

IN THE MATTER OF:	)	
	)	
SEAN MICHAEL CRAWFORD, a minor	)	
under 18 years of age	)	
	)	
THOMAS MATTHEW CIHLAR,	)	
	)	
Petitioner/Appellee,	)	Appeal No.
	)	01-A-01-9602-CV-00070
v.	)	
	)	Davidson Circuit
MARY ANN CRAWFORD and	)	No. 94C-2407
RONALD SHANE CRAWFORD,	)	
	)	
Respondents/Appellants.	)	

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

<p><b>FILED</b></p> <p><b>October 18, 1996</b></p> <p><b>Cecil W. Crowson</b> <b>Appellate Court Clerk</b></p>
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APPEAL FROM THE CIRCUIT COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

THE HONORABLE THOMAS W. BROTHERS, JUDGE

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Hendersonville, Tennessee 37075  
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REVERSED AND REMANDED

O P I N I O N

In this appeal respondents, Mary Ann Crawford and Ronald Shane Crawford, question the trial judge's decision to deny Mary Ann Crawford's motion to dismiss the petition of petitioner, Thomas Matthew Cihlar, to "legitimate" Mary Ann Crawford's biological child.

In July 1988, Mary Ann Crawford and Ronald Shane Crawford married. Sean Michael Crawford was born on 29 November 1991 in Nashville, Tennessee. Respondents have remained married since July 1988. Petitioner claimed that respondents separated in December 1990 and that he and Mary Ann Crawford had an affair during this time. It is also petitioner's contention that Mary Ann Crawford became pregnant as a result of the affair and that Sean Michael Crawford is his child.

Petitioner filed his "Petition for Legitimation" on 26 July 1994. He sought to "legitimate" Sean Michael Crawford and named Mary Ann Crawford and Randall Shane Crawford as respondents. After respondents answered the petition, the court entered an agreed order in December 1994. The agreed order granted petitioner's petition, established a visitation schedule, and fixed the amount of child support.

In January 1995, respondents moved to vacate the agreed order pursuant to Tennessee Rule of Civil Procedure 60.02. In February 1995, the trial court entered an order vacating the agreed order except for the provisions relating to visitation. The court ordered respondents to reimburse all child support paid by petitioner and to pay petitioner's attorney's fees of \$1,562.50 incurred in connection with the agreed order and the motion to set

it aside.

In March 1995, respondents filed a motion to dismiss. Petitioner opposed the motion and gave notice to the Tennessee State Attorney General that he intended to challenge the constitutionality of Tennessee Code Annotated section 36-2-202.<sup>1</sup>

The trial court entered an order in May 1995. It found that Tennessee Code Annotated section 36-2-202 was "not unconstitutional on its face under either the United States or Tennessee Constitutions" and dismissed the constitutional challenge. The trial court reserved decision on the motion to dismiss until after an evidentiary hearing in May 1995. At the conclusion of the evidentiary hearing, the trial court found in part as follows:

It would be a mockery to the concept of marriage to describe the erratic relationship of Mr. and Mrs. Crawford as being "lawful wedlock". . . .

. . . .

It is the opinion of this Court that Mr. Cihlar is not prohibited from filing a petition for the legitimation of Sean Michael Crawford under the unique facts of this case.

In July 1995 the trial court entered an order denying the respondents' motion to dismiss and granted the petition for

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<sup>1</sup>This  
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provisions of subsection (a), a person wishing to legitimate a child may obtain an order of legitimation for a child born to an unmarried woman by filing with the court a certified copy or a duplicate original of the acknowledgment of paternity as prescribed under § 24-7-118, § 68-3-203(g), § 68-3-302, or § 68-3-305(b). Further, a duplicate original of the voluntary acknowledgment of paternity filed with the juvenile court by a birthing institution pursuant to the provisions of § 68-3-302(e) shall be the basis for the entry of an order of legitimation by the court. Subject to the provisions of § 24-7-118, the court shall enter an order of legitimation upon the filing of the voluntary acknowledgment of paternity in either of the above situations.

