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Children Born Out of Wedlock: Expand Inheritance Rights

CODE SECTION:	O.C.G.A. § 53-4-4 (amended)
BILL NUMBER:	HB 498
ACT NUMBER:	619
SUMMARY:	The Act amends and expands the statutory provisions allowing inheritance from their fathers by children born out of wedlock. In addition to the current provisions allowing inheritance when there has been a judicial determination of either legitimacy or paternity during the father's lifetime, the inheritance rights of children born out of wedlock have been expanded to provide for inheritance if, during his lifetime, the father either executed and signed a sworn statement attesting to the parent-child relationship or signed the birth certificate of the child.
EFFECTIVE DATE:	July 1, 1987

History

Prior to 1980, no statutory provision in Georgia recognized inheritance rights in the father's estate for children born out of wedlock.[1] During the 1980 session, the General Assembly amended the statutory section covering inheritance by such children from the mother and maternal relatives.[2] This amendment recognized the inheritance rights of children born out of wedlock in the estate of their father and paternal kin, if certain requirements had been met.[3]

Prior to the current revision enacted in the 1987 session, statutory law provided for inheritance by a child born out of wedlock from his or her father *only* if legitimacy or paternity had been judicially determined dur-

1. Although the Georgia Code still utilizes the term "illegitimate" to designate children born out of wedlock, the latter is a more preferable and accurate description. *See, e.g.*, Radford, *Georgia Inheritance Rights of Children Born Out of Wedlock*, 23 GA. ST. B.J. 28, 34 n.1 (1986).

2. 1980 Ga. Laws 1432 (previously codified at GA. CODE ANN. § 113-904).

3. This statutory provision became O.C.G.A. § 54-4-4(c) when the Georgia Code was recodified in 1982.

ing the father's lifetime. Thus, in the 1982 case of *Poulos v. McMahan*,[4] the Georgia Supreme Court denied the inheritance rights of a child born out of wedlock because "there could have been but was not an adjudication of paternity during the [decedent father's] lifetime."[5]

The court based its holding in *Poulos* in part on the United States Supreme Court decision in *Lalli v. Lalli*,[6] in which the constitutionality of a New York statute, similar to the statutory provisions enacted by the Georgia Legislature in 1980, was upheld.[7] The New York statute[8] required that, before a child born out of wedlock could inherit from his or her father's estate, an order of filiation must have been filed during the father's lifetime. Although recognizing that classifications based on whether a child was born in or out of wedlock were not subject to "strict scrutiny," the Court stressed that such classifications would nevertheless be invalid under the equal protection clause of the fourteenth amendment unless they were "substantially related to permissible state interests."[9] The Court found the interests of the state in providing for the just and orderly disposition of the property of a decedent to be an "interest of considerable magnitude."[10] Furthermore, it was an interest "directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved."[11]

The New York statute was upheld even though the Court recognized that it might operate unfairly against children born out of wedlock who were able to present convincing proof of paternity.[12] In a footnote, however, the Court emphasized that it was not restricting the freedom of any state to recognize a proof of paternity by means other than judicial decree: "Thus, a State may prescribe any *formal* method of proof . . . that would assure the authenticity of the acknowledgment."[13]

In the 1986 case of *Prince v. Black*,[14] the Georgia Supreme Court delineated what is perhaps one of the outer limits of such a "formal method of proof" by recognizing a doctrine of "virtual or equitable legitimation." The court relied on this doctrine to overturn a Georgia Court of Appeals decision[15] denying the rights of a son born out of wedlock to inherit from

4. 250 Ga. 354, 297 S.E.2d 451 (1982).
5. *Id.* at 364, 297 S.E.2d at 458.
6. 439 U.S. 259 (1978).
7. *See* Cox v. Harris, 486 F. Supp. 219, 221-22 (M.D. Ga. 1980) ("no substantial difference between the New York statute and Georgia's own intestacy statute"; Georgia's intestacy statute found "constitutionally firm").
8. N.Y. EST. POWERS & TRUSTS LAW § 4-1.2 (McKinney 1981).
9. *Lalli*, 439 U.S. at 265.
10. *Id.* at 268.
11. *Id.*
12. *Id.* at 272.
13. *Id.* at n.8.
14. 256 Ga. 79, 344 S.E.2d 411 (1986).
15. Black v. Prince, 176 Ga. App. 465, 336 S.E.2d 318 (1985).

his deceased father, even though the appeals court acknowledged that sufficient evidence had been presented to permit the jury to find that the decedent was the natural father of the child. The court of appeals decision was based on a finding that no evidence was presented to show that the requirements of O.C.G.A. § 53-4-4(c) had been met to enable the child to inherit from his father.[16] The court therefore reversed the jury verdict recognizing the child as a lawful heir.

