.

Take for example: Larry and Sharon. They began a romantic relationship and in January 2021 began living together. In November 2021, Sharon gave birth to a baby boy. In December 2022, Larry moved out of the home he shared with Sharon and the baby. Larry refuses to pay for child support because Sharon will not let Larry see the child. On June 1, 2024, Sharon filed her Petition to Establish Parent-Child Relationship, Child Custody and Timesharing, and Assess Child Support. In her petition, Sharon states that the parties were never married and she is seeking retroactive child support back to January 2023, the month following Larry's absence from the home. The court held a hearing in March 2025 and determined that Larry should have been paying $1,000.00 per month as child support. The court ordered Larry to start paying $1,000.00 as on-going child support beginning April 1, 2025. The court also awarded Sharon judgment against Larry in the amount of $27,000.00 for retroactive child support from January 2023 through March 31, 2025, 27 months ($1,000 x 27 months = $27,000.00).

Now assume the same facts as above with one change: Larry and Sharon married in January 2021. If Sharon filed her Petition for Dissolution of Marriage on June 1, 2024, the court's look back period under the dissolution of marriage statutes would start from the filing of the petition. If no other claim is filed, Sharon's judgment for back child support would be $10,000.00 (from June 1, 2024, through March 31, 2025), with on-going child support of $1,000.00 beginning April 1, 2025.

By marrying Sharon and refusing to support his child from when he left the marital home, Larry has saved himself $17,000.00. It is this "savings" that the Uniform Parentage Act seeks to rectify.

This issue is not novel and has been addressed in other jurisdictions.[8] For example, the Colorado Court of Appeals in *In re Marriage of Smith*, stated that,"[a]lthough proceedings to establish and enforce child support obligations operate only prospectively under the Uniform Dissolution of Marriage Act . . ., the [Colorado Uniform Parentage Act] vests authority and jurisdiction in the trial court to permit the recovery of past child support."[9] The same should be true in New Mexico. Parties seeking divorce or legal separation should plead and argue retroactive child support from the date of separation and bring an additional cause of action under the New Mexico Uniform Parentage Act (NMUPA). Combining the two causes of actions is permissible under the rules of civil procedure, NMRA 2025, Rule 1-008(E)(2)[10] and recognized by New Mexico courts.[11]

II. PARENTS ARE REQUIRED TO PROVIDE FINANCIAL SUPPORT FOR THEIR MINOR CHILDREN

A. THE DEVELOPMENT OF THE UNIFORM PARENTAGE ACT

The United States Supreme Court has frequently emphasized the importance of family, stating, among other things, that the right to conceive and to raise one's children have been deemed "essential,"[12] "basic civil rights of man,"[13], and "[r]ights far more precious . . . than property rights."[14] "It is cardinal with [the Court] that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."[15] By the early 1970's, in *Stanley v. Illinois*, the Court recognized that all children, whether born of the marriage or born out-of-wedlock, deserved equal protection under the law.[16] The Court extended this concept to the child's right to financial support from his/her parents.[17]

In the aftermath of the United State Supreme Court cases, the National Conference of Commissioners on Uniform State Laws drafted and recommended the Uniform Parentage Act (UPA). This was done in 1973 and "at a time when the states need new legislation on this subject because the bulk of current law on the subject of children born out of wedlock is either unconstitutional or subject to grave constitutional doubt.".[18]

> [T]he substance of the Act . . . is expressed in the first two sections. The remainder of the Act is largely concerned with the *sine qua non* of equal legal rights - - the identification of the person against whom these rights may be asserted. In the context of the child born out of wedlock that person is the father. . . .

> In order to identify the father, the Act first sets up a network of presumptions which cover cases in which proof of external circumstances (in the simplest case, marriage between the mother and a man) indicate a particular man to be the probable father. While perhaps no one state now includes all these presumptions in its law, the presumptions *are* based on existing presumptions of "legitimacy" in state laws and do not represent a serious departure. Novel is that they have been collected under one roof. All presumptions of paternity are rebuttable in appropriate circumstances..
>
> The ascertainment of paternity when no external circumstances presumptively point to a particular man as the father are the next major function of the Act. Noteworthy is the pre-trial procedure envisaged by the Act which, the Committee expects, will greatly reduce the current high cost and inefficiency of paternity litigation.[19]