(c) Nothing herein shall be construed to authorize a putative father to legitimate a child or to execute any voluntary acknowledgment of paternity without the consent of the mother of such child.

Tenn. Code Ann. § 36-2-202 (Supp. 1995).

legitimation. Respondents filed a timely notice of appeal and presented the following issues:

Where the mother of a child was married at the time said child was born and at the time a Petition to "legitimate" said child was filed and the trial court found that Tennessee's legitimation statute is not unconstitutional:

1. Did the trial court err in denying the mother's Motion to Dismiss said Petition; and

2. Did the trial court err in entering judgment in favor of the Petitioner without the mother's consent thereby "legitimizing" a child born to a married woman?

Proceedings to legitimate children were unknown at common law and are exclusively a creature of the legislature. **Cunningham v. Golden**, 652 S.W.2d 910, 911 (Tenn. App. 1983). Since the legitimation statute is in derogation of the common law, it must be strictly construed. **Taylor v. Taylor**, 40 S.W.2d 393, 395 (Tenn. 1931). In the absence of Tennessee Code Annotated section 36-2-202, Tennessee's courts lack jurisdiction to consider legitimation cases. Therefore, if legitimation is to be done at all, it must be done in accordance with the statute.

When considering the phrase "child not born in lawful wedlock" as used in the statute, this court observed "we are persuaded that in 1805, or for that matter in 1955, when the statute was codified, the Legislature intended to make it applicable only to children of unmarried women . . . ." **Cunningham**, 652 S.W.2d 910, 912-13. In a recent opinion written by Judge Cantrell, this court applied the reasoning of **Cunningham**. **Evans v. Steelman**, No. 01-A-01-9511-JV-00508 (Tenn. App. 2 October 1996). Except for one issue, which we address later, the facts of **Evans** and the present case are similar. Thus, we adopt the following quoted portion of Judge Cantrell's opinion.

In **Cunningham v. Golden**, 652 S.W.2d 910 (Tenn. App. 1983), this court interpreted the phrase,

"child not born in lawful wedlock," in section(a), the only section that existed at the time, to mean a child born to an unmarried woman. In **Cooper v. Thompson**, 710 S.W.2d 944 (Tenn. App. 1985), this court followed the ruling in **Cunningham** and said, "The legitimation statutes are for the protection of the child, and are not for the purpose of allowing parents, biological or otherwise, to stake out claims to the child." 710 S.W.2d at 946. In both opinions the members of the court expressed a strong belief that a restrictive interpretation was necessary to preserve the integrity of existing families.

. . . .

. . . "[T]he legislature is presumed to know the interpretation which courts make of its enactments." **Hamby v. McDaniel**, 559 S.W.2d 774 (Tenn. 1974). Thus, when the legislature amended Tenn. Code Ann. § 36-2-202 in 1992, and again in 1994, it presumably knew of the interpretation given the statute in **Cunningham** and **Cooper**. Nevertheless, it did not change the language of the statute, and the additional sections keep its scope very narrow. Subsection (b) provides an informal procedure for obtaining an order of legitimation of a child born to an unmarried woman, and, as if to underscore the restrictions placed on putative fathers, subsection (c) makes the mother's consent a requirement in any legitimation proceeding. We are persuaded, therefore, that the legislature intended to restrict the operation of Tenn. Code Ann. § 36-2-202 to cases involving children born to unmarried mothers.

