

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

GOVERNMENT OF THE VIRGIN ISLANDS	)	
EX REL: ANA RAMOS	)	
	)	FAM S. 42/85
Plaintiff,	)	
	)	ACTION FOR SUPPORT
vs.	)	
	)	
STANLEY GRIFFIN	)	
	)	
Defendant.	)	
	)	
	)	

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SILVERLIGHT, Judge

MEMORANDUM OPINION
January 27, 1986

This matter comes before the Court after a hearing in the above-entitled action. Both parties have submitted briefs on the issue now before the Court. For the reasons set forth below, the Court shall defer ruling on the issue of support based upon the doctrine of equitable estoppel at this time and shall set down the matter for disposition on a date to be fixed.

F A C T S

The parties have stipulated to the followings facts:

1. Petitioner gave birth to a male son, Terrance, on March 2, 1981.
2. Respondent is not the biological father of Terrance.
3. The biological father of Terrance is Lorenzo Frederick who now resides in Tampa, Florida while attending school.
4. The paternal grandmother of Terrance is Primrose Frederick who is employed at the Ricardo Richards School as a cook.
5. The said grandmother has always accepted Terrance as her son's offspring and has taken him into her home on occasion.
6. Petitioner and respondent met for the first time on or about October 25, 1981 and they were married on October 25, 1982.
7. Respondent is the biological father of a male son, Sean, born to the parties on February 1, 1984.
8. Respondent sued for divorce in July 1984 and in his complaint he alleged that the parties had only one child. He did not acknowledge Terrance as his own therein.
9. Petitioner was served and failed to answer or appear therein.

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10. Default was entered and a decree of divorce granted on September 4, 1984.

In addition, both parties agree that the respondent signed an Acknowledgement of Paternity as to Terrance Griffin. (hereinafter "Acknowledgement") dated March 9, 1984. Respondent, however, claims that said Acknowledgement was signed in error, while petitioner asserts that it was signed voluntarily.

The issue before the Court is whether the signing of an Acknowledgement of Paternity renders the respondent liable for the support of a minor child whom both parties have conceded is not the issue of the respondent.

Petitioner claims that the respondent is liable for the support of the minor child under (1) the contract theory of liability; (2) the equitable estoppel theory of liability; and (3) the equitable adoption theory of liability. (Petitioner's Memorandum of Law at pgs. 2-3). The Court will address each of petitioner's contentions seriatim.

Petitioner's contract liability theory is premised upon her notion that her agreement to marry the respondent is sufficient consideration for the husband's pledge to support the minor child. In this instance, however, there is no evidence either that the respondent agreed to support the

minor child or that the petitioner agreed to marry the respondent as consideration thereof. Hence, lacking an exchange of promises, the award of child support cannot be predicated on an express bilateral contract between the husband and wife. S.E.M. vs. D.M.M., 664 S.W.2d 665, 667 (Mo. App. 1984).

Petitioner next raises the issue of liability based upon the theory of equitable estoppel. Specifically, she alleges that in signing the Acknowledgement, respondent misrepresented to the Virgin Islands Department of Health and to the public in general that he is the father of the minor and he is now estopped from denying paternity and hence, supporting the child.

Respondent, on the other hand, claims that the Acknowledgement was signed in error since he believed that he was signing it on behalf of the child who was born to the parties in February, 1984 and accordingly, there was no misrepresentation on his part. Respondent avers further that the mere signing of the Acknowledgement, without more, does not constitute a basis for an equitable estoppel imposing an obligation of support on one who is not the biological father. (Respondent's Memorandum of Law at p.2). Furthermore, according to respondent, there is insufficient evidence that the actions of the respondent caused sufficient detriment for

the imposition of an estoppel.

The burden of proof for a claim based on the principles of equitable estoppel is clearly on the party asserting estoppel. Miller v. Miller, 478 A.2d 351, 355 (N.J. 1984). In order to establish a claim of equitable estoppel, the claiming party must show that the alleged conduct was done, or representation was made, intentionally or under such circumstances that it was both natural and probable that it would induce action. Further, the conduct must be relied on, and the relying party must act so as to change his or her position to his or her detriment. Id. at 355; Wiese v. Wiese, 699 P.2d 700 (Utah 1985). See also, S.E.M. v. D.M.M., 664 S.W.2d 665.

In the case at bar, the petitioner has failed to show that the respondent made some representation of support to either the child or the natural parent as to his responsibilities in his relationship with them. Miller, 478 A.2d at 358. Thus, the signing of the Acknowledgement, standing alone, is insufficient for this Court to conclude that the respondent made a representation to support the minor child. Clevenger v. Clevenger, 189 Cal. App.2d 658, 11 Cal. Rptr. 707 (1961).

Even assuming arguendo that the Acknowledgement constitutes a representation of support, there is no evidence

that the minor relied on that representation to his detriment. The petitioner must show that the minor child has incurred detriment as to his future support by his previous reliance on his stepfather for support. Indeed, at this juncture, the evidence before the Court indicates that the petitioner has made no effort to secure support from the individual whom she alleges to be the natural father of the child, namely, Lorenzo Frederick, although his whereabouts are known to the petitioner. This Court agrees with the Miller Court that the natural parent should always be considered the primary recourse for child support because society and its current laws assume that the natural parent will support his or her child. Miller v. Miller, 478 A.2d at 359. Hence, it is only when a stepparent by his or her conduct actively interferes with the child's support from his natural parent that he may be equitably estopped from denying his duty to support the child. Id. In light of the limited evidence now before the Court, this matter shall be set down for a hearing in order that facts may be adduced regarding the issue of equitable estoppel.

Finally, petitioner's reliance upon the doctrine of equitable adoption is without merit. Adoptions in the Virgin Islands are strictly governed by the provisions of Title 16

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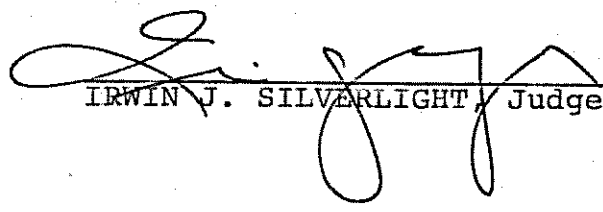
Section 141 et seq., of the Virgin Islands Code. Hence, unless the respondent has previously filed for the adoption of the minor in conformity with the statutory requirements of 16 V.I.C. Section 141 et seq. ^{1/}, the Court declines to make a finding of adoption based upon either the doctrine of equitable adoption or pursuant to the statute.

C O N C L U S I O N

Based upon the foregoing, the Court shall set down this matter for a hearing on a date to be fixed. At that time, the petitioner, to sustain her position, must prove that the respondent made some representation of support on which the minor child has relied and that the minor child has incurred detriment as to his future support from his natural father due to his previous reliance on the respondent for support.

Dated: January 27, 1985

E N T E R:


IRWIN J. SILVERLIGHT, Judge

1/ Adoption is a wholly statutory procedure unknown to the common law.