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Family Law - Determination of Paternity of Child of Putative Marriage

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FAMILY LAW — DETERMINATION OF PATERNITY OF CHILD OF PUTATIVE MARRIAGE

In concursus proceedings to determine the ownership of land one claimant admitted she was in fact the grandchild of the deceased landowner's wife and her second husband by a bigamous marriage. At the time, however, she claimed the legal filiation of a grandchild of the deceased landowner, basing her argument on Articles 184-192 of the Civil Code, under which the husband of a married woman is presumed to be the father of her child conceived or born during the marriage if he does not disavow it.[1] The district court dismissed claimant's contention. On appeal, the court of appeal, *held*, affirmed. Under the facts and circumstances of this case the presumption established by Article 184 cannot be invoked to fix the filiation of the claimant as a grandchild of the deceased landowner. Since there is no showing of any bad faith on the part of the second husband, claimant's mother is presumed to be the legitimate child of that husband under the rules relative to putative marriages. Therefore claimant cannot claim any rights from the landowner by way of inheritance. *Texas Co. v. Stewart*, 101 So.2d 222 (La. App. 1958).[2]

The child of an invalid marriage contracted in good faith by at least one of the spouses is legitimate[3] as to both.[4] This rule

1. LA. CIVIL CODE arts. 184-192 (1870).

2. Mention may be made here of a portion of the opinion not otherwise dealt with in this note. When the property was acquired by the legal husband, not only had his wife entered into a second marriage with a man deemed to be in good faith, but the husband himself had married another woman also judged to be in good faith. The court treated the property as community property, awarded one-half to the legal wife and the legal husband's half to his putative wife. The award of the husband's share to his putative wife was consistent with the established jurisprudence beginning with the decision of Patton v. Cities of Philadelphia and New Orleans, 1 La. Ann. 98 (1846), but the failure to award a share in the property to the legal wife's putative husband would seem inconsistent with the decision in Prince v. Hopson, 230 La. 575, 89 So.2d 128 (1956). For the reasons stated in two appraisals of *Prince v. Hopson* that the putative husband was not a member of a marriage, one spouse of which acquired the property, the writer believes that such a solution would have been in error, but feels compelled to raise the point in the light of the jurisprudence. See *The Work of the Louisiana Supreme Court for the 1955-1956 term — Persons*, 17 LOUISIANA LAW REVIEW 303 (1957); Note, 17 LOUISIANA LAW REVIEW 489 (1957).

3. LA. CIVIL CODE arts. 117-118 (1870).

4. The language in the court's opinion and its final disposition of the property indicate that the court may have acted on the assumption that the child in question was to be considered legitimate as to its father, the putative second husband, but not as to her mother. Thus, although the court recognized the wife of the deceased landowner as having an interest in the property, it treated her legal husband, rather than her descendant by her putative marriage, the claimant in this case, as her heir. Certainly the court could not have been mistaken with regard to the ordinary rule of succession as expounded in LA. CIVIL CODE art. 915 (1870). Thus it must have assumed the child of the second marriage to be

evidently is based on the proposition that neither the spouses to an invalid marriage nor their children should be made to suffer the ordinary consequences of the nullity of the union if the spouses believed that they were contracting validly. But it may be observed that the good faith spouse logically can operate only to overcome the effects of nullity; although it can render the child of the spouses legitimate rather than illegitimate, it cannot of itself operate to make the child of the wife in fact that of her husband any more than the validity of a marriage can of itself make the wife's child in fact that of her legal husband. Thus it would seem that before a child can be considered the legitimate child of a good faith or putative marriage, it must be ascertained to be that of the husband in the invalid marriage as well as that of the wife. In the instant case, however, the court did not articulate the basis on which it decided the child to be that of the second husband rather than the first.

It is submitted that the paternity of a child born to a woman invalidly married should be determined by the rules applicable to a child born to a woman validly married. Probably no one would dispute the applicability of these rules to determine the paternity of a child born to a wife who was in a good faith or putative marriage and, good or bad faith of itself being irrelevant to the issue of paternity as such, it would seem that the same rules should apply to a child born of a wife in a bad faith or non-putative marriage. In the case in which the mother of the child is a party to one marriage situation only there is no more than the usual difficulty in applying the rules where the marriage is valid or invalid; but if the mother is both the wife of one man by a valid marriage and that of another man by an invalid marriage, as in the instant case, it seems that the same rules, taken in their totality, should be applicable to both husbands. The determination of paternity in such a case, therefore, must be made within the framework of the same rules, distinguishing the relevant facts in the two marriages.

