We find no merit in the defendant's contention and it is dismissed.

We will consider the defendant's contentions that the verdict was against the evidence, against the weight of the evidence and against the law as one overall issue whether the evidence was legally sufficient to sustain the Court's verdict.

> "The test is whether, viewing all of the evidence admitted at trial in the light most favorable to the Commonwealth and drawing all reasonable inferences therefrom, is it sufficient to enable the trier of fact to find every element of the crime charged beyond a reasonable doubt."

Commonwealth v. Cristina, supra, page 1309. The findings of a judge sitting without jury are entitled to the same weight as a jury verdict. *Commonwealth v. Dawkins*, 223 Pa. Super. 33, 297 A. 2d 144 (1972). It is hornbook law that a trier of fact may believe all, some or none of the evidence introduced.

The three elements of the crime of driving under the influence are:

1. That the defendant was the operator of the vehicle.

2. That the defendant was under the influence of alcohol.

3. That the defendant was under the influence to the extent that he could not safely operate the motor vehicle.

In the case at bar, the defendant was the only person found at the scene and he was observed standing outside the damaged station wagon on the driver's side. He was the only person bleeding and fresh blood was observed on the left front seat, steering wheel, and left front window. The defendant exited through the window on the driver's side of the station wagon. There was no evidence that the door on the operator's side was inoperable. The defendant ran when the police cruiser entered the parking lot. The defendant's wife was apparently the owner of the station wagon. The defendant's right to operate a motor vehicle was suspended at the time. The defendant gave two different first names for the individual who allegedly was driving and was unable to supply any surname. In our judgment this combination of facts establishes beyond a reasonable doubt that the defendant was the operator of the motor vehicle.

The testimony of Officer Haldeman as to his observations which led him to the conclusion that the defendant was under

the influence, when coupled with the blood alcohol test results, proves beyond a reasonable doubt that the defendant was under the influence of alcohol.

Lincoln Way West in the Borough of Chambersburg at the scene of the accident is a one-way street West with two traffic lanes, excluding vehicle parking area on the left or South side of the street. When the operator of a vehicle who is under the influence of alcohol strays from the traffic lane and strikes the only vehicle within a distance of 600 feet, and that vehicle is legally parked, the conclusion is inescapable that the operator was incapable of safe driving by reason of being under the influence.

We, therefore, conclude the defendant's boiler plate post trial motions 2, 3 and 4 are without merit, and they are dismissed.

ORDER OF COURT

NOW, this 29th day of December, 1978, the defendant's post trial motions are dismissed.

The Probation Department of Franklin County is directed to make a Pre-Sentence Investigation and file a Pre-Sentence Report.

The defendant shall appear for sentencing upon the call of the District Attorney after the Pre-Sentence Report has been completed and filed.

Exceptions are granted the defendant.

BOYER ET AL. v. BOYER, C.P. Franklin County Branch, No. F.R. 1978-418-S, F.R. 1978-425-S

Support - College Expenses - Spouse's Earning Capacity

1. In determining whether a parent owes a duty to support his children while they are attending college the Court will not consider the earning capacity of the spouse who has chosen to remain at home with the couple's three year old child.

William C. Cramer, Esq., Assistant District Attorney, Attorney for Plaintiff

William F. Kaminski, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., January 12, 1979:

Rufus J. Boyer (father) is the father of Kitty A. Boyer and Lois R. Boyer (collectively, the girls). Both of the girls are college students and have brought these actions which were heard together to require their father to help them with their college expenses. Each has asked him to contribute $50.00 per week to that cause.

In the recent case of *Commonwealth ex rel. Cline v. Cline*, 2 Franklin Co. L. J. 119 (C.P. Franklin County 1978) we held that a father may be required to assist his child, over 18 years of age, in obtaining a college education, but only if the amount of support required for that purpose would not work an undue hardship on him.

The evidence was that the father has a weekly income of $269.71, a sum less than his stated weekly expenses of $326.09. After a divorce from the girls' mother, he remarried and he and his present wife have a son who is about three years old. The present Mrs. Boyer is a nurse and has a substantial earning capacity. We find from the evidence, considering the father's income alone, it would be an undue hardship upon him to require him to contribute any amount to the girls' college expenses.

It has been argued to us, however, that in order to determine whether a support order should be made or not, we must consider the present Mrs. Boyer's earning capacity, contending that the Equal Rights Amendment of the Pennsylvania Constitution makes her responsible with her husband, to the extent of her earning capacity, for her own support and that of the child. We are asked to either exclude from the father's expenses that portion for which the present Mrs. Boyer is obligated or to take her earning capacity into consideration. If we did this, it is likely that the father could contribute something to the girls.

In *Conway v. Dana*, 456 Pa. 536, 318 A.2d 324 (1974), it was held that support was the equal responsibility of both mother and father to be discharged according to the capacity and ability of each. In the cases that have reiterated this holding, typically the custodial mother is receiving child support from the father and there is a motion to modify the order. *See e.g. Commonwealth ex rel. Kaplan v. Kaplan*, 236 Pa. Super. 26, 344 A. 2d 578 (1975); *Commonwealth ex rel. Lyle v. Lyle*, 248 Pa. Super. 458, 375 A. 2d 187 (1977).