As the Prefatory Note to the Act stresses, "[t]he parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.[20]

B. NEW MEXICO ADOPTS THE UNIFORM PARENTAGE ACT

At common law, New Mexico held that a father had no obligation to support his illegitimate child, as the child was considered *filius nullius* – the son of no one – of no mother and no father.[21] In 1923, the legislature adopted its first paternity statute that remained in effect until 1986, when the legislature repealed it and replaced it with the NMUPA.[22] The NMUPA outlines the legal procedure to establish a parent-child relationship and the corresponding obligation of child support.[23] "The legislature clearly intended the [NM]UPA to have broad application."[24] The 1986 Act:

> [w]as also written to address the interest that children have in their own support. The rationale underlying the original UPA is that every child should be treated equally, regardless of the marital status of the child's parents.[25]

The purpose of the NMUPA is to establish the legal relationship existing between a child and his/her legal parent "to which the law imposes rights, privileges, duties and obligations."[26] In *Soon v. Kammann*, the New Mexico Supreme Court recognized that, "the overarching policy goals of the [NM]UPA [are] to 'ensur[e] that a child will be cared for financially and otherwise, by two parents' and to 'address the interest that children have in their own support.'"[27]

"A determination of parentage is necessary for the establishment of child support."[28] The NMUPA provides two legal mechanisms for determining parentage: (1) the signing of a valid acknowledgement of paternity and (2) adjudication by the court.[29] The Act provides that:

> A. The mother-child relationship is established between a woman and a child by:
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> (1) the woman's having given birth to the child;
> (2) an adjudication of the woman's maternity; or
> (3) adoption of the child by the woman.
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> B. The father-child relationship is established between a man and a child by:
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> (1) an unrebutted presumption of the man's paternity of the child pursuant to Section 2-204 of the New Mexico Uniform Parentage Act;
> (2) an effective acknowledgement of paternity by the man pursuant to Article 3 of the New Mexico Uniform Parentage Act, unless the acknowledgement has been rescinded or successfully challenged;
> (3) an adjudication of the man's paternity;
> (4) adoption of the child by the man; or
> (5) the man's having consented to assisted reproduction by a woman pursuant to Article 7 of the New Mexico Uniform Parentage Act that resulted in the birth of the child.[30]

The Act has a built-in mechanism to determine parentage in all situations including when the parties are married.[31] In such a situation, the parties are entitled to the marriage presumption set forth in NMSA 1978, § 40-11A-204. When a child is born during the marriage, the NMUPA provides that a "presumption of paternity" of the spouse if "he and the mother of the child are married to each other, and the child is born during the marriage." NMSA 1978, § 40-11A-204(A)(1), (B).[32] In *Soon v. Kammann*, the Supreme Court addressed this issue:

> We turn to the statutory framework at issue. Under the UPA, the parent-child relationship can be established several different ways. *See* Section 40-11A-201 (describing the ways a parent-child relationship can be established pursuant to the UPA). One way a parent-child relationship is conclusively established is by an unrebutted presumption of parentage, . . . Section 40-11A-201(B)(1) (referencing Section 40-11A-204, which establishes the unrebutted assumption of parentage for a person married to the mother when the child is born). This presumption of

> parentage can be rebutted *only* pursuant to the adjudication procedures established in the UPA Article 6, Section 40-11A-204(B).[33]

Once parentage is established, the obligation to pay child support, including retroactive child support, is mandated under law.[34] The question becomes, what is the mechanism that courts should use to accomplish the statutory requirements?

Court-ordered child support is addressed by both the NMUPA and the dissolution of marriage (DM) statutes. Section 40-4-7(G), a DM statute, states that, "[t]he district court shall have exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children until the parents' obligation of support for the children terminates."[35] Additionally, Section 40-4-7(B)(3) allows a court to set aside a parent's property or income for maintenance and education of the parent's "unemancipated minor children as may seem just and proper" or, if the children are emancipated, "until the children's graduation from high school if the children are emancipated only by age, are under nineteen and are attending high school."[36]

Section 40-11A-636, a NMUPA statute, permits the court to determine "the amount to be paid by a parent for support of the child" and that determination shall be made in accordance "with the provisions of the child support guidelines pursuant to Section 40-4-11.1 NMSA 1978."[37] In addition, the NMUPA states, "[t]he court shall order child support retroactive to the date of the child's birth, but not to exceed three years."[38]

