

1977

Edwena Nielsen and State of Utah v. Steven Hansen : Brief of Respondent

Utah Supreme Court

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STATEMENT OF THE NATURE OF THE CASE

Concurs in appellants' statement.

DISPOSITION IN THE LOWER COURT

Concurs in appellants' statement.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the ruling of the lower court.

STATEMENT OF FACTS

Respondent concurs in appellants' statement but disagrees with the allegation that plaintiff (Edwena Nielsen) in reliance of the "Acknowledgement of Paternity and Support Agreement" went off public assistance and because of defendant's neglect and other circumstances, was again forced to rely upon public assistance.

ARGUMENT

POINT I.

APPELLANTS' SOCIAL AND MORAL ARGUMENT
CONCERNING THE VALUE OF LEGITIMACY
DOES NOT DIMINISH THE LEGAL
RIGHTS OF THE RESPONDENT.

The argument by appellants in Point I. and Point II. concerning the desirability of conferring upon the illegitimate child all of the rights of the legitimate child cannot be denied. All of us would agree that children, regardless of their legitimacy deserve proper care, comfort and protection. Utah law is clearly in agreement with the trend which recognizes that all children need and deserve proper care. The appellants have failed to mention the rights of the alleged father. The child that was born out of wedlock

in this matter was born eleven years and two months before the State filed a complaint against the alleged father. The co-plaintiff for a period of ten years subsisted on her own resources and did not receive public assistance.

It would be grossly unjust for the defendant to present his defenses at this time to the appellants' complaint through loss of his factual ability through the attrition of time.

Statutes of limitations are cruel. It is their nature. They arbitrarily cut off existing rights that are often legitimate and important. The statutes are justified by the social need to have controversy come to an end. This is well stated at 51 AmJur 2d, Limitation of Actions, §17, page 602,

"The primary purpose of a statute of limitations is to compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend.

"Statutes of limitation are founded upon the general experience of mankind that claims which are valid are not usually allowed to remain neglected if the right to sue thereon exists. Statutes of limitation are designed to prevent undue delay in bringing suit on claims and suppress fraudulent and stale claims from being asserted, to the surprise of the parties or their representatives, when all the proper vouchers and evidence are lost, or the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses."

POINT II.

THE APPELLANTS' CAUSE OF ACTION IS BARRED BY THE STATUTE OF LIMITATIONS. (UTAH CODE ANNOTATED §78-12-22).

Although there is some overlap and omissions in the statutes of limitations in Utah, they are clear and convincing as regards the time limits for commencement of a paternity or support action and appellants have greatly exceeded these.

The "Bastardy Act", §77-60-1 et seq., UCA 1953, should be mentioned although it is not controlling. It provides, at §77-60-15,

"No prosecution under this chapter shall be brought after four years from the birth of such child; provided, that the time the person accused shall be absent from the state shall not be computed."

As this period is limited by its terms to Bastardy Act actions, it does not seem pertinent to this case, even though in State v. Judd, 27 U2d 79, 493 P2d 604, it was held that the Bastardy Act survives as a companion alternative to proceedings under the Uniform Act on Paternity, 78-45a, UCA, the main difference between the two Acts stated as being that under the Bastardy Act, the mother alone can bring the action, while under the Uniform Act on Paternity, it can be brought by the mother or by the public authority chargeable with support of the child.

The Uniform Act on Paternity, 78-45a, UCA, was enacted in 1965.

The Paternity Act has no statute of limitations in it, no provision stating how many years after birth of a child an action may be commenced. Instead, it has a provision stating that:

"78-45a-3. LIMITATION ON RECOVERY FROM THE FATHER.---
The father's liabilities for past education and necessary support are limited to a period of four years next preceding the commencement of an action."

This section has not been interpreted by Utah cases. By its language, its purpose seems clear. It controls the accumulation of arrearage the father has to pay by limiting the recovery period. The section does not state when an action may be commenced.

This omission was rectified by the Utah Legislature in 1975 when it added a new paragraph to the general eight year statute of limitations, which reads:

"78-12-22. WITHIN EIGHT YEARS.---within eight years.

