

[J-60-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IVONNE V. FERGUSON,	:	No. 16 MAP 2005
	:	
Appellee	:	
	:	Appeal from the Order of the Superior
	:	Court entered on 7/22/04 at No. 1430
v.	:	MDA 2003 which affirmed the Order of
	:	Dauphin County Court of Common Pleas
	:	Domestic Relations Division entered on
	:	8/11/03 at No. 1259 DR 1999
JOEL L. MCKIERNAN,	:	
	:	
Appellant	:	ARGUED: May 17, 2005

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 27, 2007

Section 5102 of the Domestic Relations Code prescribes that “[a]ll children shall be legitimate irrespective of the marital status of their parents,” and, subject to limited exceptions not applicable here, “in every case where children are born out of wedlock, they shall enjoy all the rights and privileges as if they had been born during the wedlock of their parents[.]” 23 Pa.C.S. §5102(a).

At the core of Appellee’s arguments is the contention that the public policy controlling the outcome of this case is embodied in Section 5102’s conferral of full rights and privileges upon all children born out of wedlock. The majority, however, dismisses such argument with the comment that this statute relates to a child’s legitimacy but not his or her entitlement to support notwithstanding a contrary agreement between a

mother and a sperm donor. See Majority Opinion, slip op. at 12 n.12. Section 5102(b), however, makes it clear that the relevant “rights and privileges” referenced in Section 5102(a) include benefits from the father. See 23 Pa.C.S. §5102(b). Moreover, under the statute, the status as father may be determined by a court determination of paternity, see id., which may be established by blood relation. See 23 Pa.C.S. §5104.

I cannot join the majority opinion, as I believe that the Legislature has established the relevant public policy through the provisions quoted above “in every case” involving children born out of wedlock. 23 Pa.C.S. §5102(a). I realize that a straightforward reading of the statute has potential ramifications for sperm donors in Pennsylvania beyond the unique circumstances presented here, as I believe the Legislature does as well, since it has previously considered various measures to mitigate the impact but has not yet acted to adopt any of these. I also recognize that, as between the mother and father in the present case, the equities do not favor the mother. My position is based on the respective roles of the representative and judicial branches.