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Bastards - Limitations - Uniform Parentage Act Held to Be Applicable to Actoin Commenced after the Effective Date of the Act, to Establish the Legal Paternity of a Child Born Prior to the Effective Date of the Act

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BASTARDS—LIMITATIONS—UNIFORM PARENTAGE ACT HELD TO BE APPLICABLE TO ACTION COMMENCED AFTER THE EFFECTIVE DATE OF THE ACT, TO ESTABLISH THE LEGAL PATERNITY OF A CHILD BORN PRIOR TO THE EFFECTIVE DATE OF THE ACT.

Appellant, as guardian ad litem for W.M.V., a minor, brought this action under the guidelines of the Uniform Parentage Act[1] (U.P.A.) to establish the legal paternity of W.M.V. and to obtain a court order requiring appellee to contribute to the support of W.M.V.[2] W.M.V. was born out of wedlock on April 7, 1971 and no man had formerly acknowledged paternity of W.M.V.[3] At the time of W.M.V's birth, the applicable statute required a paternity suit to be brought within two years of birth.[4] The appellee argued that this prior statutory law, repealed concurrently with the adoption of the U.P.A., was applicable.[5] Appellee moved for and was granted a dismissal of the action based on the running of the statute.[6] The North Dakota Supreme Court, reversing the District Court, *held* that the U.P.A. is retrospective in operation and the proper law to be applied in this case.[7] Therefore, this action was not

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1. N.D. CENT. CODE ch. 14-17 (Supp. 1976).

2. In the Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978). "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 14-17-04 may be brought by the child, the mother or personal representative of the child. . . ." N.D. CENT. CODE § 14-17-05(3)(1976).

3. 268 N.W.2d at 782.

4. N.D. CENT. CODE ch. 32-36 (1960)/repealed by 1975 N.D. Sess. Laws ch. 130-28.

5. 268 N.W.2d at 782. W.M.V. was born in 1971 and the U.P.A. was not adopted until 1975. This action was commenced in 1977. The appellee argued that the law in effect at the time of W.M.V.'s birth, N.D. CENT. CODE, ch. 32-36 (1960), should be applied to this action and therfore, the action should be barred by the statute of limitations. *Id. See* N.D. CENT. CODE § 32-36-09 (1960)(repealed 1975). "Time of bringing action to enforce the obligation of the father of a child born out of wedlock shall be subject to the following limitations:

> 2. Shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writting.

Id.

6. 268 N.W.2d at 782.

7. *Id.* at 786.

barred by the running of the statute of limitations.[8] *In the Interest of W.M.V.*, 268 N.W.2d 781 (N.D. 1978).

Under the common law, the illegitimate child was a legal nonentity.[9] There was no legal relationship between the illegitimate child and his parents; they owed him no duty of support[10] nor could he inherit from either parent.[11] He was considered a ward of the parish.[12] A bastard was made legitimate only by a special Act of Parliament.[13] The first changes in the status of the illegitimate child, statutes requiring parents to support their illegitimate children, were more in deference to the economy of the parish rather than the welfare of the children.[14] Initially, the father's only obligation for support of his illegitimate children was moral. Gradually, most jurisdictions imposed a statutory duty upon the father to provide financial support to his children.[15]

Until the adoption of the U.P.A., North Dakota appeared to have been fairly consistent in its treatment of illegitimate children in regards to the establishment of paternity and subsequent orders for support.[16] The support action was maintainable by the mother and authorities charged with the support of the child.[17] Initially, the action had to be brought within one year of the birth of the child but the statute of limitations was later lengthened to two years from the birth of the child.[18] Since 1968, a series of decisions by the United States Supreme Court under the fourteenth amendment of the United States Constitution made these and similar statutes subject to Constitutional doubt.[19] The U.P.A. was an attempt to comply with the Constitutional mandate of equal legal treatment of legitimate and illegitimate children.[20] The substantive portions of

