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Leger v. Leger

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MOMMA’S BABY, DADDY’S MAYBE: HOW *LEGER V. LEGER* RESTRICTS THE RIGHTS OF PUTATIVE FATHERS SEEKING TO ESTABLISH PATERNITY IN LOUISIANA

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I. BACKGROUND

Currently, Louisiana law imposes a peremptive period of one year on putative fathers seeking to file paternity actions where their biological child is presumed to be the child of another.¹ However, the law allows a mother to assert an action contesting a former husband’s paternity and prove her current husband is the father of her

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1. LA. CIV. CODE ANN. art. 198 (2020) states the current rule governing a father’s action to establish paternity and the restricted one-year peremptive period. Article 3458 explains that “[p]eremption is a period of time fixed by the law for the existence of a right. Unless timely exercised, the right is extinguished upon the expiration of the peremptive period.” Typically, putative father refers to the alleged biological child of a father of a child born out of wedlock. *See Father*, BLACK’S LAW DICTIONARY (11th ed. 2019). However, in this case note, the term “putative father” refers to a father seeking to establish paternity of a child who is legally presumed to be the child of another man. A paternity action, commonly referred to as a paternity suit, is a court proceeding to determine whether a person is the father of a child. *Paternity suit*, BLACK’S LAW DICTIONARY (11th ed. 2019).

child within a two-year window.² Is that fair? Or is the one-year difference a violation of the putative father's equal protection rights as articulated in the federal and state constitutions? Although the putative, and biological, father of a young child argued that the existing law constituted a violation of his equal protection rights as afforded in the U.S. Constitution as well as the Louisiana Constitution, the Third Circuit Court of Appeals disagreed.³

In August 2012, Danielle Gotreaux Leger gave birth to a child while married to Michael J. Leger, II.⁴ Pursuant to Louisiana Civil Code article 185, which states the "husband of the mother is presumed to be the father of a child born during the marriage," the child was presumed to be the legal offspring of Mr. Leger. However, unbeknownst to Mr. Leger, the child was actually the offspring of his wife's paramour—John Fontenot.⁵ Though it is not entirely clear from the record when Mr. Leger became aware of his wife's infidelity, the couple remained legally married for another four years after the child's birth. Mr. Leger did not initiate divorce proceedings until May of 2016.⁶

When Mr. Leger commenced divorce proceedings, Mr. Fontenot seized the chance to intervene and assert his paternity rights as the biological father of the minor child born during Leger's marriage.⁷ Mr. Fontenot alleged that DNA testing "established he was the biological father of the minor child" and explained he was "unable to

2. LA. CIV. CODE ANN. art. 193 (2020).

3. Michael J. Leger, II v. Danielle Gotreaux Leger, 17-270 (La. App. 3 Cir. 12/6/17); 258 So. 3d 624.

4. *Id.* at 625.

5. *Id.* at 625.

6. *Leger*, 258 So. 3d at 625.

7. *Id.* Mr. Fontenot intervened in the couple's divorce proceedings as allowed by LA CODE CIV. PROC. ANN. art. 1091(3) (2020), which allows a third person with an interest in a pending legal action to "enforce a right related to or connected with the object of the pending action against one or more of the parties" by "opposing both the plaintiff and the defendant." He intervened during the divorce proceedings in order to assert his legal parentage of the minor child born during the Leger's marriage.

timely file the avowal action pursuant to Louisiana Civil Code article 198.”⁸ Louisiana Civil Code article 198 states as follows:

A man may institute an action to establish his paternity of a child at any time except as provided in this Article. The action is strictly personal.

If the child is presumed to be the child of another man, the action shall be instituted within one year from the day of the birth of the child. Nevertheless, if the mother in *bad faith* deceived the father of the child regarding his paternity, the action shall be instituted within one year from the day the father knew or should have known of his paternity, or within ten years from the day of the birth of the child, whichever first occurs.

In all cases, the action shall be instituted no later than one year from the day of the death of the child.

The time periods in this article are preemptive (emphasis added).

