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Family Law - Can The Civil Obligation To Support An Illegitimate Child Be Established In A Proceeding for Criminal Neglect of a Child?

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both parties desire the divorce; neither party would be likely to urge a law less favorable to the granting of the divorce than the law of the forum.

Roy M. Lilly, Jr.

FAMILY LAW—CAN THE CIVIL OBLIGATION TO SUPPORT AN ILLEGITIMATE CHILD BE ESTABLISHED IN A PROCEEDING FOR CRIMINAL NEGLECT OF A CHILD?

The accused was convicted under Criminal Code Article 74, as amended by Act 368 of 1952,[1] of criminal neglect of a child found, on the basis of evidence introduced at the trial, to be his illegitimate offspring. The Supreme Court reversed the conviction and *held*, according to the interpretation of the writer, that under Article 74 of the Criminal Code, as amended, it is criminal for a parent to refuse to provide support for an illegitimate child only if it has been established in a civil proceeding that he is the parent of the child. *State v. Mack*, 71 So.2d 315 (La. 1954).

Article 74 of the Louisiana Criminal Code originally provided: "Criminal neglect of family is the desertion or intentional non-support: . . . (2) By either parent of his minor child who is in destitute or necessitous circumstances. . . ." Apparently there was some doubt as to illegitimate children being included within this article, for by Act 164 of 1950 the phrase "whether legitimate or illegitimate" was inserted after the word "child." In three decisions[2] in 1951 and 1952, the Supreme Court held (1) that it was impossible to convict a person of criminal neglect of family unless at the time of the alleged neglect he was under a civil obligation to support the person whom he is charged with neglecting; (2) that Article 74 of the Criminal Code as amended in 1950 did not establish a civil obligation; and (3) that the obligation to support an illegitimate child arises only upon the establishment of illegitimate filiation under the articles of the Civil Code, that is, by a voluntary formal acknowledgment by the parent or

1. LA. R.S. § 14:74 (Supp. 1952).

2. State v. Love, 220 La. 562, 57 So.2d 187 (1952); State v. Sims, 220 La. 532, 57 So.2d 177 (1952); State v. Jones, 220 La. 381, 56 So.2d 724 (1951). Strong dissents were filed in these cases.

by a civil judgment declaratory of parentage rendered pursuant to the provisions of the Civil Code itself.[3]

By Act 368 of 1952, Article 74 was amended to read as follows:

"Criminal neglect of family is the desertion or intentional non-support:

". . .

"(2) By either parent of his minor child, whether legitimate or illegitimate, who is in destitute or necessitous circumstances, *there being a duty established by this article for either parent to support his child. The parent shall have this duty without regard to his reasons and irrespective of the causes of his living separate from the other parent. The duty established by this article shall apply retrospectively to all children, legitimate or illegitimate, born prior to the effective date of this article.*

"In the case of an illegitimate child, evidence may be introduced in the proceedings hereunder to prove paternity or maternity. This proof shall be made in accordance with the rules established by the Revised Civil Code of 1870, as amended, as for proof of paternity or maternity for civil purposes. Such proof, however, shall be used solely as the basis for the duty to support an illegitimate child established by this article, and shall not be construed as establishing any civil obligation." (Italicized portion added by the 1952 amendment.)

It seems obvious that the legislature intended to negative the effect of the 1951 and 1952 decisions of the Supreme Court. Yet the decision in the instant case regards the 1952 amendment as a mere rephrasing of the 1950 amendment which does not change its content or effect. In the words of the court, "No appreciable change has been made in the statutory requirements. They are the same now as they were before the amendment was enacted."[4] Three vigorous dissenting opinions[5] maintain that the majority evaded the provisions of the act and defeated the plain intent of the legislature.

3. *The Work of the Louisiana Supreme Court for the 1951-1952 Term—Criminal Neglect of Family*, 13 LOUISIANA LAW REVIEW 261 (1953).

4. State v. Mack, 71 So.2d 315, 317 (La. 1954).

5. See dissenting opinions of Justices Hamiter, Hawthorne and McCaleb in State v. Mack, 71 So.2d 315, 317, 318, 319 (La. 1954).

Article 13 of the Civil Code of 1870 states, "When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit." Article 18 declares that, "The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the Legislature to enact it." Article 3 of the Louisiana Criminal Code states that, "The articles of this Code cannot be extended by analogy so as to create crimes not provided for herein; however, in order to promote justice and to effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision." It would seem that the court violated these rules of statutory construction. It hardly can be denied that the legislature intended to place the duty of support on the parents of illegitimate children in necessitous circumstances regardless of the previous establishment of filiation. If this had not been the purpose of the legislature, then there would not have been any reason for the 1952 amendment.

It is therefore submitted that the Supreme Court might have based its decision on other reasons than those it assigned for its judgment. There is an indication of this in the majority opinion. Justice Moise states: "It is a duty of this Court to be watchful of the legal and constitutional rights of its citizens and guard them against any stealthy encroachment. Our motto should be '*Obsta Principiis*'— resist the first beginning. Do not let the tyranny of an erroneous legal concept get a start."[6] The majority of the court may have felt that the legislation offended their sense of justice, or was contrary to natural law or the best public order. If so, it would have been better for the court to have based their decision on more conventional grounds and to have followed more closely the canons of interpretation. No doubt our law does not admit formally of the possibility of an act of the legislature being invalid by reason of its conflict with the natural law.[7] The court, however, could have considered the legislation to be in violation of substantive due process of law. In the case of *Schwegmann Bros. v. Louisiana Board of Alcoholic Beverage*

6. State v. Mack, 71 So.2d 315, 317 (La. 1954).
7. Art. 1, LA. CIVIL CODE of 1870.

Control,[8] the court, quoting from *American Jurisprudence*,[9] said: " 'The legislature has no power, under the guise of police regulations, arbitrarily to invade the personal rights and liberty of the individual citizen, to interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations, or to invade property rights'." If the court felt that fundamental rights were being invaded under Article 74 as amended, as it seems they did feel, they should have invalidated the law on those grounds.

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LOUISIANA PRACTICE—RES JUDICATA—MASTER AND SERVANT

Plaintiff sued the state, after its waiver of immunity, to recover damages for the death of her husband. Her claim was based solely upon the alleged negligence of the state's employees. In a suit previously instituted against the employees on the same cause of action, the employees had been declared free of fault and judgment had been rendered accordingly. In the present proceedings, the state interposed the exception of res judicata, based upon the judgment in favor of the employees rendered in the prior suit. *Held*, exception sustained. The Supreme Court has made an exception to the Civil Code requirement of identity of parties for invoking res judicata, and this case falls within the exception. *McKnight v. State*, 68 So.2d 652 (La. App. 1953).

The Supreme Court decision relied on by the court of appeal is *Muntz v. Algiers*.[1] In that case, plaintiff had sued defendant railway company's lessee for the death of his child, and the lessee had been found innocent of fault. In a contemporaneous action in a different court against defendant railway company as the vicariously liable lessor, plaintiff relied entirely on the alleged negligence of defendant's lessee. Defendant's exception of res judicata, founded on the judgment exonerating the lessee rendered while the suit against the defendant lessor was pending, was sustained. Article 2286 of the Civil Code, from which the Louisiana principles of res judicata emanate, was not mentioned in the court's opinion.

8. 216 La. 148, 172, 43 So.2d 248, 256 (1949).
9. 11 AM. JUR. 1078, § 303 (1937).
1. Muntz v. Algiers & G. St. Ry., 116 La. 236, 40 So. 688 (1906).