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8. *Id.* at 787.
9. 1 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 459 (1897).
10. 1 S. SCHATKIN, DISPUTED PATERNITY PROCEEDINGS § 1.08 at 1-26, 1-27 (4th rev. ed. 1977).
11. H. CLARK, LAW OF DOMESTIC RELATIONS § 5.3 (1968).
12. S. SCHATKIN, *supra* note 10.
13. W. BLACKSTONE, *supra* note 9 at 454.55.
14. S. SCHATKIN, *supra* note 10 at § 1.09 at 1-30.
15. *See* H. CLARK, *supra* note 11.
16. *See* N.D. CENT. CODE ch. 32-36 (1965)(repealed 1975); N.D. CODE §§ 10500al-1050037 (Supp. 1926); N.D. REV. CODE §§ 9647-9644 (1905)(repealed 1913); N.D. CODE §§ 7839-56 (1899); DAKOTA TERRITORY CODE ch. 27 (1880).
17. *Id.*
18. N.D. CODE § 10500a31 (Supp. 1926).
19. Glona v. American Guarantee & Liability Ins. Co., 391 U.S. 73 (1968); Levy v. Louisiana, 391 U.S. 68 (1968).
In *Levy*, the U.S. Supreme Court held that Louisiana's wrongful death statute, which did not allow illegitimate children to recover for the wrongful death of their mother, was inviolation of the Equal Protection Clause of the fourteenth amendment to the U.S. Constitution and therefore was unconstitutional. 391 U.S. at 71, 72.
A similar result was reached in *Glona* when a statute prohibited a mother from recovering for the wrongful death of her illegitimate children. 391 U.S. at 75.
20. Uniform Parentage Act (U.L.A.), Commissioner's Prefatory Note.

the act define the parent and child relationship and to whom the rights inherent therein pertain.[21] The remainder of the act is concerned with the *sine qua non* of equal legal rights, that is, the identification of the person against whom these rights can be asserted.[22] In addition, the drafters hoped to fill an additional social need by improving the states' systems of support enforcement.[23]

North Dakota was not the first state to be faced with the question of retroactive operation of paternity statutes. The position reached in the instant case is supported by three cases decided in Mississippi.[24] In 1962, Mississippi adopted a paternity act[25] which provided that paternity might be determined upon petition of the mother, the child, or any public authority chargeable by law with the support of the child.[26] Under the Mississippi Act, the mother's action against the putative father was still retricted to the period within one year of the date of birth of the child, unless the defendant was absent from the state or had acknowledged paternity

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21. N.D. CENT. CODE § 14-17-01 (Supp. 1976) states that "'parent and child relationship' means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and the child relationship." *Id.*

N.D. CENT. CODE §14-17-02 (Supp. 1976) states that "[t]he parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." *id.*

22. Uniform Parentage Act (U.L.A.), *supra* note 20.

North Dakota has substantially adopted the U.P.A. as originally drafted. 1975 N.D. Sess. Laws Ch. 130-28. It has deleted the section dealing with artificial insemination and all references to the issuance of new birth certificates in relation to an action under the act. In addition, North Dakota provides for a jury trial. *Id.*

Additional states that enacted the U.P.A.; California, Hawaii, Montana, Washington and Wyoming. Uniform Parentage Act (U.L.A.), *supra* note 20 at 446.

23. *Id.* at 447. The U.P.A. was adopted in 1973 by the National Conference of Commissioners on Uniform Laws and was approved by the House of Delegates of the American Bar Association in February, 1974. *Id.*

24. Palmer v. Mangum, 338 So.2d 1002 (Miss. 1976); Sandifer v. Womack, 230 So.2d 212 (Miss. 1970); Dunn v. Grisham, 250 Miss. 74, 157 So.2d 766 (1963).

In *Grisham*, the plaintiff brought an action for filiation and support of an illegitimate child under the 1962 Missisippi Uniform Act on Paternity. In reversing the trial court, the Mississippi Supreme Court held that the Paternity Act of 1962 did not violate a constitutional probitition against enactment of ex post facto laws even though it was retroactive in operation. 157 So.2d. 769.

In *Sandifer*, children, acting by next friend, brought the action to establish that defendant was their father and to require him to provide for their support. In confirming the ruling of the trial court, the Mississippi Supreme Court held that suit brought by children under the Mississippi Uniform Act on Paternity was not barred by a statute prohibiting such proceedings from being instituted by the mother after the child had reached the age of one year. 230 So.2d 213.

In *Palmer*, the action was brought by the minor child, through her mother as next friend, under the Mississippi Uniform Law on Paternity to establish the support obligation of the putative father. The Mississippi Supreme Court held that a statute requiring the proceeding to be brought within one year of the birth of the child was inapplicable as it applied to the mother and not the child and the child was the real party in interest. 338 So.2d 1003.