While intervening, the putative father acknowledged that his attempt to formally assert paternity was past the mandated preemptive period.⁹ However, Mr. Fontenot argued that the bad-faith exception applied to his circumstances.¹⁰ The paramour explained that he delayed in asserting his parental rights due to “concerns for the safety of both Ms. Leger and the child” if the child’s true paternity was revealed during the marriage.¹¹ He even produced proof of attempts to covertly seek joint custody by presenting a petition for joint custody and child support filed in a separate trial court proceeding in February of 2014.¹² Still, the trial court declined to grant Mr. Fontenot an extension on the preemptive period on the basis of bad faith.¹³

In response to the trial court’s denial of his attempts to assert paternity, Mr. Fontenot filed a “Petition to Declare Louisiana Civil Code article 198 Unconstitutional” under the same docket as the

8. *Id.*

9. *Leger*, 258 So. 3d at 626.

10. *Id.*

11. *Id.*

12. *Id.* at 625.

13. *Id.*

Leger's divorce proceedings.¹⁴ In that action, Mr. Fontenot "named Mr. and Ms. Leger, as well as the State of Louisiana, through the Attorney General, as defendants."¹⁵ In Mr. Fontenot's petition, he referenced the "fundamental right of parents to make decisions concerning the care, custody, and control of their children" and alleged the one-year preemptive period within Louisiana Civil Code article 198 was "unconstitutionally short and an undue interference with [his] constitutionally protected rights as a parent of the minor child" as recognized in *Troxel v. Granville*.¹⁶

Mr. Fontenot's petition also highlighted Louisiana Civil Code article 193 which "allows a mother to institute an action to disavow a presumed father and establish paternity of the biological father as long as she institutes the action within two years of the date of the birth of the child" where the presumed father was the mother's former husband and the biological father is her current husband.¹⁷ In his action, Mr. Fontenot lamented that the disparity in the amount of time afforded to a mother compared to the time afforded a putative father to bring a disavowal action "violated his rights of equal protection both of Louisiana Constitutional article 1, §3, and U.S. Constitutional Amendment XIV, §1."¹⁸ He contended there was no reasonable justification for "granting an extra year for the mother of a child to bring an action to establish the paternity of the biological father than for the biological father himself."¹⁹ Consequently, Mr. Fontenot asked the court to declare Louisiana Civil Code article 198 unconstitutional, and that he be allowed to establish his paternity as well as assert legal custody of the minor child.²⁰ After this

14. *Id.* at 626.

15. *Id.*

16. *See Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). *See also Leger*, 258 So. 3d at 626 (citing *id.* and *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)).

17. *Id.* at 627. LA. CIV. CODE ANN. art. 193 (2020) must be read in light of LA. CIV. CODE ANN. art. 192 (2020).

18. *Id.*

19. *Id.* at 627.

20. *Id.*

matter was formally submitted to the trial court, the court denied Mr. Fontenot's claim and declared Louisiana Civil Code article 198 constitutional.²¹ Mr. Fontenot appealed that holding to the Third Circuit Court of Appeal.²²

II. DECISION OF THE COURT

On appeal, the Third Circuit delivered two pertinent holdings in this case. First, the court stated that Louisiana Civil Code article 198 “did not violate [the] equal protection clause of [the] state or federal constitution, even though a mother’s action to contest a former husband’s paternity of her child . . . could be filed within two years of the child’s birth.”²³ The court reasoned that the difference in time afforded had a reasonable basis, and explained “a mother contesting both a former husband’s paternity and attempting to establish her current husband’s paternity” in accordance with Louisiana Civil Code article 193 “faced different circumstances and consequences than a putative father attempting to establish his paternity.”²⁴ Second, the court also held that “it is possible for parties to be treated differently without violation of equal protection rights; equal protection of all claimants in all circumstances is not required, as the law merely requires equal application in similar circumstances.”²⁵ For that reason, the court held Louisiana Civil Code article 198 does not violate the equal protection clause of the state or federal constitution.²⁶

The Third Circuit’s denial of Mr. Fontenot’s rights conforms to well-established case law regarding the limited rights of putative fathers. In the case of *Michael H. v. Gerald D.*, the United States Supreme Court “declined to recognize a biological father’s interest in

21. *Id.*

22. *Id.*

23. *Id.* at 624.

24. *Id.*

25. Vanessa S. Browne-Barbour, “*Mama’s Baby, Papa’s Maybe*”: *Disestablishment of Paternity*, 48 AKRON L. REV. 263 (2015).

