

1986

Vickie Burrow v. Mark Vrontikis : Brief of Appellant

Utah Supreme Court

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DOCKET NO. 860071

SUPREME COURT OF THE STATE OF UTAH

---ooo0ooo---

VICKIE BURROW,

)

Plaintiff/Respondent,

)

860071-CA
SUPREME COURT NO. 20294

vs.

)

MARK VRONTIKIS,

)

Defendant/Appellant.

)

---ooo0ooo---

BRIEF OF APPELLANT

APPEAL FROM THE DECISION RENDERED BY THE DISTRICT
 COURT OF THE THIRD JUDICIAL DISTRICT FOR SALT LAKE
 COUNTY, THE HONORABLE J. DENNIS FREDERICK PRESIDING

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MAR 26 1985

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SUPREME COURT OF THE STATE OF UTAH

---ooo0ooo---

VICKIE BURROW,)	
Plaintiff/Respondent,)	SUPREME COURT NO. 20294
vs.)	
MARK VRONTIKIS,)	
Defendant/Appellant.)	

---ooo0ooo---

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SUPREME COURT OF THE STATE OF UTAH

---ooo0ooo---

VICKIE BURROW,)	
Plaintiff/Respondent,)	SUPREME COURT NO. 20294
vs.)	
MARK VRONTIKIS,)	APPELLANT'S BRIEF
Defendant/Appellant.)	

---ooo0ooo---

This is an appeal from the decision rendered by the District Court of the Third Judicial District for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick presiding.

STATEMENT OF ISSUES PRESENTED ON APPEAL

This case involves the question of whether the right to back support within the period of limitation provided by Utah Code Annotated, Section 78-45a-3 is subject to the doctrine of equitable estoppel.

STATEMENT OF THE CASE

The lower court determined that the defendant was the father of the plaintiff's child, born the 17th day of August, 1976. The Court further determined that the plaintiff should receive child support in the amount of Two Hundred Dollars (\$200.00) per month, running from June of 1983 when Plaintiff filed her Complaint in this matter. (See Judgment) This portion of the Court's Order was not appealed. The Court further, however, provided judgment

against the defendant in the amount of Seven Thousand Two Hundred Dollars (\$7,200.00) for back support for the period June, 1979, through June, 1983. The trial court looked at the elements of the doctrines of laches and estoppel but determined as a matter of law that they could not be applied to obligations arising under Title 78, Chapter 45a. (Judgment and Findings of Fact). It is from this judgment for back support that defendant appeals.

RELIEF SOUGHT ON APPEAL

Appellant respectfully submits that the doctrine of equitable estoppel is and should be fully applicable to claims for back support under Title 78, Chapter 45a of Utah Code Annotated, and that the judgment rendered by the District Court should be reversed, and the matter remanded to allow the District Court to consider application of the doctrine of estoppel against such claim.

JURISDICTIONAL STATEMENT

Judgment was entered by the District Court on the 18th day of September, 1984. Defendant filed a timely Notice of Appeal which was perfected, and pursuant to stipulation, provided a supersedeas bond against the appealed from judgment in the amount of Ten Thousand Dollars (\$10,000.00).

STATEMENT OF FACTS

1. Plaintiff and defendant dated during the latter part of 1975 and the early months of 1976. The relationship, although meeting the physical requirements for conception, never grew to one of emotional commitment. The plaintiff was then eighteen or

nineteen and the Defendant a twenty year old. (TR, pg. 34-35)

2. In approximately March of 1976, the plaintiff discovered that she was pregnant and met the defendant to advise him of these facts. (TR, pg. 36)

3. Following that meeting, there was no direct contact between the plaintiff and defendant for a period of seven years. (TR, pg. 38-39)

4. Plaintiff determined that she wanted to raise the child "separately and independently of Mark Vrontikis". (TR, pg. 21, Ln. 24, pg. 22, Ln. 13)

5. This decision was made even prior to the plaintiff's conversation with the defendant wherein he was advised of her pregnancy. (TR, pg. 22-23)

6. The defendant was subsequently advised of the plaintiff's desire not to see him, to have no contact with him, and to have him play no role in the life of the child. (TR, pg. 38-39)

7. Plaintiff subsequently married Allan Burrow and has had two children from that relationship. (TR, pg. 4) No claim for support or contact with the defendant was made by the plaintiff until January of 1983. That contact resulted in the instant matter being filed in June of 1983.