25. 1962 Miss. Laws ch. 312.

26. MISS. CODE ANN. ch 93-9 (1962).

in writing.[27] The father's liability for past support was limited to a period of one year next preceeding the commencement of the action.[28]

Under Mississippi's old bastardy act,[29] which was concurrently repealed with the adoption of the Paternity Act of 1962, the child had no cause of action on his own behalf and the mother's cause of action was limited to one year from the birth of the child.[30] Since the children in each Mississippi case were all over one year old, the Mississippi court was presented with the issue of whether the new act applied by its own terms to children born out of wedlock prior to the effective date of the act.[31] The Mississippi court determined that the new act did apply to the children born prior to the effective date of the Act.[32] Similarly, paternity statutes have been found to be retroactive in operation in Maine, Alabama and Florida.[33]

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27. *Id.* § 93-9-9.

> However, proceedings hereunder shall not be instituted by the mother after the child has reached the age of one year, unless the defendant is absent from the state so that personal service of process cannot be had upon him, or, unless the defendant has acknowledged in writing that he is the father of the child.

Id.

28. *Id.* § 93-9-11. "The father's liabilities for past education and necessary support and maintenance and other expenses are limited to a period of one (1) year next proceeding the commencement of the action." *Id.*

29. MISS. CODE. ANN. §§ 383-398 (1943)(repealed 1962).

30. *Id.* § 393. Proceedings under this chapter shall not be instituted by the mother after the child is twelve months old, unless the defendant be absent from the state so that process cannot be served on him." *Id.*

31. *See supra* note 24.

32. 338 So.2d 1002;230 So.2d 212;157 So.2d 766.

33. Ward v. State, 42 Ala. App. 529, 170 So.2d 500 (1964), *cert. denied,* 277 Ala. 703, 170 So.2d 504 (1965); Thut v. Grant, 281 A.2d 1 (Me. 1971); Wall v. Johnson, 78 So.2d 371 (Fla. 1955).

In *Thut,* bastardy proceedings were brought by the illegitimate child and mother against the putative father. On appeal from an interlocutor order, the Supreme Judicial Court denied the appeal and allowed application of the procedural methods afforded by the Uniform Act on Paternity to enforce rights which arose under old law. 281 A.2d at 6.

The Court in *Thut* also considered the new cause of action given to the illegitimate child under the new act and held that the obligation of support is a distinct and continuing duty, therefore, no vested rights are imposed or personal liabilities created which would render the Act constitutionally infirm by requiring the defendant to provide continuing future support. *Id.* at 7.

In *Ward,* the defendant was found to be the father of an illegitimate child and ordered to pay child support. The defendant appealed on the basis that the new paternity law was an unconstitutional ex post facto law. The Court of Appeals of Alabama confirmed the holding of the district court stating that the new paternity law did not impair the defendant's vested rights and therefore did not violate the constitution. 42 Ala. App. at —, 170 So. 2d at 501.

In *Wall,* a woman whose illegitimate child was born in New York brought suit in Florida under the 1951 Bastardy Act to compel the putative father to pay support for the child. The child was born in 1943 and this suit was commenced in 1955. The court held that the 1951 Bastardy Act was retroactive and therefore created a cause of action in her behalf but her cause of action was barred by the three year statute of limitations. While the court held the 1951 Bastardy Act to be retroactive in operation, it did not revive causes of action that were barred under old law. 78 So. 2d at 373.

In determining the U.P.A. to be retroactive in operation, the North Dakota Supreme Court relied on prior case law[34] to rebut the argument put forth by appellee that to hold the U.P.A. retroactive in operation would violate North Dakota statutory law which provides that statutes are not retroactive unless expressly declared to be so.[35] In *Ford Motor Co. v. State,*[36] the North Dakota court concluded that the prospective or retrospective operation of a statute is a question for the legislature.[37] Therefore, a legislative act, or amendment thereto, is presumed prospective unless a contrary intent is clearly manifested by the legislature, either expressly or impliedly.[38]

The specific language of the U.P.A. which manifests the intent of retroactive operation is found in the following words: ". . . may not be brought later than three years after the birth of the child, or later than three years after July 1, 1975, whichever is later."[39] The court in *W.M.V.* found that the words "or later than three years after July 1, 1975, whichever is later," would not have been included unless the legislature had intended the statute to be retroactive in operation.[40] For only when a child had been born prior to July 1, 1975, could three years after July 1, 1975, be later

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34. Monson v. Nelson, 145 N. W. 2d 892 (N. D. 1966); Gimble v. Montana-Dakota Utilities, 77 N. D. 581, 44 N. W. 2d 198 (N. D. 1950); In re Berg's Estate, 72 N. D. 52, 4 N. W. 2d 575 (N. D. 1942).

