Who’s Your Daddy? State v. Perry and Its Impact on Paternity and the Rights of Adjudicated Fathers in Arkansas*

I. INTRODUCTION

Individuals from all walks of life experience paternity issues. In fact, the one and only King of Pop, Michael Jackson, dedicated one of his most popular songs to the issue of paternity.1 However, paternity proceedings have evolved in such a way that not even the King of Pop could have predicted. In State v. Perry, the Arkansas Supreme Court improperly applied the rules of statutory interpretation and disregarded a father’s rights to service of process and due process.

At common law, fathers of illegitimate children had no duty of support.2 This lack of compelled support derived from the fact that illegitimate children had no rights under the law and were considered the children of no one.3 Today, legislatures and courts have moved aggressively in the other direction,4 protecting illegitimate children at the expense of adjudicated fathers.

This note focuses on State v. Perry, a case where the Arkansas Supreme Court followed the trend of liberalizing paternity laws and essentially disregarded the rights of adjudicated fathers.5 Specifically, the court issued an

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1. Michael Jackson, Billie Jean (Epic Records 1982) (“Billie Jean is not my lover. She’s just a girl who claims that I am the one. But the kid is not my son.”).


improper blanket ruling by failing to follow Arkansas’s rules of statutory interpretation. The *Perry* court’s interpretation of subsection 9-10-115(e)(1)(A) of the Arkansas Code created a per se rule preventing any adjudicated father from obtaining a paternity test once the child reaches the age of majority. This broad rule will improperly infringe upon the due-process rights of adjudicated fathers who do not have actual notice of their adjudication.

Understanding the differences between two categories of fathers—putative and adjudicated—is essential to this note. First, a putative father is “any man not legally presumed or adjudicated to be the biological father of a child but who claims or is alleged to be the father of the child.” Second, an adjudicated father is a man determined by a court to be the legal father of a child. Furthermore, two types of adjudicated fathers exist: (1) those who receive actual notice of the paternity adjudication; and (2) those who receive legal, but not actual, notice of the paternity adjudication. This note discusses issues concerning the second class of adjudicated fathers—those who do not receive actual notice of a paternity adjudication.

Part II explains the history of paternity and its recent development. Part III addresses paternity laws in Arkansas. Part IV provides the factual and procedural background of *State v. Perry*. Part V discusses the applicable statute—subsection 9-10-115(e)(1)(A) of the Arkansas Code—and how the Arkansas Supreme Court interpreted its language in *Perry*. Part V also addresses how proper statutory interpretation would have impacted the *Perry* decision and, consequently, the rights of adjudicated fathers in Arkansas. Part VI then analyzes the connection between the *Perry* decision, service of process, and fundamental rights. This note argues that the Arkansas Supreme Court made an inappropriate blanket ruling in *Perry* that may unlawfully infringe upon the rights of adjudicated fathers who lack actual notice of their paternity.

8. See *BLACK’S LAW DICTIONARY* 47 (9th ed. 2009) (defining the term “adjudicate”).
adjudication. Furthermore, allowing fathers to petition for paternity after a child reaches the age of majority will not prevent illegitimate children from receiving equal protection of the laws.

II. THE HISTORICAL DEVELOPMENT OF PATERNITY

As previously noted, the common law of most jurisdictions did not require fathers to support their illegitimate children. Illegitimate children were not entitled to support because they “had no rights in law.” This harsh rule stemmed from the Old Testament, which stated: “No bastard shall enter the Assembly of the Lord.” Based on this biblical teaching, officials reasoned that laws pertaining to the parents of illegitimate children should be harsh “to punish those who go against society and to foster the state of marriage.”

Paternity law evolved as society realized that punishment targeted illegitimate children more than the parents who committed the perceived moral and legal wrong. Specifically, courts recognized “[w]hatever wrongs the parents did are no fault of the child, and whatever wrong the parents did should not forever deny them the privileges that other parents enjoy.” Essentially, society became more tolerant, allowing people to acknowledge and rectify their mistakes. These changes sought to protect the parents of illegitimate children and, more importantly, the illegitimate children themselves, who were the innocent products of their parents’ actions. Moreover, society’s new perception of illegitimate children allowed states to promote their own interests in preventing illegitimate children from becoming wards of the state.

