

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

In the Matter of)
) FAM. NO. C18/1983
)
SYLVIE ALISON, A Minor) ACTION FOR PATERNITY & CUSTODY
_____)

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FINCH, Judge

MEMORANDUM OPINION
(August 8, 1985)

INTRODUCTION

Petitioner, Montgomery Thompson, filed a petition asking this Court to determine that he is the father of a minor child born to respondent, Margo Alison Hewitt. At the time of birth of the minor, the respondent was not married to the petitioner, she was married to another man. The petitioner alleges that he is the natural father of the child and as such seeks joint legal custody of said minor child.

Respondent moved to dismiss the petition pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that petitioner has no standing to bring the suit. Specifi-

cally, respondent argues that under 16 V.I.C. 291, petitioner is not granted standing to institute a paternity suit. In response, petitioner takes the position that the Virgin Islands paternity statute creates an impermissible gender based classification and that as a result he is denied equal protection of the law. Petitioner claims that the statute fails to afford a putative father the same procedure to establish paternity as is given to the mother. In the alternative, petitioner argues that this action must survive under the Virgin Islands Declaratory Judgment Act, 5 V.I.C. 1261.

II. DISCUSSION

Under 16 V.I.C. 291, a paternity proceeding may be instituted by:

- (a) any female resident of the Virgin Islands who has delivered an illegitimate child; or
- (b) the government of the Virgin Islands if the mother fails to institute the action or to pursue the completion of a commenced action.

Under §291(d), if the natural mother is married at the time the child is conceived, she can only bring a proceeding for paternity against the putative father if she was separated and living apart from her husband at the time of conception of the child. Thus, the right of the mother to commence an action

for paternity is limited. The statute clearly does not allow a putative father to bring a paternity action.

An analysis of the pertinent statutes clearly indicates that the classification created in the instant case is not one based on sex, but one based on a person's relationship to a family unit. The Virgin Islands Code creates a presumption that a child born to a mother who is legally married, is the child of the husband. It is presumed that the husband is the father of the child, unless the mother states to the contrary or paternity is established otherwise through Court action. 19 V.I.C. 833. The statute describes a paternity suit as one of the methods to establish paternity and thereby rebut the presumption of legitimacy, but it does not address the question of standing. The Virgin Islands paternity statute, in conjunction with the presumption of legitimacy statute, insulates a family unit from being disrupted by a suit brought by an alleged father of a child born in wedlock. It goes even further in protecting an existing family relationship by prohibiting a natural mother from bringing a suit unless she was separated and living apart from her husband at the time the child was conceived. 16 V.I.C. 291(b). This specific limitation placed on a mother, clearly shows a governmental interest in protecting a family relationship from the potentially disruptive effects of a judicial determination

of paternity in another man. It also indicates that the legislative intent was not to disparately discriminate on the basis of sex, but rather, to create a non-gender classification to protect a child and the family unit into which the child is born. Since the classification created by the statute does not affect a fundamental right nor creates a suspect classification, the appropriate test to determine if equal protection standards are satisfied is whether the classification is reasonable, not arbitrary and bears a rational relationship to legitimate state interests. Village of Belle Jerre v. Baraas, 416 U.S.1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974).

Assuming, arguendo, that the statutory classification created by our paternity statute is based on gender, this court finds that equal protection standards have been met. The Equal Protection Clause of the Federal Constitution prohibits invidious discrimination based on statutory classifications. The courts have developed different levels of scrutiny to determine whether the equal protection standards are satisfied when a classification is created by statute. A classification based on gender will be upheld if it bears a fair and substantial relationship to important and legitimate governmental objectives or state ends. Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976);

Reed v. Reed, 404 U.S. 72, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971). In other words, the legislation cannot create invidious classifications which make over-broad generalizations based on sex and are wholly irrelevant to the achievement of state objectives. The classification "must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relationship to the object of the legislation so that all persons similarly circumstanced shall be treated alike." Caban v. Mohammed, 441, U.S. 391, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979).