The DM and NMUPA statutes regarding child support are intertwined, and, in fact, the New Mexico Child Support Guidelines are contained within the DM statutes.[39] Where different statutes cover the same subject matter, as in the case of these statutes, courts attempt to read the statutes in harmony with each other:

> In ascertaining legislative intent, the provisions of a statute must be read together with other statutes in *pari materia* under the presumption that the [L]egislature acted with full knowledge of relevant statutory and common law. . . . Thus, two statutes covering the same subject matter should be harmonized and construed tougher when possible, and in a way that facilitates their operation and the achievement of their goals.[40]

The original version of the NMUPA recognized that causes of action brought under it could be joined with an action for dissolution of marriage.[41] Accordingly, the NMUPA and DM statutes could be joined in one petition to determine all the child support obligations, including retroactive child support.

C. THE STATE'S RIGHT TO BE REIMBURSED FOR PUBLIC ASSISTANCE

A little more than fifty years ago, Congress began to increase its involvement in child welfare programs and child support. In 1975, Congress adopted the child support amendments, commonly referred to as "Title IV-D" of the federal Social Security Act.[42] The Act required that custodial AFDC [Aid for Families with Dependent Children, now known as Temporary Assistance for Needy Families (TANF)] parents assign their rights to the state to collect child support payments and that the funds collected on behalf of AFDC families be used to reimburse the government for welfare benefits paid to the families.[43]

The New Mexico legislature recognized these federal mandates and enacted Section 27-2-28, which provides that "[i]n cases where the department has provided cash assistance to children in a household, the court shall award judgment in favor of the department and against the noncustodial parents of the children for child support, calculated pursuant to Section 40-4-11.1 NMSA 1978, for all months in which the children received cash assistance benefits."[44] The statute contemplates that there will be a judgement for retroactive child support. The legislature specially stated that the noncustodial parent shall receive a "credit for any support actually provided, including housing, clothing, food or funds paid **prior to the entry of any order for support**."[45] Receipt of public assistance is not dependent upon marriage; the legislature created the Public Assistance Act[46] to help all New Mexicans in need. However, once cash assistance is provided the state is entitled to be reimbursed.

In *State ex rel., Human Services Department v. Toney*, mother gave birth to a daughter in 2005.[47] At that time, father executed an acknowledgement of paternity.[48] The parties separated in 2006; father only paid mother child support in 2011 and 2012.[49] Mother applied for public assistance and assigned her rights to child support to the Department.[50] In August of 2016, the Department filed a petition on behalf of mother and the State seeking child support retroactive to the date of separation.[51] Father appealed and argued that the NMUPA did not apply and therefore any award of retroactive child support to the date of the couple's separation was barred.[52]

The Court of Appeals disagreed. In doing so, the court noted that NMUPA governs "the determination of parentage".[53] The court did a complete analysis of the NMUPA provisions regarding parentage, including recognition that an acknowledgement of paternity "is equivalent to an adjudication of paternity of a child."[54] The court noted that the Department filed a timely petition (even though it was filed eleven years after the birth of the child) and that it "sought to enforce the obligation of the noncustodial parent."[55] The court rejected father's argument as the Act "would prohibit retroactive support when paternity is acknowledged and allow it when paternity is adjudicated."[56] The court held "that the NMUPA authorizes district courts to order retroactive support when an acknowledgment of paternity has established the parent-child relationship."[57] "Our holding today advances the Legislature's goal of broadly applying the

NMUPA to ensure that it serves its important purposes, unhindered by overly technical application of provisions designed to ensure that all parents contribute equitably to their children's financial support."[58]

The *Toney* court noted that every case is different. "Instead of categorically forbidding or categorically requiring retroactive support, the NMUPA calls for a case-by-case approach to retroactive support issues, including consideration of any equitable defenses."[59] This includes situations in which married parents separate and live apart.

Toney involved an unmarried couple; however, the same analysis must be applied to married individuals. To argue otherwise is untenable. When married couples have a child, the only quasi-legal document that can be executed is the acknowledgement of paternity. This is exactly what was at issue in *Toney* wherein retroactive child support was awarded from the date the parties separated. If no acknowledgement of paternity is executed, then a presumption is created. It can be unrebutted or challenged as was done in *Soon*.[60] In all situations, you first establish parentage, which must be done under the NMUPA, and then the court awards all child support obligations, including retroactive child support.

