

SUPREME COURT OF FLORIDA

Eldridge v. Eldridge

16 So. 2d 163 (Fla. 1944) · Decided January 4, 1944

SUMMARY

The court considered whether a husband could rebut the presumption that a child born during the marriage was legitimate. It held that conception before marriage did not weaken the presumption and affirmed the judgment because the evidence did not clearly overcome it.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Adams; Buford; Chapman; Terrell
JURISDICTION	Florida
DECIDED	January 4, 1944
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment concerning the legitimacy and paternity of a child born in wedlock.
STANDARD OF REVIEW	The judgment was presumed correct, and the evidence supporting it was viewed in the light most favorable to the judgment.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; precedential.
PARTIES	Eldridge v. Eldridge, Ann Ila Eldridge, M.H. Jones, Guardian ad Litem for the Minor

TOPICS

- paternity
- presumptions
- burden of proof
- evidence
- family law

PRACTICE AREAS

- family law
- paternity
- evidence

QUESTIONS PRESENTED

- Whether the husband proved that a child born during the marriage was illegitimate.
- Whether the presumption of legitimacy is weakened when a child is conceived before marriage but born in wedlock.

3. Whether the evidence was sufficient to overcome the presumption of legitimacy under the applicable clear-and-satisfactory-evidence standard.

HOLDINGS

1. A husband and reputed father may challenge the parentage of a child born in wedlock, but he must overcome the strong rebuttable presumption of legitimacy.
2. The presumption of legitimacy is not weakened merely because the child was conceived before the marriage.
3. The husband need not prove nonpaternity beyond a reasonable doubt, but his evidence must be clear and satisfactory and must do more than create suspicion or grave doubt.
4. The evidence did not establish that the chancellor erred in rejecting the husband's paternity challenge.

KEY QUOTATIONS

“The better rule is that the husband is not required to prove his contention beyond all reasonable doubt, yet his proof must be sufficiently strong to clearly remove the presumption of legitimacy.” (*Page 875)

“The better view which is adhered to by most courts is to the effect that under such circumstances the presumption is not weakened.” (*Page 875)

“When the evidence is considered in its entirety we are unable to say that the chancellor committed error in the conclusion reached.” (*Page 876)

FACTUAL BACKGROUND

The parties met on June 22, 1941, engaged in frequent sexual intercourse, and married on July 16, 1941. The child was born on February 9, 1942, approximately 226 days after the parties first met and after the marriage. The husband denied paternity, but evidence showed intercourse between him and the mother from June 24 until the marriage, and medical testimony established that a normal gestation period is 280 days while a child born after 190 days has a fair chance of survival.

PROCEDURAL HISTORY

The husband appealed a chancellor's judgment rejecting his challenge to the child's legitimacy. The Supreme Court of Florida held that the evidence did not overcome the strong presumption of legitimacy and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Gossett v. Ullendorff, 114 Fla. 159, 154 So. 177
- Anon v. Anon, 22 Beav. 481, 23 Beav. 273 (1856)

- The Poulett Peerage, A.C. 395 (1903)
- Hargrave v. Hargrave, 9 Beav. 552, 50 English Reprint 458
- Lay v. Fuller, 178 Fla. 375, 59 So. 609
- Powell v. State ex rel. Fowler, 84 Ohio St. 165, N.E. 660, 36 L.R.A. (N.S.) 255
- Wright v. Hicks, 15 Ga. 160, 60 Am. Dec. 687
- Re McDermott, 125 Neb. 179, 249 N.W. 555
- Zachmann v. Zachmann, 201 Ill. 380, 66 N.E. 256, 94 Am. St. Rep. 180
- Wallace v. Wallace, 137 Iowa 37, 114 N.W. 527, 14 L.R.A. (N.S.) 544, 126 Am. St. Rep. 253, 15 Ann. Cas. 761
- State v. Schoemaker, 62 Iowa 343, 17 N.W. 589, 49 Am. Rep. 146
- Rabeke v. Baer, 115 Mich. 328, 73 N.W. 242, 69 Am. St. Rep. 567
- Miller v. Anderson, 43 Ohio St. 473, 3 N.E. 605, 54 Am. Rep. 823
- Westfall v. Westfall, 100 Or. 224, 197 P. 271, 13 A.L.R. 1428
- Dennison v. Page, 29 Pa. 420, 72 Am. Dec. 644
- McCulloch v. McCulloch, 69 Tex. 682, 7 S.W. 593, 5 Am. St. Rep. 96

OPINION

ADAMS, J.

