

1986

Vickie Burrow v. Mark Vrontikis : Brief of Respondent

Utah Supreme Court

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Thomas N. Arnett; Attorney for Repspondent.

Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 860071

IN THE SUPREME COURT OF THE
STATE OF UTAH

-----oooOooo-----

VICKIE BURROW,

Plaintiff and
Respondent,

vs.

MARK VRONTIKIS,

Defendant and
Appellant.

:
:
:
:
:
:

860071.CA

Case No. 20294

-----oooOooo-----

BRIEF OF RESPONDENT

Appeal from the Judgment Rendered by
the District Court of the Third Judicial District
for Salt Lake County
Honorable J. Dennis Frederick Presiding

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FILED

APR 19 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

-----oooOooo-----

VICKIE BURROW,	:	
Plaintiff and	:	
Respondent,	:	
vs.	:	Case No. 20294
MARK VRONTIKIS,	:	
Defendant and	:	
Appellant.	:	

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the District Court of the Third Judicial District
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IN THE SUPREME COURT OF THE
STATE OF UTAH

-----oooOooo-----

VICKIE BURROW,	:	
Plaintiff and	:	
Respondent,	:	
vs.	:	Case No. 20294
MARK VRONTIKIS,	:	
Defendant and	:	
Appellant.	:	

-----oooOooo-----

STATEMENT OF ISSUES PRESENTED FOR REVIEW

This case presents the issue of whether this Court should reverse its holding in the case of Zito v. Butler that the equitable doctrines of estoppel and laches are not applicable to a statutory paternity proceeding.

STATEMENT OF THE CASE

This is a paternity action brought by plaintiff against defendant pursuant to the Uniform Act on Paternity, Section 78-45a-1, et seq., Utah Code Annotated (1953 as amended). The parties stipulated at trial that the defendant was the father of plaintiff's child, born on August 17, 1976. The issues of past and future support were tried to the Court. The Court determined that the defendant should pay to the plaintiff child support in the sum of \$200.00 per month, effective June, 1983 when plaintiff filed

her Complaint, and defendant has not appealed this portion of the judgment. The Court further determined that the plaintiff was entitled to judgment against the defendant in the sum of \$7,200.00 for back support for the period from June, 1979 until June, 1983. The defendant has appealed the portion of the judgment for back support.

STATEMENT OF FACTS

1. Defendant stipulated at trial that he is the father of plaintiff's child, Chad Laverne Harney. (R. 177, 178)

2. When plaintiff informed defendant that she was pregnant, he indicated he was not able to make any commitments to her. (R. 180)

3. There was no further contact between the plaintiff and defendant prior to the filing of this action. (R. 181, 214)

4. Plaintiff and defendant had a mutual friend, and defendant admitted that, had he made an effort, he could have located the plaintiff. (R. 222, 226)

5. Plaintiff filed this action due to her bankruptcy and separation from her husband and her need for support for the child. (R. 182)

SUMMARY OF ARGUMENT

This Court has previously held in the case of Zito v. Butler, 584 P.2d 868 (Utah 1978) that the equitable

doctrines of estoppel and laches are not applicable to a statutory paternity action. In any event, the equitable doctrines of estoppel and laches do not apply to the facts of this case.

ARGUMENT

POINT I

THE EQUITABLE DOCTRINE OF LACHES IS NOT APPLICABLE TO A STATUTORY PATERNITY ACTION IN THE STATE OF UTAH.

In 1965, Utah adopted the Uniform Act on Paternity, Section 78-45a-1, et seq., Utah Code Annotated (1953 as amended). A copy of the Act is included in the addendum hereto. The Act provides a statutory basis for the determination of paternity, replacing the common law basis for such an action prior to the adoption of the Act. The Act also provides for a determination of the father's liability for support, including necessary support furnished on behalf of the child for the four years preceding the commencement of an action. In 9A Uniform Laws Annotated, Paternity, Section 3, the Commissioner's Note indicates that "this section is intended to prevent cumulating an excessive amount to be recovered at once against the father."