In reversing that decision and recognizing the doctrine of "virtual or equitable legitimation," the supreme court relied on the "clear and convincing" evidence which the appellant had presented to establish that the decedent was his natural father.[17] The court compared the doctrine of virtual or equitable legitimation to the previously recognized theory of virtual or equitable adoption. Under this latter theory, foster children have been allowed to inherit from foster parents who died intestate if the foster parents had made an agreement to adopt prior to their deaths.[18] Similarly, the court pointed out:

> There may be cases in which there is such clear and convincing evidence that the child is the natural child of the father and that the father intended for the child to share in his intestate estate, in the same manner that the child would have shared if he had been formally legitimated, that equity will consider that done which ought to have been done . . . .Thus the father's intentions will be fulfilled by allowing the child to inherit the property that was undisposed of by will as if the child was legitimate, although the child was not formally legitimated and cannot be considered legitimate in the eyes of the law. . . . Just as the doctrine of virtual or equitable adoption will allow a child to inherit from his intestate foster parents under certain conditions, the doctrine of virtual or equitable legitimation will allow an illegitimate child to inherit from his intestate father's estate when the evidence is clear and convincing as it was in this case.[19]

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16. *Id.* at 466, 336 S.E.2d at 320.

17. *Prince*, 256 Ga. at 80-81, 344 S.E.2d at 413. In remanding Coplin v. Broadnax, 256 Ga. 291, 349 S.E.2d 748 (1986) for a factual determination of whether plaintiff had met the standard for virtual or equitable legitimation, the court reiterated its holding in *Prince*:

> There we held that a child born out of wedlock may share in his natural father's estate, as an heir-at-law, in the same manner as children born of wedlock, provided that there is clear and convincing evidence that the child is the natural child of the father, and that the father intended for the child to share in his estate.

Coplin, 256 Ga. at 291, 349 S.E.2d at 748.

18. *Prince*, 256 Ga. at 80, 344 S.E.2d at 412.

19. *Id.* at 80-81, 344 S.E.2d at 412-13.

This holding not only expanded the rights of children born out of wedlock to inherit from their fathers quite beyond the statutory provisions then in effect, but also beyond those included in HB 498.

HB 498

The Act expands the current provisions of subsection (c) of O.C.G.A. § 53-4-4 by adding two new conditions under which children born out of wedlock may inherit from their father. In addition to the previous provisions allowing inheritance when there had been a judicial determination of either legitimacy or paternity during the father's lifetime, inheritance also will be allowed when the father has either executed and signed a sworn statement attesting to the parent-child relationship or signed the birth certificate of the child.

These standards greatly diminish both the father's and the child's burden to establish inheritance rights. The Act should significantly benefit people who are either reluctant to become involved in the judicial system or who are unable to afford the legal fees and costs of having paternity or legitimacy legally determined and declared.[20] The Act also will eliminate situations such as the one which arose in the Fulton County Probate Court involving a German family. In that situation, the father had signed an affidavit in Germany attesting to his paternity but neither paternity nor legitimacy had been judicially declared during his lifetime. Signing such an affidavit was sufficient under German law to allow a child born out of wedlock to share in the paternal estate, but was not sufficient to comply with the Georgia statutory inheritance requirements.[21] HB 498 should alleviate such anomalies.

Providing a less burdensome means of meeting the statutory requirements for inheritance by children born out of wedlock should obviate somewhat the "harsh result" under prior Georgia law of "punishing a child born out of wedlock merely because the child or the child's parents were ignorant of the requisite legal procedures for establishing paternity or reluctant to pursue in court the adjudication of a relationship which, as far as they were concerned, was obvious."[22] This statutory provision, in conjunction with the judicial recognition of the doctrine of virtual or equitable legitimation, contributes to the significant expansion of inheritance rights of the more than 20,000 children born out of wedlock in Georgia each year.[23]

J. Watson

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20. *See* Radford, *supra* note 1, at 33.

21. Telephone interview with Judge Floyd E. Propst, Fulton County Probate Court (Mar. 18, 1987). Under German law a child born out of wedlock does not inherit from the father; instead, the child receives a child's share as a creditor. *Id.*

22. Radford, *supra* note 1, at 34.

23. *Id.* at 28.