In *Division of Family Services v. Summerford*,[61] the Missouri child support agency, as the assignee of the mother's right to child support, brough suit against the child's father, even though the mother and father were still married.[62] The trial court denied the request for child support. The appellate court reversed and remanded and held that the mother, even though married, had the right to pursue child support under the Missouri UPA.[63]

> The cases upon which the trial court relied for its position that Mother must petition for dissolution of marriage, legal separation, or separate maintenance and must seek judgment on child custody and visitation matters before the court may 'exercise its discretion to enter an award of child support' were all decided prior to Missouri's 1987 enactment of the UPA. Here, pursuant to the UPA, Mother properly sought an adjudication of paternity and an order of support.[64]

The court explained that mother did not have to file for divorce to obtain an order for child support.[65] In doing so the court stated, "[t]he trial court's ruling in this case is erroneous in that it would give children whose parents never marry greater rights to support than children whose parents at some time marry one another."[66]

III. CONCLUSION

Married but separate custodial parents can seek retroactive child support from the date of separation under the NMUPA. This comports with the strong public policy requiring every parent

to support his/her children and preserves the child's right to financial support. This important function was best described in *Williams v. Perkins*, wherein the Texas Supreme Court noted:

> The function of child support is to help a custodial parent maintain an adequate standard of living for the child. When child support payments are not made, the result is a loss of funds available for the child's food, clothing, education, and home environment. It is a strong, long-standing policy of this state to protect the interests of its children, and this is the policy underlying the enforcement of child support obligations. Characterizing arrearages as nothing more than a "debt" owed to the custodial parent ignores the reality that the child is frequently the one who has been harmed by nonpayment and it is the child's interest which are ultimately sought to be protected.[67]

If a party seeks a divorce, the dissolution of marriage can be coupled with a NMUPA claim to permit the court to provide all relief that may be awarded including the claim for retroactive child support.

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[2] *Martina v. Martinez*, 1982-NMSC-097, ¶ 13, 98 N.M. 535, 650 P.2d 819. The New Mexico Supreme Court has characterized child support "as a parent's 'most important single obligation.'" *In re Estate of DeLara*, 2002-NMCA-004, ¶ 10, 131 N.M. 430, 38 P.3d 198 (quoting *Niemyjski v. Niemyjski*, 98 N.M. 176, 177, 646 P.2d 1240, 1241 (1982)).

[3] *Sheppard v Money*, 529 N.E.2d 542, 544 (Ill. 1988) ("A parent's duty to support his or her minor child is among the oldest principles of law. (See 1 W. Blackstone,Commentaries 446, 447.) "This duty has been a traditional source of State child support statutes and concomitant enforcement procedures."). The duty of support arises from common law. *Fullen v. Fullen*, 1915-NMSC-091, ¶ 46, 21 N.M. 212, 237, 153 P. 294 302 (1915) ("The general principle upon which allowances are made against the husband for the support of minor children awarded to wife in divorce cases is that it is the primary common-law duty of the husband to support his children; that this duty continues with him when, from his own fault, the marriage relation is dissolved, and the society and services of the children are taken from him and committed to the wife, for his fault." (citations omitted)). "This court is aware of no legislature, either within New Mexico or without, that has ever specifically abrogated this duty. On the contrary, our statutes encourage respect for, and enhance opportunities for, successful discharge of this solemn duty." *D'Avignon v. Graham*, 1991-NMCA-125, ¶ 21, 113 N.M. 129, 823 P.2d 929.

[4] *In re Quintana*, 1972-NMSC-038, ¶ 11, 83 N.M. 772, 497 P.2d 1404.

[5] *Stringer v. Dudoich*, 1978-NMSC-071, ¶ 5, 92 N.M. 98, 583 P.2d 462.

[6] *Tedford v. Gregory*, 1998-NMSC-067, ¶ 24, 125 N.M. 206, 959 P.2d 540.

[7] NMSA 1978, § 40-11A-636(G) (2021) requires the court to "order child support retroactive to the date of the child's birth, but not to exceed three years unless there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within three years of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; . . . ."