Based upon Section 78-45a-3, the trial court awarded judgment to the plaintiff for four years of necessary support furnished prior to the commencement of the action.

The defendant asserts that the plaintiff's claim for past support should be barred by the equitable doctrine of laches.

By adopting the Uniform Act on Paternity, Utah vitiated the common law action and substituted a statutory basis for a paternity claim. It is hornbook law that laches is an equitable doctrine and defense and is inapplicable to a statutory action. In 27 Am Jur 2d, Equity, Sections 153 and 154, the general rule is stated as follows:

Laches is a purely equitable doctrine, and the defense of laches is a creation of equity and is generally peculiar to a court of equity
. . .

Laches is an equitable defense, and generally it arises only where there has been an unreasonable delay in asserting an equitable remedy. Ordinarily, the defense may not be invoked in a court of law, the action of the latter court being governed by the statute of limitations. (Footnotes omitted)

This Court is in accord with the general rule. In Zito v. Butler, 584 P.2d 868 (Utah 1978), the mother instituted a paternity proceeding some four and one-half years after the birth of the child. The father asserted that the mother's claim was barred by the statute of limitations and by the doctrines of laches and estoppel. This Court upheld the judgment in favor of the mother and, in ruling on the father's assertion that the mother's claim was barred, stated as follows: "Defendant also seeks to invoke the equitable doctrines of estoppel and laches. This being a statutory action neither has any application." The

decision in Zito is directly applicable to the instant case. Defendant's appeal can only be granted if this Court reverses the decision in Zito.

In Szarak v. Sandoval, 639 P.2d 1082 (Utah 1981), the mother and the Utah State Department of Social Services brought a paternity action, and the trial court ruled in favor of the plaintiffs. The defendant appealed, arguing that the action was without the statute of limitations, having been brought over six years after the birth of the child. This Court affirmed the decision of the trial court holding that the recovery for necessary support furnished in the four years prior to the commencement of the action can be recovered so long as the action is brought within the statute of limitations. The Court further held that the statute of limitations is tolled during the child's minority, even if the action is brought by the mother and/or the State Department of Social Services and that recovery under Section 78-45a-3 can still be had. In the instant case, the child of the parties was still in his minority at the time the action was commenced, and recovery for the four years of necessary support furnished prior to the action should be upheld.

Defendant turns to several cases in his brief to support his argument on appeal. He cites two cases from the Missouri Court of Appeals which he claims bolster his position that laches should be applied in the case on appeal. However, the Missouri Court is clearly dealing with

an equitable common law claim as stated by the Court in the case of V _____ v. S _____, 579 S.W.2d 149 (Mo.App. 1979):

Missouri recognizes the common law doctrine of indemnity for recovery of monies expended for necessities from one who owed the duty to support. In the area of domestic relations, this doctrine encompasses both monies expended for support by another of a delinquent husband's wife as well as those expended for the support of a delinquent father's children. A distinction is made between the statutory remedy for future maintenance and support and the common law remedy for recovery of a specific liquidated amount already paid out. (Emphasis added)(Citations omitted)

Under the Uniform Act on Paternity in Utah, both the claim for future support and the claim for necessary support furnished within the four years prior to the commencement of the action have a statutory basis and are not dependent upon a common law remedy. Thus, the analogy to the Missouri cases must fail.

Defendant also relies on this Court's ruling in the case of J.P Koch, Inc. v. J.C. Penney Company, Inc., 534 P.2d 903 (Utah 1975), where the plaintiff subcontractor sued the owner of a building for a balance due on the subcontract. Defendant argues that this Court's ruling allowed the defendants to prevail based upon the doctrine of waiver and estoppel. However, the true holding is that the plaintiff had signed lien waivers, legally waiving its claim, and this Court so found. This case did not involve a question concerning the equitable doctrines of waiver and estoppel.

