

MAINE STATE LEGISLATURE

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18 MRSAY 1003
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The (various) conditions of the Acknowledgement

Department of Human Services

STATE HOUSE, AUGUSTA, MAINE

Date December 16, 1976

To David E. Smith, Commissioner, Department of Human Services
From Kate Clark Flora, Staff Attorney, Legal Division
Subject Acknowledgement of Paternity

In response to your request, my formal opinion on acknowledgement of paternity follows.

FACTS

One condition of AFDC eligibility is the continued absence from the home of a parent of the needy child. In some cases, the mother and putative father of an illegitimate child are living together when the mother applies for AFDC, but the father has never acknowledged the child as his before a notary or a justice of the peace, although he may have admitted paternity of the child before two witnesses. If the parents were married, the child would not be eligible for AFDC.

QUESTION

For purposes of establishing eligibility for AFDC and for collection of child support, may the Department of Human Services consider the fact that the putative father has admitted paternity in front of two witnesses but not a notary public or justice of the peace as legal acknowledgement of paternity?

ANSWER

No. According to federal law, a parent is a person who owes to the child a state-imposed legal duty of support. Under Maine law, such a duty may be imposed only when paternity has been established in a judicial proceeding or by a written acknowledgement of paternity before a notary or a justice of the peace.

REASONING

States participating in AFDC programs are bound by the federal eligibility requirements and may not add additional requirements which exclude children eligible under federal standards. Townsend v. Swank, 404 U.S. 282 (1971). One of the conditions of AFDC eligibility is that the child for whom aid is sought must be a needy child "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent."

42 U.S.C. § 606A. Regulations implementing that statute, 45 C.F.R. §233.90, provide that "the determination of whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent...will be made only in relation to the child's natural or adoptive parent."

In King v. Smith, 392 U.S. 309 (1968), the Supreme Court spoke definitely on the question of what is meant by the term "parent." "Congress must have meant by the term "parent" an individual who owed to the child a state-imposed legal duty of support." (emphasis supplied). The Court made it clear that within the meaning of the Social Security Act, a person cannot be considered a parent for the purposes of determining AFDC eligibility (or ineligibility) unless that person is the "legal parent" of the child.

In the case of illegitimate children, the putative father is not the "legal father" with the attendant legal responsibilities unless he is determined to be the father (i.e., a person with a legal duty of support) under state law. The Maine law relating to the establishment of paternity is found in the Uniform Act on Paternity, located in Title 19 M.R.S.A. § 271 et seq. Section 272 provides that paternity may be established in two ways: By a judicial determination; or by acknowledgment in accordance with state law. The act is silent as to what constitutes "an acknowledgement in accordance with state law. "

The only section of Maine law which addresses itself to the issue of acknowledgment of paternity is Title 18 M.R.S.A. § 1003. The section states in pertinent part: "If the father of a child born out of wedlock...in writing acknowledges before some justice of the peace or notary public that he is the father, such child is the heir and legitimate child of his or her father." Cases interpreting this statute and its predecessors have clearly stated that it is limited to heirship and distribution of estates. See, e.g., In re Joyce Estate, 158 Me. 304 (1962); Lyon v. Lyon, 88 Me. 395, 404 (1896)

Despite these apparent limitations on its applicability, however, two factors are persuasive that the requirements for acknowledging paternity set out in Section 1003 should be the controlling standard for what constitutes a legally sufficient acknowledgement of paternity. First, in light of the legal consequences of establishment of paternity, i.e., a duty of support during the 18-year minority of the child, no lesser standard of acknowledgement should be required before this obligation attaches than is required before an illegitimate child can inherit its father's estate.

Second, and I believe controlling, is the application of established principles of statutory construction. In ascertaining the intent of the legislature, all parts of the

statute in question must be taken into consideration. Reggep v. Lunder Shoe Products Co. 241 A. 2d 802 (Me. 1968). Nothing in a statute is to be treated as surplusage if reasonable construction supplying meaning and force is possible. Finks v. Maine State Highway Commission 328 A. 2d 791 (Me. 1974); National Newark and Essex Bank v. Hart, 309 A. 2d 512 (Me. 1973). Therefore, when the legislature adopted that section of the Uniform Act on Paternity providing for "acknowledgement of paternity in accordance with state law", it is presumed to have intended that section to have some meaning. In seeking legislative intent, the court turns first to the language which the lawmakers chose to use to carry out their purpose. In re Spring Valley Development 300 A. 2d 736 (Me. 1973). If the intent of the legislature is clear from the language of the statute, that intention should prevail. Davis v. State, 306 A. 2d 127 (Me. 1973). It is clear from the language of Title 19 M.R.S.A. Section 272 that the legislature intended that there be a mechanism for acknowledging paternity. The legislature is presumed to have prior laws in mind when it enacts new ones. Therefore, it is equally clear that the legislature must have intended the procedure for acknowledgement in Title 18 M.R.S.A. § 1003 to be the procedure for acknowledging paternity under Title 19 M.R.S.A. § 272, since section 272 refers to "acknowledgement in accordance with state law" and section 1003 is the only statute which addresses itself to the subject.

My conclusion is that the answer to your question must be no. The state is bound to comply with federal eligibility requirements. Federal law requires that the presence or absence from the home of a parent may be considered only if that parent is a person determined to owe a legal duty of support in accordance with state law. Under the laws of Maine, the father of an illegitimate child can be required to support that child only if he has either been determined to be the parent in a judicial proceeding, or if he has acknowledged the child in accordance with the laws of this state. The only law of this state which speaks to the issue requires that the acknowledgement be in writing before a notary public or a justice of the peace. While acknowledgement before two witnesses may be some evidence of paternity, it is not sufficient, without more, to charge the putative father with a duty of support, and it is therefore not sufficient to meet the definition of "legal parent" under state law as required by the Supreme Court in King v. Smith.

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