STATE OF MICHIGAN

COURT OF APPEALS

BRANDI WALKER,

Plaintiff-Appellee,

v

THOMAS WALKER,

Defendant-Appellant.

UNPUBLISHED
August 24, 2001

No. 221515
Ostego Circuit Court
LC No. 98-007780-DS

Before: Holbrook, Jr., P.J., and McDonald and Saad, JJ.

PER CURIAM.

Defendant appeals by right from an order of the family court requiring defendant to pay confinement and childbirth expenses of $13,029.90. We reverse and remand.

In August of 1998 plaintiff initiated these proceedings by filing a complaint for reimbursement of confinement expenses associated with the birth of their son, Brandon Walker, born on May 29, 1996. At the time this action was commenced, a divorce action between the parties was pending.[1] "Thereafter, the Prosecutor filed for a hearing on reimbursement for confinement expenses, the State of Michigan thereby seeking recovery from the father, as the mother had been entitled to Medicaid."[2] The plaintiff's hospital expenses were $7,580.04 and her doctor expenses were $1,150.76. Brandon's hospital expenses were $3,465.81 and his doctor's expenses were $833.37.[3] The trial court rejected defendant's constitutional and statutory interpretation challenges. The court also held that confinement expenses "include the

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[1] The parties were divorced on January 7, 1999.

[2] As stipulated to by the parties, the matter was presented to the family court on briefs. Pursuant to MCR 7.210(B)(2), defendant motioned the family court to certify his proposed statement of facts. The Otsego County Prosecutor's office objected to certain language, which was removed by the court. The quoted passage in the text above is from the certified statement of facts. MCR 7.210(B)(2)(c).

[3] The prosecutor's answer to defendant's confinement expense brief notes that plaintiff was hospitalized for approximately four weeks prior to birth. The plaintiff's doctor's expense covered care given between November 1998 and June 1999. Brandon was apparently placed in a neonatal care unit for several days following birth.

expenses of childbirth for both the mother and child for the reason that the father is financially responsible for causing the childbirth."[4]

Defendant first asserts that MCL 722.712 is unconstitutional as violative of the equal protection clauses of the Federal and State Constitutions in that it creates an improper gender-based classification. It is clear, however, from his argument on appeal that defendant's primary quarrel is with how the family court interpreted this Court's holding in *Thompson v Merritt*, 192 Mich App 412; 481 NW2d 735 (1991). Specifically, defendant argues that the family court interpreted *Thompson* as indicating that MCL 722.712(2) is constitutional even though it mandates that a father is solely liable for a mother's necessary confinement expenses. We review de novo a challenge to the constitutionality of a statute. *Gibson v Dep't of Treasury*, 215 Mich App 43, 49; 544 NW2d 673 (1996).

The Equal Protection Clause of the United States Constitution and the coextensive Equal Protection Clause of the Michigan Constitution, *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996), both provide that equal protection of the laws shall not be denied to any person. US Const, Am XIV; Const 1963, art 1, § 2. This does not mean that the Legislature cannot draw any distinctions between persons. *Crego, supra* at 259. After all, "[c]lassification is the essence of all legislation." *Clements v Flashing*, 457 US 957, 967; 102 S Ct 2836; 73 L Ed 2d 508 (1982)(plurality opinion). Rather, "only those classifications which are invidious, arbitrary, or irrational offend" the Equal Protection Clauses of the federal and state constitutions. *Id.*

"The underlying purpose of the Paternity Act is to ensure that minor children born outside a marriage are provided with support and education." *Crego* v *Coleman*, 463 Mich 248, 269; 615 NW2d 218 (2000). Accord *Romain v Peters*, 9 Mich App 60, 63; 155 NW2d 700 (1967)(observing that when enacting the Paternity Act, "it was the support of the child with which the legislature was concerned").

As the United States Supreme Court has observed, "There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism, which in practical effect put woman, not on a pedestal, but in a cage." *Frontiero v Richardson*, 411 US 677, 684; 93 S Ct 1764; 36 L Ed 2d 583 (1973)(footnote omitted). Legislatively drawn gender classifications often were justified by reference to sex-based stereotypes "that reflected '"old notions" and "archaic and overbroad" generalizations' about the roles and relative abilities of men and women." *Heckler v Mathews*, 465 US 728, 745; 104 S Ct 1387; 79 L Ed 2d 646 (1984)(plurality opinion), quoting *Califano v Goldfarb* 439 US 199, 211; 97 S Ct 1021; 51 L Ed 2d 270 (1977), (quoting *Stanton v Stanton*, 421 US 7, 14; 95 S Ct 1373; 43 L Ed 2d 688 [1975]; *Schlesinger v Ballard*, 419 US 498, 508; 95 S Ct 572; 42 L Ed 2d 610 [1975]).[5] Principal among these stereotypical

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[4] Quotation taken from certified statement of facts. MCR 7.210(B)(2)(c).

[5] See also *Parham v Hughes*, 441 US 347, 354; 99 S Ct 1742; 60 L Ed 2d 269 (1979)(observing "that a State is not free to make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women or which demean the ability or social status of the affected class").

notions about the social roles of men and women was the idea that "the female [was] destined solely for the home and the rearing of the family, and only the male for the marketplace of the world of ideas." *Stanton, supra* at 14-15. See also *Taylor v Louisiana*, 419 US 522, 535 n 17; 95 S Ct 692; 42 L Ed 2d 690 (1975).