10. 10 AM. JUR. Trials 653, § 2 (1965).
12. See id.
13. Id. at 395-96, 614 S.W.2d at 669.
14. Id. at 396, 614 S.W.2d at 669.
15. Id.
16. Roque, 272 Ark. at 396, 614 S.W.2d at 669.
17. See Brazener, supra note 2, at 692.
To implement society’s evolved perception of illegitimate children, paternity proceedings greatly changed.\(^{18}\) Now, the goals of paternity proceedings are twofold: (1) to provide support for the child; and (2) to impose liability on the father for the wrongful act of fathering an illegitimate child.\(^{19}\) Since the social change, compelling a father to support an illegitimate child punishes the father for fathering the child.\(^{20}\)

This modern approach differs greatly from the common-law approach, where the court imposed criminal liability on the father, denying the father total access to the child.\(^{21}\) Unlike the common-law approach, the current trend for compelled support promotes a state’s interest in keeping illegitimate children from becoming wards of the state.\(^{22}\) Specifically, fathers better serve a state’s interest if they are out of jail and have the ability to earn money to pay child support.\(^{23}\)

To reflect society’s changed view of illegitimate children and states’ interests in keeping them from becoming wards of the state, Congress amended the child support enforcement statute in 1984, requiring states to allow paternity petitions until the child reaches the age of majority.\(^{24}\) Congress amended this statute to ensure illegitimate children, like legitimate children, could obtain support until they turn eighteen.\(^{25}\) Prior to this amendment, states enacted statutes that greatly limited illegitimate children’s access to support.\(^{26}\)

\(^{18}\) See James Lockhart, Cause of Action on Behalf of Child or Mother to Establish Paternity, 6 SHEPARD’S CAUSES OF ACTION 2D 1, 8 (1994).

\(^{19}\) Brazener, supra note 2, at 691.

\(^{20}\) See id. at 691-92.

\(^{21}\) See id. at 691.

\(^{22}\) See id. at 692.

\(^{23}\) See 10 AM. JUR. Trials 653, § 4 (1965).


\(^{26}\) See, e.g., Pickett v. Brown, 462 U.S. 1, 18 (1983) (holding a Tennessee statute, which required petitioners to file paternity actions within two years of a child’s birth, unconstitutional on equal protection grounds); Mills v. Habluetzel, 456 U.S. 91, 101-02 (1982) (holding a Texas statute, which required petitioners to file paternity actions within a year of the child’s birth, unconstitutional because it denied illegitimate children equal protection of the law).
While this amendment promoted the interests of the states and illegitimate children, it also recognized putative fathers’ rights in paternity proceedings. Further, Congress left the statute open-ended, allowing states to decide if they would allow paternity petitions after the child reaches the age of the majority. Society appropriately shifted its perception of illegitimate children, and Congress’s promotion of this changed view through the amendment is valid. Although Congress has the right to promote states’ interests in keeping illegitimate children from becoming burdens of the state, Arkansas—with the Perry decision—has moved too far in this direction by ignoring the rights of adjudicated fathers who did not receive actual notice of the adjudication.

III. PATERNITY IN ARKANSAS

Congress’s amendment to the child support enforcement statute, which protects illegitimate children and prevents them from becoming wards of the state, required Arkansas to enact statutes that met the federal paternity guidelines and promoted these interests. In compliance with the federal guidelines, Arkansas now requires parents to support their children while they are under the age of majority. This support, which includes providing for the necessities of life, is the responsibility of both parents regardless of whether the child is the product of marriage. Because both parents share this responsibility, section 9-10-104 of the Arkansas Code allows petitions for paternity to be filed by:

27. See 42 U.S.C. § 666(a)(5)(L) (requiring states to implement procedures ensuring that putative fathers have reasonable opportunities to initiate paternity actions).
30. See supra notes 26-28 and accompanying text.
32. Id. § 21:11, at 411 (citing Evans v. Evans, 263 Ark. 291, 564 S.W.2d 505 (1978)).
33. Id. (citing Barnhard v. Barnhard, 252 Ark. 167, 477 S.W.2d 845 (1978)).
(1) a biological mother; (2) a putative father; (3) a person for whom paternity is not presumed or established by court order, including a parent or grandparent of a deceased putative father; or (4) the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.\(^{34}\)

Pursuant to this statute’s language, Arkansas courts in paternity proceedings consider the interests of the biological mother, the putative father, relatives of the putative father, the children, and the State.\(^{35}\)

The Arkansas General Assembly omitted one important group from section 9-10-104: adjudicated fathers whom courts order to support a child although the fathers did not receive actual notice of the paternity adjudication. Why does this statute ignore the interests of these adjudicated fathers? Presumably, the General Assembly imagined subsection 9-10-115(e)(1)(A) of the Arkansas Code would offer sufficient protection.\(^ {36}\) However, in reality, the Arkansas Supreme Court’s interpretation of this statute in \textit{Perry} leaves this category of adjudicated fathers with little or no options for relief.