. . . .

a. Due Process

The Fourteenth Amendment to the federal constitution and Article 1 § 6 of the state constitution prohibit the state from taking a citizen's life, liberty, or property without due process of law. The parent-child relationship may rise to the level of a protective interest, because it is viewed as an interest in liberty. **Lehr v. Robertson**, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983); **Nale v. Robertson**, 871 S.W.2d 674 (Tenn. 1994). The right to raise a child is also a right of privacy guaranteed by the Tennessee Constitution. **Hawk v. Hawk**, 855 S.W.2d 573 (Tenn. 1993). But constitutional protection does not result from the "mere existence of a biological link;" an unwed father must demonstrate a "full commitment to the responsibilities of parenthood" before "his interest and personal contact with his child acquires substantial protection under the Due Process clause." **Lehr v. Robertson**, 463 U.S. at 261, 103 S.Ct. at 2993, 77 L.Ed.2d at 626.

Whether [petitioner's] interest has risen to the level where it acquires constitutional protection has not been determined. For the

purpose of this argument, we assume that it has. Nevertheless, the short answer to the due process argument is that the statute does not deprive him of anything. At common law, he had no right to legitimate the child, and this state has never recognized that right except by the statute in question. The statute creates rights rather than taking them away, and should not be judged defective on due process grounds. We think [petitioner's] case boils down to a question of whether his rights to equal protection have been violated by the state giving the right to legitimate a child to a man who fathers a child by an unmarried woman while denying that right to men whose children are the product of a liason with another man's wife.

b. Equal Protection

The right to equal protection under the law, as preserved by both state and federal constitutions, guarantees "equal privileges and immunities for all those similarly situated." **Tennessee Small Schools v. McWherter**, 851 S.W.2d 139, 152 (Tenn. 1993). The obverse of that proposition is a recognition that "things which are different in fact or opinion are not required by either constitution to be treated the same." **Id.** 851 S.W.2d at 153. **See also MCI Telecommunications Corp. v. Taylor**, 914 S.W.2d 519 (Tenn. App. 1995).

In a case brought as a paternity action pursuant to Tenn. Code Ann. § 36-2-103 (but treated by the Court of Appeals as a legitimate action) this court held that where the child was born during the mother's marriage to another man the state's interest in preserving family stability overrode any constitutionally cognizable interest of the putative father. **In the Matter of "A"**, 735 S.W.2d 232 (Tenn. App. 1987). The court quoted with approval from **Petitioner F. v. Respondent R.**, 430 A.2d 1075 (Del. 1981):

[I]n this case, however, there exists the very powerful countervailing public interest in promoting the marital relationship, preserving intact an existing family unit, and protecting the minor child from confusion, torn affection, and the lifelong stigma of illegitimacy. Thus, even assuming *arguendo* that the putative father has a constitutionally cognizable interest, that interest would be outweighed by the competing public interest and public policy in this case, and he must be denied judicial access.

735 S.W.2d at 238, 430 A.2d at 1079.

**In Matter of "A"**, this court also rejected the

putative father's argument that the paternity statute violated his right to equal protection by giving the right to file a petition to the mother and not to him. We found that the putative father was not in the same category or circumstances as those within the family. We think that a person seeking to legitimate a child born to a married woman is also in a fundamentally different position from a man seeking to legitimate a child born to an unmarried woman. The state's interest in preserving the family justifies the state's decision to give the right of legitimation to one and not the other.

**Evans v. Steelman**, No. 01-A-01-9511-JV-00508, slip op. at 3-7

(Tenn. App. 2 October 1996)(footnotes omitted).

It is undisputed that Mary Ann Crawford is the mother of ~~the child~~ marriage was in such a state that there was no public policy reason for protecting it. In other words, the trial court determined that the child was not born in lawful wedlock because respondents' marriage was a mockery. Based on this finding, the court allowed petitioner's case to proceed.

The trial court has, in effect, amended the statute by stating that under facts such as we have in this case petitioner would have a right to bring a legitimation action. Neither this court nor the trial court has the authority to amend acts of the General Assembly.

Therefore, it follows that the judgment of the trial court is reversed with costs on appeal assessed to petitioner, Thomas Mathew Cihlar. The cause is remanded to the trial court for further necessary proceedings.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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HENRY F. TODD, P.J., M.S.

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BEN H. CANTRELL, JUDGE