

FAMILY LAW OUTLINE - SPRING 2003 - VALDEZ

CASE LAW

Baker v. State (Vt. 1999)

Facts: Ps petition court for expansion of marriage laws to include same-sex union so that they may avail themselves of the same benefits conferred on marital status.

Analysis: While the legislature intended marriage to only be between a man and a woman, the benefits given to married couples cannot be enjoyed by same-sex couples. Benefits include health benefits, estate benefits, insurance, etc. Thus there are classifications created in the disbursements of benefits based on marriage. State's interest that must be compelling (b/c marriage is fundamental right) is supposedly to further the link b/w procreation and child rearing. Court notes that all sorts of couples raise children and same-sex couples can procreate using modern scientific methods. Thus the statute is overinclusive and underinclusive- not tailored.

Holding: The Vt. legislation violates EP clause and that the legislature has to fix it (Court cannot order the Ps to be permitted to marry by court order)

Kulko v. Superior Court (SC, 1978)

Facts: H and W got married in California but stayed there only 3 days. Moved back to NY and lived there for 15 years and then separated (with Haitian separation agreement). Wife moved back to Cali and they put together custody agmt in which husband kept kids most of the year but W got to see them several times a year. Once the kids are in California visiting the mom, they decide to stay there and live with her. Wife/mom then moves to modify the custody order under California courts and increase H's child support. H appears in Cali special to quash the service b/c no minimum contacts.

Analysis: Lower court says he is availing himself of California's laws b/c his kids are visiting/living in California. He himself has not visited nor is living in California, thus he personally is not availing himself of California laws/services.

Holding: Just sending your kids to a state to live with other parent without living/visiting there yourself does not mean you are availing yourself of that state's laws and thus no personal jurisdiction over H/D here.

Loving v. Virginia (SC, 1967)

Facts: VA statute prohibits whites from marrying non-whites. Does not prohibit non-whites from marrying other non-white races.

Analysis: Race is suspect classification and deserves strict scrutiny. Furthermore, marriage is a fundamental right under the 14th Amdt. so S/S used to analyze VA statutory scheme. Freedom to marry is vital personal right and cannot be restricted by the State based on racial prejudice/white supremacy. Is not a legit state interest.

Holding: The P's marriage is valid and VA's statute is unconstitutional under Equal Protection clause of 14th Amdt.

Marvin v. Marvin (Cal. 1976)

Facts: P and D lived together for 7 years after orally agreeing to combine efforts/earnings and share equally in any property acquired (though it is all in Ds name); also agreed to hold themselves out to public as husband/wife and wife agreed to drop her career and take care of home life for them and husband agreed to take care of her financially. D then kicked P out and she wants to enforce the property agreement for property acquired during their living together.

Analysis: No consideration for only sexual services here. D's prior/legal wife's interest in his property is not impaired. Only marital settlement has to be in writing- living together contract does not. Competent parties can contract to pool earnings/efforts/property rights, and that is what occurred here.

Holding: A contract b/w non-marital partners is unenforceable to the extent that it rests explicitly on immoral/illicit consideration of sexual services; other than that, it is valid.

Moore v. City of Cleveland (SC, 1977)

Facts: Ordinance permitting only nuclear family to occupy a household.

Analysis: Right to privacy in family and sanctity of family are of fundamental importance. Family should be able to live in any combination they want- extended family is historical legacy of U.S. also.

Overcrowding/financial burden on schools are not legit state interests.

Holding: The right of members of a family - even a non-nuclear family - to live together is "fundamental," and any state interference with that right will be strictly scrutinized.

Sosna v. Iowa (SC, 1975)

Facts: Married couple lived in NY and had three children there. After a separation, W moved to Iowa with three children, and H went to visit the children there and was served with notice for W's petition for marital dissolution. Iowa court dismissed action b/c H was not resident of Iowa and W had not been resident of Iowa for one year (durational residency required by state statute).

Analysis: Many States have durational residency requirements for divorce. Is not the same as residency requirements for welfare b/c those deny welfare/medical benefits. This durational requirement simply delays P/W's ability to petition for divorce, not eliminates it. State is justified on grounds of not wanting to be a divorce mill state and since divorce is a big decision (including child support, etc.) the durational requirement necessary for sufficient attachment in the state.

Holding: Iowa durational residency requirement of one year for applying for divorce is valid.

Village of Belle Terre v. Boraas (SC, 1974)

Facts: Local housing ordinance stated only people related by blood/adoption/marriage or only two people unrelated living together/cooking together as a single unit, constituted marriage and was ok. Group of unrelated people brought suit against this ordinance b/c of the narrow definition of marriage.

Analysis: Court decides whether to let unrelated people live together as a "family" (the definition of family) is a legislative decision. This ordinance does not affect any "fundamental right" or marriage or privacy. No other bans on entertaining guests or freedom of association. The zone's desire to keep excess noise, cars, and overcrowding is a legitimate rational interest.