\section*{IV. \textit{STATE V. PERRY}}

A paternity complaint filed against Franklin Perry on April 11, 1994, alleged that he was the father of Zenobia Brown, who was born November 30, 1987.\(^{37}\) The Lincoln County Circuit Court entered a default judgment against Perry on January 26, 1995,\(^{38}\) after he received actual notice

\begin{footnotesize}
\begin{enumerate}
\item [34] \textit{ARK. CODE ANN. § 9-10-104 (Repl. 2009).}
\item [35] \textit{See ARK. CODE ANN. § 9-10-104.}
\item [36] Subsection 9-10-115(e)(1)(A) states:
\begin{quote}
When any man has been adjudicated to be the father of a child or is deemed to be the father of a child pursuant to an acknowledgment of paternity without the benefit of scientific testing for paternity and as a result was ordered to pay child support, he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support upon the filing of a motion challenging the adjudication or acknowledgment of paternity in a court of competent jurisdiction.
\end{quote}
\textit{ARK. CODE ANN. § 9-10-115(e)(1)(A) (Repl. 2009).}
\item [37] \textit{State v. Perry, 2012 Ark. 106, at 1, 2012 WL 745302, at *1.}
\item [38] \textit{Id.}
\end{enumerate}
\end{footnotesize}
of the paternity complaint but failed to respond in a timely fashion.\textsuperscript{39} The default judgment ordered Perry to pay child support in the amount of $40.00 per week—$32.50 for regular support and $7.50 for retroactive support.\textsuperscript{40} Apparently, Perry never complied with this order because, on May 13, 2009, the Office of Child Support Enforcement (OCSE) filed a motion for judgment to collect reimbursement for $14,195.72 of back child-support payments.\textsuperscript{41}

Perry filed a response denying his obligation to pay child support for Zenobia Brown on May 28, 2009.\textsuperscript{42} Less than a month later, on June 11, 2009, he filed a motion for paternity testing.\textsuperscript{43} The circuit court granted Perry’s petition for paternity testing, postponing his obligation to pay child support pending the results of the paternity test.\textsuperscript{44} The OCSE then appealed to the Arkansas Court of Appeals.\textsuperscript{45} The court of appeals dismissed the OCSE’s appeal because it lacked a final, appealable order.\textsuperscript{46} Because the circuit court specifically reserved the child-support obligation issue until the completion of the paternity matter, the court of appeals deemed the OCSE’s appeal improper.\textsuperscript{47}

The OCSE then appealed to the Arkansas Supreme Court, which unanimously reversed the decision of the circuit court.\textsuperscript{48} The supreme court based its decision on a plain reading of subsection 9-10-115(e)(1)(A), which allows an adjudicated father to petition for one paternity test within the period of time he is required to pay child

\begin{thebibliography}{9}
\bibitem{39} Abstract, Addendum, and Brief of Appellant at vi, Office of Child Support Enforcement v. Perry, 2010 Ark. 861 (No. CA10-660), 2010 WL 5624586 at *vi [hereinafter Brief of Appellant].
\bibitem{40} \textit{Perry}, 2012 Ark. 106, at 1, 2012 WL 745302, at *1.
\bibitem{41} \textit{Id.}
\bibitem{42} \textit{Id}. at 1-2, 2012 WL 745302, at *1-2.
\bibitem{43} \textit{Id.} at 2, 2012 WL 745302, at *2.
\bibitem{44} \textit{Id.}
\end{thebibliography}
support. The court explained that subsection 9-14-237(a)(1)(A)(i) of the Arkansas Code automatically terminates a non-custodial parent’s obligation to pay child support when the child turns eighteen. Thus, Perry could only petition for paternity “during the period of time that he [was] required to pay child support.” Moreover, the supreme court favored the OCSE’s argument that subsection 9-10-115(e)(1)(A) applies only to current child-support payments, not arrearages. The fact that Zenobia Brown was over eighteen and that the OCSE only sought arrearages was indisputable. Therefore, the Arkansas Supreme Court held that the plain language of subsection 9-10-115(e)(1)(A)—in conjunction with subsection 9-14-237(a)(1)(A)(i)—barred Perry’s petition for paternity.

V. SUBSECTION 9-10-115(e)(1)(A) OF THE ARKANSAS CODE

In Perry, the Arkansas Supreme Court correctly stated the first rule of statutory interpretation: “In considering the meaning and effect of a statute [one must] construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language.” When the language of a statute is clear and unambiguous, no reason exists to look beyond the statute. However, when a statute is ambiguous, the interpreting court should “look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.” More concisely, the

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49. Id. at 6, 2012 WL 745302, at *6 (quoting ARK. CODE ANN. § 9-10-115(e)(1)(A) (Repl. 2009)).
50. Id. (citing ARK. CODE ANN. § 9-14-237(a)(1)(A)(i) (Repl. 2009)).
51. Id. (quoting ARK. CODE ANN. § 9-10-115(e)(1)(A)).
52. Id. at 5, 2012 WL 745302, at *5.
54. Id. at 6, 2012 WL 745302, at *6.
55. Id. at 2-3, 2012 WL 745302, at *2-3 (citing Raley v. Wagner, 346 Ark. 234, 57 S.W.3d 683 (2001)).
57. Id. (citing Stephens, 341 Ark. 939, 20 S.W.3d 397).
interpreting court should promote the intent of the Arkansas General Assembly.58