POINT II

EVEN IF THE EQUITABLE DOCTRINE OF LACHES WERE APPLICABLE TO STATUTORY PATERNITY ACTIONS, IT WOULD NOT BE APPLICABLE TO THE FACTS OF THIS CASE.

In this case, the sole evidence that goes to the issue of laches is the fact that the plaintiff waited approximately six and one-half years from the birth of the child before contacting the defendant. There is also evidence that the defendant indicated he could make no commitment to the plaintiff and that, for religious reasons, they could not marry.

In the case of Adams v. Adams, 593 P.2d 147 (Utah 1979), this Court dealt with the issue of laches in a claim for accrued and unpaid alimony. The parties in that case were divorced in 1970 and, in 1977 the plaintiff made a claim for unpaid alimony. The trial court found for the defendant, ruling that the plaintiff was estopped by her silence from claiming the unpaid alimony. This Court reversed and remanded with instructions to enter judgment in favor of the plaintiff. In so doing, this Court stated:

Mere silence on the part of plaintiff is not sufficient to raise an estoppel, and we find nothing in the record to support the Court's finding that she had a duty to speak. In the case of French v. Johnson, 16 Utah 2d 360, 401 P.2d 315 (1965), this Court held:

The facts show no representations, either explicit or implicit, by plaintiff to defendant with respect to

discontinuation of payments . . . Mere silence over a period of time will not raise an estoppel. (Citations omitted)

The record does not show that plaintiff misled defendant in any way, nor that defendant changed his position to his detriment in reliance on any representations or actions on the part of plaintiff.

In the case now before the Court, there is no evidence that the plaintiff made any representations to the defendant concerning his legal duties and obligations nor that he relied to his detriment on any actions of the plaintiff. Thus, the plaintiff's mere silence cannot be held sufficient to impose the doctrines of estoppel or laches in this case.

Finally, the defendant's reliance on this Court's decision in the case of Larsen v. Larsen, 5 Utah 2d 224, 300 P.2d 596 (1956) is misplaced. In that case, this Court held that the doctrine of laches may be applicable in an action by the plaintiff to recover unpaid child support. However, it should first be noted that there is no statutory basis for the recovery of unpaid child support. Second, in the Larsen case, the evidence indicated that the plaintiff had represented to the defendant that he need not pay any child support if he would stay away from the plaintiff and not interfere in her life. She further represented that her new husband would support the child of the parties and did not expect to be repaid. Finally, the evidence indicated that the defendant had relied upon the active representations of the plaintiff and had undertaken other obligations in the

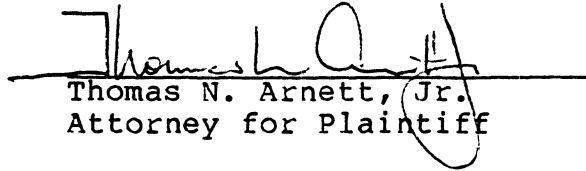
belief that he would not have to pay child support. Based upon this evidence, this Court remanded the case for findings on the issue of laches. Again, this holding is not applicable to the facts of the case before the Court, in that the defendant did not testify as to any representations made to him by the plaintiff.

CONCLUSION

The holding by this Court in Zito v. Butler, supra, was not dicta but was in fact an integral part of the decision in that case. The holding affirmed the general rule that equitable doctrines, such as estoppel and laches, are not applicable to statutory actions. The trial court in the instant case felt compelled and bound by the holding in Zito v. Butler, supra, and this Court should affirm that ruling. However, even if the doctrine of laches were applicable to a statutory paternity action, the facts necessary for the imposition of a bar based upon laches are not present in this case. The mere silence of the plaintiff is insufficient to raise the doctrine of laches so as to constitute a bar to the plaintiff's claim. The plaintiff respectfully urges this Court to affirm the decision of the trial court.

Respectfully submitted this 19 day of April
1985.

THOMAS N. ARNETT, JR.


