

THE CONSTITUTIONAL FRAMEWORK OF FATHERS' RIGHTS

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The Fourteenth Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Case Law

Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208 (1972).

Summary of Facts

An Illinois statute declared that children of unmarried fathers, upon the death of the child's mother, are to be declared dependents without any hearing as to the fathers' parental fitness or a determination of neglect. Illinois did require such hearing before the State could assume custody of a divorced couple's children, or an unmarried mother's children. An unmarried father, whose children were declared wards of the state and placed in guardianship upon the death of their mother, brought due process and equal protection challenges against the State of Illinois.

Summary of Holding

The United States Supreme Court held that under the Due Process Clause of the Fourteenth Amendment, the unmarried father was entitled to a hearing on his parental fitness before his children could be placed with the State. The Court also held that such denial of a hearing to unwed fathers, where unwed mothers and divorced parents were granted such hearing, violated the Equal Protection Clause of the Fourteenth Amendment.

Teachings of the Case

It all starts with *Stanley*. For the first time, the United States Supreme Court recognized that the Constitution protects an unwed father's parental rights. However, the unwed father in this case had custody of his children *before* his wife's death. The Supreme Court framed the protected

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interest this way: “The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection.” *Id.* at 651, 92 S. Ct. at 1212. This case left unanswered the question of whether an unmarried father who did not raise his children had any constitutionally protected parental rights.

***Quilloin v. Walcott*, 434 U.S. 246, 98 S. Ct. 549 (1978).**

Summary of Facts

Under one Georgia statute, the consent of a father was not required before a child born out of wedlock could be placed for adoption. Under another Georgia statute, the consent of both parents was required before a child born in wedlock could be placed for adoption. A mother, whose child was born out of wedlock, married a second man who was not the father. The mother consented to her new husband’s adoption of the child. At that point, the biological father attempted to block the adoption and secure visitation rights. The trial court granted the adoption on the basis that it was in the “best interests of the child,” and the Georgia Supreme Court affirmed.

Summary of Holding

The United States Supreme Court held that the unwed father’s substantive rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment were not violated by application of the “best interests of the child” standard. The Court reiterated the constitutionally protected relationship between a parent and child, but distinguished this case from others. The Court held that in a case in which the unwed father never sought actual or legal custody of his child, he is not entitled to veto authority over the adoption of his child.

Teachings of the Case

The Supreme Court addressed the question left unanswered after Stanley here. In justifying this distinction, the court had this to say: “[The unwed father] has never exercised legal or actual custody over his child, and thus has never shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child.” *Id.* at 256, 98 S. Ct. 555. The case permitted “difference[s] in the extent of commitment to the welfare of the child” by an unwed father to be considered in determining if his constitutional rights were violated. *Id.*

Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760 (1979).

Summary of Facts

An unwed couple lived together in New York for five years and had two children together. A New York law permitted a child's unwed natural mother to withhold her consent and block the child's adoption, but did not permit a child's unwed natural father to do the same. The natural parents each attempted to adopt the children, and the New York court granted the natural mother and stepfather's petition to adopt. The court stated that the natural father was foreclosed from adopting the children because the natural mother had withheld her consent.

Summary of Holding

The United States Supreme Court held that the New York law in question violated the Equal Protection Clause of the Fourteenth Amendment. The Court analyzed the case through its intermediate scrutiny standard for questions regarding gender-based discrimination, and held that the statutory distinction did not bear "a substantial relation to the proclaimed interest of the State in promoting the adoption of illegitimate children." *Id.* at 393, 99 S. Ct. at 1769.

Teachings of the Case

The case was a win for unwed fathers, but yet again was based on a significant paternal relationship where the unwed father had established a substantial relationship with the child, was listed on their birth certificates, and lived with the children when they were very young. The "cut-off" in terms of the relationship required for constitutional protection of putative fathers' parenting rights remained unclear.