Although the Perry court correctly stated the rules of statutory interpretation, it wrongly interpreted subsection 9-10-115(e)(1)(A) as clear and unambiguous. Rather, one could construe the statute’s language in several ways, and the court should have looked beyond the statutory language. Subsection 9-10-115(e)(1)(A) provides:

When any man has been adjudicated to be the father of a child or is deemed to be the father of a child pursuant to an acknowledgment of paternity without the benefit of scientific testing for paternity and as a result was ordered to pay child support, he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support upon the filing of a motion challenging the adjudication or acknowledgment of paternity in a court of competent jurisdiction.59

The Arkansas Supreme Court held the plain and unambiguous reading of this statute precludes an adjudicated father from obtaining a paternity test once his child-support obligation terminates.60 This obligation terminates when the child reaches the age of majority, graduates from high school, is emancipated, marries, or dies.61 The court came to this conclusion after reading the OCSE’s appellate brief.62 The OCSE argued in its brief that the term “‘child’” in the statute would never mean “‘the adult child’ or ‘the child who has reached the age of majority.’”63 Therefore, the OCSE contended the statute only allowed for paternity petitions during a period when the adjudicated father was required to pay current child

60. Perry, 2012 Ark. 106, at 6, 2012 WL 745302, at *6 (“[T]he statute at issue provides that an adjudicated father is entitled to one paternity test at any time ‘during the period of time that he is required to pay child support.’” (quoting ARK. CODE ANN. § 9-10-115(e)(1)(A))).
61. Id. at 4, 2012 WL 745302, at *4 (quoting ARK. CODE ANN. § 9-14-237(a)(1) (Repl. 2009)).
62. See id. at 5-6, 2012 WL 745302, at *5-6.
63. Brief of Appellant, supra note 39, at 3.
support, not arrearages. The Arkansas Supreme Court agreed with the OCSE’s argument, denying Perry a paternity test because Zenobia Brown had reached the age of majority and because the OCSE only sought arrearages.

The court made a mistake when it determined subsection 9-10-115(e)(1)(A) was clear and unambiguous. Specifically, one could interpret the language “he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support” to mean during the pendency of any action for child support. Because the statutory language is not clear and unambiguous on its face, the Arkansas Supreme Court should have looked beyond the plain language to discern the General Assembly’s intent. In his appellee’s brief, Perry argued that had the General Assembly intended the statute to apply only when the children involved are under the age of the majority, it would have included specific language such as “‘minor child’” or “‘current support.’”

Perry’s argument is sound, as demonstrated by statutes in other jurisdictions. For example, Pennsylvania’s statute reads: “An action or proceeding under this chapter to establish the paternity of a child born out of wedlock must be commenced within 18 years of the date of birth of the child.” This statute is clear and unambiguous because it specifies that the putative father must file the paternity action before the child reaches the age of the majority. If the Arkansas General Assembly intended subsection 9-10-115(e)(1)(A) to apply only to minor children for current child-support proceedings, it likely would have included language similar to Pennsylvania’s statute.

65.  Id. at 6, 2012 WL 745302, at *6.
69.  See, e.g., 23 PA. CONS. STAT. ANN. § 4343(b)(1) (West 2013).
70.  23 PA. CONS. STAT. ANN. §4343(b)(1).
71.  See 23 PA. CONS. STAT. ANN. §4343(b)(1).
Further, Arkansas's statute does not refer to a “child” in terms of age. Rather, the statute refers to a “child” in terms of support. Specifically, subsection 9-10-115(e)(1)(A) contains the following phrases: (1) “father of a child”; and (2) “child support.” Courts should not limit the first phrase, “father of a child,” to minor children because individuals are the children of their parents for life. Likewise, the phrase “child support” does not refer to a specific age. In fact, some situations require parents to continue supporting a child after he reaches the age of majority. Additionally, parents can contract to pay child support after a child reaches the age of majority. Because the phrases “father of a child” and “child support” do not refer to the age of a child, the Arkansas Supreme Court wrongly held that the statute precludes adjudicated fathers from obtaining a paternity test once the child reaches the age of the majority.

VI. PERRY, SERVICE OF PROCESS, AND FUNDAMENTAL RIGHTS

A. Perry and Service of Process

In addition to misinterpreting the intent behind subsection 9-10-115(e)(1)(A), Perry's broad ruling may prevent adjudicated fathers who did not receive service of process from obtaining a paternity test. In its brief, the OCSE noted that Perry was personally served with the original paternity complaint and with the motion for citation. Therefore, Perry knew he was the adjudicated father of Zenobia Brown.