This case is a little different and is similar to that in *Travitzky v. Travitzky*, 230 Pa. Super. 435, 326 A. 2d 883 (1974), where the parties were divorced parents of six minor children. The mother had custody of five of them and the father lived with the sixth together with his second wife and their child. At the hearing the trial court would not permit the first wife to ascertain the extent of the second wife's earnings and her contribution to the household. On appeal the Superior Court held that this inquiry was proper. This was not because the second wife should be required to support children of the first marriage, but because the second wife has a responsibility to support herself and her children and finding out what the second wife contributed to family expenses would help determine the father's "ability to pay".

The court stated: "[c]ertainly, *if* the second wife was gainfully employed and *if* her earnings or a portion thereof were contributed to the family budget, such facts would be relevant in determining the father's ability to pay support for his minor children." (Emphasis added) 230 Pa. Super. at 440, 326 A. 2d at 885.

In our case the present Mrs. Boyer is not employed and considers it her obligation to remain at home with the small child. In *Commonwealth ex rel. Wasiolek v. Wasiolek*, 251 Pa. Super. 108, 380 A. 2d 400 (1977) a mother of three children ages 7, 9 and 11 felt the same way, though the evidence at the hearing showed she had a proven earning capacity. After the trial court concluded that she had to contribute toward her children's support, the Superior Court said:

> "Recognition that a wife has an obligation of support does not end our inquiry. The E.R.A. requires that we treat men and women similarly situated in a like manner. [citation] The amendment does not provide a substantive answer in the instant case.
>
> "We must be mindful that the purpose of a support order is the furtherance of the welfare and best interests of the child for whom it is entered. [citations] Obviously, a court cannot ignore the substantial nonmonetary contributions made by a nonworking spouse. [citation] It would be surely ironic if by its support order a court were to dictate that a parent desert a home where very young children were present when the very purpose of the order is to guarantee the welfare of those same children. Such an order would ignore the importance of the nurture and attention of the parent in whose custody the children have been entrusted and would elevate financial well-being over emotional well-being. *Conway v. Dana* does not require that a court be insensitive to the reality of a

nonworking parent's contribution to the welfare of a child. Our Supreme Court did not intend to create a *per se* rule that the custodian parent was obligated to work in all cases." 251 Pa. Super. at 112, 113, 380 A. 2d at 402, 403.

The Superior Court added that before a trial court can expect a nurturing parent to seek outside employment and contribute financially it must balance several factors, including the age and maturity of the child; the availability and adequacy of others who might assist the custodian-parent; and the adequacy of available financial resources if the custodian-parent does remain in the home. The court emphasized that, "while not dispositive, the custodian-parent's perception that the welfare of the child is served by having a parent at home is to be accorded significant weight in the court's calculation of its support order." 251 Pa. Super. at 114, 380 A. 2d at 403.

A similar conclusion was reached three years ago in *Commonwealth ex rel. Levinson v. Levinson*, 99 Mont. L.R. (C.P. Montgomery County, 1975). The court held that *Conway v. Dana* did not require a custodial mother of children ages 6 and 12 to go to work to support them because she was already fulfilling her responsibility to her children by working to raise them in a proper home environment. If she left the home to work, a baby sitter would have to be hired to perform her motherly function.

Though the father's son is not a subject of these proceedings, we believe that it is in his best interest to have his mother stay with him. If we were required to balance the contentions here, whether a mother should stay at home with her three year old child or a father should contribute to the support of his daughters who are in college (and it is impossible to do both), we would conclude that the former is more exacting than the latter. *Commonwealth ex rel. Ulmer v. Somerville*, 200 Pa. Super. 640, 190 A. 2d 182 (1963).

ORDER OF COURT

NOW, January 12th, 1979, the prayers of the complaints are denied. Costs shall be paid by the Plaintiffs.

ELHUFF v. WASHINGTON TOWNSHIP MUNICIPAL AUTHORITY, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 165

Equity - Preliminary Objections - Municipal Authorities Act of 1945, Section 4-B(h) - Motion to Strike - Reasonable Rates - Demurrer

1. A preliminary objection in the nature of a motion to strike will be granted where an action is brought on the equity side of the court under Section 4-B(h) of the Municipal Authorities Act of 1945, 53 P.S. Sect. 306, for relief as to the propriety of sewage fees fixed by a township municipal authority.

2. Under the foregoing circumstances suit should be properly brought on the law side of the court.

3. A complaint which avers that a water meter is read incorrectly and that the party is consequently overbilled is sufficient to state a cause of action under the "reasonableness of services" clause of Section 4-B(h) of the Municpal Authorities Act of 1945.

4. A motion for more specific pleading will be granted where the party fails to state on what dates he made requests to a township municipal authority questioning his charges.

Donald L. Kornfield, Esq., Attorney for Plaintiff

Jan G. Sulcove, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, J., January 22, 1979:

This action was commenced by the filing of a complaint in equity on July 10, 1978, and service of the same upon defendant on July 28, 1978. Preliminary objections in the nature of a petition raising a question of jurisdiction, a demurrer, a motion to strike, and a motion for a more specific complaint were filed on August 16, 1978.

First, it should be noted that plaintiff concedes points 1 and 2 of the defendant's motion to strike, and agrees to correct the caption and that the attorney's fee claimed should be deleted.

The defendant raises the issue of lack of equitable jurisdiction. With this contention, we must agree. The plaintiff brings this action pursuant to Section 4-B (h) of the Pennsylvania Municipal Authorities Act of 1945, 53 P.S. 306, claiming that the defendant's water rates are not uniform and, therefore, in violation of Section 4-B (h) of the Act. Section 4-B (h) gives every authority the power to fix, alter, and charge rates that are reasonable and uniform. The section further provides:

"Any person questioning the reasonableness and the