Lehr v. Robertson, 463 U.S. 248, 103 S. Ct. 2985 (1983).

Summary of Facts

A woman gave birth to a child out of wedlock, and married a man who was not the biological father eight months later. After just over a year of marriage, the mother and her husband filed an adoption petition. The State of New York maintained a "putative father registry," whereby a man could demonstrate his intent to claim paternity of a child born out of wedlock. By registering, a putative father became entitled to notice of any proceeding to adopt that child. The child's biological father did not enter his name on the register. Even though the judge presiding over the adoption petition knew that the biological father had filed a paternity petition for the same child, he entered the adoption order without giving notice to the biological father. The

father filed a petition to vacate the adoption, claiming the judge's failure to provide notice violated his constitutional rights.

Summary of Holding

The United States Supreme Court held that where a putative father had never established a substantial relationship with his child, the State's failure to give him notice of adoption proceedings, even though the State knew he was claiming paternity, did not violate the Due Process Clause or Equal Protection Clause of the Fourteenth Amendment. The Court noted that a father's opportunity to "accept[] some measure of responsibility for the child's future" based on his biological relationship with the child would permit him to "enjoy the blessings" of parenthood and have a positive effect on the child's development. *Id.* at 262, 103 S. Ct. at 2993-94. If a biological father fails to take these steps, "the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie." *Id.*

Teachings of the Case

This case comes closest to articulating the "line in the sand" regarding what is required for a putative father to be granted constitutional protection of his parental rights. The Court stated,

When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the due process clause....But the mere existence of a biological link does not permit equivalent constitutional protection.

Id. at 261, 103 S. Ct. at 2993.

Michael H. v. Gerald D., 491 U.S. 110, 109 S. Ct. 2333 (1989).

Summary of Facts

A biological father who had established a paternal relationship with his child filed an action to establish paternity and visitation rights. In addition, the child claimed she had a right to maintain a filial relationship with the biological father and her mother's husband. A California statute in place created a presumption that a child born to a married woman living with her husband is the child of the marriage. The California court granted summary judgment for the husband, who was presumed to be the father under California law.

Summary of Holding

The United States Supreme Court held that the California statute creating the presumption that a child born into a marriage is the child of that marriage did not violate the biological father's procedural or substantive due process rights. Nor did it violate the child's asserted due process or equal protection rights to maintain a filial relationship with two different fathers.

Teachings of the Case

In its plurality opinion, the Supreme Court takes the unique position of asserting the putative father did not establish that he had any constitutional protected liberty interest. The integrity of the family unit, where a child is born during and into a marriage, is discussed as being the more important interest that should be protected. A biological connection and active relationship between the biological father and child was not enough to establish a fundamental liberty interest. It seems this was particularly true where the opposing interest was a traditional familial relationship.

Justices O'Connor wrote a concurring in part opinion, joined by Justice Kennedy. Justice Stevens wrote a concurring opinion separately. And Justice Brennan wrote a dissenting opinion, joined by Justices Marshall and Blackmun. This dissent primarily takes issue with the plurality's almost exclusive focus on tradition as a limitation on Constitutional liberties. Justice White wrote a separate dissenting opinion as well, arguing that the California statute as applied violated the Due Process Clause of the Fourteenth Amendment.

North Carolina Case Law

In re Baby Boy Dixon, 112 N.C. App. 248, 435 S.E.2d 352 (1993).

Summary of Facts

A mother gave birth to a child, and wished to place the child up for adoption. The mother had met the father only briefly. She made repeated attempts to locate the father in order to secure his consent to place the child for adoption, but was unsuccessful. The court found sufficient grounds to terminate the father's parental rights in the best interests of the child. However, the court did not terminate the father's parental rights because he had insufficient minimum contacts with the State of North Carolina to satisfy due process rights.

Summary of Holding

The Court of Appeals reversed, holding that traditional notions of fair play and substantial justice were not offended by permitting termination of the father's parental rights. Where the father had not taken any steps to establish paternity, legitimate the child, or provide substantial financial support, due process did not require minimum contacts.