73. ARK. CODE ANN. § 9-10-115(e)(1)(A).
74. ARK. CODE ANN. § 9-10-115(e)(1)(A).
75. ARK. CODE ANN. § 9-10-115(e)(1)(A).
76. ARK. CODE ANN. § 9-10-115(e)(1)(A).
77. BRILL, supra note 31, § 21:11, at 412 (“[A]fter the age of majority, further support may be required for educational purposes to prepare a handicapped child to pay his medical bills and support himself if the financial condition of the parents allows.”).
78. Id.
80. Id.
But the effects of the Arkansas Supreme Court’s ruling in *Perry* extend beyond those facts. What if the circuit court entered default judgment against Perry after the complaining party only published notice of the original paternity complaint, rather than after Perry received actual notice? What if Zenobia Brown’s mother and the OCSE were unaware of Perry’s whereabouts and Perry did not receive personal service of the motion for citation? What if Perry never knew the court had adjudicated him the father of Zenobia Brown until after she reached the age of the majority? The answer to these questions in Arkansas is quite harsh; the *Perry* decision would have forced Perry to pay child support without providing him the opportunity to ensure Zenobia Brown was his biological child.

Rule 4 of the Arkansas Rules of Civil Procedure requires personal service unless, “after diligent inquiry, the identity or whereabouts of a defendant remains unknown.” In such a situation, “service shall be by warning order.” The warning order must: (1) state the caption of the pleadings; (2) state the matter to be affected by the judgment; and (3) “warn the defendant . . . to appear within thirty days from the date of the first publication of the warning order or face entry of judgment by default or be otherwise barred from asserting his or her interest.” The party seeking judgment must then have the warning order “published weekly for two consecutive weeks in a newspaper having general circulation in the county where the action is filed.” The party seeking judgment must also mail a copy of the complaint to the defendant at his last known address, by any form of mail, with delivery restricted to the defendant or his agent for service of process.

A court will enter default judgment only after the party seeking judgment files an affidavit with the court stating that thirty days have passed since publication of the
warning order.89 Remember, if a defendant does not reside in the county that published the warning order, he may never see the warning order. Thus, a court could enter default judgment even though the defendant never received actual notice of the complaint filed against him.

According to Perry, a father adjudicated after publication of a warning order—but before he became aware of the adjudication—has no remedy to prove he is not the biological father of the child in question when that child has reached the age of majority.90 Such an adjudicated father would have to pay the amount imposed by the court or be held in contempt and possibly serve time in jail. Adjudicating an individual to be the father of a child without allowing him the possibility of establishing paternity infringes upon numerous rights of the adjudicated father. Furthermore, providing actual notice to an individual is important before infringing upon his fundamental rights. Specifically, “[w]hen a person has [no] actual notice he ought not to be treated as if he had notice unless” he did not receive actual notice because of his own gross negligence.91 The subsequent section explains how the Perry decision—by allowing courts to adjudicate individuals as fathers without providing them actual notice—could violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

B. Perry and Due Process

Two types of due process exist: substantive and procedural.92 Substantive due process asks whether a sufficient purpose justifies the government’s deprivation of a person’s life, liberty, or property.93 Procedural due process asks whether the government followed appropriate procedures when it deprived this person of his life, liberty, or property.94 Perry’s broad ruling may violate substantive

89. ARK. R. CIV. P. 4(f)(4).
93. Id. at 1501.
94. Id.
due process by construing subsection 9-10-115(e)(1)(A) of the Arkansas Code to take away adjudicated fathers’ rights to have a paternity test after the child in question reaches the age of majority. *Perry* may also violate procedural due process by not providing adjudicated fathers with adequate notice and an opportunity to be heard before the paternity adjudication.

The Due Process Clause of the Fourteenth Amendment limits states’ arbitrary authority and guarantees against excessive legislation by demanding that laws not be unreasonable, capricious, or arbitrary. At the very least, procedural due process requires that “deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.”

Based on these requirements, the *Perry* decision may lead subsection 9-10-115(e)(1)(A) to violate the due process rights of adjudicated fathers in Arkansas. Arguably, the Arkansas Supreme Court made the appropriate decision for Perry, as an individual, because he received personal service of the original complaint and the motion for citation. Therefore, Perry could have petitioned for a paternity test prior to Zenobia Brown reaching the age of the majority. However, the Arkansas Supreme Court made a blanket decision in *Perry*, construing subsection 9-10-115(e)(1)(A) as precluding adjudicated fathers from obtaining paternity tests after they are no longer “required to pay child support,” regardless of the manner in which the original paternity complaint was served. According to due-process requirements, this decision was an improperly broad construction of Arkansas’s statute for several reasons.

The Due Process Clause “provides heightened protection against government interference with certain

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98. See id.
fundamental rights and liberty interests,"\(^{100}\) such as personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.\(^{101}\) The United States Supreme Court has deemed fundamental the right to have children and to participate in their upbringing.\(^{102}\) Therefore, the Due Process Clause protects a man’s right to petition for paternity so he can share in the “companionship, care, custody, and management of his . . . children.”\(^{103}\) The Supreme Court’s recognition of such a fundamental right begs the question of whether a man also has a fundamental right to \textit{refrain} from supporting children who are not his. If such a fundamental right exists, a state cannot infringe on this right “unless the infringement is narrowly tailored to serve a compelling state interest.”\(^{104}\)

One could argue that the State of Arkansas’s compelling interest for limiting a man’s time to obtain a paternity test is to protect illegitimate children and to prevent them from becoming wards of the State.\(^{105}\) However, preventing fathers from obtaining a paternity test once the child reaches majority age is not narrowly tailored to that interest. At this point, the adult child can protect and support himself.\(^{106}\) Therefore, the State fails to promote its interest by preventing adjudicated fathers from obtaining a paternity test once the illegitimate child reaches the age of majority.


