

Short notes on:

## **"WHO'S YOUR DADDY" - UNMARRIED FATHERS AND THE NOTICE OF BIRTH**

### ***Introduction***

The Republic of South Africa is filled with a large variety of people, cultures and traditions. Although these cultures and traditions may differ, the importance of family and community are among the most prominent concepts in most of them. As a result, the impact and role of the community regarding children and the rights of parents are topics that arise from time to time as we move forward as a society. More recently, focus has been placed on fathers and their rights, more specifically, unmarried fathers.

In South Africa, when a child is born, the parents of that child, whether they are married or not, are required to within 30 days of that child's birth to register it with the Department of Home Affairs in terms of the Births and Deaths Registration Act<sup>1</sup>. Previously, in the instances where the parents of the child were unmarried, the child would automatically be assigned the surname of their mothers and would only be given the father's surname when it was jointly requested by the father and mother.

The Births and Deaths Registration Act<sup>2</sup> has constantly differentiated between unmarried and married parents. In the process of registering a child's birth and in terms of Sections 9 and 10 of the Births and Deaths Registration Act<sup>3</sup>, unmarried fathers have until recently been incapable of registering the child under their surname without the mother's consent. However, this is no longer the case due to the recent Constitutional Court ruling in *Centre for Child Law v Director-General: Department of Home Affairs and Others*<sup>4</sup>.

In the abovementioned case, the majority in the Constitutional Court found that Section 10 of the Births and Deaths Registration Act<sup>5</sup> unfairly discriminated against people based on their sex, gender

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<sup>1</sup> The Births and Deaths Registration Act 51 of 1992.

<sup>2</sup> The Births and Deaths Registration Act 51 of 1992.

<sup>3</sup> The Births and Deaths Registration Act 51 of 1992.

<sup>4</sup> *Centre for Child Law v Director General: Department of Home Affairs and Others* (CCT 101/20) [2021] ZACC 31; 2022 (2) SA 131 (CC); 2022 (4) BCLR 478 (CC) (22 September 2021).

<sup>5</sup> The Births and Deaths Registration Act 51 of 1992.

and marital status, as well as perpetuating stereotypical gender roles. As a result, it was found that this Section of the Births and Deaths Registration Act<sup>6</sup> was not in the child's best interest and inconsistent with the values of human dignity.

The Constitution Court found that the Section is severed from the Act and granted an Order that the date of the Order is the effective date of the declaration of constitutional invalidity of the provision. Subsequently, there should no longer be distinctions made between married and unmarried parents. Unmarried fathers are now to take responsibility for their children and register the birth of their child under their surname without requiring permission from the mother.

### **Conclusion**

It is crucial to know your rights as a parent, current legislation, and its effect on your family. Consult with a legal professional when initiating any legal process that may affect your family.

Contact an attorney at SchoemanLaw for your legal needs!

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<sup>6</sup> The Births and Deaths Registration Act 51 of 1992.