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Are Limitations Necessary on Paternity?

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1935 building accessible to the disabled.²⁵

1. Title II of the ADA of 1990, 42 USC §§ 12131-12165 regulates all services, programs, and activities conducted by a "public entity," defined to include the States and their departments, agencies, and instrumentalities. 42 USC § 12131(1). "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to any discrimination by any such entity." 42 USC § 12132.
2. The abrogation part of the ADA provides: "A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in a Federal or State court of competent jurisdiction for a violation of the requirements of this chapter, remedies, are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State." 42 USC § 12202.
3. "No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV § 1.
"The congress shall have the power to enforce, by appropriate legislation, the provisions of this article." U.S. CONST. amend. XIV § 5.
4. 2003 WL 22733904 4-5 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003)
5. 2003 WL 22137324 1, 8 (Appellate Brief) Brief of Petitioner (Sep. 8, 2003).
6. Lane filed suit with Beverly Jones, respondent in the instant case. Jones has paraplegia and is a Tennessee courthouse reporter who could not access many Tennessee courtrooms to perform her job. Four other similarly situated plaintiffs later joined in the original suit. See 2003 WL 22733904 5-7 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003).
7. 2003 WL 22733904 7 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003).
8. 2003 WL 22428028 5 (Appellate Filing) Brief for the United States (May 30, 2003).
9. 276 F.3d 808 (6th Cir.), cert. denied, 123 S. Ct. 72 (2002).
10. Pet. App. 1-5, 10-11.
11. 2003 WL 22137324 16 (Appellate Brief) Brief of Petitioner (Sep. 8, 2003).
12. *Id.* at 19-24.
13. Telephone interview with Barry Taylor, Legal Advocacy Director, Equip for Equality (Mar. 24, 2003).
14. 2003 WL 22733905 6-11 (Appellate Brief) Brief for the American Bar Association as Amicus Curiae Supporting Respondents (Nov. 12, 2003).
15. 2003 WL 22733904 22-23 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003) (citing Comm'n on the Future of the Tenn. Judicial Sys., Final Report (1996) available at: <http://www.fiu.edu/~degrees/coa/research/jury.htm>.)
16. 2003 WL 22733904 25 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003) (citing the Department of Justice's Enforcement Records available at: <http://www.usdoj.gov/crt/ada/enforce.htm>).
17. Jonathan Groner, ADA Case Promises Fight Over Federalism - Courthouse Access for Disable Underlies High Court Arguments, 27 Legal Times 2 (1/12/2004 LEGAL-TIMES 1).
18. 2004 WL 136390 41 (Oral Argument) Transcript (Jan. 13, 2004).
19. 2003 WL 22733905 3 (Appellate Brief) Brief for the American Bar Association as Amicus Curiae Supporting Respondents (Nov. 12, 2003).
20. Taylor, *supra* note 13.
21. Groner, *supra* note 16.
22. Groner, *supra* note 16.
23. Nevada Dep't of Human Res. v. Hibbs, 123 S. Ct. 1972 (2003).
24. Groner, *supra* note 16.
25. Groner, *supra* note 16.

Are Limitations Necessary on Paternity?

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When two married persons have a child, paternity is assumed and there is no limitation on that child's ability to establish paternity. On the contrary, statutes of limitations exist in most states that limit the time frame within which a child born out of wedlock may legally establish paternity. The use of a statute of limitation to paternity actions serves to create classifications of children who are treated differently in terms of their parental rights.¹

Statutes of limitations establish the time period within which a cause of action must be commenced.² These statutes attempt to halt the litigation of stale and fraudulent claims by ensuring that suits are commenced within a reasonable period of time, before memories have faded and evidence has been lost.³ It is difficult to understand why, then, statutes of limitation are applied in a paternity context. A child's right to support is continuing and since a determination of paternity is necessary before child born out of wedlock may enforce the right to support, an action to determine paternity should never be viewed as stale.⁴

The United States Supreme Court presided over numerous cases in the early 1980s that challenged statutory provisions that placed time restrictions on an individual's right to establish paternity. These cases mostly dated before the enactment of the Child Support Enforcement

Amendments of 1984, 42 U.S.C. § 666, that required all states participating in the federal child support program to have procedures to establish the paternity of any child who is under the age of eighteen.⁵ The leading case on this issue is *Mills v. Habluetzel*, where the Court held that a one-year time limit for establishing paternity denied children born to unwed parents in Texas equal protection of the laws.⁶ The Court emphasized in its holding that "once a state posits a judicially enforceable right of children to support from their natural fathers, the Equal Protection Clause of the Fourteenth Amendment prohibits the state from denying that same right to illegitimate children."⁷