26. *Leger*, 258 So. 3d at 624.

maintaining a relationship with his daughter, born as a result of an adulterous affair with the mother who was then married to another man.”²⁷ Mr. Fontenot was in an identical predicament in *Leger v. Leger*. In *Michael H.*, the Supreme Court refused to “recognize the biological father’s Fourth Amendment due process or liberty interest in the maintaining a relationship with his child.”²⁸

Likewise, the Third Circuit Court of Appeal found no merit in Mr. Fontenot’s argument that the short preemptive period in Louisiana Civil Code article 198 violated his due process rights.²⁹ Because Mr. Fontenot’s due process rights were not violated, the lower court’s refusal to allow him to establish paternity and denial of custodial rights was constitutional.

III. COMMENTARY

The commentary will explain Mr. Fontenot’s restricted rights to assert parentage as a putative father under Louisiana Civil Code article 198 in accordance with federal regulations mandating state procedures for establishment and disestablishment of paternity. The one-year preemptive period in the aforementioned article reflects federal practices as well.³⁰ Whether or not the law governing disestablishment of paternity should change in light of modern DNA testing is a related and contested issue shrouded in debate. The policy motivations for the short temporal limitation on an avowal action under Louisiana Civil Code article 198 will also be discussed.

As mandated in section 666(a)(5), Title 42, United States Code, states must create “procedures to establish, rescind, or challenge paternity.”³¹ Accordingly, Louisiana Civil Code article 198 provides a mechanism for the establishment of paternity as required by federal law.³² Rule 60 of the Federal Rules of Civil Procedure also

27. Browne-Barbour, *supra* note 25, at 276.

28. *Id.* at 276-277.

29. *Leger*, 258 So. 3d at 629.

30. 42 U.S.C. § 666(a)(5) (2006).

31. Browne-Barbour, *supra* note 25, at 291.

32. *Id.*

“incorporates a one-year limitation of action period for claims based upon fraud, mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence.”³³ Similarly, Louisiana Civil Code article 198 also imposes a one-year limitation on putative fathers bringing an action to disestablish paternity, mirroring the federal regulation.

A. The Role of DNA Testing in Modern Actions for Disestablishment and Establishment of Paternity

Mr. Fontenot’s use of DNA testing to prove his paternity is indicative of a growing concern regarding the role of genetic testing in cases where paternity is disputed. Generally, “commentators agree that disestablishment [or establishment of paternity] requires the balancing of the interests of the affected parties.”³⁴ Surely, modern DNA testing provides a level of certainty regarding paternity not previously afforded to presumed fathers such as Mr. Leger and putative fathers such as Mr. Fontenot. However, the role which DNA testing should play in determining the outcome of legal battles remains uncertain.³⁵ Because disestablishment of paternity by a non-biological father “legally severs the parent-child relationship” until the child is eighteen, at which time the child can choose to have a relationship with a putative father of their own volition, the role DNA testing should play in determining who is entitled to custody and visitation rights remains contested.³⁶

There are two competing arguments regarding the role DNA testing should play in establishing or disestablishing parental rights. Some commentators argue “biological proof of non-paternity should cause the balancing process to favor the non-biological father’s interests [in disestablishing paternity] over others, including the best

33. *Id.* at 292.

34. *Id.* at 288-289.

35. *Id.*

36. *Id.* at 264.

interests of the child.”³⁷ Advocates of this rule are primarily concerned with the issue of fairness, and argue DNA testing is valid grounds for disestablishing paternity obligations.³⁸ It seems unjust to make a man financially responsible for a child with whom he is not biologically related. There is also a concern that the presumptive father is legally bound to the parent-child relationship “based upon fraud, a material mistake of fact, or other misrepresentation.”³⁹ This line of reasoning focuses upon the rights of the established father and are the primary motivations for granting paternity disestablishment.⁴⁰

Instead of mandating legal obligations based solely on biological connections, some argue “courts should place more weight on maintaining stability in an established parent-child relationship, despite the potential for a loving and supportive relationship with the biological father.”⁴¹ Here, proponents contend a “child’s right to have a relationship with his or her paternal family should be comparable to the child’s right to have a relationship with his or her maternal family.”⁴² Therefore, a court should focus on the existing ties between a child and the father seeking to establish or disestablish paternity as opposed to allowing DNA results to be dispositive of legal obligations and visitation rights.⁴³

Moreover, scholars argue mandating a parent-child relationship is contrary to the best interests of the child.⁴⁴ These legal theorists argue that creating legal rules which establish rights for biological fathers will be harmful to the child both emotionally and financially.⁴⁵ In other words, a “disestablishment of paternity order not only severs permanently a child’s legally recognized relations with

37. *Browne-Barbour*, at 289.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 290.

