

1978

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Recommended Citation

(1978) "Constitutional Law—Equal Protection and Illegitimacy—Unborn Child v. Evans, ____ Minn . ____, 247 N.W.2d 600 (1976)," *William Mitchell Law Review*: Vol. 4: Iss. 1, Article 7.

Available at: <http://open.mitchellhamline.edu/wmlr/vol4/iss1/7>

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Constitutional Law—EQUAL PROTECTION AND ILLEGITIMACY—*Unborn Child v. Evans*, — Minn. —, 245 N.W.2d 600 (1976).

In the recent case of *Unborn Child v. Evans*,¹ the Minnesota Supreme Court considered the question of whether denial to a child of life insurance proceeds solely on the basis of the child's illegitimacy violates the equal protection clause.² The plaintiff appealed the trial court's grant of summary judgment and dismissal of the complaint. Finding that factual disputes existed, the Minnesota Supreme Court reversed the trial court and remanded the case. The supreme court stated that denial of life insurance proceeds solely on the basis of a beneficiary's illegitimacy violates the equal protection clause.

The insured and plaintiff's mother were married in July 1970 and divorced in February 1972. In March of 1972 plaintiff's mother conceived plaintiff. The insured admitted paternity and the couple planned to remarry. Before they could remarry, the insured was killed in an automobile accident.

The insured had been employed by the state of Minnesota. A group life insurance policy had been negotiated on his behalf by the State Employees Insurance Benefit Board (S.E.I.B.B.) with two private insurance companies.³ The policy provided for \$50,000 double indemnity in case of accidental death. The policy's substitute beneficiary clause provided that if no beneficiary was named the benefits would be paid according to the following priority: "1. Your surviving lawful wife or husband; 2. Your surviving children in equal shares; 3. Your surviving parents in equal shares; 4. The duly appointed legal representative of your estate."⁴ The policy defined "children" as "only first generation lawful bodily issue and legally adopted persons."⁵

The insured died in June 1972 without naming a beneficiary. After his death, according to the priority established in the substitute beneficiary clause, his parents received the insurance policy proceeds. Plaintiff, the insured's posthumous illegitimate child,⁶ was born in December 1972. Plaintiff's mother, and natural guardian, claimed the life insurance pro-

1. — Minn. —, 245 N.W.2d 600 (1976).

2. The fourteenth amendment provides in part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

3. The Minnesota Mutual Life Insurance Company and the Northwestern National Life Insurance Company issued the insured's group life insurance policy based on a contract with the state. — Minn. at —, 245 N.W.2d at 602.

4. *Id.*

5. *Id.*

6. The court concluded the fact that the child was posthumous was not important since it should be treated as if it had been living at the time of the insured's death. *See id.* at —, 245 N.W.2d at 603. By analogy, the court relied on MINN. STAT. § 525.171 (1976) which, relating to intestate succession, provides: "A posthumous child shall be considered as living at the death of its parent."

ceeds on behalf of plaintiff. Plaintiff's mother alleged that the exclusion of illegitimate children from the substitute beneficiary clause definition of children was a denial of equal protection.

The equal protection clause provides in part that no person shall be denied equal protection of the laws.⁷ The clause is directed to the states so that no state may arbitrarily discriminate through legislation or otherwise.⁸ However, it is well-recognized that a state may legislatively classify persons without violating the equal protection clause.⁹ Such a classification must, however, be based on a material difference between the classes¹⁰ or a legitimate state interest¹¹ to be valid.

The Minnesota Supreme Court noted that the plaintiff must prove three things to establish a violation of the equal protection clause:¹² first, the denial of proceeds was the result of state action;¹³ second, the denial of proceeds was based solely on the child's illegitimacy;¹⁴ third, there was no legitimate state interest justifying the classification.¹⁵

The supreme court held that the S.E.I.B.B.'s authorization and execution of the contract on behalf of state employees constituted state action for the purpose of the fourteenth amendment. It noted that state action is not limited to legislative, executive, or judicial action but includes "all the instrumentalities by which the State acts."¹⁶ Thus, the fact that the insurance policies were issued by private insurance companies did not preclude the existence of state action. For the purpose of the appeal, the court assumed that the insured did not have an adequate opportunity to designate a beneficiary. If the insured had a chance to designate a beneficiary, but decided to adopt the substitute beneficiary clause, the denial of participation in the insurance proceeds would have been the result of private action and not state action.

