9-1-1997

Due Process, Equal Protection, and the Unwed Father

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Introduction

Many cases have been tried by the United States Supreme Court wherein the defendants believed that their rights to due process and equal protection had been violated in the original trial. These rights were established in Section I of the Fourteenth Amendment:

No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws (emphasis added).

The due process clause guarantees the right to a fair trial and protects each citizen’s basic rights. According to the Supreme Court, this includes the right of a parent to carry on a relationship with their child (Quillioin 255). The equal protection clause prohibits discrimination between persons similarly situated under given conditions, usually based on race or sex (Conley 367). But what is meant by “persons...
similarly situated?" Are unwed fathers and divorced fathers "similarly situated" when their child is up for adoption, and should they be given the same rights? What about the rights of the child?

Many of these questions were finally answered in Quilloin v. Walcott 434 U.S., 54 L. Ed. 2d 511, 98 S.Ct. 549, 46 U.S.L.W. 4055 (1978) (Young 435). The Court ruled that it is not a violation of the natural father's due process or equal protection rights to deny him the right to object to the adoption of his child by a stepfather, if, prior to the adoption petition, he made no effort to legitimate or support the child. According to the Court, the interests of the two father types are readily distinguishable and therefore should not be treated the same (Quilloin 255-256).

Stanley v. Illinois
The rights of an unwed father were first discussed in Stanley v. Illinois. Peter Stanley was an unwed father who lived with his illegitimate children and their mother for eighteen years. After the mother died, the State of Illinois decided that it would be in the children's "best interests" to place them in adoptive homes. According to State statutes, the children had no "surviving" parent (Davis 385-386). "Stanley raised constitutional objections to this procedure," claiming that it violated his constitutional right to due process and equal protection (Davis 386). The Court agreed with Stanley and the decision was reversed.

Under the due process claim, the Court ruled it unconstitutional for a state to presume parental unfitness from the fact of illegitimacy. Under the equal protection claim the Court made two rulings: (1) Unwed fathers are entitled to the same hearing on parental fitness as a legitimate parent; and (2) The state is required to give a de facto parent the same procedural rights given to parents of legitimate children (Davis 386-387). Unfortunately, the broad wording of the decision left the exact extent of the requirements unclear. For example: (1) What type of hearing is the unwed father entitled to? (2) How much effort must a state exert to provide notice to unwed fathers? (3) Are the unwed fathers now authorized to veto an adoption? and (4) Are all unwed fathers entitled to the same substantive parental rights as the parents of legitimate children? (Davis 384). These unanswered questions would be addressed in future cases.

Illegitimacy
Under Georgia Law, adoption of a child born in wedlock requires the consent of each living parent who has not been ruled unfit or surrendered rights to the child. In contrast, adoption of an illegitimate child requires only the consent of the mother (Ga. Code 74-403). The unwed father must

3 An existing family relationship between the illegitimate child and the unwed father (Davis 384).

4 Section 74-403(1) (1973) states:
No adoption shall be permitted except with the written consent of the living parents of the child.
Section 74-403(2) (1973) states:

According to Illinois Rev. Stat. Ch 37, 701-14 (1971), fitness of the unwed father was irrelevant since he was not considered a "parent."
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either marry the mother or obtain a court order declaring the child legitimate if he is to gain the same veto power possessed by other parents (Ga. Code 74-103). Unless this occurs, the mother possesses exclusive authority over all legal matters.

Consent to adoption of a parent shall not be required where a child has been abandoned by such parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from giving such consent and the court is of the opinion that the adoption is for the best interests of the child . . . . Where a decree has been entered by a superior court of this State or any other court of competent jurisdiction of any other State ordering a parent to support a child and such a parent has wantonly and willfully failed to comply with the order for a period of 12 months or longer, the consent of such parent shall not be required and the consent of the other parent alone shall suffice in any proceedings for adoption relative to such child.

Section 74-403(3) (1973) states:
Illegitimate children.-If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the State Department of Family and Children Services.