45. *Id.* at 288.

a man previously deemed to be [his or] her father, but also terminates financial support obligations associated with that parent-child relationship.”⁴⁶ These commentators are concerned with the complicated and potentially disastrous nature of reallocating parental rights after a familial bond, regardless of biological ties, is established. This line of reasoning seeks to preserve an intact family unit regardless of biological links and appears to be the ideology behind the Third Circuit’s decision in *Leger*.

In its analysis, the *Leger* court emphasized that “the minor child lived in an ‘intact family structure’ with Mr. Leger as the presumptive father.”⁴⁷ The Third Circuit did not consider Mr. Fontenot’s evidence of a biological tie to the young child a persuasive factor when assessing his claim. In fact, the court only mentioned the DNA evidence proving Mr. Leger was the biological father once in its decision.⁴⁸

B. Policy Motivations for the Peremptive Period on Avowal Actions

In *Leger*, the Third Circuit Court of Appeal’s reasoning suggests the peremptive period articulated in Louisiana Civil Code article 198 is necessary to preserve public policy interests in maintaining intact families. The court explained Mr. Fontenot’s failure to timely file an avowal action was contrary to the “policy statement contained in Louisiana Civil Code article 198, comment (e),” providing that the limitation period protects a child “from the upheaval of such litigation and its consequences in circumstances where the child may actually live in an existing intact family with his mother and presumed father or may have become attached over many years to the man presumed to be his father.”⁴⁹ The court also chastised Mr. Fontenot for failing to properly establish that the “minor child did

46. *Id.* at 288.

47. *Leger*, 258 So. 3d at 628.

48. *Id.* at 625.

49. *Id.* at 628.

not or could not have become attached to Mr. Leger between the August 2012 birth and the filing of the avowal action in June 2014,” indicating that a successful avowal action would effectively prove that there is no attachment between the minor child and presumptive father.⁵⁰ The court’s rationale in denying Mr. Fontenot’s claim demonstrates the hefty burden required to rebut the presumptive paternity of a husband in accordance with Louisiana Civil Code article 185.

In conclusion, though the one-year preemptive period in Louisiana Civil Code article 198 restricting a putative father’s right to bring a paternity action appears (at least facially) a violation of his equal protection rights when compared to the rights of mothers under Louisiana Civil Code article 192, it is not. As the Third Circuit noted, a putative father under Louisiana Civil Code article 198 is not similarly situated to a mother seeking to contest a former husband’s paternity and prove her current husband is the father of her child pursuant to Louisiana Civil Code articles 192 and 193.⁵¹ To state the matter plainly, Mrs. Leger’s maternity rights regarding the young child were never challenged, which contrasts greatly with Mr. Fontenot’s struggle to assert paternity rights. Mr. Fontenot, in contrast to a mother contesting paternity under Louisiana Civil Code articles 192 and 193, was not married to the child’s biological parent *and* seeking to rebut the legal presumption of parentage of a former spouse. In order for Louisiana Civil Code article 198 to be found unconstitutional, a civil code article extending a longer preemptive period for putative *mothers* would need to exist.⁵²

In accordance with state and federal law, the Third Circuit’s reasoning was sound in the case at issue. In light of modern familial structures and the policy motivations protecting intact family units,

50. *Id.* at 629.

51. *Id.* at 628.

52. Black’s Law dictionary does not include the term “putative mother,” which indeed sounds purely hypothetical. However, in this context, the phrase refers to a mother seeking to assert parental rights where her child is presumed to be the child of another woman.

the Third Circuit's decision to avoid allocating parental rights based solely on DNA evidence was wise and well poised. *Leger v. Leger*, in a manner analogous to *Michael H. v. Herald G.*, restricts a putative father's rights and illustrates the "remaining power of the parental presumption" of parentage within marriage as well as the "stigma of sexual conduct outside the marital relationship."⁵³ This case serves as a clear warning to those with married lovers; file an avowal action within the one-year preemptive period stipulated in Louisiana Civil Code article 198 or forfeit custodial rights to any offspring of that relationship.

53. Browne-Barbour, *supra* note 25, at 277.