



# Domestic Relations

## Lecture 08

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# Unmarried Fathers' Rights

- Under common law, the father of a child born out of wedlock had no rights.
- In modern times, fathers have been able to assert more rights under a “best interest of the child” theory as well as by relying on the Equal Protection Clause.
- This has resulted in two major shifts in custodial preference litigation over the last 50 years:
  - The general rule that preferred mothers in custody disputes is no longer applied
    - Even the “tender years” doctrine, which favored mothers during infancy, has somewhat fallen into disfavor
  - Under similar theories, statutes that automatically deny fathers' rights have been deemed unconstitutional



# *Stanley v. Illinois*

## 405 U.S. 645 (1972)

- **Facts**

- Joan Stanley lived with Peter Stanley, appellant, intermittently for 18 years, during which time they had three children.
- Under Illinois law the children of unwed fathers became wards of the State upon death of the mother.
- When Joan died, a dependency proceeding was instituted by the State and appellant's children were declared wards of the State and placed with court-appointed guardians.
- Appellant appealed upon the fact that he had never been shown to be an unfit parent and that since married fathers and unwed mothers could not be deprived of their children without such a showing, he had been deprived of the equal protection of laws guaranteed by the Fourteenth Amendment.



# *Stanley v. Illinois*

405 U.S. 645 (1972)

- **Issue**

- Does the Illinois statute violate the Fourteenth Amendment to the United States Constitution by distinguishing against and burdening unwed fathers?



# *Stanley v. Illinois*

## 405 U.S. 645 (1972)

- **Holding**

- As a matter of due process of law, appellant was entitled to a hearing on his fitness as a parent before his children were taken from him.
- By denying him a hearing when all other parents whose custody of their children is challenged are permitted one, the State denied appellant the equal protection of laws under the Fourteenth Amendment.
- Under Illinois law, children of all parents can be taken from them in a neglect proceeding, but only after notice, hearing, and proof of unfitness.
- In contrast, an unwed father is uniquely subject to the more simplistic dependency proceeding.
- The private interest of a man and the children he has sired and raised warrants deference and protection.
- In comparison, previous case law has recognized those family relationships that were not legitimized by a marriage ceremony.



# *Stanley v. Illinois*

## 405 U.S. 645 (1972)

- **Holding**

- The State claims that the interest furthered by the statute is to protect the moral, emotional, mental, and physical welfare of the minor and the best interests of the community.
- In support of this interest, the State asserts that most unmarried fathers are unsuitable and neglectful parents.
- However, the State registers no gain toward its goals when it separates children from the custody of fit parents.
- The State's insistence on **presuming rather than proving** appellant's unfitness solely on the basis of convenience is unconstitutional.



# *Stanley v. Illinois*

405 U.S. 645 (1972)

- **Explanation**

- The Court acknowledges that the State has a legitimate interest in prompt efficacious procedures furthered by the presumption that unwed fathers are unfit.
- However, such an interest is outweighed by the father's right to demonstrate that he is fit when the right taken away from the father would be the right to raise his child.



# Adoption

- Adoption generally gives the adoptive parents **full parental rights** and obligations and cuts off the parental rights and obligations of the biological parents!
- **Permission required before an adoption can take place**
  - Assuming that her parental rights have not been legally terminated, the consent of the biological mother is always necessary before a child can be adopted.
  - A marital father (a man that was married to the mother at the time of conception or birth of the child) also must consent for the child to be adopted.
  - A non-marital father has the constitutional right to refuse to allow an adoption if and only if he has cared for the child. If not, the state may dispense with his parental rights.
- Does payment of child support constitute “care”? What about child support plus visitation?





# Adoption

- Parental objection to adoption must be made in a timely manner to be effective.
- Consent to adoption can sometimes be revoked within a certain period of time, as determined by the state.
- **“Best interest of the child” standard can override everything else in some cases!**



# Termination of Parental Rights

- It is unconstitutional to deny paternal status to a father because of non-marital status. Custody and other parental rights can only be determined after notice and a hearing.
- **Things that can terminate parental rights**
  - **Voluntary Termination** (many government agencies allow for such abandonment to assure proper treatment for the child). Once done, this is generally irrevocable, especially if the child is adopted by someone else or put into a new home.
  - In some states, a parent's rights may be terminated only if there are "substitute" parents willing to step into the void created by termination.
    - State's interest in insuring that someone other than the state is financially responsible for the child



# Termination of Parental Rights

- **Involuntary termination** based on unfitness of the parent and that the best interest of the child demands the termination.
- Inherent indicia of unfitness
  - Abandonment or “extreme parental disinterest,” including lack of visitation or contact
  - Abuse or neglect
  - Mental illness or deficiency
  - Alcohol or drug induced incapacity
  - Felony conviction or being in jail
  - Sexual abuse
  - Felony assault of child or sibling
  - Murder or manslaughter of sibling child



# Involuntary Termination of Parental Rights – Procedure

- All involuntary termination can only come after notice and a hearing! There is no inherent right to appointed counsel at these hearings (the state does not have to hire an attorney for an indigent person)
  - The first step in this kind of a case is temporary removal pending the hearing.
  - A child can be placed in “foster care” during the termination proceeding.
  - Once a child has been in foster care for a significant period of time, the state must either give the child back or commence a termination proceeding.
  - A social worker assigned to the case can develop a “re-unification” plan to allow the child back into the parent’s home pending certain conditions.



# Involuntary Termination of Parental Rights – Procedure

- Once a hearing determines that parental rights should be cut off, that determination, though subject to appeal, is final and the parent must then apply for visitation rights to have any access to the child. In determining these visitation rights, the “best interest of the child” standard applies.
- In many cases, courts will determine that visitation only complicates matters for the child and would undermine establishment of traditional family bonding
- Should there be liability for social workers who make determinations that do not turn out well?
- What about social workers who are negligent in making their determinations?
  - Failure to adequately investigate



# Quick Quiz



# Legitimacy

- Today, the term “non-marital” is used instead of “illegitimate.”
- Historically, there were many legal distinctions between children born in and out of wedlock. Today, there is very little distinction.
  - “Wrongful birth” actions against parents for the social stigma of being “illegitimate” have not been allowed because they are against public policy.
  - However, other types of wrongful birth actions are available in some cases.
- Rules that differentiate between marital and non-marital children may violate the “equal protection” clause of the Constitution. A regulation that does differentiate must be substantially related to an important government interest to avoid being overturned on equal protection grounds.
  - Thus, limiting wrongful death actions to marital children was ruled unconstitutional.



# End Of Class Review Quiz

16

**THE  
BIG  
QUIZ**





# The End