Next the court concluded the denial of proceeds was based solely upon

7. See note 2 *supra*.

8. See, e.g., *Gilmore v. City of Montgomery*, 417 U.S. 556, 565 (1974); *Civil Rights Cases*, 109 U.S. 3, 11 (1883).

9. See, e.g., *Allied Stores, Inc. v. Bowers*, 358 U.S. 522, 526-28 (1959); *Borden's Farm Prods. Co. v. Baldwin*, 293 U.S. 194, 209-10 (1934).

10. E.g., *Reed v. Reed*, 404 U.S. 71, 75-76 (1971); *Metropolitan Cas. Ins. Co. v. Brownell*, 294 U.S. 580, 583 (1935).

11. To be valid, a classification must be reasonably related to obtaining a legitimate state interest, e.g., *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 172 (1972); *White v. Fleming*, 522 F.2d 730, 734 (7th Cir. 1975), that is, it must not be arbitrary or without a rational basis. See, e.g., *Reed v. Reed*, 404 U.S. 71, 75-76 (1971).

12. ___ Minn. at ___, 245 N.W.2d at 603-07.

13. See note 8 *supra* and accompanying text.

14. If the denial of proceeds was based on some other reason not objectionable under the equal protection clause there would not be a denial of equal protection. ___ Minn. at ___, 245 N.W.2d at 604.

15. See note 11 *supra* and accompanying text.

16. ___ Minn. at ___, 245 N.W.2d at 604 (quoting *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 35 (1907)).

the child's illegitimacy. This conclusion was based on the fact that insurance proceeds would not have been denied to a surviving posthumous legitimate child.¹⁷

Finally, the court noted that legitimate state interests may exist for having a classification based on a child's illegitimacy when the state furnishes life insurance to its employees. Specifically, the state has an interest in avoiding fraudulent claims¹⁸ and in seeing that insurance proceeds are promptly paid to those entitled to them. However, the court reasoned, these interests are not sufficient to prevent illegitimate children who are clearly children of the insured from participating in life insurance proceeds.¹⁹

In support of its decision, the court noted a trend of judicial holdings finding that classification based on illegitimacy violates the equal protection clause.²⁰ Although the United States Supreme Court has stated that illegitimacy is not a suspect classification,²¹ in only two²² of the twelve cases²³ on the issue since 1968 has the Court upheld the constitu-

17. The court reasoned that in a rare case a married couple could conceive a child and then be divorced. If the father died before the birth of the child but after the divorce, there would not be a surviving spouse, but with the birth of the child there would be a surviving legitimate child. The surviving posthumous legitimate child would be entitled to the insurance proceeds according to the priority stated in the substitute beneficiary clause while a surviving posthumous illegitimate child would not. ___ Minn. at ___, 245 N.W.2d at 603.

18. *Id.* at ___, 245 N.W.2d at 607. However, "[i]t does not [necessarily] follow . . . that the blanket and conclusive exclusion . . . of illegitimates is reasonably related to the presentation of spurious claims." *Jimenez v. Weinberger*, 417 U.S. 628, 636 (1974).

19. See ___ Minn. at ___, 245 N.W.2d at 607. In addition, the court indicated the fact that more time may be required to locate and verify the identity of illegitimates was not a sufficient reason to completely bar them from receiving insurance proceeds. *Id.* at ___, 245 N.W.2d at 607-08.

20. For a general discussion of this judicial trend, see Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477 (1967).

21. *Trimble v. Gordon*, 430 U.S. 762, 767 (1977); *Mathews v. Lucas*, 427 U.S. 495, 506 (1976). Although the Supreme Court refused to hold that illegitimacy was a suspect classification, the Court noted that illegitimacy was similar to other personal characteristics which have been held to be suspect, *id.* at 505, and that its scrutiny of illegitimacy "is not a toothless one." *Id.* at 510.

