Buffalo Law Review

Volume 7 | Number 1 Article 71

10-1-1957

Domestic Relations—Bastards: Support Payments by Putative Father

Diane Gaylord

the executor-trustee from taking the additional percentage on gross rentals. This litigation was commenced after the discovery by the trust's life tenant, of a letter in the hands of the bank written to the settlor of this trust by the bank's chief trust officer, stating that the bank would accept certain rates for its "services" as executor-trustee of the settlor's estate. These rates were less than the statutory minimums and as with the will, this letter was silent as to commissions for real estate management.

The decision rested on the interpretation the Court gave to the word 'services' contained in the bank's letter. The Court held that the word 'services' encompassed both the ordinary administrative duties of the executor-trustee and the management of the real property, as both duties were services to be performed by the trustee.

The bank, admittedly knowing of the existence of the letter, had a duty to show this correspondence to all interested parties.[49] Its failure to do so, the improbability of the banks officer consenting to accept reduced commissions without an idea of the estate's composition, and the fact that the bank could have refused to qualify as executor-trustee after it had learned of the estate's contents, led the Court to use its authority to reopen the Surrogate's prior decrees[50] and force the bank to return the rental commissions it had withheld. This case presents an example of the familiar legal principle that when one of the parties prepares the wording to an agreement and the meaning of this wording later comes into dispute, any ambiguity is construed against the maker of the agreement[51]

DOMESTIC RELATIONS

Bastards: Support Payments By Putative Father

Early this year, the Court of Appeals in reviewing a paternity proceeding reached the decision that support payments assessed against the father of an illegitimate child should not be limited by the station in life of the mother but that the father's financial ability together with the mother's standard of living should be considered in determining the amount of such payments.[1] In this case, the mother's station in life was much inferior to that of the father. The lower

49. In re Bond and Mortgage Guarantee Co., 303 N.Y. 423, 103 N.E.2d 721 (1952).

50. N.Y. SURROGATE'S COURT ACT §20(6); In re Short's Will, 229 N.Y. 374, 128 N.E. 225 (1920).

51. Giller v. Bank of America, 160 N.Y. 549, 55 N.E. 292 (1899); Rentways, Inc. v. O'Neill Milk and Cream Co., 308 N.Y. 342, 126 N.E.2d 271 (1955).

1. Schaschlo v. Taishoff, 2 N.Y.2d 408, 161 N.Y.S.2d 48 (1957).

court, functioning under the New York City Court Act,[2] awarded a sum consistent with the mother's station in life on the assumption that a larger award would benefit the mother and that such a result was not the purpose of a support award. The Court of Appeals, though remanding to the lower court for further fact finding of the father's financial ability agreed with the Appellate Division[3] that the definition of support in the New York City Court Act §61 (4)[4] does not require that the child suffer from the added burden of a low standard of living when the father could provide a better one. Although the words "according to the station in life of the mother" are words of limitation, they are not an absolute limitation. Furthermore, the Court felt that since the support award could be administered by a trustee[5] a more adequate award would not necessarily increase the mother's standard of living.

For years, the courts have awarded meager support payments in paternity proceedings on the ground that greater awards would increase mothers' standard of living,[6] or that the father had other dependents for whom to provide.[7] Even when the trial court has made support orders which were more than nominal, the Appellate Division has reduced them.[8] Community demand upon the father to provide support merely sufficient to prevent the illegitimate from becoming a public charge was the theory behind these decisions.[9] The Court of Appeals, setting a new precedent, has denied this theory and says, instead, that the child's welfare is the real purpose of the law of paternity proceedings. There has been a gradual trend in a few other jurisdictions to order support for illegitimates according to the father's means.[10] Although this decision does not go so far, it recognizes that the child's welfare is not served by limiting support to the mother's station in life regardless of the father's means. Such a standard may be very harmful to the child born out of wedlock especially if the mother is very poor.