[8] *Zabolzadeh v. Zabolzadeh*, 2009-NMCA-046, ¶ 7, 146 N.M. 125, 207 P.3d 359 ("Under New Mexico law, the only authority for awarding retroactive child support before the date of the filing of the petition for modification is under Section 40-11-15(C) of the UPA."); *Sisneroz v. Polanco*, 1999-NMCA-039, ¶ 6, 126 N.M. 779, 975 P.2d 392:

> A paternity action under the [NM]UPA provides for the remedy of child support retroactive to the date of a child's birth, **unlike suits brought for support in which paternity is not an issue in which courts can award child support only from the date of the petition**. Compare § 40-11-15(C) (stating that the court shall order retroactive child support) with NMSA 1978, §§ 40-4-11 to 11.2 (1988, as amended through 1995) (determining prospective award of child support in dissolution of marriage cases).

Sisneroz v. Polanco, 1999-NMCA-039, ¶ 6 (emphasis added). *See also, Crabtree v. Crabtree*, 200 Mont. 178, 651 P.2d 29 (1982) (permissible for the trial court to award retroactive child support from the date of separation and before the filing of a petition for dissolution of marriage); *Grynwald v. Grynwald*, 2022 Ark.App. 310, 651 S.W.3d 177 (2022) (evidence supported an award of child support to the wife retroactive to the date of the husband and wife's separation despite the husband's claim that wife did not seek retroactive child support by filing her petition for dissolution of marriage); *Trump v. Trump*, 136 Ohio.App.3d 123, 736 N.E.2d 39 (1999) (domestic relations court has no jurisdiction to grant retroactive award of child support from the date of separation to the date of the filing of the divorce complaint; however, mother could seek such an award by filing a parentage action in juvenile court); *In re Custody of Garcia*, 695 P.2d 774 (Colo.App. 1984) (Uniform Dissolution of Marriage Act, § 14-10-101, et seq., C.R.S. 1999, permits child support to be awarded prospectively; the UPA vests authority and jurisdiction in the trial court to permit recovery of past child support).

[9] *In re Marriage of Smith*, 7 P.3d 1012, 1016 (citations omitted).

[10] NMRA 1-008(E)(2) provides that:

> A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 1-011 NMRA.

[11] *United Nuclear Corporation v Fort*, 1985-NMCA-049, ¶ 19, 102 N.M. 756, 700 P.2d 1005 ("Under our rules of civil procedure, a party may file pleadings alleging multiple claims or stating inconsistent causes of action." (citation omitted).

[12] *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

[13] *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942).

[14] *May v. Anderson* , 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.2d. 1221 (1953).

[15] *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438m, 442, 88 L.Ed. 645 (1941),

[16] *Stanley v. Illinois*, 405 U.S. 645, 651-52, 92 S.Ct. 1208, 1212-13, 31 L.Ed.2d 551 (1972) (denial to unwed father of hearing on fitness, accorded to all other parents whose custody of their children is challenged by the State, constitutes a denial of equal protection of the laws).

[17] *Gomez v. Perez*, 409 U.S. 535, 538, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973). In *Gomez*, the Court recognized "the lurking problems with respect to proof of paternity. Those problems are not to be lightly brushed aside, but neither

can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination."). *Gomez*, 409 U.S. at 538.

[18] Prefatory Note to Uniform Parentage Act, 9B U.L.A. 287 (1987).

[19] Prefatory Note, 9B U.L.A. at 289 (emphasis added).

[20] Prefatory Note, 9B U.L.A. at 289.

[21] *Ex Parte Wallace*, 1920-NMSC-019, 26 N.M. 181, 192-193, 190 P. 1020 (1920), dealt with the issue of whether a putative father was required to consent to the adoption of his illegitimate child and, if not, whether it was essential that the putative father be given notice of the adoption proceedings. *Wallace* held that only the mother's consent was necessary for adoption and that notice of the proceedings to the putative father was not required. In so holding, the court observed that under state law, the putative father had no responsibility to care for, educate, and maintain the illegitimate child. *Stringer v. Dudoich*, 1978-NMSC-071, ¶ 5, 92 N.M. 98, 583 P.2d 462

[22] *State ex. rel., Human Services Department v. Aguirre*, 1990-NMCA-083, ¶ 14, 110 N.M. 528, 797 P.2d 317.