A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, setting forth the name, age, sex of the child, and also the name of the mother; and if he desires the name changed, stating the new name, and praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known.

which concern the child and is the only recognized parent (Ga. Code 74-203). In accordance with Stanley v. Illinois, Georgia is required to notify the unwed father of legal actions which concern his relationship to the child. The state is also required to refrain from automatically presuming the father unfit because the child is illegitimate. The father must be given the opportunity to prove he is a de facto parent and therefore entitled to the same procedural protections given to parents of legitimate children (Davis 394).

Georgia also employed the “rational basis” standard, which was a broad interpretation of Stanley. In essence, “the Georgia Court was rejecting the contention that Stanley had designated an unwed father's parental interests as ‘fundamental,’ the infringement of which could only be sustained by a ‘compelling state interest’” (Davis 390).

History of the Case
Darrell Williams, the illegitimate child of Ardell Williams Walcott (mother) and Leon Webster Quilloin (father), was born in December 1964. His natural parents never married, nor did they ever live together. When his mother married Randall Walcott in September 1967, he went to live with his maternal grandmother for two years. Except for those two years, Darrell always lived in the custody of his

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mother. During his early childhood, Darrell’s natural father made no effort to legitimate or obtain custody of him, and he was never a de facto member of the family (H.C.T.R. 805).

On March 24, 1976, after obtaining his wife’s consent, Randall Walcott filed a petition to adopt Darrell. In accordance with Stanley, the Georgia Department of Human Resources notified the natural father about the petition for adoption. Quilloin did not wish to lose contact with his son, so he immediately tried to block the adoption. He applied for a writ of habeus corpus seeking visitation rights, a petition for legitimation, and an objection to the adoption (Davis 389).

Georgia Trial Court

Quilloin’s petitions were consolidated for trial, pending a Georgia trial court’s decision on finding him (or not) a fit parent. The court found that, although Leon never abandoned the child, he provided financial and physical support only on an irregular basis. He also did not desire custody of the child. On the other hand, Walcott was considered a “fit and proper person” for the proposed adoption. The court also took into account Darrell’s expressed desire to be adopted by his stepfather and the mother’s testimony that Quilloin’s sporadic visits had a disruptive effect on both the child and her family (H.C.T.R. 806-807).

Although the court did not find Quilloin to be an unfit parent, his petition for legitimation and visitation rights was denied on the grounds that it was not in the “best interests of the child.” Since he had not legitimated the child in the eleven years prior to the petition, Quilloin lacked standing to object to the adoption and Walcott prevailed (H.C.T.R. 806).

Georgia Supreme Court

Quilloin appealed to the Georgia State Supreme Court, claiming that Georgia Codes 74-203 and 74-403, as applied in his case, violated his right to due process and equal protection. He argued that due to Stanley, he was entitled to the same veto power over adoption that is given to a divorced or married father and to unwed mothers. Quilloin felt that since the trial court did not find him an unfit parent or guilty of abandonment, adoption should not have been allowed.

The court affirmed the judgement (Young 438). The decision was based on a strong state policy that children should be reared in a family setting. Furthermore, “the court feared that this policy might be hindered if it were necessary for unwed fathers to consent to adoptions” (H.C.T.R. 807). Since in this case adoption was sought by the stepfather, adoption solidified an existing family unit and thus provided

7 The court stated:
If the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the state’s interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the state could be required to sever his relationship before the adoption could proceed. In addition, since the father has already shown a lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption (Butler v. Butler, 238 Ga.198, 232 S.E.2d 246, 248 (1977).
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Arguments
Quilloin next appealed to the U.S. Supreme Court on the grounds that he was entitled to an absolute veto over the adoption of his son unless the Court ruled that he was an unfit parent. He based his appeal on the assumption that the natural father should receive the same privileges granted to a divorced father (Stanley). By denying him these same privileges, the state violated his right to equal protection. He also claimed that his right to due process was violated when the state applied the "best interests of the child" standard to his case (Quilloin 254-255).