Thomas N. Arnett, Jr.
Attorney for Plaintiff

CERTIFICATE OF MAILING

STATE OF UTAH)
 :SS.
County of Salt Lake)

Maggie Lee, being duly sworn, says:

That she is employed in the office of Thomas N. Arnett, Jr., attorney for plaintiff, Vickie Burrow, herein, that she served the attached Brief of Respondent upon the following parties by placing four true and correct copies thereof in an envelope addressed to:

Jerome H. Mooney
Mooney & Smith
Attorneys at Law
356 South 300 East
Salt Lake City, Utah 84111

and depositing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Salt Lake City, Utah on the 19 day of April, 1985.

Maggie Lee
SUBSCRIBED AND SWORN to before me this 19 day of April, 1985.

Julie King
Notary Public
Residing at Salt Lake City,
Utah

My commission expires:

4-4-88

SEP 13 1984

THOMAS N. ARNETT, JR. (0128)
Attorney for Plaintiff
900 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 373-5650

H. Dixon Hindle, Clerk of Dist. Court
By AB Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

VICKIE BURROW,

Plaintiff,

vs.

MARK VRONTIKIS,

Defendant.

:

:

:

:

:

-----oooOooo-----
BK 190 No. 928
9-18-84 2:08 P.M.
JUDGMENT

Civil No. C83-3916
Judge J. Dennis Frederick

-----oooOooo-----
The above-entitled action came on regularly for trial before the Honorable J. Dennis Frederick, Judge of the above-entitled Court, on Monday, the 13th day of August, 1984, at the hour of 2:00 p.m., plaintiff appearing in person and through her attorney Thomas N. Arnett, Jr., and the defendant appearing in person and through his attorney Jerome H. Mooney of the firm of Mooney and Smith, and the Court having heard the stipulation of the parties by and through their respective counsel as to certain issues, having heard the sworn testimony of the plaintiff and defendant, having heard the arguments of counsel, having considered the contents of the Court's file, and good cause appearing therefore, and having heretofore made and entered its Findings of Fact and Conclusions of Law;

NOW, THEREFORE;

IT IS HEREBY ORDERED as follows:

1. That the defendant Mark Vrontikis be and is hereby declared to be the natural father of Chad Laverne Harney, son of the plaintiff, Vickie Burrow. That the birth certificate of Chad Laverne Harney shall be amended to that the minor child's name is Chad Laverne Vrontikis.

2. That the plaintiff is awarded the care, custody and control of the minor child Chad Laverne Vrontikis, subject to reasonable rights of visitation in the defendant.

3. That upon the entry of this judgment, the Court's file shall be sealed and shall not be opened to any person without further order of the Court.

4. That the defendant is ordered to pay to the plaintiff child support for the benefit of the minor child of the parties in the sum of \$200.00 per month, effective June 1, 1983, until the minor child reaches the age of majority. That so long as the defendant is current in his payment of child support, the defendant shall be entitled to claim the minor child as a deduction for income tax purposes.

5. That the plaintiff is granted judgment against the defendant for child support from June 1, 1983 through August 31, 1984, in the sum of \$3,000.00 less a credit in the sum in the sum of \$250.00 for one-half of the cost of the HLA Tissue Typing Test, for a judgment amount of \$2,750.00.

6. That the plaintiff is granted judgment against the defendant for child support for the period from June 1, 1979 through May 31, 1983, in the sum of \$7,200.00, representing

support at a rate of \$150.00 per month.

7. That the defendant is ordered to maintain the minor child on the defendant's medical insurance and pay one-half of any medical or dental expense incurred on behalf of the minor child which is not paid by said insurance.

8. That the defendant is ordered to obtain and maintain \$20,000.00 of life insurance on his life, with the minor child of the parties named as beneficiary thereof, until the minor child reaches age 18.