In *Monson,* the court rejected the argument that silence constituted an express declaration that provisions of an amendment to the Unsatisfied Judgment Fund Act should operate retrospectively and therefore apply to an accident which occurred prior to the effective date of the amendment. 145 N. W. 2d 892.

In *Gimble,* the court looked to the language and the history of the use of the language by the legislature to conclude that an amendment to the Workmen's Compensation Act, which allowed a workman to bring an action in his own right, was prospective in operation and would therefore not apply to the plaintiff who had received compensation prior to the amendment's affective date. 77 N. D. 581, 44 N. W. 2d 198.

The plaintiff, in In re Berg's Estate, was born prior to the enactment of a statute declaring all children to be the legitimate children of their natural parents. The action was brought to establish paternity for inheritance purposes. The court, holding that the plaintiff's action was barred, looked to the four corners of the statute to determine that it was prospective in operation. 72 N.D. 52, 4 N.W. 2d 575.

35. N. D. CENT. CODE § 1-02-10 (1975). "No part of this code is retroactive unless it is expressly declared to be so." *Id.*

36. 59 N. D. 792, 231 N. W. 883 (1930).

37. Ford Motor Co. v. State, 59 N. D. 792, 802, 231 N. W. 883, 887 (1930).

38. Monson v. Nelson, 145 N. W. 2d at 897.

39. N.D. CENT. CODE § 14-17-06 (Supp. 1976). The statute in full state as follows:

> An action to determine the existence of the father and child relationship as to a child who has no presumed father under section 14-17-04 may not be brought later than three years after the birth of the child, or later than three years after July 1, 1975, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three years after the child reaches the age of majority. Sections 14-17-05 and 14-17-06 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedent's estates or to the determination of heirship or otherwise.

Id.

40. 268 N. W. 2d at 784.

than three years after the birth of the child.[41] Had the court ruled otherwise, it would have given the above words no effect in derogation of the North Dakota Centruy Code.[42] Therefore, the court held that the U.P.A. must be construed as being retroactive in operation.[43]

The North Dakota court's finding that the U.P.A. is to be applied retroactively appears to conflict with the ruling in *C.L.W. v. M.J.*[44] In *C.L.W.*, an illegitimate child brought an action against the estate of her alleged father to determine that she was entitled to inherit even though the statute of limitations had run for an action to determine paternity.[44] In dicta, the court said that the law to be applied to an action to establish paternity is the law in effect at the time of the child's birth.[46]

The court's conclusion in *C.L.W.* was supported by *State v. Underseher.*[47] In *Unterseher,* the action was commenced prior to the adoption of the U.P.A. but the trial was held after the effective date of the U.P.A.[48] The court held that the rules of evidence contained in the U.P.A.[49] would apply to the action but the substantive law would not.[50] However, *Unterseher* did not deal with the situation where the action was commenced after the effective date of the U.P.A.[51]

In *W.M.V.*, the court ruled that except in matters of evidence, the U.P.A. cannot be applied retroactively to actions commenced *prior* to its effective date.[52] Therefore, consistent with *C.L.W.*, the correct rule is that the law in effect at the time of the child's birth is applicable to paternity actions unless the legislature had clearly

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41. *Id.*

42. N. D. CENT. CODE § 1-02-38 (1975). "In enacting a statute, it is presumed that. . . [T]he entire statute is intended to be effective." *Id.*

43. 268 N. W. 2d at 785.

44. 254 N. W. 2d 446 (N. D. 1977).

45. C. L. W. v. M. J., 254 N. W. 2d 446 (N. D. 1977).

46. *Id.* at 449.