\(^{104}\) Glucksberg, 521 U.S. at 721 (quoting Flores, 507 U.S. at 302) (internal quotation mark omitted).

\(^{105}\) See Brazener, supra note 2, at 692.

\(^{106}\) A parent is not compelled to support a child once he has reached the age of majority unless the parent contracts to do so or the child is handicapped. Brill, supra note 31, § 21:11, at 412. The policy behind this rule is that adults should be able to support themselves, rather than becoming a burden on the state in the absence of parental support. See id.
Furthermore, the Due Process Clause protects individuals from unreasonable and arbitrary legislation. Forcing a man to pay child support when the child may not be his biological child is unreasonable. Imposing this limitation is also arbitrary because the difference between seeking a paternity action the day before the child turns eighteen and the day after the child turns eighteen is illogical and indiscriminate. Again, the statute does not have a sufficient purpose for this limitation.

Lastly, the Perry decision may cause subsection 9-10-115(e)(1)(A) to deny an adjudicated father, who did not receive actual notice of the adjudication until after the child reached the age of majority, his right to determine paternity. The Due Process Clause requires notice and an opportunity for an appropriate hearing before a state deprives a person of his life, liberty, or property. An appropriate opportunity for a hearing in a paternity action would likely provide an adjudicated father a chance to acknowledge paternity or to request a paternity test. Without such an opportunity, the State should not deprive an adjudicated father of his right to receive a paternity test.

C. Perry and Equal Protection

The Equal Protection Clause of the Fourteenth Amendment commands: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause does not prohibit classifications; rather, it prevents governmental decision-makers from treating people, who are alike in all relevant aspects, differently. One specific equal-protection
concern is ensuring that states treat illegitimate children “substantially similar to” legitimate children.\textsuperscript{114}

Denying illegitimate children access to support when legitimate children received support prompted concern over states limiting when paternity actions may be filed.\textsuperscript{115} For instance, the United States Supreme Court, in \textit{Mills v. Habluetzel}, found a Texas paternity statute unconstitutional because it barred paternity actions that were not brought before a child turned one year old.\textsuperscript{116} The \textit{Mills} court reasoned that the Texas statute denied illegitimate children equal protection of the laws because it inhibited them from obtaining child support in situations where legitimate children could obtain support.\textsuperscript{117} Furthermore, the Supreme Court, in \textit{Clark v. Jeter}, found Pennsylvania’s paternity statute, which had a six-year statute of limitations, unconstitutional because it violated the equal-protection rights of illegitimate children.\textsuperscript{118}

In deciding \textit{Clark} and \textit{Mills}, the Supreme Court applied a heightened level of scrutiny over the states’ statutes, allowing illegitimate children the ability to establish paternity and obtain child support.\textsuperscript{119} To withstand this heightened scrutiny, a statutory classification differentiating legitimate children from illegitimate children “must be substantially related to an important governmental objective.”\textsuperscript{120} Despite this concern, some limitations states place on illegitimate children, but not on legitimate children, are proper due to the lingering problem of paternity.\textsuperscript{121} The basis behind this rationale is a state’s interest in preventing stale and fraudulent claims.\textsuperscript{122} However, Justice O’Connor’s concurring opinion in \textit{Clark} noted that scientific blood testing has greatly diminished

\begin{itemize}
  \item \textsuperscript{115} See id. at 119.
  \item \textsuperscript{116} 456 U.S. 91, 101 (1982).
  \item \textsuperscript{117} Id. at 100.
  \item \textsuperscript{118} 486 U.S. 456, 463 (1988).
  \item \textsuperscript{119} Id. at 464; \textit{Mills}, 456 U.S. at 101.
  \item \textsuperscript{120} \textit{Clark}, 486 U.S. at 461.
  \item \textsuperscript{121} See \textit{Gomez v. Perez}, 409 U.S. 535, 538 (1973) (per curiam).
  \item \textsuperscript{122} See Hummel, supra note 114, at 120.
\end{itemize}
the guesswork in establishing paternity, making fraudulent claims less likely.\textsuperscript{123}

Around the same time as the Supreme Court’s decisions in \textit{Clark} and \textit{Mills}, Congress amended the child support enforcement statute.\textsuperscript{124} As previously noted, this statute requires states to establish procedures permitting the determination of paternity from birth to at least the age of majority.\textsuperscript{125} The statute is open-ended, permitting states to determine whether to allow paternity tests after a child reaches the age of majority.\textsuperscript{126} But any limitations states place on paternity that will cause illegitimate children to be treated differently than legitimate children must substantially relate to an important governmental objective.\textsuperscript{127}