In the instant case the mother of the child whose paternity was put at issue apparently lived with the second husband and not with the first. Thus, to ignore the legal rules for a moment, it would seem consistent with ordinary reason to conclude that

legitimate as to the father and not as to her mother. It is submitted that the child of an invalid marriage enjoys legitimate status as to both parents, even though only one is in good faith, though the parent in bad faith may not claim the rights of legitimate filiation against the child.

the second husband, rather than the first, must have been the father of the child. It is submitted that the rules in the Civil Code on paternity, properly interpreted, would lead to the same conclusion. If Articles 184-192 of the Civil Code, on the presumption concerning the paternity of a child born to a married woman, are construed in the light of Articles 193-197, and Article 197 in particular, it can be concluded that the husband of the mother who does not disavow the child is to be considered its father only if the child can be said to have had the reputation or appearance of being born of the particular union.[5] In the instant case, therefore, the presumption mentioned would be deemed applicable to the second husband but not to the first, because the mother's living with the second husband would give the child the reputation or appearance of being his and not that of the legal husband. But the existing jurisprudence of the Louisiana Supreme Court does not seem consistent with the above given interpretation of Articles 184-192 and 193-197. Thus the presumption of the husband's paternity of his wife's child has been applied in situations in which her child did not enjoy the reputation or appearance of being that of her husband. The court has, for example, applied the presumption against the legal husband even where the wife lived exclusively with another man in open concubinage.[6] The instant case is apparently part of a trend of the court towards giving a child legitimate status rather than determining actual filiation.

Some observations may be made on the finding of good faith on the part of the second husband. It is to be observed that the court simply presumed good faith on his part. This raises the question whether good faith is always to be presumed if the contrary is not shown. Here it appears that no evidence was adduced at the trial concerning the good or bad faith of the second husband, and he was never charged with knowledge that there was an impediment to his marriage. The court seems to have followed the prior jurisprudence in holding that where a

5. Under LA. CIVIL CODE arts. 193-197 (1870), a child may prove his legitimacy by proving a reputation to this effect. If the child does not enjoy this reputation, however, it must prove both birth from a married woman and, in addition, that her husband was its father. Thus Article 197 specifically notes that even if the child proves his mother to have been a married woman, those opposing his claims may show that he was not the child of her husband. Thus it can be argued that the presumption of paternity in Articles 184-192 is not applicable in instances in which the child does not possess the reputation or appearance of legitimacy. See note 2 *supra*.

6. Succession of Saloy, 44 La. Ann. 433, 10 So. 872 (1892); Eloi v. Mader, 1 Rob. 581, 38 Am. Dec. 192 (La. 1841).

man and woman enter into marriage there is a presumption that the marriage, though null, was nevertheless contracted in good faith.[7] He who alleges bad faith must bear the burden of proof and if there is doubt as to the good or bad faith of a party, the issue will be resolved in favor of his good faith.[8] It has also been said that the issue of good or bad faith, which necessarily raises a question of fact, should be determined by the trial court.[9] It is submitted that if evidence as to the good or bad faith of a party cannot be produced, or if there is a conflict in that which is produced, the presumption of good faith should prevail. However, if the question is never raised at the trial level, it would appear that the case should be remanded to the lower court for determination of the issue.

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LABOR LAW — PEACEFUL PICKETING NOT RESTRAINT AND COERCION OF EMPLOYEES

An employer charged that a union was restraining and coercing employees in the exercise of their right to refrain from union membership. After the union had been certified, unsuccessful contract negotiations precipitated a strike. The strike continued for two years, during which time the striking employees were replaced by non-union employees. In a subsequent election requested by the employer the new employees voted overwhelmingly against representation by the union. The union continued picketing and the company filed unfair labor practice charges with the NLRB. The picketing was at all times peaceful. The employer charged that the union was picketing to force it to recognize the union as bargaining agent for its employees, and thus to compel the employees to join the union or lose their jobs. The trial examiner, relying on legislative history and past Board decisions, rejected the employer's charge. The Board reversed, finding that the conduct of the union was designed to cause the employer to force its employees to join the union or be discharged, and therefore violated Section 8(b)(1)(A).[1] On appeal the court of appeals, *held,* reversed.

7. Prince v. Hopson, 230 La. 575, 89 So.2d 128 (1956); Succession of Pigg, 228 La. 799, 84 So.2d 196 (1955); Succession of Fields, 222 La. 310, 62 So.2d 495 (1952); Succession of Chavis, 211 La. 313, 29 So.2d 860 (1947).

8. Funderburk v. Funderburk, 214 La. 717, 38 So.2d 502 (1949); Succession of Chavis, 211 La. 313, 29 So.2d 860 (1947); Succession of Marinoni, 183 La. 776, 164 So. 797 (1935); Succession of Navarro, 24 La. Ann. 298 (1872); Eason v. Alexander Shipyards, 47 So.2d 114 (La. App. 1950).

9. Succession of Chavis, 211 La. 313, 29 So.2d 860 (1947).

1. 29 U.S.C. § 158 (b)(1)(A) (1947): "It shall be an unfair labor practice