The first question presented is whether the parties in this case are "similarly circumstanced." The petitioner urges this court to find that an alleged father and mother of a child are persons similarly situated or of the same class, and that no logical reason exists for treating them unequally. Unfortunately, the laws of nature does not allow this court to reach the conclusion that an alleged father and mother are similarly situated with respect to the issue presented. Men and women are not similarly situated in child-bearing. Unlike men, women bear children, carry them through pregnancy and thus maternity is obvious and does not have to be proven. Courts have held that this natural difference between men and women would warrant dissimilar treatment and have, therefore, upheld the constitutionality of statutes limiting standing to

institute paternity actions. A v. X,Y, and Z, 641 P.2d 1222 (S.C. Wyo. 1982); Petitioner F. v. Petitioner R., 430 A.2d 1085 (Del. Super. 1980); Andrews v. State of Florida, 390 So.2d 61 (S.C. Fla. 1980); State v. Unterseher, 255 N.W.2d 882 (S.C.N.C. 1977).

Having determined that the parties are not similarly situated, this court now turns to the governmental interests involved. The purpose of the Virgin Islands paternity statute is not specifically stated, but a reading of the statute indicates that its purpose is to determine the liability of support of a child born out of wedlock and to relieve the government from the burden of support. The governmental interest in limiting standing can be inferred from the paternity statute and the statutory presumption that a child born to a woman in wedlock is presumed to be the child of the mother's husband. This presumption, read together with the standing limitation placed on a natural mother of a child born in wedlock, leads this court to conclude that the governmental interests involved are twofold: (1) to preserve an existing family relationship; and (2) to protect the interests of a child born in wedlock. It is uncontroverted that a state or territory has an important and legitimate interest in preserving the integrity of a family unit already in existence and fostering child-rearing in harmonious family settings.

However, this Court must take its analysis one step further to determine whether the means used to achieve this goal is reasonably structured:

"...[the] unquestioned right of the state to further these desirable ends by legislation is not in itself sufficient to justify the gender-based distinction... Rather, under the relevant cases applying the Equal Protection Clause it must be shown that the distinction is structured reasonably to further these ends... .

Caban v. Mohammed, 441 U.S. at 391, 99 St.Ct. at 1767, 60 L.Ed. 2d at 306.

This court believes that the Virgin Islands achieves its goal of protecting the legitimacy of a child and the integrity of a family relationship in the least restrictive manner. The statute does not give a mother the unlimited right to bring a suit under all circumstances, but instead limits that right to cases in which the child is born out of wedlock or born in wedlock and the mother is separated and living apart from her husband at the time of conception. In addition, the statute does not allow a presumed father to bring an action for a declaration of non-paternity.

Other jurisdictions addressing the issues presented to this court have upheld the constitutionality of paternity statutes, even though the statute are less restrictive. See, e.g. A. v. X,Y,Z, supra,; F. v. R. supra.

In P. McG v. J.W., 615 P.2d 666 (S.C. Colo. 1980), the Uniform Parentage Act, adopted in Colorado, was challenged as violative of the equal protection rights of an alleged natural father by denying him standing to institute an action for paternity. The court found that the statute violated the equal protection clause by establishing contrary treatment of similarly situated parties and by creating an overbroad generalization that a mother has a legitimate interest in bringing a paternity suit, while an alleged father does not. Id. at 671. The Uniform Parentage Act can be distinguished from the paternity statute in this jurisdiction. The court in this case specifically pointed out that the statute did not limit the mother's right to institute an action for declaration of paternity. Moreover, the court found this point to be crucial in the determination of whether the statute was constitutional. The court clearly stated that had the statute limited the mother's standing, it might have reached a different conclusion as to the constitutionality of the statute:

[3] Section 19-6-107(1)(a) grants statutory standing to a child, her natural mother and a presumed father to establish the father-child relationship. Were the restrictive standing provisions to end there, it is at least arguable that the statutory classification, although under-inclusive in its omission of a claiming natural father, might satisfy sub-

stantially the governmental interest by insulating a continuing family relationship from the potentially disruptive effects of a judicial determination of paternity in another. However, it is unnecessary for us to resolve that question because constitutional infirmities are evident in section 19-6-107(1)(b), which permits the natural mother to undo the state's interest in preserving family stability by seeking both a declaration of non-paternity in the presumed father and a declaration of paternity in the non-family natural father. Section 19-6-107(1)(b) does not condition the natural mother's right to seek a declaration of paternity in a non-spousal father upon the failure of her existing marriage to the presumed father, or the presumed father's desertion or non-support; the statute requires only that the natural mother's action be commenced within five years after the child's birth.