"An Action to enforce any liability due or to become due for failure to provide support or maintenance for dependent children." (emphasis added)

This enactment covers any kind of case brought to enforce support.

Before the amendment to §78-12-22, the Bastardy Act with its four year provision might have been controlling, in view of the language in State v. Judd, supra, that the two acts were to be reasonably correlated. If not, the mothers time of recovery was limited because, the Paternity Act being silent, the action would be governed by §78-12-26(4), UCA, which provides a three year limitation for "An action for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special cases a different limitation is prescribed by the statutes of this state." (Emphasis added)

The amendment to §78-12-22 also reconciled the conflict of the limitation periods just cited with the four year arrearage stopper established in the Paternity Act.

It will be noted that the word "paternity" does not appear in §78-12-22. The word is not needed and was undoubtedly omitted by purpose so as not to interfere with determinations of heirship or other cases where a proper issue might arise involving the establishment of paternity.

In setting the statute of limitations at eight years,

the Legislature set a time limit years greater than in most cases. Should this limitation period be too short, it is for the Legislature, as representatives of the people, to consider all social, economic and legal issues, and determine what revisions should be made. When a substantial change is necessary or desirable, our constitution has set up procedures for the change by the Legislature, or of the constitution, by the amendment process.

POINT III.

A CHILD'S MINORITY DOES NOT TOLL
THE STATUTE OF LIMITATIONS.

"78-12-36. EFFECTIVE DISABILITY.---if a person entitled to bring an action, other than for recovery of real property, is at the time the cause accrued, either:

"(1) under the age of majority;. . .

Under our law, a minor is not entitled to bring an action for his own support.

In this case, the child is not a party to the action.

As stated in the recent case, Stanton v. Stanton, (Case number 14268, Utah, filed June 23, 1976,) 552, P2d, 112, in both the main and concurring opinion, it was held that a child does not have standing before the court in matters concerning recovery of his own support. Right to the action is held by the person who has the responsibility for the support, be it mother, guardian, or state agency.

As a second reason for determining that the statute of limitations is not tolled by minority of the child, it must be remembered that recovery of support from the father of an illegitimate child is entirely governed by statute and did not exist at common law. In re State of Utah in the Interest of Baby Girl M,

A comparable line of cases are those in which injured children are barred in their claims against cities because not timely filed even though the children remained minor at the time of filing. Greenhalgh v. Payson City, 530 P2d 799 (Utah 1975); Gallegos v. Midvale City, 27 U2d 27, 492 P2d 1335; and Hurley v. Bingham, 63 Utah 589, 228 P. 213.

In those cases, the difficulty of a municipality in assembling its evidence when a stale claim is presented was a factor, as was the factor that the parents have active control of their children and could have acted promptly for their benefit if they had chosen to.

The major factor and the one that matches the concepts in the case at bar was that a claim against a city is entirely a creation of statute, being formerly barred by sovereign immunity, except as since specifically allowed by statute.

Gallegos, supra, cited Hurley, supra,

" . . . as the right to any damages at all is purely statutory, it can only be availed of when there has been a reasonable effort to comply with the conditions upon which the right is conferred."

That rationale precisely parallels the instant case. First the right to support was conferred by the Bastardy Act with its four year period of limitations. This right was broadened by the Paternity Act which omitted limitations. This omission was cured by the Legislature in its amendment of §78-12-22 setting the eight year limit which now controls. Thus, both the right, and the limitation of the right are exclusively statutory creations, and so prevent tolling of the statute due to minority of the child.

CONCLUSION

After eleven years, this matter should come to a conclusion. The appellants had several years to take action but failed to do so. If there was ever a case where justice would be served in the application of the statute of limitation, it is now before the court. The lower court's order to dismiss the plaintiffs' complaint should be affirmed.

Respectfully submitted,

ALAN D. FRANSEN
Attorney for Respondent

DELIVERY CERTIFICATE

I hereby certify I delivered two copies of the foregoing Brief of Respondent to Vernon B. Romney, Utah Attorney General, and Stephen G. Schwendiman, Assistant Attorney General, attorneys for the Appellants, at 236 State Capitol Building Salt Lake City Utah 84114, by leaving true and correct copies at their offices on October , 1976.