Statutes of limitations are a matter of legislative discretion and, by definition, incorporate an arbitrary time period.⁸ Public policy dictates that legislatures may alter or abolish a limitations period that no longer serves the public interest.⁹ Paternity statutes were enacted to protect fathers by ensuring an accurate determination of paternity.¹⁰ "Whatever merit this contention may have had in the past, the ever-increasing effectiveness of both blood and genetic tests significantly reduces the chance that a defendant will be compelled to support a child he did not sire."¹¹ In 2002, the accuracy of paternity tests was measured at around 98-99 percent.¹²

The Uniform Parentage Act

has attempted to reconcile this inconsistency by promoting equality for parents and children without regard to marital status.¹³ Under the new amendments to the Act, enacted in 2002, a proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after the child becomes an adult.¹⁴ Presently, nine states do not have statutes of limitations on establishing paternity. In Illinois, under 750 ILCS § 45/9, paternity may only be established until a child reaches the age of twenty.

In *Nguyen v. I.N.S.*, the U.S. Supreme Court addressed the issue of a limitations period for establishing paternity.¹⁵ The crux of the Court's rationale was based on immigration policies and the Court's need to grant extreme deference to Congress' authority on these matters.¹⁶ In this case, a biological father did not establish paternity until his son, who was born in Vietnam to unwed parents, was 28 years old.¹⁷ The Supreme Court ruled that the son could not be considered a citizen of the U.S. since his father had failed to comply with the requirements of the United States Code § 1409.¹⁸ The Court found that a statute of limitation on establishing paternity did not violate a person's constitutional rights.

In an immigration context, statutes of limitation are viewed as essential to avoid an influx of immigrant children into the United States. The United States Congress views this as an important goal and to change statutes of limitation would greatly affect this area of public policy. As a result, the legislature has been unwilling to completely abandon statutes of limitation on paternity actions.

In inheritance suits, though, the courts have been quite lenient and have allowed children born to unmar-

ried parents to inherit from their fathers even though paternity was not established within the applicable statute of limitations. In *In re: Estate of Palmer*, Michael Smith was born on February 10, 1959, but he did not bring any proceeding to adjudicate paternity until April 16, 2001.¹⁹ The Supreme Court of Minnesota allowed Smith to establish parentage even though the statute of limitations had tolled.²¹

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The United States Immigration Service considers a child born out of wedlock as having a sole parent, his or her mother, unless the child has or had a bona fide relationship with the father.²¹ This policy helps to secure U.S. borders from the arrival of countless children born abroad to fathers who are U.S. citizens. In light of this important goal, a clear issue arises between fairness for children born out of wedlock and immigration concerns. Margaret Stapleton, a senior attorney at the Sargent Shriver National Center on Poverty Law, is interested in changing the statute of limitations for establishing paternity in Illinois.²²

Even though immigration law dictates that paternity limitations are necessary, opponents argue that depriving a child of the right to paternity is unconstitutional. Although little has changed in the area of immigration, statutes of limitations in

inheritance and other areas of the law are beginning to be reformed and progress is being made towards abolishing these limitations.

1. Carlotta P. Wells, Statutes of Limitations in Paternity Proceedings: Barring an "Illegitimate's" Right to Support, 32 Am. U. L. Rev. 567, 569 (1983).
2. Id.
3. Id. at 573.
4. Id. at 606.
5. Clark v. Jeter, 486 U.S. 456, 459 (1988).
6. Mills v. Habluetzel, 456 U.S. 91, 102 (1982).
7. Id. at 92.
8. Wells, supra note 1 at 573.
9. Id. at 574.
10. Id. at 571.
11. Id. at 572.
12. Unif. Parentage Act of 1973, § 505 (2002).
13. Unif. Parentage Act of 1973, Prefatory Note (2002)
14. Unif. Parentage Act of 1973, § 606 (2002).
15. Nguyen v. I.N.S., 533 U.S. 53, 57 (2001).
16. Id. at 67.
17. Id. at 57.
18. Id.
19. In re: Estate of Palmer, 658 N.W.2d 197, 198 (Minn. 2003).
20. Id.
21. United States Citizenship and Immigration Services, Children Born out of Wedlock (2004), at <http://uscis.gov/graphics/index.htm>.
22. Margaret Stapleton, Senior Attorney, Sargent Shriver National Center on Poverty Law.