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HAITI

LEGITIMATION OF OUT-OF-WEDLOCK CHILDREN

Executive Summary

Although a 1959 Presidential Decree has equalized the rights and duties of legitimate children and children born out of wedlock who have been acknowledged, a child born out of wedlock is not a legitimate child in the strict legal sense under Haitian law because the Civil Code still requires either a subsequent marriage or a judgment to legitimate such a child.

I. Facts and Issues Presented

A. Facts

The respondent is claiming that he is a derivative citizen as a result of his mother having naturalized before he became eighteen. He was born out of wedlock and has submitted a birth certificate from the National Archives of Haiti. The birth certificate shows his father's name and that he has taken such name.

B. Issues

1. Is the appearance of the father's name on the birth certificate conclusive proof of legitimation?
2. Is there any provision in Haitian law stating that the fact that the child took the last name of the father is conclusive proof of legitimation?

II. Statement of Law

A. Acknowledgment of an Out-of-Wedlock Child

Outside of marriage, paternity is established by a declaration of acknowledgement before the competent official of the civil status. The declaration of acknowledgement may take place before the birth of the child, at the time of or after the birth declaration, or even after the child's death. The birth certificate of the child, inscribed in the registries of the civil status, will show whether a child has been legally acknowledged by his father. The name of the father will either appear in the text of the child's birth certificate, if the acknowledgment took place at the time the certificate was drawn, or will be added in its margin if it took place later.¹

¹ JEAN VANDAL, CODE CIVIL D' HAITI art. 305 (2005).

B. Legitimation of a Child

As a general rule, under Haitian law, a legitimate child is a child conceived or born during the marriage of his/her parents.²

A child born out of wedlock (referred to as “*naturel*” in the Haitian Civil Code), is legitimated by the subsequent marriage of the parents, when both parents have acknowledged the child before the marriage or in the marriage certificate itself.³ When one or both acknowledgements occur after the marriage, a court judgment will be necessary to legitimate the child. Such a judgment must state that the child is viewed by the community as a common child of both parties since the marriage celebration.⁴

Notation of any legitimation will appear in the margin of the child’s birth certificate. Such notation will be made on the initiative of the official of the civil status who performed the marriage, if he has knowledge of the existence of the child, and if not, on the initiative of any interested party.⁵

A Presidential Decree of January 27, 1959, ended “all inequalities between the legal status of *naturel* children and legitimate children.”⁶ Article 1 of the decree provides that “natural *filiation* [a child’s descent from his parents] confers the same rights and duties as those deriving from legitimate *filiation*. However, the establishment of *filiation naturelle* may only result from a voluntary acknowledgment or a judicial acknowledgment in cases authorized by law.”⁷

Although Haitian law has equalized the rights and duties of legitimate children and children born out of wedlock who have been acknowledged, a child born out of wedlock is not a legitimate child in the strict legal sense because the Civil Code still requires either a subsequent marriage or a judgment to legitimate a child born out of wedlock.

C. Family Name

There is no provision in Haitian law stating that the fact that a child took his/her father’s last name is conclusive proof of legitimation. Haitian courts have ruled for quite some time that when a child born out of wedlock has been acknowledged by both parents, he or she takes the name of the father.⁸

III. Conclusion

The sole appearance of the father’s name on the birth certificate of a child born out of wedlock is not conclusive proof of legitimation as defined under Haitian law, although it shows that the child has been acknowledged by his father. As discussed above, a child born out of

² *Id.* arts. 293–299.

³ *Id.* art. 302.

⁴ *Id.*

⁵ *Id.*

⁶ Decree of January 27, 1959, Ending All Inequalities Between the Legal Status of Natural Children and Legitimate Children, in I ERTHA AND ERNST TROUILLOT, CODE DE LOIS USUELLES 377 (Ed. Semis, 1998).

⁷ *Id.* art 1.

⁸ FRANÇOIS LATORTUE, COURS DE DROIT CIVIL 73 (Ed. des Antilles, 1997).

wedlock is legitimated only by the subsequent marriage of the parents or by a judgment. Such legitimation should appear in the margin of the child's birth certificate. Finally, when acknowledged by both parents, Haitian courts have ruled that the child takes the name of his or her father. It may be, however, that the combination of the fact that there is a Presidential Decree in Haiti that equates the rights of legitimate and out-of-wedlock children, and that the child was acknowledged by the father in this case, would be sufficient under U.S. law to establish that the child was legitimate.

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October 2010