States have an important objective in preventing individuals from bringing stale and fraudulent claims.\textsuperscript{128} Generally speaking, petitioning for a remedy multiple years after adjudication would constitute a stale claim because of the threat of lost evidence and fraud.\textsuperscript{129} However, as Justice O’Connor’s concurrence in \textit{Clark} notes, scientific advances have solved this problem in paternity cases.\textsuperscript{130} Specifically, a blood test renders the same result whether given one day after birth or twenty years later, thus preventing stale and fraudulent claims.\textsuperscript{131}

1. Paternity Actions After a Child Reaches Majority Age Will Not Result in Stale Claims

Paternity testing is not the type of stale claim the Supreme Court referenced in \textit{Clark} and \textit{Mills}.\textsuperscript{132} When the Supreme Court referred to stale claims, it was concerned with statutes of limitations that are so long they “present a
real threat of loss or diminution of evidence.”133 In
Arkansas, a stale claim “is one that has for a long time
remained unasserted.”134 Arkansas courts “will not grant
aid to a litigant who has negligently slept on his rights and
suffered his demand to become stale, where injustice would
be done by granting the relief asked.”135 For instance, an
injustice results where a court grants a petitioner relief even
though the petitioner waited so long to bring his claim that
the respondent’s key witness died or disappeared.136

Allowing an adjudicated father to bring a paternity
action after the child reaches the age of the majority will
not cause an injustice due to staleness because the paternity
test will always deliver the same result.137 Thus, prohibiting
a man from obtaining a paternity test once the child reaches
the age of majority is not limited to furthering a state’s
interest in preventing stale claims.138

2. Paternity Actions After a Child Reaches Majority Age
Will Not Result in Fraudulent Claims

Not only does prohibiting adjudicated fathers from
obtaining paternity tests once the child reaches the age of
majority fail to promote a state’s interest in preventing stale
claims, but it also does not further the governmental
objective of limiting fraudulent actions. Instead, the
Arkansas Supreme Court’s decision in Perry might
encourage fraudulent paternity actions.

First, if mothers of illegitimate children are aware of
the Perry decision, they may either hide the whereabouts
of the individuals against whom they filed the paternity action
or they may file the action against a man whose
whereabouts are unknown. If a woman files a warning
order in a county where the man does not live, the court
could render judgment against the man without providing

134. Skelly Oil Co. v. Johnson, 209 Ark. 1107, 1117, 194 S.W.2d 425, 430
(1946).
135. Id. at 117-18, 194 S.W.2d at 430.
138. See id. (explaining the heightened level of scrutiny applied by the Court
to allow illegitimate children a reasonable opportunity to establish paternity).
him actual notice.\textsuperscript{139} Filing such claims would ensure payment of the illegitimate-child-support arrearages if the whereabouts of the man became known after the child turned eighteen.\textsuperscript{140} Such actions may be common in situations where many individuals could be the biological father.

Second, adjudicated fathers will not bring fraudulent paternity claims even if they are allowed to petition for paternity after the child reaches the age of majority. As previously noted, the results of paternity tests are extremely reliable.\textsuperscript{141} The average person understands the reliability of paternity tests or can easily determine the accuracy of their results.\textsuperscript{142} Thus, adjudicated fathers will not bring fraudulent claims in hopes of being improperly relieved of a child-support obligation. Further, even if an adjudicated father fraudulently files a paternity claim, the reliable test results would prove the father’s paternity, ensuring the child did not wrongfully become a ward of the State.

Because allowing adjudicated fathers to obtain paternity tests after the child reaches majority age will not result in stale or fraudulent claims, the decision in \textit{Perry} does not promote this legitimate state interest. The modern paternity test removes the guesswork from paternity proceedings and prevents fraudulent claims. Therefore, removing this safeguard for adjudicated fathers—as the Arkansas Supreme Court did in \textit{Perry}—could result in fraudulent claims and the courts taking a step back in the paternity arena.

\textsuperscript{139} See \textit{ARK. R. CIV. P. 4(f)(4)}.

\textsuperscript{140} The father is unable to petition for paternity after the child reaches the age of majority. \textit{State v. Perry}, 2012 \textit{Ark.} 106, at 6, 2012 \textit{WL} 745302, at *6. Remember, \textit{Perry} is a blanket decision that likely applies even if an adjudicated father does not receive actual notice of the adjudication of paternity. \textit{See supra Part IV}.

\textsuperscript{141} See \textit{Clark}, 486 U.S. at 463.