Teachings of the Case

The court reasoned its opinion with reference to *Lehr v. Robertson*, specifically that case's holding that a father's constitutional due process rights do not "spring full blown from the biological connection arise[] only where the father demonstrates a commitment to the responsibilities of parenthood." *In re Baby Boy Dixon*, 112 N.C. App. at 251, 435 S.E.2d at 354.

Jones v. Patience, 121 N.C. App. 434, 466 S.E.2d 720 (1996).

Summary of Facts

A married woman gave birth to a son, knowing that her husband was not the father. The husband was present for the child's delivery and all three lived as a family unit until the husband and wife separated and divorced. Even after separation, he continued his relationship with the child. The husband believed he was the child's father for over two and one-half years, until the mother told him he was not. She then terminated his visitation rights. The husband sought visitation, and the trial court awarded him visitation rights. The mother appealed.

Summary of Holding

The Court of Appeals reaffirmed North Carolina's longstanding presumption "that children born during a marriage, as here, are presumed to be the product of the marriage." *Id.* at 439, 466 S.E.2d at 723. Without any showing that another man has formally acknowledged paternity or been formally adjudicated to be the child's father, this marital presumption applies. Because he is presumed to be the child's father, the former husband had standing to seek and attain visitation rights under the "best interests of the child" standard.

Teachings of the Case

The court noted the presumption is in keeping with recent federal law explained in *Michael H. v. Gerald D.* that the "Constitution protects the sanctity of the family." *Id.* at 440, 466 S.E.2d at 723. To permit rebuttal of a marital presumption without another man's formal acknowledgement of paternity would illegitimate an otherwise legitimate child.

***Price v. Howard*, 346 N.C. 68, 484 S.E.2d 528 (1997).**

Summary of Facts

A man and woman lived together for three years, during which time the woman gave birth to a child. From the time of the child's birth, the mother represented that the man was the child's father. After the couple's separation, the child continued to live with the man who she believed was her biological father. After a custody dispute arose, the woman denied that the man was the child's father. Blood tests confirmed that he was not the father. Although the court concluded it was in the child's best interests to be with the putative father, it concluded that *Peterson* required the child be with the mother. The Court of Appeals affirmed.

Summary of Holding

The North Carolina Supreme Court held that the case should be remanded for a determination of whether the mother's conduct was inconsistent with her constitutionally protected status of a natural parent. In so doing, the court did not focus on the putative father's relationship with the child, but rather on the natural mother's relationship. The trigger for the "best interests of the child" test was the natural mother's actions and relationship with the child. There was not a simple assumption that placement with a natural parent is always in the best interests of the child.

Teachings of the Case

This case discusses the entirety of federal case law regarding the constitutionally protected, fundamental rights of parents to raise their children. It identifies the interest at stake and the application of due process to any proceedings affecting that interest. Importantly, in the case of a natural parent vs. a non-natural parent, the analysis focuses on a natural parent's actions towards her child to determine whether due process is met.

***In re Baby Girl Dockery*, 128 N.C. App. 631, 495 S.E.2d 417 (1998).**

Summary of Facts

A woman became pregnant after briefly dating a man. After they stopped dating, they did not communicate and the woman did not tell the man she was pregnant. Shortly after placing the child for adoption, the woman requested the man's consent, and he refused. The adopting parents filed an adoption proceeding arguing that the father's consent was not required because he had not legitimated the child. One week later and unaware of the pending adoption proceeding, the father filed to establish paternity.

Summary of Holding

The Court of Appeals held that the statute in place at the time, which did not require a father's consent to adoption if he had not legitimated the child, did not violate the father's rights under the Due Process or Equal Protection Clauses of the Fourteenth Amendment. On equal protection, the court reasoned that mothers and fathers were not similarly situated, because without more, fathers have only a biological link to a child, where mothers have both a biological link and provide care throughout pregnancy and birth. Only upon doing one of the acts to legitimate the child does a father become similarly situated with the mother. On substantive due process, the court held similarly that because he had not taken the required steps, his mere biological link to the child entitled him only to rational basis review.