The only question presented by this appeal is the legitimacy vel non of an infant child. Appellant and appellee first met on June 22, 1941. A courtship followed with frequent acts of sexual intercourse. They were married July 16, 1941.

The child was born February 9, 1942, a period of about 226 days from their first meeting. The appellant husband claims he is not the father of the child. Where a child is born in wedlock the law extends the right to the reputed father to contest the parentage but the mother has no such right. She being restricted, to question the identity of the child only.

Gossett v. Ullendorff, 114 Fla. 159, 154 So. 177. Where the legitimacy of a child born in wedlock is questioned by the husband and reputed father, one of the strongest rebuttable presumptions known to the law is required to be overcome before the child can be bastardized. At common law the presumption was at one time virtually conclusive. Law of illegitimacy by Hooper, pg.

202; Anon v. Anon (1856), 22 Beav. 481, 23 Beav. 273. The rule was relaxed later in England and the latter case was overruled in 1903 in The Poulett Peerage A. C. 395. See also Hargrave v. Hargrave, 9 Beav. 552, 50 English Reprint 458.

The rule is well established in this country that the husband may make the attack but in so doing he must overcome the strong presumption of legitimacy by clear and satisfactory *Page 875 testimony. Marriage, Divorce, Separation and Domestic Relations by Schouler (6d) Vol. 1, pg. 760, Lay v. Fuller, 178 Fla. 375, 59 So. 609, 7 C. J. 953, 10 C. J. 18.

The better rule is that the husband is not required to prove his contention beyond all reasonable doubt, yet his proof must be sufficiently strong to clearly remove the presumption of legitimacy. The evidence must more than cast a strong suspicion or grave doubt on the paternity of the child. 7 Am. Jur. Par. 43, pg. 655. *Powell v. State ex rel. Fowler*, 84 Ohio St. 165, N.E.

660, 36 L.R.A. (N.S.) 255. There is authority that the presumption is weakened in cases where it is shown that the child was born in wedlock but conceived prior thereto. *Wright v. Hicks*, 15 Ga. 160, 60, Am. Dec. 687; *Re McDermott*, 125 Neb. 179, 249 N.W. 555.

The better view which is adhered to by most courts is to the effect that under such circumstances the presumption is not weakened. We prefer to adhere to the latter rule. It is supported by public policy and a wealth of authority. 7 Am. Jur. Par. 45, pg. 656. *Zachmann v. Zachmann*, 201 Ill. 380, 66 N.E. 256, 94 Am. St. Rep. 180; *Wallace v. Wallace*, 137 Iowa 37, 114 N.W.

527, 14 L.R.A. (N.S.) 544, 126 Am. St. Rep. 253, 15 Ann. Cas. 761; *State v. Schoemaker*, 62 Iowa 343, 17 N.W. 589, 49 Am. Rep. 146; *Rabeke v. Baer*, 115 Mich. 328, 73 N.W. 242, 69 Am. St. Rep. 567; *Miller v. Anderson*, 43 Ohio St. 473, 3 N.E. 605, 54 Am. Rep. 823; *Westfall v. Westfall*, 100 Or. 224, 197 P. 271, 13 A.L.R. 1428; *Dennison v. Page*, 29 Pa. 420, 72 Am.

Dec. 644; *McCulloch v. McCulloch*, 69 Tex. 682, 7 S.W. 593, 5 Am. St. Rep. 96. That brings us then to the question of whether there was sufficient proof to sustain the appellant's contention when weighed by these principles of law.

The judgment appealed from is presumed to be proper hence the evidence in support thereof is viewed in its most favorable light. The evidence shows that appellant engaged in frequent acts of sexual intercourse with the mother from June 24th until their marriage on July 16th following.

The medical testimony disclosed that the normal period of gestation is 280 days; that after 190 days a child has a fair chance to live. When the evidence is considered in its entirety we are *Page 876 unable to say that the chancellor committed error in the conclusion reached.

The judgment is affirmed. BUFORD, C. J., TERRELL and CHAPMAN, JJ., concur.