\textsuperscript{142} A simple Google search brings up many sites that explain the reliability of most modern paternity tests. For example, one site stated: “Although no test can ever be 100\% certain most paternity test results should prove at least 99\%.” Mandy Fain, \textit{How Accurate are DNA Paternity Test Results}, \textit{EZINE ARTICLES}, http://www.ezinearticles.com/?How-Accurate-are-DNA-Paternity-Test-Results&id=444662 (last visited Nov. 12, 2013).
D. Paternity Testing for Adjudicated Fathers Who Did Not Receive Actual Notice Will Not Unduly Burden the State’s Interests

Both state and federal governments have focused on protecting illegitimate children and keeping them from becoming wards of the state.\textsuperscript{143} As previously noted, these concerns are the primary reasons Congress mandated that states allow petitions for paternity at least until a child reaches the age of majority.\textsuperscript{144} Arkansas has complied with this federal mandate.\textsuperscript{145} However, in doing so, the Arkansas General Assembly has also recognized the interests of other parties, such as putative fathers.\textsuperscript{146}

As previously noted, a putative father is “any man not legally presumed or adjudicated to be the biological father of a child, but who claims or is alleged to be the biological father of the child.”\textsuperscript{147} The Arkansas Supreme Court has provided putative fathers great leeway to obtain paternity tests, even when allowing the test was not in the best interest of the State.\textsuperscript{148} For instance, the court gave a putative father standing to bring a paternity action to establish he was the biological father of a child presumed to be legitimate.\textsuperscript{149} Based on this decision, Arkansas acknowledged the authority to grant putative fathers paternity tests, even if the child in question was born during a marriage.\textsuperscript{150} Children born of marriages are ideal for promoting the State’s interests in protecting children and keeping them from becoming wards of the State.\textsuperscript{151} Specifically, marriage partners are obligated to support children born of the marriage.\textsuperscript{152} Upon divorce, both parties

\textsuperscript{143} Brazener, supra note 2, at 691.
\textsuperscript{145} See ARK. CODE ANN. § 9-10-115(c)(1)(A) (Repl. 2009).
\textsuperscript{146} See ARK. CODE ANN. § 9-10-104 (Repl. 2009).
\textsuperscript{147} See ARK. CODE ANN. § 20-18-701(5) (Repl. 2005).
\textsuperscript{148} See R.N. v. J.M., 347 Ark. 203, 211, 61 S.W.3d 149, 153 (2001) (“[W]e have held that a putative father was not precluded from petitioning to determine paternity in cases where the child was presumed legitimate.”).
\textsuperscript{149} Willmon v. Hunter, 297 Ark. 358, 360, 761 S.W.2d 924, 925 (1988).
\textsuperscript{150} R.N., 347 Ark. at 211, 61 S.W.3d at 153.
\textsuperscript{151} See BRILL, supra note 31, § 21:11, at 411.
\textsuperscript{152} See id.
still support the children. Allowing a putative father to petition for a paternity test at this point puts a strain on the State, the children, and the marriage. However, the Arkansas Supreme Court held these strains do not wrongly interfere with the State’s interest in protecting children and keeping them from becoming wards of the State.

Since the Arkansas Supreme Court found that putative fathers could petition for paternity of a child born to a marriage, the Perry court should have refrained from issuing a broad ruling that prevents adjudicated fathers who did not receive actual notice of the adjudication from bringing petitions. Allowing adjudicated fathers who did not receive actual notice to petition for paternity after the child reaches the age of majority will not negate the State’s interest. Specifically, the illegitimate child should not need the State’s protection because the child has reached the age of the majority. Therefore, the Arkansas Supreme Court should have avoided such a broad ruling in Perry.

VII. CONCLUSION

The Arkansas Supreme Court’s decision in State v. Perry was improper for two reasons. First, the language in subsection 9-10-115(e)(1)(A) of the Arkansas Code was not clear and unambiguous. Therefore, the court should have looked beyond the language of the statute to discern the intent of the Arkansas General Assembly. Second, even if the General Assembly intended to preclude adjudicated fathers from seeking paternity actions after a child reaches the age of majority, Perry is still improper because the decision’s broad ruling may cause subsection 9-10-115(e)(1)(A) to infringe unconstitutionally upon the rights of adjudicated fathers.

The Perry decision prohibits putative fathers from obtaining a paternity test after the child reaches the age of majority—even if the adjudicated father did not receive actual notice of the adjudication until after his child-

153. See id.
154. See R.N., 347 Ark. at 211, 61 S.W.3d at 153.
support obligations terminated. For adjudicated fathers who do not receive actual notice of the adjudication, *Perry*’s broad ruling could cause Arkansas’s statute to violate the Due Process Clause of the U.S. Constitution. The Arkansas Supreme Court ignored the statute’s future impact on the due-process rights of adjudicated fathers who do not receive actual notice and focused solely on the interests of the State and of illegitimate children. Allowing fathers to file paternity petitions after a child reaches the age of majority will not prevent illegitimate children from receiving equal protection of the laws. Based on these reasons, the Arkansas Supreme Court issued an overly broad ruling in *Perry*.

BRITTANY HORN

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