Before the Court, The State of Georgia responded by claiming that Quilloin's right to due process was not violated since any constitutionally protected interest he had was lost after he failed to legitimate his son during the eleven years prior to the adoption hearing (Quilloin 254). Georgia further argued that Stanley was not a controlling factor in this case since the cases were not similar. In Stanley, "the father was a de facto member of the family unit, and the mother had died. Either of these factual differences would be sufficient to distinguish Stanley from the case before us" (H.C.T.R. 808). Since Quilloin was not a de facto parent, his right to equal protection was not violated when he was denied an absolute veto over the adoption of his son by Walcott.

Quilloin v. Walcott
On January 10, 1978, the United States Supreme Court affirmed the decision of the Georgia Supreme Court (Conley 363). Justice Marshall began by recognizing that the relationship between parent and child is constitutionally protected (Quilloin 255). The Court conceded that the appellant's due process rights would be violated "if a state forced the breakup of a natural family unit, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interests" (Quilloin 255). That was not the circumstance in this case; the unwed father did not seek custody of the child, nor would adoption place the child in a new family setting. On the contrary, adoption would give full recognition to a family unit already in existence. According to Justice Marshall, "Georgia was recognizing a family, not destroying one" (Davis 390). In such a case, the state is not required to find more than in the "best interests of the child" (H.C.T.R. 809). The Supreme Court also decided against Quilloin's claim that his right to equal protection had been violated. They ruled that the appellant's interests were clearly distinguishable from those of a married or divorced father. Quilloin never exercised custody nor shouldered any of the responsibility for rearing Darrell. He was therefore not entitled to equal privileges (H.C.T.R. 810). "Georgia statute's distinction between wed and unwed fathers survived the scrutiny of the Court through

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Results

*Quilloin v. Walcott* established that the "child's best interests" standard is the most important factor in determining child custody. The standard allows a court to consider moral fitness, the home environment, the child's emotional ties to the parties, the party's emotional ties to the child, the age, sex, or health of the child, the desirability of continuing an existing relationship, and the child's preference in making this decision (Davis 389). The Court also established that only *de facto* parents must be afforded full parental rights. In doing so, judicial recognition was given to the concept that "there can be no absolute parental right without parental responsibility" (Conley 369).

Conclusion

This ruling was both fair and just. Leon Quilloin had eleven years prior to the petition for adoption to either legitimate Darrell or play a more active role in his son's life. He chose to do neither. Quilloin was not a *de facto* parent and only rarely provided any financial or physical support for his son. As the Court stated, "there can be no absolute parental right without parental responsibility" (Conley 369). Furthermore, his sporadic visits tended to have a disruptive effect on the child. It was therefore not in the "child's best interests" to allow Quilloin to veto the adoption, especially since he did not seek custody of the child—he only wished to prevent solidification of the existing family unit. It is my opinion that the Supreme Court acted wisely; neither Quilloin's right to *due process* nor *equal protection* were violated in the original trial.

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**Palmore v. Sidoti**

Collette Harrell

**Issue**

Does the Fourteenth Amendment's equal protection clause preclude consideration of a stepparent involved in miscegenation when determining custody awards? To what extent can similar standards be applied to interracial adoption issues?

**Facts**

Linda and Anthony Sidoti, two Caucasians, divorced in Florida in May of 1980. Linda was awarded custody of their three year-old daughter, Melanie. In September 1981, Anthony challenged the custody award, asserting that an "extreme change" in the child's living conditions warranted awarding him custody. The "extreme change" referred to Linda cohabiting with an African-American, Clarence Palmore, Jr.¹

¹ Palmore was Linda's fiancé and they subsequently married in November 1981. Anthony also accused Linda of failing to provide adequate care for the daughter's hygiene, namely that his daughter had contracted head lice and worn a mildew-stained article of clothing to school. However, the claim of hygiene neglect was never substantiated and never addressed by the court. The only question remaining for consideration by the Supreme Court was whether the mother's interracial marriage should affect her right to custody of her daughter.