

CONSTITUTIONAL ISSUES FOR FATHERS KNOWN AND UNKNOWN

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The Fourteenth Amendment

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Fourteenth Amendment

Meyer v. Nebraska, 262 U.S. 390 (1923). "[w]ithout doubt" the fourteenth amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Troxel v. Granville, 530 U.S. 57, 65-66 (2000)

"The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children— is perhaps the oldest of the fundamental liberty interests recognized by this Court."

Parents' Rights

- ***Meyer v. Nebraska***, 262 U.S. 390 (1923)
- ***Pierce v. Society of Sisters***, 268 U.S. 510 (1925)
- ***Prince v. Massachusetts***, 321 U.S. 158 (1944)

Parents' Custodial Rights

The state may interfere with the parent-child relationship only when the parent is unfit OR has acted inconsistently with the parent's constitutionally protected interest.

Fathers' Rights-Federal Cases

- ***Stanley v. Illinois***, 405 U.S. 645, 92 S. Ct. 1208 (1972)
- ***Quilloin v. Walcott***, 434 U.S. 246, 98 S. Ct. 549 (1978)
- ***Caban v. Mohammed***, 441 U.S. 380, 99 S. Ct. 1760 (1979)
- ***Lehr v. Robertson***, 463 U.S. 248, 103 S. Ct. 2985 (1983)
- When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, he acquires substantial protection under the due process clause...but the mere existence of a biological link does not permit equivalent constitutional protection.

North Carolina Cases

- ***Petersen v. Rogers***, 337 N.C. 397 (1994)
- We hold that absent a finding that parents (i) are unfit or (ii) have neglected the welfare of their children, the constitutionally-protected paramount right of parents to custody, care, and control of their children must prevail.

North Carolina Cases

- ***Price v. Howard*** 346 N.C. 68 (1997)
- [T]he parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child. If a natural parent's conduct has not been inconsistent with his or her constitutionally protected status, application of the "best interest of the child" standard in a custody dispute with a nonparent would offend the Due Process Clause.

Parents' Custodial Rights-NC

The state may interfere with the parent-child relationship only when the parent is unfit OR has acted inconsistently with the parent's constitutionally protected interest.

Fathers-Adoption

- *In re Dockery*, 128 N.C. App. 631, 495 S.E.2d 417 (1998)
- *In re Byrd*, 354 N.C. 188, 552 S.E. 2d 142 (2001)
- *In re K.A.R.*, 205 N.C. App. 611, 696 S.E.2d 757 (2010)
- *In re S.D.W.*, ___ N.C. ___, 758 S.E.2d 374 (2014)
- *In re Adoption of Robinson*, ___ N.C. App. ___, (12/31/2014)

Fathers-TPR

- *In re Dixon*, 112 N.C. App. 248, 435 S.E.2d 352 (1993)
- *A Child's Hope*, 178 N.C. App. 96, 630 S.E.2d 673 (2006)
- *In re A.C.V.*, 203 N.C. App. 473, 692 S.E.2d 158 (2010)

Fathers-AND and Custody Cases

- *Rosero v. Blake*, 357 N.C. 193, 581 S.E. 2d 41 (2003)
- *In re B.G.*, 197 N.C. App. 570, 677 S.E.2d 549 (2009)
- *In re D.M.*, 211 N.C. App. 382, 712 S.E.2d 355 (2011)
- *Sides v. Ikner*, 730 S.E.2d 844 (N.C. Ct. App. 2012)
- *In the Matter of S.S.*, 738 S.E.2d 453 (N.C. Ct. App. 2013)(unpublished)

Summary

- Fathers have substantive constitutional rights
- If constitutional rights are intact, don't get to best interests against 3rd party
- Fathers can lose constitutional rights by acting inconsistently with those rights
- If act inconsistently, don't get protection and court can use best interest test between the father and a 3rd party
- Actions that can be deemed acting inconsistently include failing to grasp the opportunity to be a father
- If haven't grasped opportunity, don't get protection and consent not needed for adoption
- If haven't grasped opportunity, don't get protection and there are grounds for TPR.
- If haven't grasped opportunity, should be given opportunity to do so in A/N/D case. Must give opportunity to each parent to reunify with the child.

Procedural Due Process

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Procedural Due Process

- **Right to Receive Notice of Proceedings**
 - ▣ *In re H.D.F.*, 197 N.C. App. 480 (2009)
- **Right to Participate in Hearings**
 - ▣ *In re Murphy*, 105 N.C. App. 651, aff'd, 332 N.C. 663 (1992)
 - ▣ *In re Quevedo*, 106 N.C. App. 574 (1992)
- **Right to an Appropriate Standard of Proof in Hearings**
 - ▣ *Adams v. Tessener*, 354 N.C. 57, 550 S.E.2d 499 (2001)
- **Right to Counsel**
 - ▣ *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S. Ct. 2153 (1981)
 - ▣ N.C.G.S. 7B-602 and N.C.G.S. 7B-1101.1

Fathers Known and Unknown

But what if there are issues about the identity of the father?

Who gets the substantive and procedural due process rights?

- Legal Father?
- Putative Father?
- Both?