Holding: Unrelated people have no fundamental right to live together.

Zablocki v. Redhail (SC, 1978)

Facts: Wisconsin statute states person cannot marry if they have outstanding child support obligations that have not been paid.

Analysis: Right to marry is fundamental right, thus S/S applies. Marriage involves right to privacy. State's interest in ensuring child support is paid for children is important, but Court states this is not necessarily related to the person getting married. There are other equal/more effective ways to ensure collection of child support. Moreover, this statute disproportionately

harms poor people who may never earn enough to pay their child support obligations.

Holding: Wisconsin statute is unconstitutional b/c the classification created does not justify the state's interests advanced in support of it.

STATUTES

Defense of Marriage Act (DOMA)

First part: Act provides federal definitions for terms "marriage" and "spouse" for federal benefits to state marriage is union of man and woman and spouse is only opposite sex.

Second part: Specifies states are not required to give effect to same-sex marriages under the Full Faith and Credit Clause (they are free to decide)

Family and Medical Leave Act of 1993 (FMLA)

FMLA gives 12 weeks of unpaid leave to employees to deal with family members' extended illness; applies to employers of over 50 people

- Original argument against FMLA was that it would be too costly, but study that Congress ordered that showed the FMLA might actually save employers money (firing and hiring costs money) and has not been detrimental to business since salary does not continue once employee has taken FMLA leave
- One can substitute paid leave; generally restoration of job is required; employer is required to maintain health benefits throughout
- FMLA deals with families and individual role in the family; is unpaid leave (available only for those who can afford it)

Caldwell v. Holland of Texas, Inc. (8th Cir. 2000): Caldwell had 3-year-old son who got sick with ear infection and at the time she was working at KFC. She had a good record, and when her son got sick, she called and told her supervisor she couldn't come in. She came in later on that evening to work a shift at the request of her supervisor. When she returned to work the next time, she was fired on the spot. Caldwell sued under FMLA.

Rule: Under FMLA, "family member" (parent, child, spouse) must be suffering from a "serious health condition" and the employee's absence must be attributable to the illness. "Serious health condition" occurs when family members suffers an illness and is incapacitated for 3 or more *consecutive* days, has to see a health care provider for inpatient care or "continuing treatment."

Holding: P's son was incapacitated (did not do his regular toddler activities) for more than 3 days, and had to have surgery and follow-up treatment; thus there is a genuine issue of fact regarding the FMLA and summary judgment overturned.

Parental Kidnapping and Prevention Act of 1980 (PKPA)

Initial decree:

- Basically same rules as UCCJA, but was a federal attempt to ensure custody decrees issues by states asserting jurisdiction in conformity with the PKPA receive recognition and enforcement in other states through full faith and credit
- Preempts UCCJA if there is a conflict of laws
- Major diff b/w this and UCCJA is that it ranks the bases of jurisdiction and gives the home state explicit priority to make initial decree

The only way the next base of a state with "significant connections" would prevail is if there IS no home state

Modifications of decree:

- Provides for continuing jurisdiction in initial decree state as long as original state has jurisdiction under its own state laws AND remains the residence of a child or any contestant
- Once there is a home state for original jurisdiction, that state remains the correct state for continuing jurisdiction

Uniform Child Custody Jurisdiction Act of 1968 (UCCJA)

With original jurisdiction, 4 alternate bases for states:

- o Home state of child or was home state of child within 6 months of commencement of proceeding (child may have been removed by person claiming custody for other reasons) and the parent continues to live in the state
- o Best interest of child b/c child or one parent have significant connection to the state and there is substantial evidence concerning the child (care, protection, training, personal relationships, etc)
- o Child physically present in state and has been abandoned or there is an emergency b/c of abuse or neglect
- o No other state would have jurisdiction or the state declines jurisdiction and jurisdiction is in child's best interest
- Drafted to reduce jurisdictional competition and to prevent forum shopping to re-litigate custody
- No real continuing jurisdiction provisions here
- UCCJA §8- If a child is wrongfully taken from a state, or is wrongfully retained after visitation, child does not gain a new home state, regardless of length of time, and that state court does not gain jurisdiction
- UCCJA §6- State should decline jurisdiction if another state is already exercising jurisdiction "in substantial conformity" with the Act; if proceeding in one state pending, and another proceeding brought in another state, the 2nd state should not start that proceeding as long as the prior pending proceeding state has accepted jurisdiction over it

Uniform Child Custody Jurisdiction and Enforcement Act of 1997 (UCCJEA)

- Created to harmonize UCCJA and PKPA
- Gives home state primary jurisdiction
- Eliminates "best interests" language and restricts emergency jurisdiction to temporary orders only; emergency jurisdiction means a court can take temp. jurisdiction even where it is not the home state
- If a child is wrongfully taken from a state, or is wrongfully retained after visitation, child does not gain a new home state, regardless of length of time, and that state court does not gain jurisdiction