SUMMARY OF ARGUMENT

The doctrine of equitable estoppel is properly applicable to claims arising under a statute. The doctrine has been applied to cases involving past support obligations for a child born in wedlock. There is no reason to distinguish between the rights of

the mother of a child born out of wedlock to recover past support, in spite of her wrongdoing, from the rights of the mother of a child born in wedlock. The trial court should have applied the doctrine of equitable estoppel to the past support obligation and reached a resolution based on the facts.

ARGUMENT

THE DOCTRINE OF EQUITABLE ESTOPPEL MAY BAR
A RECOVERY FOR PART OR ALL OF A JUDGMENT
FOR BACK SUPPORT IN ACTIONS INSTITUTED
UNDER UTAH CODE ANNOTATED, TITLE 78,
CHAPTER 45A.

All parents have a duty to support their children. Utah Code Annotated, Section 78-45-3. This duty applies whether the child is a product of a solemnized relationship or born out of wedlock. Utah Code Annotated, Section 78-45a-1. But with this obligation comes parental rights and the opportunity to participate in the enjoyment of the child. See Slade v. Dennis, 594 P.2d 898 (1979), Thomas v. Children's Aid Society of Ogden, 12 Utah 2d 235, 364 P.2d 1029 (1961).

In 1981, this Court determined that there was no statute of limitations on determinations of paternity. Szarak v. Sandoval, 636 P.2d 1082 (1981). The statutory scheme of the uniform act on paternity, however, provides a statute of limitations against recovery for back support. On what would appear to be the theory that each separate expenditure toward support gives rise to a new claim or cause of action for participation by the putative father, no claim is allowed for support claims outside a four year period preceding the commencement of an action for determination of paternity. Utah Code Annotated, Section 78-45a-3.

It is concern for the needs and interests of the child which drive the non-application of statutes of limitations to the determinations of paternity.

"We are unable to find any time limitation as to when a suit may be instituted to determine paternity. The child has an interest in the matter, and courts should be reluctant to invent limitations not set out in the statute, especially where minor children may be adversely affected thereby.

... In cases of establishing paternity, there are other public policy considerations such as the need of the minor child for support and the requirement that the man who actually sired the child be required to furnish it's support. Nielsen and the State of Utah by and through the Utah State Department of Social Services v. Hansen, 564 P.2d 113, (1977)

To this end, it has been determined that a parent cannot release the right to future support. Price v. Price, 4 Utah 2d 153, 289 P.2d 1044, Gulley v. Gulley, 570 P.2d 127 (1977). It has thus been recognized that a right to support is owed by every parent to their child. This obligation, however, is for future support. Thus, every action which is brought for a determination of support obligations, as well as a claim for reimbursement for past support, is in fact two separate claims representing the interests of at least two separate parties. The Missouri Court of Appeals described this as two remedies, one looking to future support of the child, the other a common law independent action seeking to recover reimbursement for expenses already incurred. "The two remedies are conterminous rather than concurrent, and the one begins where the other ends." Smith v. Smith, 300 S.W. 2d 275, 278 (Mo. App. 1957). Missouri has also applied this

principal to claims for recovery of past expenditures for the support of illegitimate children.

"We believe the same principal applies where a mother seeks future support for her illegitimate child as well as recovery for past expenditures. The latter action has nothing to do with child support; the mother alone is entitled to reimbursement upon the basis of her quasi contractual relationship with the child's father." (Citation omitted). In the child's support count in this case, the son is the true party in interest and is represented by his mother only because of the disability to pursue by reason of minority. (Citations omitted). In her action for reimbursement, the mother is the only interested Plaintiff. "If [the judgment is] collected, that money goes to her, not to the child, who has already had the past support." (Citations omitted). V. v. S., 579 S.W. 2d 149, 151-152 (Mo. App. 1979).

This Court has recognized this principal with respect to past support.