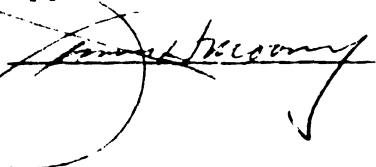
9. That the plaintiff is granted judgment against the defendant for her costs of Court incurred herein in the sum of \$34.75.

DATED this 18 day of Sept., 1984.

BY THE COURT:


District Judge

Approved as to form:



ATTEST

(H. DIXON HINDLEY
Clerk

By 
Deputy Clerk

THOMAS N. ARNETT, JR. (0128)
Attorney for Plaintiff
900 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650

SEP 13 1984
By [Signature] Clerk of Court

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

-----oooOooo-----
VICKIE BURROW, :
Plaintiff, : FINDINGS OF FACT
vs. : AND CONCLUSIONS OF LAW
MARK VRONTIKIS, : Civil No. C83-3916
Defendant. : Judge J. Dennis Frederick
-----oooOooo-----

The above-entitled action came on regularly for trial before the Honorable J. Dennis Frederick, Judge of the above-entitled Court, on Monday, the 13th day of August, 1984, at the hour of 2:00 p.m., plaintiff appearing in person and through her attorney Thomas N. Arnett, Jr., and the defendant appearing in person and through his attorney Jerome H. Mooney of the firm of Mooney and Smith, and the Court having heard the stipulation of the parties by and through their respective counsel as to certain issues, having heard the sworn testimony of the plaintiff and defendant, having heard the arguments of counsel, having considered the contents of the Court's file, and good cause appearing therefor, now makes and enters the following:

FINDINGS OF FACT

1. That the defendant, Mark Vrontikis, is the natural father of plaintiff's son, Chad Laverne Harney. That the birth certificate of Chad Laverne Harney should be amended so that the minor child's name is Chad Laverne Vrontikis.

2. That the plaintiff should be awarded the care, custody and control of the minor child Chad Laverne Vrontikis, subject to reasonable rights of visitation in the defendant.

3. That upon the entry of judgment in this matter, the Court's file should be sealed and should not be opened to any person without further order of the Court.

4. That the income of the plaintiff and her husband and the income of the defendant and his wife appear to be roughly equivalent, and child support for the minor child should be ordered commensurate with the defendant's ability to pay and the child's needs. That the Court finds that the current expenses for the minor child are the sum of \$436.00, and that each parent should be responsible for approximately one-half (1/2) of the child's expenses and the defendant should therefore be ordered to pay child support to the plaintiff in the sum of \$200.00 per month, effective June 1, 1983, until the child reaches the age of majority. That so long as the defendant is current in his payments of child support, the defendant shall be entitled to claim the minor child Chad Laverne Vrontikis as a deduction for income tax purposes.

5. That the provisions of the Utah Uniform Act on Paternity, Sections 78-45(a)-1, et seq., Utah Code Annoated (1953 as amended) and the case of Zito v. Butler, 584 P2d 868 (Utah 1978) entitled the plaintiff to recover a lump sum for support furnished to the minor child in the four (4) year period preceding plaintiff's filing of this action. That the plaintiff's recent increase in monthly living expenses indicates that the support furnished to the minor child in the past was less than at present and the sum of \$150.00 per month is a reasonable amount for the minor child's support for the period from June 1979 through May 31, 1983, for a total sum of \$7,200.00. That the defendant should be entitled to a credit against this amount for one-half (1/2) of the cost of the HL-A tissue typing tests.

6. That the defendant should be ordered to maintain the minor child Chad Laverne Vrontikis on the defendant's medical insurance and pay one-half (1/2) of any medical or dental expense incurred on behalf of the minor child which is not paid by said insurance.

7. That the defendant should obtain and maintain \$20,000.00 of life insurance on his life, with the minor child of the parties named as beneficiary thereof, until the minor child reaches age 18.

8. That the defendant should be ordered to reimburse the plaintiff for her costs of Court incurred herein.

From the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. This Court is bound by the ruling in Zito v. Butler, supra, and may not apply the Doctrine of Latches or Estoppel with respect to past support obligations in paternity actions.