Modification of decree:

- A court cannot exercise modification jurisdiction if another state has exclusive continuing jurisdiction; state that makes initial custody determination has such continuing jurisdiction as long as A party to the original custody determination remains in the state
- "Child custody determination" encompasses ALL custody/visitation decrees (permanent, temp, modifications)
- With court asserting jurisdiction, need to separate b/w original jurisdiction and continuing jurisdiction if modification or something else comes up later

Gilman v. Gilman (Conn. SC, 2001): Father here had the child for 6 months so that the father could actually claim that the child had acquired a new home state in Connecticut. Father should have waited to file till child had been in state for 6 months under the UCCJEA

Uniform Interstate Family Support Act of 1996/2001 (UIFSA)

This Act imposes duties on states to enforce and not modify (except as authorized) support orders established by other states, consistently with the Act's requirements. It provides for continuing, exclusive jurisdiction by a court that has made an order, so long as the state is the child's state or the residence of any individual contestant unless a court in another state has modified the order, in accordance with the act.

- All states use it b/c is it required by Congress for federal funding.
- Covers both spousal and child support , but not property distribution
- Spells out procedures for establishing support orders and enforcing them
- Visitation is irrelevant
- Relies on long-arm statutes instead of the broader "child-state" approach; this facilitates a one-state proceeding
- 8 bases of jurisdiction over absent obligors, including:
 - When individual resided with child in the state
 - The individual engaged in sexual intercourse in the state that the child may have been conceived therein
 - There is any other basis for jurisdiction consistent with the Constitution for bases of personal jurisdiction
- A state that issues a support order has continuing exclusive jurisdiction over that order; no other state may modify that order as long as the issuing state has continuing exclusive jurisdiction
 - A state court lacks jurisdiction to modify out-of-state orders when the provisions of UIFSA (including subject matter jurisdiction) are not satisfied
- Uses direct enforcement when an order is sent to an obligor's employer in another state, in turn triggering wage withholding
- Authorizes direct administrative enforcement of an order issued elsewhere by an agency in the obligor's state

Uniform Premarital Agreement Act of 2001 (UPAA)

Requires both procedural (informed consent and disclosure) and substantive fairness in any agreement.

- Has provision on alimony being unconscionable if it contains provision modifying or eliminating alimony in such a way that it causes either spouse to be eligible for public assistance (court can order enough alimony to get them off public assistance)
- Property division is unconscionable if:
 - It is involuntary; or
 - Unconscionable before/at execution and before execution, and
 - The party was not given full and fair disclosure of other's financial status
 - They involuntarily sign an agmt that waives the right to disclosure
 - The party did not have adequate knowledge of property of financial obligations of the other
- An enforceable contract has to be voluntary AND fair or entered into voluntarily

Ex. If two parties are aspiring to be financially huge but at the time of the prenup agmt signing they both had nothing financially and they both voluntarily sign it, it is valid even if one party gets huge later on.

Uniform Marriage and Divorce Act in 1998 (UMDA)

Common Law Marriage:

- Takes no position on common law marriage (leaves it up to the states)

Child Support:

- §316(a)- Permits a modification of child support award based on a "showing of changed circumstances so substantial and continuing as to make the terms unconscionable"

Child Custody:

- §409(b)- Modification of child custody requires endangerment for nonconsensual changes
- §409(a)- Absent serious endangerment, it provides for a 2-year waiting period following the initial decree

Underage Marriage:

- Minor may marry on either parent's consent or after a finding that the minor is capable of assuming the responsibilities of marriage and that the marriage would be in his/her best interests

Spousal Support/Maintenance:

- §308 follows self-sufficiency model, granting support only if spouse seeking support:
 - lacks sufficient property to provide for rsbl needs, AND
 - is unable to support himself thru employment or has to stay home because of a child
- Court will decide on support's amount/time considerations, including:
 - Financial resources of party seeking and ability to meet needs
 - Time needed to acquire sufficient education or training to find employment
 - Standard of living established during the marriage
 - Duration of the marriage
 - Age, physical condition, emotional condition of seeking spouse
 - Ability of asked spouse to meet needs while meeting seeking spouse's needs
- §316(a)- Permits a modification of maintenance based on a "showing of changed circumstances so substantial and continuing as to make the terms unconscionable"
- §316(b)- Termination of maintenance on remarriage or death of receiver spouse (unless otherwise agreed in writing)

Putative Spouse:

- §209 states any person who has cohabitated with another to whom s/he is not legally married in the good faith belief that they are married to that person is a putative spouse until knowledge terminates his status and prevents acquisition of further rights
- Putative spouse acquires rights to maintenance following the termination whether or not the marriage is prohibited
- Putative spouse's rights don't take away from a legal/other putative spouse's rights, court shall apportion property, maintenance, support as appropriate in the circumstances/interests of justice

**** See other UMDA provisions handed out in class.**