[23] *Wallis v. Smith*, 2001-NMCA-017, ¶ 9, 13 N.M. 214, 2 P.3d 682 (citations omitted). The New Mexico Court of Appeals went on to state that the NMUPA "imposes a form of strict liability for child support, without regard to which parent bears the greater responsibility for the child's well being." *Wallis v. Smith*, *supra* (citations omitted). The current version of the NMUPA is codified at NMSA 1978, §§ 40-11A-101, et seq.

[24] *In re Estate of Delara*, 2002-NMCA-004, ¶13, 131 N.M. 430, 38 P.3d 198.

[25] *Chatterjee v. King*, 2012-NMSC-019, ¶ 33, 280 P.3d 283. *Padilla v. Montano*, 1993-NMCA-127, ¶ 14, 116 N.M. 398, 862 P.2d 1257 ("One of the main purposes of paternity proceedings is to provide support for the child.") (citations omitted); *Wallis v. Smith*, 2001-NMCA-017, ¶ 9, 130 N.M. 214, 22 P.3d 682 ("Our legislature has spoken to the public policy that governs the economic consequences of sexual relationships that produce children, and that policy is reflected in New Mexico child support laws.").

[26] NMSA 1978, § 40-11-2 (repealed, effective January 1, 2010)) and replaced with NMSA 1978, § 40-11A-103 (2009). In *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 9, 444 P.3d 1074, it was stated that, "[t]he NMUPA governs the determination of parentage, which is the establishment of the parent-child relationship, the legal relationship between a parent and child." (internal quotations and citations omitted).

[27] *Soon v. Kammann*, 2024-NMSC-018, ¶ 23, 557 P.3d 104 (internal quotations and citations omitted).

[28] 8.50.107.8 NMCA; *Soon v. Kammann*, 2024-NMSC-018, ¶ 23, 557 P.3d 104.

[29] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 9, 444 P.3d 1074.

[30] NMSA 1978, § 40-11A-201 (2009).

[31] *Mintz v. Zoernig*, 2008-NMCA-162, ¶ 8, 145 N.M. 362, 198 P.3d 861 ("The parent and child relationship may be established between a child and the natural father as provided in the [NM]UPA, Section 40-11-4(B), and the relationship extends to every child and parent, regardless of the marital status of the parents.") (citations omitted).

[32] NMSA 1978, §40-11A-204(A)(1) and (2) states that a man is presumed to be the father of the child if: (1) he and the mother of the child are married to each other and the child is born during the marriage; (2) he and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity or divorce or after a decree of separation. The use of the term "paternity" is considered gender-neutral and applies to the non-birthing spouse. *Soon v. Kammann*, 2024-NMSC-018, ¶ 15, 557 P.3d 104.

[33] *Soon v. Kammann*, 2024-NMSC-018, ¶ 16, 557 P.3d 104.

[34] "The primary purpose of determining parentage under the [NM]UPA is to provide support for the child." *Soon v. Kammann*, 2024-NMSC-018, ¶ 23, 557 P.3d 104, quoting, Julio C. Romero, *A Gender-Neutral Reading of New Mexico's Uniform Parentage Act: Protecting New Mexico Families Regardless of Sexuality*, 43 N.M. L. Rev. 567,571 (2013); *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 21, 444 P.3d 1074 (the NMUPA authorizes retroactive child support when an acknowledgement of paternity has established the parent-child relationship); *Sisneroz v. Polanco*, 1999-NMCA-039, ¶ 6, 126 N.M. 779, 975 P.2d 392 (retroactive child support permitted under the NMUPA against fathers who do not deny paternity of their children but never formally acknowledge their paternity or assume legal responsibility for their support). The Act "does not create, enlarge, modify or diminish parental rights or duties pursuant to the Children's Code [Chapter 32A NMSA 1978] or other law of New Mexico." The *Sisneroz* court noted that

> When a child is born of married parents, the husband's paternity of the child is presumed. As a result, the child born to married parents has a legal right to support from both parents. Children born out-of-wedlock do not benefit from the legal presumption of paternity that children of married persons enjoy.

Sisneroz v. Polanco, 1999-NMCA-039, ¶ 8 (internal citations omitted).

[35] NMSA 1978, § 40-4-7 (1997).

[36] NMSA 1978, § 40-4-7(B)(3) (1997).