"However, this [the rights of the child to future support] does not mean that a mother may not, by her actions or representations, or both, preclude herself from recovering past due installments of support money to reimburse her for the money which she has spent for the support of the child." Larson v. Larson, 5 Ut.2d 224. 300 P.2d 596, 598 (1956); see also Wasescha v. Wasescha, 548 P.2d 895 (1976).

In the instant case, the defendant asserted that plaintiff's claim for past support should be barred by the doctrine of laches and/or equitable estoppel. The trial court examined the evidence against defendant's claim, but determined that he was unable to apply this doctrine or provide any relief. "I do not condone the plaintiff's conduct in waiting some six years to make claim for support in the form of a lump sum obligation. It may

well be that had notice been given to the defendant much earlier, out of claim for back support, the defendant could have shared certain of the expenses incident to the raising of the child and thereby reduced the plaintiff's financial hardship. Conversely, had that been done, he would not now be faced with the difficult problem of a large lump sum obligation with his current family obligations and his new child. However, this Court is bound by the statutory scheme of the Utah Legislature and acted in the Uniform Paternity Act, Title 78-45a and following, as well as the language of our Supreme Court in interpreting that act under Getto (sic) vs. Butler Case, 584 P.2d 868, wherein it was stated that the equitable doctrines of latches and estoppel have no relevance in an action of this type since it is based upon a statutory schemen (TR, pg. 5, ln. 8-25)

Zito v. Butler, 584 P.2d 868 (1978) is a per curium decision of this Court affirming an award of both future support and past support for an illegitimate child. The primary attack of the appellant who appeared pro se, seems to have rested on a claim of Statute of Limitations. This Court, however, includes the following two sentences in that decision:

"Defendant also seeks to invoke the equitable doctrines of estoppel and latches. This being a statutory action, neither has any application." Id. at 869.

The only support for these sentences is a reference to 27 AmJur 2d, Equity Sec. 154. That section is fully set forth in the attachment hereto, but in pertinent part provides as follows:

"Latches 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. It is said that only where the elements of an estoppel are present, may latches constitute a bar in an action at law. (Emphasis added). Id.

The unfortunate two sentences cited above from Zito v. Butler and relied upon by the trial court find no support in law and are inconsistent with prior rulings of this Court where the issues were properly represented on both sides. Even though the terms "latches" and "estoppel" are utilized almost interchangeably throughout the legal profession, they are separate and distinct principals. Leaver v. Grose, 610 P.2d 1262 (1980).

Traditionally, latches exists where two elements are proved:

- "(1) The lack of diligence on the part of plaintiff;
- (2) An injury to defendant owing to such lack of diligence." Papanikolas v. Sugarhouse Shopping Center Associates, 535 P.2d 1256, 1260 (1975); Leaver v. Grose, supra at 1264.

While the equitable function of latches may well serve the same fundamental principals as a statute of limitations, and may have questionable application where a statute of limitations has been provided or the claim based upon doctrines of law as opposed to equity, it is the primary force and function of equitable estoppel to attack the ability of a party to rely upon statutory protections. In J.P. Koch, Inc. v. J.C. Penney Co., Inc., 534 P.2d 903 (1975), Koch sued to recover labor and materials furnished as a subcontractor on a construction job to the defendants, wherein the general contractor had become insolvent.

Plaintiff relied upon the statutory bonding requirements to impute liability for its claim on the defendants. Defendants claimed that plaintiffs were estopped through their actions from relying upon the statute. In ruling in favor of the defendants, and against the application of the statute, this court stated as follows:

"The position of the plaintiff in support of the ruling of the trial court seems to be that failure of the owner to furnish the bond required by Section 14-2-1 results absolute liability; and that the plaintiff could neither waive its right nor be estopped from enforcing it. This, of course is not right. Notwithstanding the provisions of that statute, there is no question but that a person may waive or forego the right it gives him, the same as he could any other property right." Id. at 904.

Thus equitable doctrine can be applied and statutory schemes are not absolute in the face of equity. "It is a doctrine of equity to prevent one party from diluting or inducing another into a position where he will unjustly suffer loss." Id. at 905.