Modern legal writers have long advocated the decision reached by this court.[11] They realize that it is grossly unjust to treat a child born to unwed parents as

2. N.Y. CITY COURTS ACT §61(4) provides that:
> The word support as used in this article may include (a) the necessary support and education of the child . . . according to the age of the child and the station in life of its mother and the financial ability of the parents.

3. 1 A.D.2d 543, 151 N.Y.S.2d 783 (1st Dep't 1956).
4. *Supra* note 2.
5. N.Y. CITY COURTS ACT §70.
6. Fowler v. Rizzuto, 205 Misc. 1088, 132 N.Y.S.2d 29 (Sup. Ct. 1954).
7. People v. Towns, 201 Misc. 322, 115 N.Y.S.2d 39 (Sup. Ct. 1951).
8. Oertli v. Margulies, 258 App. Div. 952, 17 N.Y.S.2d 871 (1st Dep't 1940); GELLHORN, CHILDREN AND FAMILIES, 194-195 (1954).
9. VENIER, IV AMERICAN LAWS, 218 (1936).
10. James v. Commonwealth, 190 Ky. 458, 227 S. W. 562 (1921); Fawhead v. State, 99 Okla. 197, 226 Pac. 376 (1924); Doughdrill v. Hathorn, 160 Miss. 291, 130 So. 131 (1931).
11. *Supra* note 9; SCHATKIN, DISPUTED PATERNITY PROCEEDINGS, 421-424 (3rd ed. 1953).

the offspring of illegal and immoral relations instead of as an innocent babe in need of security and protection. Thus, the standard of support for the illegitimate child should not be less than that required of the father of the legitimate child. In the long run, the community will realize greater profit in protecting and providing for the innocent child than in merely safeguarding the community charity funds.

This case interprets the New York City Court Act which applies only to the City of New York.[12] Under the Domestic Relations Law, concerning paternity proceedings brought in any other part of the state, support is not narrowly defined.[13] Thus the reasoning of the present decision is more readily applicable to the Domestic Relations Law. With little doubt it can be stated that this decision has initiated a new trend in higher support payments not only in New York City but throughout the entire state.

Res Judicata In Matrimonial Actions

In this state, the conclusiveness of judgments is determined by one of two rules, res judicata and collateral estoppel. Res judicata bars subsequent litigation based on the same cause of action as to issues which were or could have been raised in the former proceeding.[14] The doctrine of collateral estoppel prevents subsequent litigation on a different cause of action as to issues actually and necessarily determined in the prior proceeding.[15] Thus, the determining factor as to what rule shall be applied is the similarity or difference between causes of actions in the two proceedings.

In *Statter v. Statter*[16] plaintiff, wife, brought an action for annulment against her husband on the basis of facts which she had knowledge of in a prior action against her for separation but was unable to prove at that time. Judgment in the separation action was for the husband after the wife admitted the validity of the marriage due to her lack of proof to the contrary. The wife's contention, that since the two causes of action were different and the validity of the marriage had never been contested, she could maintain this action for annulment, was upheld by the lower court and the Appellate Division.[17] The Court of Appeals[18] reversed finding

12. Szwarce v. Buenaventura, 301 N.Y. 558, 93 N.E.2d 448 (1950); Hought v. Light, 275 App. Div. 299, 89 N.Y.S.2d 361 (1st Dep't 1949).
13. N. Y. DOMESTIC RELATIONS LAW §120 provides that:
> The parents of a child born out of wedlock are liable for the necessary support and education of the child. . . .

14. Pray v. Hegeman, 33 Hun. 358 (N.Y. 1885); Matter of N.Y. State Labor Relations Board v. Holland Laundry, 294 N.Y. 480, 63 N.E.2d 68 (1954).
15. Smith v. Kirpatrick, 305 N.Y. 66, 111 N.Y.S.2d 209 (1953).
16. 2 N.Y.2d 668, 163 N.Y.S.2d 13 (1957).
17. 2 A.D.2d 81, 153 N.Y.S.2d 471 (1st Dep't 1956).
18. *Supra* note 16.