

Short Notes on:

## **Right of Unmarried Natural Fathers to be Recognised on Birth Certificates**

### ***Introduction***

Traditionally, unmarried natural mothers have enjoyed a particular privilege over unmarried natural fathers in terms of the recognition of their parental responsibilities and rights. However, with the dynamics of society changing, it has become a frequent occurrence to see unmarried natural fathers seek assistance in having themselves recognised on their child or children's birth certificates. This article will look to briefly explain this right and the process to be followed in order to make use of this right.

### ***Parental Responsibilities and Rights of Natural Fathers***

Fortunately, legislation has seen healthy development in the move towards recognising the parental responsibilities and rights of unmarried natural fathers. As an illustration and point of interest, there was even a Natural Fathers of Children born out of Wedlock Act 86 of 1997 enforceable within the Republic. This Act was later repealed by the formulation and incorporation of Section 21 of the Children's Act<sup>1</sup> into law, with Section 21 now being the point of departure.

Married natural fathers have full parental responsibilities and rights in respect of a child where he is married to the child's mother, or if he was married to the child's mother at the time of the child's conception, the time of the child's birth or any time between the child's conception and birth.<sup>2</sup>

Unmarried natural fathers, however, only acquire parental responsibilities and rights in respect of a child if, at the time of the child's birth, he is living or in a permanent life-partnership with the mother; or regardless of the above, if he consents to be recognised

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<sup>1</sup> No 38 of 2005.

<sup>2</sup> Section 20 of the Children's Act.

as the child's father, contributes or attempts to contribute in good faith towards the upbringing of the child for a reasonable period and if he contributes or attempts to contribute towards the expenses relating to the maintenance of the child for a reasonable period.<sup>3</sup>

Since we have now discussed when parental responsibilities and rights are acquired, what is the position relating to unmarried natural fathers when they want to be recognised as such on their child or children's birth certificates?

### ***The Births and Deaths Registration Act***

The Births and Deaths Registration Act<sup>4</sup> lays the foundation in answering this question. More specifically, Section 11 addresses the amendment of the birth registration of a child born out of wedlock. Section 11(4) states that *'a person who wishes to acknowledge himself to be the father of a child born out of wedlock, may, in the prescribed manner, with the consent of the mother of the child, apply to the Director-General, who shall amend the registration of the birth of such child by recording such acknowledgement and by entering the prescribed particulars of such person in the registration of the birth of such child.'*

Section 11(5) further states that *'where the mother of a child has not given her consent to the amendment of the registration of the birth of her child in terms of subsection (4), the father of such a child shall apply to the High Court of competent jurisdiction for a declaratory order which confirms his paternity of the child and dispenses with the requirement of consent of the mother contemplated in subsection (4).'*

In further explanation of the above, an unmarried natural father may, therefore, apply to the Director-General of Home Affairs in order to have himself recognised on the registration of the child or children's birth certificate and to have the Population Register updated to reflect such amendment. In the instance where the mother's consent is obtained, the process would be a lot more simplistic and fulfilled by mere application to

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<sup>3</sup> Section 21 of the Children's Act.

<sup>4</sup> No 51 of 1992.

Home Affairs. In a scenario where consent is withheld by the mother, the High Court may still issue an order declaring such a person to be the child's natural father. Such an order will only be issued if the Court has satisfied itself that the person applying is indeed the natural parent, which can be proven by way of a paternity test.

The Court takes applications of this nature very seriously, as it is generally regarded as the upper guardian of every minor child. In the case of *L v H and Another*<sup>5</sup> before the Kwa-Zulu Natal High Court, Henriques J stated that under Section 28(1)(a) of the Constitution<sup>6</sup>, every child has the right to a name and nationality from birth and this *'includes a name identifiable in respect of both holders of parental responsibilities and rights.'*<sup>7</sup> It flows from this that the right to have both holders of parental responsibilities and rights relates not only to that of the parent but constitutionally to that of the child as well.

### ***Conclusion***

Having this right recognised before the law both in legislation and case precedent is a secure sign to unmarried fathers that their attempts to be recognised as natural fathers of their child or children will not be in vein. It is therefore recommended that if one should find himself in such a scenario, one should seek the professional advice and assistance of a qualified family law practitioner.

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<sup>5</sup> (2205/2016) [2018] ZAKZDHC 61.

<sup>6</sup> The Constitution of the Republic of South Africa, 1996.

<sup>7</sup> At para 58.