47. 255 N. W. 2d 882 (N. D. 1977). The child was born and the action to establish paternity was commenced prior to the adoption of the U. P. A. *Id.*

48. State v. Unteseher, 255 N. W. 2d 882 (N. D. 1977).

49. N. D. CENT. CODE § 14-17-11 (Supp. 1976). The U. P. A. allows evidence of sexual intercourse, expert testimony of the probability of the alleged father's paternity based on the length of pregnancy, blood tests, medical and anthropological evidence to be admitted if relevant to the issue of paternity of the child. *Id.*

The court stated that it was a long standing rule that when a statute changing a rule of evidence goes into effect, all cases tried thereafter must be governed thereby, unless there is a limitation in the statute. 255 N. W. 2d at 888.

50. *Id.* at 891. Since the action was commenced prior to the adoption of the U. P. A., the substantive law contained therein could not be applied retroactively without express declaration of the legislature. *Id.*

51. 255 N. W. 2d 882.

52. 268 N. W. 2d at 785.

manifested a contrary intent.[53]

Implicit in the decision of *W.M.V.* and supported by dicta, is the creation of a new cause of action on behalf of an illegitimate child.[54] Prior to the enactment of the U.P.A., North Dakota statutes denied a cause of action to the child unless the mother was deceased or disabled.[55] The *W.M.V.* decision has granted an action on behalf of the child without regard to the position of the mother.[56] In addition, the statute of limitations does not run on a child's cause of action to establish paternity until three years after the child reaches the age of majority.[57]

The appellant in *W.M.V.* raised several constitutional issues, and although they were not used as a basis for the court's decision, the court appeared to imply a ratification of those arguments.[58] Appellant pointed out that the state has recognized that the parent-child relationship extends to all children and parents regardless of the marital status of the parents.[59] In addition, it is the duty of the father, mother or child of a poor person to support that person.[60] Therefore, to deny illegitimate children a cause of action to determine this relationship and the corresponding duty of support, while granting it to other children who are similarly situated but fortunate enough to have been born in wedlock or otherwise legitimated, would be a denial of equal protection of the laws under the fourteenth amendment to the United States Constitution.[61] A similar Texas statute, although not the direct issue of the action, which caused this same dissimilarity of treatment between children born out of wedlock and those born in wedlock or otherwise

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53. *Id.*

54. *Id.* at 786. The court stated that the legislature created a new remedy for the child as distinguished from the mother. *Id.*

55. N. D. CENT. CODE § 32-36-08 (1960) (repealed 1975).

56. *See supra* note 54.

57. N. D. CENT. CODE §14-17-06 (Supp. 1976). "However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three years after the child reaches the age of majority. . . ." *Id.*

58. 268 N. W. 2d at 787. The court noted that its holding was consistent with its result in In re Estate of Jensen, 162 N. W. 2d 861 (N.D. 1968), in which it held illegitimacy to be a suspect classification for purpose of due process-equal protection. *Id.*

59. Brief for Appellant at 6. In the interest of W.M.V., 268 N.W. 2d 78 (1978). W. M. V. based this contention on a statute providing that "the parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." N. D. CENT. CODE § 14-17-02 (Supp. 1976).

60. *Id.* § 14-09-10 (1971).

> It is the duty of the father, the mother and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of the ability of such father, mother or children. Such liability may be enforced by any person furnishing necessaries to such poor person. The promise of an adult son or daughter to pay for necessaries previously furnished to such parent is binding.

Id.

61. *See* Gomez v. Perez, 409 U. S. 535 (1973).

legitimated was held unconstitutional by the United States Supreme Court on the grounds that it denied equal protection under the fourteenth amendment to the United States Constitution.[62]

In addition, appellant argued that to hold the U.P.A. prospective in operation only, would be a denial of the due process.[63] This contention was based on the North Dakota case of *Kottsick v. Carlson*[64] in which the court recognized the relationship of parent and child as consisting of "a bundle of essential rights necessary for the preservation of society."[65] The *Kottsick* court went on to say that depriving one of his parental rights without just cause would raise serious constitutional doubts under the Due Process Clause.[66]

Moreover, contrary to the United States Supreme Court,[67] the North Dakota Supreme Court appears to have determined that classifications and differential treatment based solely upon illegitimacy are inherently suspect and in violation of the fourteenth amendment ot the United States Constitution and section 20 of the