2. That a Judgment should be entered in accordance with the foregoing Findings of Fact.

DATED this 18 day of August, 1984.

BY THE COURT:

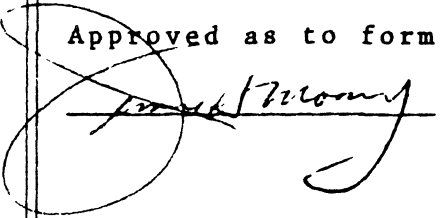

District Judge

ATTEST

N. DIXON NOBLEY
Clerk

By 
Deputy Clerk

Approved as to form:



78-45-12. Rights are in addition to those presently existing.—The rights herein created are in addition to and not in substitution to any other rights.

History: L. 1957, ch. 110, § 12.
Separability Clause. Section 13 of Laws 1957, ch. 110 provided as follows "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable"

78-45-13. Interpretation and construction.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: L. 1957, ch. 110, § 14.

CHAPTER 45a

UNIFORM ACT ON PATERNITY

Section 78-45a 1.	Obligations of the father.
78 45a 2.	Enforcement.
78 45a 3.	Limitation on recovery from the father.
78 45a 4.	Limitations on recovery from father's estate
78 45a 5	Remedies.
78 45a 6.	Time of trial.
78 45a 7.	Authority for blood tests.
78 45a 8.	Selection of experts.
78 45a 9.	Compensation of expert witnesses.
78-45a-10.	Effect of test results.
78 45a 11.	Judgment.
78 45a-12.	Security.
78-45a 13.	Settlement agreements.
78 45a-14.	Venue.
78 45a-15.	Uniformity of interpretation.
78-45a 16.	Short title.
78 45a-17.	Operation of act.

78-45a-1. Obligations of the father.—The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child A child born out of wedlock includes a child born to a married woman by a man other than her husband.

History: L. 1965, ch. 158, § 1.	Cross-References.
Title of Act.	Bastardy Act, 77 60 1 et seq
An act relating to paternity; providing for the enforcement of duties thereof and making uniform the law with respect to paternity—L. 1965, ch. 158.	Injunction not to issue against order of department or action of county attorney or attorney general, 78 45b 19
Comparable Provisions.	Uniform Civil Liability for Support Act, 78 45 1 et seq.
States that have adopted the Uniform Act on Paternity include: Kentucky, Maine, Mississippi, Montana, and New Hampshire.	Uniform Reciprocal Enforcement of Support Act, 77 61a 1 et seq
	Bastardy Act.
	This act does not repeal the Bastardy Act, chapter 60 of Title 77, or any part thereof. State v. Judd, 27 U. (2d) 79, 493

P. 2d 604; *State v. Abram*, 27 U. (2d) 266, 495 P. 2d 313.

Custody Rights.

Father who publicly acknowledged his paternity had right to custody of his illegitimate child, second only to mother's right, so that it was improper for juvenile court to dismiss petition for custody and thereby terminate father's parental right without hearing to determine whether he was fit and proper person. *State in Interest of Baby Girl M*, 25 U. (2d) 101, 476 P. 2d 1013, 45 A. L. R. 3d 206.

Plaintiff's election of remedies.

Bastardy cases are tried as civil matters rather than criminal even though the cases are brought in the name of the state, and the plaintiff mother must elect whether to proceed under the Bastardy Act or the

Uniform Act on Paternity since her cause of action cannot be filed under both statutes. *Brown v. Marrelli*, 527 P. 2d 230.

Collateral References.

Bastards—16.

10 C.J.S. Bastards § 18.

10 Am. Jur. 2d 895, Bastards § 68.

Foreign filiation or support order in bastardy proceedings, requiring periodic payments, as extraterritorially enforceable, 16 A. L. R. 2d 1098.