Teachings of the Case

This is a harsh outcome for a man who did not know about the existence of his child, and attempted to establish paternity as soon as practicable after learning he was a father. This was not enough and the child was adopted. The case reiterates the importance that fathers must take steps to legitimate a child born out of wedlock to protect their parental rights before the father's parental status is brought into question by a court. In keeping with federal Constitutional law, the Court of Appeals was not swayed by sympathetic facts where it determined the father/child relationship was nothing more than biological.

Mason v. Dwinnell, 190 N.C. App. 209, 660 S.E.2d 58 (2008).

Summary of Facts

A same-sex couple raised a child together from birth, until a custody dispute resulted in the non-biological parent filing a complaint for custody. Because the biological parent had executed a "parenting agreement" with the non-biological parent, and shared the parenting responsibility in many other ways, the district court determined the biological parent had acted in a manner inconsistent with her parental rights. Therefore, the court applied the "best interests of the child standard" and ordered joint custody.

Summary of Holding

The North Carolina Court of Appeals held that the biological mother's actions, which included bringing another person into the child's life in the role of a second parent, were inconsistent with her constitutionally protected status as a parent. This meant the *Peterson* presumption, that a child should be with its natural parent or parents, did not apply. Instead, the "best interests of the child" standard applied.

Teachings of the Case

Although not dealing with a putative father, this case teaches that a person acting in a role as a parent may “earn” rights to continue that relationship with the child. Under the Constitutional analysis in North Carolina, though, the answer is not determined by what the putative parent has or has not done. Rather, it is determined by what the natural parent has or has not done. If the natural parent is either unfit, or has acted inconsistently with his or her Constitutionally protected parental status, then the “best interests of the child” standard applies. Application of this standard often allows a continued relationship with the child’s putative parent.

In re A.C.V., 203 N.C. App. 473, 692 S.E.2d 158 (2010).

Summary of Facts

Two teenagers had a relationship that resulted in the birth of a child. The father attended some early stage pregnancy meetings with the mother, but did not otherwise support the mother during pregnancy or take other steps to legitimize the child. The trial court terminated the father’s parental rights against the wishes of the father.

Summary of Holding

The North Carolina Court of Appeals held that because the trial court had properly found the putative father had not complied with statutory requirements to prevent termination of his parental rights, he forfeited his constitutionally protected status. Therefore court properly applied the lower threshold “best interests of the child” standard, and the child was placed for adoption. This was true even though the father demonstrated his fitness to care for the child.

Teachings of the Case

The Court of Appeals begrudgingly reached its decision, and discussed the seeming unfairness of it. The court stated it had no choice, as the North Carolina Supreme Court determined in *Owenby* that finding any statutory basis to support termination of a putative father’s parental rights automatically forfeits that father’s constitutionally protected status.

In re Adoption of K.A.R., 205 N.C. App. 611, 696 S.E.2d 757 (2010).

Summary of Facts

An 18-year-old woman gave birth to a child, and attempted to place the child for adoption. When a relative of the mother filed a petition for adoption, the 20-year-old father refused to

consent. The father had attended pre-natal classes, purchased children's supplies and clothing, and petitioned to legitimate the child. The district court determined his consent to the adoption was required.

Summary of Holding

The North Carolina Court of Appeals upheld the decision, concluding he did all that was required of him to maintain his inherent parental rights.

Teachings of the Case

The putative father in this case did everything right. Although the requirements are statutory, this case shows that these statutory requirements have evolved to become the focus of any Constitutional analysis. If a putative father complies with the various statutory requirements, he will retain his constitutionally protected status as a parent. If he fails to comply with them, he will lose his constitutionally protected status as a parent.