22. *Mathews v. Lucas*, 427 U.S. 495 (1976); *Labine v. Vincent*, 401 U.S. 532 (1971).

23. *Trimble v. Gordon*, 430 U.S. 762 (1977) (portion of Illinois probate code denying illegitimate children the right to inherit from their father by intestate succession held unconstitutional); *Mathews v. Lucas*, 427 U.S. 495 (1976) (portion of Social Security Act requiring proof of dependency in cases involving illegitimates, while dependency is assumed in cases involving legitimate children, held constitutional); *Jimenez v. Weinberger*, 417 U.S. 628 (1974) (portion of Social Security Act excluding post-disability illegitimate children from disability insurance benefits, while post-disability legitimate children would almost automatically qualify, held unconstitutional); *New Jersey Welfare Rights Organization v. Cahill*, 411 U.S. 619 (1973) (portion of state statute providing financial assistance to poor families with legitimate children, but not those families with illegitimate children, held unconstitutional); *Gomez v. Perez*, 409 U.S. 1069 (1972) (state law

tionality of such classifications. And one of the two cases which upheld a state intestate succession statute appears to have been overruled by a recent Court decision involving a similar statute.²⁴

The Minnesota Supreme Court's implicit decision to consider classifications based on illegitimacy on a case-by-case basis²⁵ is in accord with the United States Supreme Court's decisions holding that classifications based on illegitimacy are not illegal per se or even suspect classifications.²⁶ The Minnesota court's decision in *Unborn Child* would have been more helpful, however, if it had indicated what type of state interests might justify such a classification.²⁷

granting legitimate children judicially enforceable right to support from natural father, but not to illegitimate children, held unconstitutional); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972) (portion of state workers' compensation statute which prevented illegitimate children from sharing equally with legitimate children in death benefits held unconstitutional); *Labine v. Vincent*, 401 U.S. 532 (1971) (portion of Louisiana intestate succession statute which barred illegitimate children from sharing equally with legitimate children in their father's estate held constitutional); *Glonn v. American Guar. & Liab. Ins. Co.*, 391 U.S. 73 (1968) (portion of state wrongful death statute which barred recovery by parent for death of illegitimate child, while parent of legitimate child could recover, held unconstitutional); *Levy v. Louisiana*, 391 U.S. 68 (1968) (portion of state statute creating a wrongful death action in favor of legitimate children, but not illegitimate children, held unconstitutional); *Beaty v. Weinberger*, 478 F.2d 300 (5th Cir. 1973), *aff'd mem.*, 418 U.S. 901 (1974) (portion of Social Security Act excluding post-disability illegitimate children from disability insurance benefits, while post-disability legitimate children would almost automatically qualify, held unconstitutional); *Griffin v. Richardson*, 346 F. Supp. 1226 (D. Md.), *aff'd mem.*, 409 U.S. 1069 (1972) (portion of Social Security Act applying reduction of insurance benefits first to those payable to certain illegitimate children held unconstitutional); *Davis v. Richardson*, 342 F. Supp. 588 (D. Conn.), *aff'd mem.*, 409 U.S. 1069 (1972) (portion of Social Security Act reducing benefits payable to illegitimate children if family award not sufficient to pay spouse and legitimate children held unconstitutional).

24. In 1971 the Supreme Court in *Labine v. Vincent*, 401 U.S. 532 (1971), upheld the constitutionality of Louisiana's intestate succession statute which barred illegitimate children from inheriting equally with legitimate children from their father's estate. Illegitimate children could inherit only if they had been acknowledged by their father and only if he left no other relatives; in other words they could inherit only to the exclusion of the state. In the 1977 case of *Trimble v. Gordon*, 430 U.S. 762 (1977), the Supreme Court held unconstitutional, as a denial of equal protection, the Illinois' intestate succession statute which barred illegitimate children from inheriting from their father's estate. While the Court in *Trimble* attempted to distinguish the Illinois statute from the Louisiana statute, it was forced to state that "[d]espite these differences, it is apparent that we have examined the Illinois statute more critically than the Court examined the Louisiana statute in *Labine*. To the extent that our analysis in this case differs from that in *Labine* the more recent analysis controls." *Id.* at 776 n.17.