Provision in divorce decree against mother's husband, not the father of her illegitimate child, for its support, 90 A. L. R. 2d 583.

Validity and construction of putative father's promise to support or provide for illegitimate child, 20 A. L. R. 3d 500.

78-45a-2. Enforcement.—Paternity may be determined upon the petition of the mother, child, or the public authority chargeable by law with the support of the child. If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the father may be enforced in the same or other proceedings (1) by the mother, child, or the public authority which have furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses, and (2) by other persons including private agencies to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses.

History: L. 1965, ch. 158, § 2.

Cross-Reference.

Enforcement of provisions by department of social services, 55-15a-24.

Collateral References.

Bastards—19 et seq.

10 C.J.S. Bastards § 32 et seq.

10 Am. Jur. 2d 900 et seq., Bastards § 74 et seq.

Death of putative father as precluding action for determination of paternity or for child support, 58 A. L. R. 3d 188.

Effect of death of child prior to institution of bastardy proceedings by mother, 7 A. L. R. 2d 1397.

Maintainability of bastardy proceedings against infant defendant without appointment of guardian ad litem, 69 A. L. R. 2d 1379.

Maintainability of bastardy proceedings by infant prosecutrix in her own name and right, 50 A. L. R. 2d 1029.

Marriage of woman to one other than defendant as affecting her right to institute or maintain bastardy proceeding, 98 A. L. R. 2d 256.

Nonresident mother's right to maintain bastardy proceedings, 57 A. L. R. 2d 639.

Right of mentally incompetent mother to institute bastardy proceeding, 71 A. L. R. 2d 1261.

Statute of limitations in illegitimacy or bastardy proceedings, 59 A. L. R. 3d 685.

Temporary allowance for support or costs pending action or proceeding for declaration of paternity of an illegitimate child, 136 A. L. R. 1264.

What amounts to recognition within statutes affecting the status or rights of illegitimates, 33 A. L. R. 2d 705.

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.

History: L. 1965, ch. 158, § 3.

10 C.J.S. Bastards § 53.
10 Am. Jur. 2d 936, Bastards § 127.

Collateral References.

Bastards ⇨ 34.

78-45a-4. Limitations on recovery from father's estate.—The obligation of the estate of the father for liabilities under this act are limited to amounts accrued prior to his death and such sums as may be payable for dependency under other laws.

History: L. 1965, ch. 158, § 4.

10 C.J.S. Bastards § 53.
10 Am. Jur. 2d 936, Bastards § 127.

Collateral References.

Bastards ⇨ 34.

78-45a-5. Remedies.—(1) The district court has jurisdiction of an action under this act and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under the Uniform Reciprocal Enforcement of Support Act, are available for enforcement of duties of support under this act.

(2) The obligee may enforce his right of support against the obligor and the state department of social services may proceed on behalf of the obligee or in its own behalf pursuant to the provisions of chapter 45b of this title to enforce that right of support against the obligor. In such actions by the department, all the provisions of chapter 45b of this title shall be equally applicable to this chapter. Whenever a court action is commenced by the state department of social services, it shall be the duty of the attorney general or the county attorney, of the county of residence of the obligee, to represent that department.

History: L. 1965, ch. 158, § 5; 1975, ch. 96, § 24.

Cross-Reference.

Uniform Reciprocal Enforcement of Support Act, 77 61a 1 et seq.

Compiler's Notes.

The 1975 amendment designated the former section as subsec. (1); added subsec. (2); and made minor changes in phraseology in subsec. (1).

Collateral References.

Bastards ⇨ 80 et seq.
10 C.J.S. Bastards §§ 116, 117.
10 Am. Jur. 2d 935 et seq., Bastards § 126 et seq.

78-45a-6. Time of trial.—If the issue of paternity is raised in action commenced during the pregnancy of the mother, the trial shall not, without the consent of the alleged father, be held until after the birth or miscarriage but during such delay testimony may be perpetrated according to the laws of this state.