Id. at 670, 671 (emphasis added).

In light of the above, this Court finds that the Virgin Islands paternity statute does not deny petitioner equal protection of the law.

However, the analysis must not stop here. Petitioner takes the position that this action may be brought under the Declaratory Judgment Act, 5 V.I.C. 1261. Under this act, a court has the power to declare "rights, status and other legal relations whether or not further relief is or could be claimed." The purpose of the act is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." 5 V.I.C. 1270. The statute is to be liberally construed and administered. Id.

The question arises whether a declaratory judgment action is a proper vehicle to determine the paternity of a child born in wedlock.

On its face, Petitioner's action appears to fit within the ambit of the Declaratory Judgment Act. However, an analysis of statutory construction principles clearly shows that the specific paternity statute and its purposes must prevail over the general scope of the Declaratory Judgment Act.

Other jurisdictions have allowed paternity suits by putative fathers under the declaratory judgment acts. For e.g. Kendrick v. Everheart, 390 So.2d 53 (S.C. Fla. 1980); Salvatore S. v. Anthony S., 396 N.Y.S.2d 873 (A.D. 1977). However, this Court finds the cases unpersuasive for two reasons, first the facts in the cases differ; and more important, the Courts did not construe the Declaratory Judgment Act in light of the more specific paternity statutes.

General and specific statutes which deal with the same matter must be construed together. If there is a conflict, the specific act controls:

General and special acts may be in pari materia [on the same subject]. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it

was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.

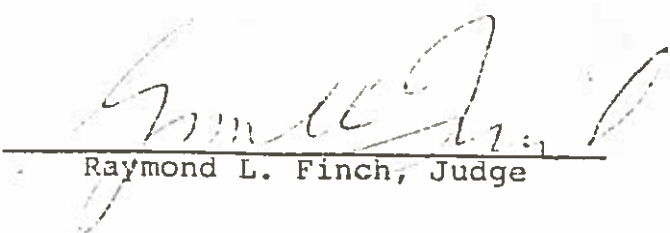
C.D. Sands, SUTHERLAND ON STATUTORY CONSTRUCTION, § 51.05 at 499 (1974). The Declaratory Judgment Act is very general in scope. On the other hand, the Virgin Islands paternity statute is very specific and narrow as to who has standing to institute a paternity suit. The two statutes clearly conflict as to the issue of standing. Under statutory construction principles, the specific paternity statute which conflicts with the Declaratory Judgment Act must be considered an exception thereto. In addition, the Declaratory Judgment Act cannot be used as a vehicle to do an act which is expressly prohibited by another statute. See, Gary v. Marquette Casualty Co., 72 So.2d 619, 622 (La.Ct.App. 1954) ("The petitioner seeks to do, under the Declaratory Judgment Act, what is expressly prohibited under the compensation act. The Declaratory Judgment Act was not meant as a means whereby a litigant might circumvent an express prohibition of another statute."); and Rolls Royce Ltd., Derby, London v. United States, 364 F.2d 415, 419 (Ct.Cl. 1966) ("The cases are legion that the Declaratory Judgment Act cannot be used to give indirectly that which cannot be given directly. The statute is a procedural one and does not supply an independent ground of jurisdiction where none otherwise

exists.").

Application of the foregoing principles to the instant case compels the conclusion that Petitioner does not have standing under the Declaratory Judgment Act to institute this action. Although the Act grants this Court power to declare rights and status generally, the paternity statute specifically deals with the rights and status relative to paternity. The Declaratory Judgment Act is in conflict with the paternity statute, and under the rules of statutory construction enunciated above, the specific paternity statute must prevail. To allow Petitioner to proceed under the Declaratory Judgment Act would erode the purpose of the Act and effectively repeal it.

Accordingly, Respondents' motion to dismiss the petition is hereby GRANTED.

DATED: August 8, 1985.



Raymond L. Finch, Judge