25. The Minnesota Supreme Court did not indicate whether legitimate and illegitimate children should receive equal treatment with respect to all rights. By remaining silent on the question, the court implicitly decided to treat classifications based on illegitimacy on a case-by-case basis, as the United States Supreme Court has done. See note 23 *supra*.

26. See note 21 *supra*.

27. The two most recent United States Supreme Court cases upholding the constitutionality of classifications based on illegitimacy, see note 22 *supra* and accompanying text,

Finally, it should be noted that the Minnesota Supreme Court faced the equal protection issue squarely instead of attempting to rewrite the insurance contract to change its definition of children. Although the plaintiff did not argue that the contract should be reformed, other courts have used this approach in similar fact situations, and have thus avoided the equal protection issue.²⁸ In *Unborn Child*, it would have been difficult, however, to avoid the equal protection question because the definition of children in the insurance policy specifically included only "first generation lawful bodily issue and legally adopted persons."²⁹

As a result of *Unborn Child*, the rights of illegitimates in one area of the law are more certain. In the future, the Minnesota Supreme Court will undoubtedly hold that discrimination in the distribution of life insurance proceeds solely on the basis of illegitimacy violates the equal protection clause. It is also likely that the court will hold other classifications based solely on illegitimacy to be unconstitutional as a violation of equal protection, absent a strong state interest.

do provide some guidelines. In *Labine* the Court upheld the constitutionality of Louisiana's intestate succession statute which barred illegitimate children from sharing equally with legitimate children in their father's estate based on Louisiana's interest in strengthening and preserving family ties. 401 U.S. at 536-38. However, as the Court noted, the statute did not bar an illegitimate child from inheriting from his father since the father could have executed a will devising a portion of his estate to his illegitimate child. *Id.* at 539. The usefulness of *Labine* for defining what interests may be sufficient for upholding a statutory classification based on illegitimacy has, however, been severely limited by *Trimble v. Gordon*, 430 U.S. 762 (1977). See note 24 *supra* and accompanying text.

In *Mathews* the Court upheld the portion of the Social Security Act which created a presumption of dependency in favor of legitimates but not in favor of illegitimates on the basis that the statutory classification was justified as part of a statutory design "to qualify entitlement to benefits upon a child's dependency at the time of the parent's death." 427 U.S. at 510. The Court further noted that an illegitimate was not denied benefits "solely and finally on the basis of illegitimacy" since an illegitimate could receive benefits by proving dependency. *Id.* at 511-13. Thus, *Mathews* suggests that a classification based on illegitimacy may be constitutional if it does not completely bar illegitimates but only creates a presumption in favor of legitimates, assuming, of course, that the classification is reasonably related to the objectives of the statute. See note 11 *supra* and accompanying text.

28. See, e.g., *Turner v. Metropolitan Life Ins. Co.*, 56 Cal. App. 2d 862, 133 P.2d 859 (1943). In *Turner* the California Court of Appeals reasoned that insurance contracts are governed by contract law and not the common law of intestate succession which, in 1943, generally discriminated against illegitimates. In contract law, words are interpreted in their ordinary sense, unless they have a technical meaning, and the dictionary definition of "children" does not distinguish between legitimate and illegitimate children. Thus, the court interpreted "children" to include all children regardless of legitimacy. *Id.* at 865-66, 133 P.2d at 860-61 (1943); accord, *Samuels v. Aetna Life Ins. Co.*, 48 Mich. App. 761, 211 N.W.2d 104 (1973); *Butcher v. Pollard*, 32 Ohio App. 2d 1, 288 N.E. 2d 204 (1972). See generally Annot., 62 A.L.R.3d 1329 (1975).

29. ____ Minn. at ____, 245 N.W.2d at 602.