[37] NMSA 1978, § 40-11A-636(I) (2021).

[38] NMSA 1978, § 40-11A-636(G) (2021).

[39] NMSA 1978, §§ 40-4-11 – 11.6 (2023).

[40] *Pub. Sev. Co. of N.M. v. N.M. Pub Util. Comm'n*, 1999-NMSC-040, ¶ 23, 128 N.M. 309, 992 P.2d 860 (internal quotation marks and citation omitted). "Because we consider statutes in the context of the broader act in which they are situated, we read them in conjunction with statutes addressing the same subject matter, ensuring a harmonious, common-sense reading. *Chatterjee v. King*, 2012-NMSC-019, ¶ 12, 280 P.3d 283 (citations omitted).

[41] NMSA 1978, § 40-11-8(A) (1986) (repealed and replaced 2009).

[42] Congressional Quarterly Weekly Report, January 11, 1975, 9406; [1975]. The anticipated role of the federal government is summarized in the Senate Report which embodies the legislative history of the 1974 amendments. See, S. Rep. No. 93-1356, 93rd Cong., 2d Sess. 1974, reprinted in [1974] U.S. Code Cong. & Ad. News, 8134. The authors of the Senate Report correlated the issues of rising welfare costs and the nonsupport of children by stating that "[t]he problem of welfare in the United States is, to a considerable extent, a problem of non-support of children by their absent parents." 120 Cong. Rec. 21,748 (daily edition, December 17, 1974).

[43] See, Irwin Garfinkel, et al., A Brief History of Child Support Policies in the United States, in Fathers Under Fire: The Revolution in Child Support Enforcement 14, 19 (1998) (explaining that the 1974 child support amendments to the Social Security Act established OSCE and required that states create counterparts at the state level).

[44] NMSA 1978, § 27-2-28(A) (2009). In *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 3, 444 P.3d 1074, the court recognized that mother had assigned her right to child support to the State because "it had provided assistance to the child."

[45] NMSA 1978, § 27-2-28(E) (2009) (emphasis added). The legislature further provided that the "noncustodial parent has the burden to prove that [he/she] provided any support."

[46] NMSA 1978, § 27-2-1 through § 27-2-34, the New Mexico Public Assistance Act.

[47] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 2, 444 P.3d 1074.

[48] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 2, 444 P.3d 1074.

[49] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 2, 444 P.3d 1074,

[50] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 3, 444 P.3d 1074.

[51] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶¶ 3, 4, 444 P.3d 1074.

[52] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶¶ 5, 6, 444 P.3d 1074.

[53] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 9, 444 P.3d 1074 (internal quotations and citations omitted).

[54] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 9, ¶ 11, 444 P.3d 1074 (citations omitted).

[55] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 14, 444 P.3d 1074 (citation omitted).

[56] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 20, 444 P.3d 1074. The court goes on to state that, "[w]e found nothing in the NMUPA to suggest that our Legislature intended for the two legally equivalent mechanisms of establishing paternity to have opposite effect on children, parents and the state. We therefore reject Father's interpretation . . . ." *Id*.

[57] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 21, 444 P.3d 1074.

[58] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 24, 444 P.3d 107).

[59] *State ex rel., Human Services Department v. Toney*, 2019-NMCA-035, ¶ 32, 444 P.3d 1074.

[60] *Soon v. Kammann*, 2024-NMSC-018, 557 P.3d 104.

[61] *Division of Family Services v. Summerford*, 75 S.W.3d 353 (Mo.Ct.App. 2002).

[62] *Division of Family Services v. Summerford*, 75 S.W.3d 353, (Mo.Ct.App. 2002).

[63] *Division of Family Services v. Summerford*, 75 S.W.3d 353, 356 (Mo.Ct.App. 2002).

[64]*Division of Family Services v. Summerford*, 75 S.W.3d 353, 356 (Mo.Ct.App. 2002) (internal quotations and citations omitted).

[65]*Division of Family Services v. Summerford*, 75 S.W.3d 353, 358 (Mo.Ct.App. 2002).

[66] *Division of Family Services v. Summerford*, 75 S.W.3d 353, 358 (Mo.Ct.App. 2002).

[67] *Williams v. Patton*, 821 S.W.2d 141, 145 (Tex. 1991).