

1975 WL 29682 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 9, 1975

***1 Re: Unwed Fathers in Adoption Proceedings**

The Honorable Howard K. Williamson
Judge of the Family Court
Aiken County Courthouse Annex
Aiken, South Carolina 29801

Dear Judge Williamson:

Ms. Abney of the Adoption Division of the Aiken County Department of Social Services has contacted me concerning adoption proceedings where an illegitimate's father cannot be personally served after due diligence. She was particularly concerned over what Stanley v. Illinois would require.

Stanley is not clear as to what extent a State must go to bring the father into such actions. The fact situation in Stanley is somewhat different than the usual case encountered in South Carolina. Peter and Joan Stanley had lived together for eighteen years as man and wife—through unmarried under Illinois law. From this union came three children who were raised by both Peter and Joan. Joan died, and by virtue of Illinois law Peter lost custody of the children. Peter as an unwed father was placed in class with no parental rights, whereas unwed mothers and married mothers and fathers were given equal parental rights. The Supreme Court held that this violated Equal Protection and concluded 'that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody.' Id at 651. Whether the Court would apply the same deference to the private interest of a man who has simply sired the children is not answered.

A review of South Carolina Law as to what may be required to bring an unwed father into the action is also inconclusive. Section 10-2587.7(b) [1974 Supplement to S. C. Code of Laws (1962)] makes it clear that unwed fathers are not proper parties for adoption proceedings. Therefore, the provisions that require Service by Publication after personal service has failed in adoption proceedings may be said inapplicable to the unwed father. Section 10-451(5)(6) S. C. Code of Laws, 1962.

After consideration of the uncertainty in this area of the law, it is the opinion of this office that the following procedures be adopted:

- (1) Illegitimate children born as the result of rape or prostitution may be adopted without the father being made a party to the action. However, the Court should be satisfied that conception did indeed come about in this manner.
- (2) Other unwed fathers should be personally served with all pleadings, if personal service can be had within the State. Enclosure 1 is a sample of a Notice and Summons that may accompany the Petition.
- (3) If personal service cannot be had after due diligence, a Notice of Invitation to Intervene should be published in a newspaper of general circulation in the area where the unwed father was last known to be living, and that a copy of the same be mailed to the last known address of the unwed father. Enclosure 2 is a sample of this type of notice. This notice should be left vague so as not to publish possible libelous allegations of paternity. The number of publications required should be a matter of judicial discretion.

*2 We believe that these procedures will satisfy Stalley v. Illinois, and that the State's interest in facilitating adoption of illegitimate children will be greater than those of an unwed father whose unavailability is evidence of a lack of true parental interest.

Please feel free to correspond should you have any questions.

With best wishes, I am
Very truly yours,

Harry B. Burchstead, Jr.
Staff Attorney

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