MCL 722.712 states in relevant part:

> The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses. *The father is liable to pay the expenses of the mother's confinement, and is also liable to pay expenses in connection with her pregnancy as the court in its discretion may deem proper*. . . . [Emphasis added.]

We believe the highlighted portion of this section of the Paternity Act is ambiguous. Specifically, we do not believe it is clear from the text whether the reference to the court's discretionary power refers only to cost of the mother's pregnancy or also to the cost of her hospital confinement. Given this ambiguity, we turn to the rules of statutory construction for guidance. *Backus v Kaufmann (On Rehearing)*, 238 Mich App 402, 406; 605 NW2d 690 (1999).

Absent a clear showing to the contrary, a statute is presumed to be constitutional and we will construe it so as to save it from constitutional attack. *Caterpillar, Inc v Dep't of Treasury*, 440 Mich 400, 413; 488 NW2d 182 (1992). However, we will not construe a statute "to the point of perverting the purpose of a statute." *Scales v United States*, 367 US 203, 211; 81 S Ct 1469; 6 L Ed 2d 782 (1961). For while we have "the authority to construe statutes," we do not have the authority "to redraft them." *Robinson v Detroit*, 462 Mich 439, 473; 613 NW2d 397 (2000)(Corrigan, J., concurring).

The *Thompson* Court held that this section of the Paternity Act does not violate equal protection because it "gives the court the power to apportion the costs between the parents." *Thompson, supra* at 425. We agree. The *Thompson* Court also rejected the defendant's assertion that the statute imposes on the father sole responsibility for the cost of the mother's hospital confinement. *Id.* at 424-425. Again, we agree. We further extend the *Thompson* analysis by reading the statute as authorizing a court to impose liability for the necessary cost of the mother's hospital confinement on either parent, and to consider the means and responsibilities of both parents when apportioning those costs.

In support of its conclusion that MCL 722.712(1) does not violate Equal Protection, the *Thompson* Court noted the distinction drawn in the Paternity Act between "necessary" and "unnecessary" expenses. *Thompson, supra* at 423. We agree that such a distinction is drawn. We do not agree with the trial court, however, that this means that once the determination is made that something is a necessary expense with regard to the mother's confinement, that the father must pay the whole amount. Just because the mother is not mentioned in the statute as being liable for her hospital confinement expenses does not change the fact that she is financially liable for the care she has received. The term liable means "[r]esponsible or answerable in law; legally obligated." Black's Law Dictionary (7th ed), p 927. A determination that one person is liable for a debt does not necessarily exclude all others. In short, the statute's indication that the father is liable means simply that he is also liable for these expenses.

We believe this is a reasonable reading of the statute and of *Thompson* that eliminates any potential gender-based discrimination. See *In the Matter of Lisa Marie UU v Mario Dominick VV*, 432 NYS2d 411; 78 Ad2d 711 (1980).[6] On remand, the trial court should follow this reading of the statute.

We disagree, however, with defendant that the trial court's apportionment of costs should be based on any recommendation from the Friend of the Court on apportionment of the child's uninsured medical expenses. While such a recommendation may be considered by the trial court, it is not precluded from exercising its discretion relative to all surrounding facts and circumstances, financial or otherwise.

Defendant also argues that the trial court erred in concluding that he is solely liable for the child's hospital confinement expenses because they are included in the confinement expenses of the mother. We agree. The statute clearly and unambiguously states that the father is "liable to pay the expenses of the mother's confinement." Before the child is born, the mother's confinement would necessarily include the unborn child's as well.[7] However, after birth the child's confinement expenses are related to the child's care alone, and thus are separate from the mother's confinement expenses. The child's expenses are nonetheless "expenses in connection with [the mother's] pregnancy," and thus can be apportioned at the trial court's discretion.[8] Finally, we disagree that the court's discretion is limited by Michigan's Child Support Guidelines.

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[6] As in the case before us, the court in *Lisa Marie UU* was faced with a constitutional challenge to a statute providing for the payment of the hospital confinement expenses of the mother of a child born out of wedlock. The language of the statute involved was similar to that of MCL 722.712:

> "The father is liable to pay the reasonable expenses of the mother's confinement and recovery and such reasonable expenses in connection with her pregnancy as the court in its discretion may deem proper." [*Lisa Marie UU, supra* at 412, quoting Family Ct. Act, § 514.]

The court "read the statute in a gender-neutral manner authorizing the court to impose the obligation of paying for the confinement expenses of the mother of the child upon either the mother or father or both as the court, in its discretion, may deem proper." *Lisa Marie UU, supra* at 412. "Such a construction," the court observed, "eliminates any sex-based discrimination and negates appellant's contention that section 514 of the Family Court Act violates the equal protection clause." *Id.*

[7] MCL 722.711 defines child to "mean[] a child *born* out of wedlock." (Emphasis added.)

[8] We note that in concluding the defendant was solely liable for the child's confinement expenses, the trial court observed that "[a]n argument could even be made that the said law in requiring a father to pay expenses in connection with the pregnancy, could be stretched to cover childbirth as well." However, it is clear to us from the trial court's opinion that the basis on which the award of the child confinement expenses was based was the equivalence the court found between the mother's and the child's confinement expenses.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

Saad, J., concurs in result only.

McDonald, J., did not participate.