It is further well recognized that the doctrine of equitable estoppel may be applied specifically against the application of the statute of limitations. Rice v. Granite School District, 456 P.2d 159 (1969).

Additionally, this doctrine is no stranger to claims based upon the claims for past support. Larson v. Larson, supra; Wasescha v. Wasescha, supra; In re Marriage of Szamoki, 47 Cal. App. 3d 812 (Cal., 1975).

In the case of Larson v. Larson, supra, provides the most indepth analysis of this application to obligations for past due support. In Larson, the defendant provided no support to the minor children of the parties from 1947 to 1955. The defendant

maintained that his failure to provide support during this period was predicated upon representations from the mother of the children that ". . . all she wanted from the appellant is that he should refrain from trying to see her or the child." Id. at 596. In reliance upon representations of the respondent, the appellant in the Larson case had remarried and had taken on other obligations. As in the instant case, no relationship was maintained with the children and the father changed his situation from that existing at the time the obligation was incurred. As in the instant case, the trial court determined a defense of laches or estoppel was not available to the Larson appellant. This court determined that estoppel was applicable in such a circumstance. The Larson court noted:

"Where the father's failure to make such payments was induced by her representations or actions, and where, as a result of such representations or actions the father has been lulled into failing to make such payments and into changing his position which he would not have done but for such representations, and that as a result of such failure to pay and change in his conditions, it will cause him great hardship and injustice if she is allowed to enforce the payment of such back installments, she may be thereby estopped from enforcing the payment of such back installments." Id at 598.


There is no logical basis upon which to predicate a distinction between the application of estoppel to a back support obligation founded upon a decree of divorce from founded upon the determination of paternity. The illegitimate child bears no greater interest at law than that of a lawful marriage and in fact, as indicated above, has no relationship to the claim made by the mother for repayment. The actions of a mother claiming

back support founded upon a decree of divorce may be analyzed by the trial court for a determination of estoppel. Likewise, the trial court in the instant case should have been allowed to apply the doctrine in this matter. The unfortunate language of Zito v. Butler", supra should be corrected to correct the confusion created thereby and bring its principals into consistency with the body of law dealing with the subject of estoppel as established and existing within the State of Utah and throughout the United States.

CONCLUSION

The judgment of the trial court should be reversed and remanded as to the judgment in the amount of Seven Thousand Two Hundred Dollars (\$7,200.00) predicated upon back support and remanded to allow application of the doctrine of estoppel.

DATED this 22 day of March, 1985.


JEROME H. MOONEY
Attorney for the Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and exact copy of the foregoing Brief, postage fully prepaid, to:

THOMAS N. ARNETT, JR.
900 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111

Dated this 22 day of March, 1985.

A handwritten signature in dark ink, appearing to read 'T. Arnett', is written over a horizontal line.

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Telephone: (801) 363-5650

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

-----oooOooo-----
VICKIE BURROW, :
Plaintiff, : JUDGMENT
vs. :
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 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 _____ day of _____, 1984.

BY THE COURT:

District Judge

Approved as to form:

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Salt Lake City, Utah 84111
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

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

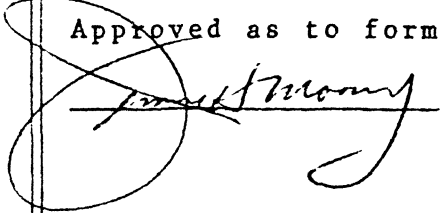
2. That a Judgment should be entered in accordance with the foregoing Findings of Fact.

DATED this _____ day of August, 1984.

BY THE COURT:

District Judge

Approved as to form:



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.

Title of Act.

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.

Comparable Provisions.

States that have adopted the Uniform Act on Paternity include: Kentucky, Maine, Mississippi, Montana, and New Hampshire.

Cross-References.

Bastardy Act, 77-60-1 et seq.
Injunction not to issue against order of department or action of county attorney or attorney general, 78-45b-19.

Uniform Civil Liability for Support Act, 78-45-1 et seq.

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 \Rightarrow 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 \Rightarrow 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 689.

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 obligations 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 by 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 educational 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 an 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.