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62. 409 U. S. 535 (1973). The mother of an illegitimate child sought support from the defendant on behalf of the child. The trial judge found the defendant to be the biological father of the child and the child in need of maintenance and support from the father. However, under Texas law, because the child was illegitimate, the father was under no legal obligation to support the child. Had the child been legitimate, the defendant would have had a legal obligation to provide needed support. The action was based on the common law within the state of Texas and the statute inferred to was not a focal point of the action. However, because the statute was a codification of the common law, it was held to be unconstitutional. *Id.*

The Supreme Court stated the following:

> A state may not invidiously discriminate against illegitimate children by denying them substantial benefits awarded children generally. We therefore hold that once a state posits a judicially enforceable right in behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married his mother. For a state to do so is "illogical and unjust." (cites omitted) We recognize the lurking problems with respect to proof of paternity. Those problems are not be to lightly brushed aside, but neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination.

Id. at 538.

63. 268 N. W. 2d at 783.

64. 241 N. W. 2d 842 (N. D. 1976). Divorced wife and her new husband instituted proceedings to adopt, without the consent of the former husband, minor children of the wife and former husband. The North Dakota Supreme Court held that the divorced father was entitled to a hearing on the question of his fitness and related questions applicable to all parents. *Id.*

65. Kottsick v. Carlson, 241 N. W. 2d 842, 853 (N. D. 1976).

66. *Id.*

67. Stanley v. Illinois, 405 U. S. 645 (1972). Peter and Joan Stanley were not married but lived together for 18 years during which time they had three illegitimate children. When Joan Stanley died the children were declared wards of the state and placed with court appointed guardians. Plaintiff appealed arguing that since the state must demonstrate in a hearing that married fathers and unwed mothers are unfit before denying them of their children, failure of Illinois to establish his parental fitness denied him equal protection of the law. The Supreme Court reversed, using procedural due process and traditional equal protection analysis. *Id.* at 657-58.

Procedural due process involves a balancing of the individual's interest against the state's interest in maintaining the challenged activity. *Id.* at 651.

Under traditional equal protection analysis, a statutory classification is valid if it is rationally related to a legitimate state interest. *See* Morey v. Doud, 354 U. S. 457 (1957).

North Dakota Constitution.[68] However, because the court was able to reach its decision without direct consideration of the constitutional issues,[69] it appears doubtful that such consideration will be fourthcoming in regard to paternity.

By enacting the U.P.A., the North Dakota Legislature recognized the expanded rights of the illegitimate child which had been established by the United States Supreme Court. In decisions since the enactment of the U.P.A., the North Dakota Supreme Court further defined these rights within the State of North Dakota. Through *W.M.V.*, the North Dakota Supreme Court has affirmed the intention of the legislature by interpreting the U.P.A. to be retrospective in operation and has given substance to the rights of the illegitimate child by recognizing the U.P.A.'s creation of an independent cause of action on behalf of the child. While problems of proof remain and probabilities of proof decrease with the passage of time, *W.M.V.* recognizes that such problems do not outweigh the interest of the child in having paternity established.

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68. In re Estate of Jensen, 162 N. W. 2d 861 (N. D. 1968). Plaintiffs appealed from a ruling that found that only legitimate children of decedent's mother could inherit from the decedent. The North Dakota Supreme Court reversed stating, "the question is whether the classification is reasonable and necessary to effect the purpose of the law. . . ." *Id.* at 877. The North Dakota court was not hesitant to hold § 56-01-05 of the North Dakota Century Code unconstitutional as an invidious discrimination against illegitimate children in violation of section 20 of the North Dakota Constitution and the fourteenth amendment of the United States Constitution. *Id.* at 878.

The North Dakota court, in Olson v. Maxwell, 259 N. W. 2d 621 (N. D. 1977), elaborated on its use of suspect classifications when it said that classifications based on sex, race, illegitimacy and immutable characteristics are "inherently suspect" and require strict judicial scrutiny. In addition, a showing of a compelling state interest, which justifies the discriminatory treatment, must be made. *Id.* at 627.

Although the court in *Maxwell* was not considering illegitimacy, its general statement regarding suspect classifications in relation to section 20 of the North Dakota Constitution together with its statement in *Jensen* leads to the conclusion that the North Dakota Supreme Court has classified illegitimacy as a suspect classification for purposes of equal protection analysis.

69. 268 N. W. 2d at 787.