History: L. 1965, ch. 158, § 6.

10 C.J.S. Bastards § 101.
10 Am. Jur. 2d 932, Bastards § 123.

Collateral References.

Bastards ⇨ 67.

78-45a-7. Authority for blood tests.—The court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is in-

volved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require.

History: L. 1965, ch. 158, § 7.

10 C.J.S. Bastards § 93.

10 Am. Jur. 2d 928, Bastards § 118.

Cross-Reference.

Blood tests to determine parentage, 78-25-18 to 78-25-23.

Weight and sufficiency of blood grouping test to show paternity or legitimacy, 46 A. L. R. 2d 1027.

Collateral References.

Bastards—65.

78-45a-8. Selection of experts.—The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of court, the results of which may be offered in evidence. The number and qualifications of such experts shall be determined by the court.

History: L. 1965, ch. 158, § 8.

Cross-Reference.

Blood test examiner as witness, 78-25-20.

78-45a-9. Compensation of expert witnesses.—The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

History: L. 1965, ch. 158, § 9.

Collateral References.

Bastards—94.

10 C.J.S. Bastards § 138.

78-45a-10. Effect of test results.—If the court finds that the conclusions of all experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence. If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type.

History: L. 1965, ch. 158, § 10.

Cross-Reference.

Admissibility of blood test results, 78-25-21.

Collateral References.

BastardsⒸ65.
 10 C.J.S. Bastards § 93.
 10 Am. Jur. 2d 922, Bastards § 107.

Right to jury trial in bastardy proceedings, 94 A. L. R. 2d 1128.

78-45a-11. Judgment.—Judgments under this act may be for periodic payments which may vary in amount. The court may order payments to be made to the mother or to some person, corporation, or agency designated to administer them under the supervision of the court.

History: L. 1965, ch. 158, § 11.

Collateral References.

BastardsⒸ78.
 10 C.J.S. Bastards § 111.
 10 Am. Jur. 2d 936, Bastards § 127.

Judgment in bastardy proceeding as conclusive of issues in subsequent bastardy proceeding, 37 A. L. R. 2d 836.

Right of mother of illegitimate child to appeal from order or judgment entered in bastardy proceedings, 18 A. L. R. 2d 948.

78-45a-12. Security.—The court may require the alleged father to give bond or other security for the payment of the judgment.

History: L. 1965, ch. 158, § 12.

Collateral References.

BastardsⒸ84 et seq.

10 C.J.S. Bastards § 118 et seq.

10 Am. Jur. 2d 936, Bastards § 128.

78-45a-13. Settlement agreements.—An agreement of settlement with the alleged father is binding only when approved by the court.

History: L. 1965, ch. 158, § 13.

Collateral References.

BastardsⒸ26.
 10 C.J.S. Bastards § 40 et seq.
 10 Am. Jur. 2d 917 et seq., Bastards § 98 et seq.

Avoidance of lump-sum settlement or release of bastardy claim on grounds of fraud, mistake, or duress, 84 A. L. R. 2d 593.

Lump-sum compromise and settlement, or release, of bastardy claim or of bastardy or paternity proceedings, 84 A. L. R. 2d 524.

78-45a-14. Venue.—An action under this act may be brought in the county where the alleged father is present or has property or in the county where the mother resides.

History: L. 1965, ch. 158, § 14.

Collateral References.

BastardsⒸ36.

10 C.J.S. Bastards §§ 57, 58.

10 Am. Jur. 2d 902, Bastards § 76.

78-45a-15. Uniformity of interpretation.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: L. 1965, ch. 158, § 15.

78-45a-16. Short title.—This act shall be known and may be cited as the "Uniform Act on Paternity."

History: L. 1965, ch. 158, § 16.

78-45a-17. Operation of act.—This act applies to all cases of birth out of wedlock as defined in this act where birth occurs after this act takes effect.

History: L. 1965, ch. 158, § 17.