

WITNESSES: Wife is competent witness against husband for failure to support wife and minor child. Same when wife is divorced.

December 27, 1948



Honorable Marvin C. Hopper  
Prosecuting Attorney  
Linn County  
Brookfield, Missouri

12-28

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"Will you please furnish me an opinion on the following matters:

"(1) When a father is prosecuted for failure to support his wife and minor children, is the wife a competent witness against said father and husband?

"(2) When a father is prosecuted for failure to support his minor children, the father and mother of said children then being married, is the wife and mother a competent witness against said father and husband?

"(3) When the spouses are divorced, is the former wife a competent witness against the former husband in a prosecution for failure to support the minor children born of the marriage?"

In the case of State vs. Hartman, 259 S.W. 513, a trial for abandonment and non-support of children, the Springfield Court of Appeals said, l.c. 514:

"On another trial the former wife should not be permitted to testify concerning matters that transpired during coverture (State v. Kodat, 158 Mo. 125, 59 S.W. 73, 51 L.R.A. 509, 81 Am. St. Rep. 292; State v. Williams, 202 Mo. App. 536, 208 S.W. 283) unless defendant himself opened the

door for the admission of her testimony, as he did in this trial.

"Our attention is called to the case of State v. Langley, 248 Mo. 545, 154 S.W. 713, where the opinion of the Supreme Court discloses that the wife testified and makes no criticism. We do not find that any objection was made in that case or that the point was raised in the case."

In the case of State vs. Newberry, 43 Mo. 429, a prosecution for abandonment of a wife, the Supreme Court said, l.c. 432:

" \* \* \* The wife is the party having the best means of knowledge, and may be the only person capable of establishing the facts in proof."

The Court further said at l.c. 433:

"The conclusion, therefore, upon the whole case, is that Mrs. Newberry, the complainant, was a competent witness to testify to the fact of abandonment and its attendant circumstances. \* \* \* \*"

In the case of Ex parte Dickinson, 132 S.W. (2d) 243, the Springfield Court of Appeals said, l.c. 245:

" \* \* \* The common law rule has been modified to the extent that the wife may testify against the husband in divorce proceedings and in a prosecution of him for wife and child abandonment, \* \* \* "

We believe that the reasoning in the Newberry case, supra, leads to the inevitable conclusion that a wife may testify as to non-support because that in most cases, she is the only person who is capable of establishing the facts just as truly as she is the only person establishing the facts in a case of abandonment. We believe, also, that under the statement of the Springfield Court of Appeals in the Dickinson case, supra, that a wife may testify for wife and child abandonment that

the non-support of the child is similar to abandonment of the child and that of necessity, the wife is a competent witness in a prosecution for non-support of a child. While it is not clear as to just what facts were testified to in the Hartman case, we do not believe that such holding quoted above means that the wife is an incompetent witness to testify against a husband in a prosecution for non-support of children. We believe that the law, as it exists at present, is well stated by the Criminal Court of Appeals of Oklahoma in the case of Hunter vs. State, 134 Pac. 1134, where the court said, l.c. 1138:

"We do not believe this court will say that we have so foolish a public policy in Oklahoma that closes the lips of an abandoned and deserted wife, in order that the family harmony and concord which has been utterly destroyed by the husband's acts shall not be further disturbed. The right of the public, upon whom this father would cast his own offspring for support, demands that this woman should be heard; the right of the children whom he would willingly leave in want and neglect demands that she be heard; and her rights, grievously disregarded by him, demand that she be permitted to bear witness against him for his breach of his marital obligations. Surely, any public policy which would deny her the witness stand would be one wholly without reason, wholly contrary to the essential welfare of families, and therefore wholly wrong."

When the husband and wife are divorced, the relationship ceases to exist, and in such cases, the wife is a competent witness to testify as to any fact that may have occurred after the divorce.

#### CONCLUSION

It is the opinion of this department

(1) that the wife may testify against her husband for failure to support her and her minor children;

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(2) that the wife is a competent witness to testify in the prosecution of her husband for failure to support the children;

(3) that when the husband and wife are divorced, the wife is a competent witness to testify against the former husband in a prosecution for failure to support the minor children born to the marriage.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General *J. E. Taylor*

CBB:VLM