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Notes: Family Law — Adoption: Do Laws Prohibiting Reimbursement to a Natural Mother for Reasonable Expenses Incurred during Pregnancy Truly Serve the Best Interests of the Child? In re Adoption No. 9979, 323 Md. 39, 591 A.2d 468 (1991)

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FAMILY LAW — ADOPTION: DO LAWS PROHIBITING REIMBURSEMENT TO A NATURAL MOTHER FOR REASONABLE EXPENSES INCURRED DURING PREGNANCY TRULY SERVE THE BEST INTERESTS OF THE CHILD? *In re Adoption No. 9979*, 323 Md. 39, 591 A.2d 468 (1991).

According to a recent *Time Magazine* article on infertility, more than one couple in twelve in this country have difficulty conceiving a child.¹ Once a couple reaches the “thirtysomething years,” that number increases to one out of every seven couples.² In fact, “[t]he number of doctor visits for fertility problems nearly tripled between 1968 and 1984.”³ For this and a variety of other reasons more and more couples are turning to adoption as an alternative.

In 1975, the Federal Government stopped recording the number of babies adopted each year.⁴ An independent estimate in 1986, from the National Committee for Adoption in Washington, set the total for that year at approximately 60,000 adoptions by non-relatives.⁵ From the early 1980s it seems that independent adoptions⁶ are also on the rise.⁷ As the number of private adoptions escalates, many professionals are concerned that the standards and safeguards, intended first and foremost to protect the children, are slipping.⁸

*In re Adoption No. 9979*⁹ and this casenote address one of the many adoption issues our courts face today: Which expenses incurred by a natural mother during her pregnancy are reimbursable by adoptive parents?¹⁰ This is an important question because Maryland law prohibits the payment of compensation to a natural parent in exchange for that parent’s consent to an adoption.¹¹ Reimbursement

1. Philip Elmer-Dewitt, *Making Babies*, TIME, Sept. 30, 1991, at 56, 56.

2. *Id.*

3. *Id.* at 58.

4. Nancy Gibbs, *The Baby Chase*, TIME, Oct. 9, 1989, at 86, 86.

5. *Id.*

6. Eileen Ogintz, “*Baby Wanted: Call Viv . . .*”: *How More Couples are Advertising for a Child*, GLAMOUR, Aug. 1988, at 160, 162 (“Most states recognize three legal paths to adoption: through public agencies, usually part of local or state government; through private agencies; and through private placement (independent) arrangements.”). *See generally infra* note 14.

7. Ogintz, *supra* note 6, at 162. In 1982, according to the National Committee for Adoption, there were 16,743 independent adoptions and 14,549 private agency adoptions. This was the first time since 1961 that independent adoptions outpaced private agency adoptions. *Id.*

8. *See Gibbs, supra* note 4, at 88.

9. 323 Md. 39, 591 A.2d 468 (1991).

10. *See id.* at 40, 591 A.2d at 469.

11. *See infra* notes 43-47 and accompanying text.

for certain expenses could, therefore, result in criminal prosecution and conviction of a misdemeanor.¹² The expense in question in *In re Adoption No. 9979* was a reimbursement for maternity clothing.¹³

In re Adoption No. 9979 concerned a petition for the adoption of an infant child filed in Circuit Court for Montgomery County, Maryland.¹⁴ A court investigator conducted an adoption investigation and recommended that the petition be granted.¹⁵ The investigator also requested, however, that the adoptive parents submit itemized bills of all payments made to or on behalf of the natural mother.¹⁶ The adoptive parents filed a statement of expenses paid to the natural mother which included a \$488.00 reimbursement for maternity clothing.¹⁷

At the close of the adoption hearing on October 25, 1989, the trial judge signed the final decree approving the adoption.¹⁸ Subse-

12. See MD. CODE ANN., FAM. LAW § 5-327 (1991). Section 5-327 of the Family Law Code provides the following:

(a) *In general.* — (1) An agency, institution, or individual who renders any service in connection with the placement of an individual for adoption may not charge or receive from or on behalf of either the natural parent of the individual to be adopted, or from or on behalf of the individual who is adopting the individual, any compensation for the placement.

(2) This subsection does not prohibit the payment, by any interested person, of reasonable and customary charges or fees for hospital or medical or legal services.

(c) *Prosecution by State's Attorney.* — The State's Attorney shall prosecute any violation of this section.

(d) *Penalty.* — A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding 3 months, or both, for each offense.

Id. See generally *infra* note 47.

13. See *No. 9979*, 323 Md. at 40, 591 A.2d at 469. As requested by the court investigator, the natural mother provided the trial court with an itemized list of the clothing purchased. *Id.* For the itemized list of the maternity clothing, see *id.* at 41 n.1, 591 A.2d at 469 n.1.

14. *Id.* at 40, 591 A.2d at 469. This was a direct adoption, not involving any agency, but handled and consented to privately by the natural and adoptive parents. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 40-41, 591 A.2d at 469. Among the other expenses were attorney's fees, court costs and \$378.35 paid to the natural mother as reimbursement for hospitalization insurance. The compensation for these expenses went unchallenged by the State. Appellants' attorney submitted an affidavit from the natural mother that she had not kept any of the bills for the maternity clothing; she did, however, itemize the expenses for the court. *Id.*

18. *Id.* at 54, 591 A.2d at 476 (Eldridge, J., concurring).

quently, on December 14, 1989, the judge entered an order finding that the reimbursement for the maternity clothing was not a permitted expense and was therefore disallowed.¹⁹ The adopting parents appealed the trial judge's order to the court of special appeals and, prior to consideration of the case by the lower appellate court, the Court of Appeals of Maryland issued a writ of certiorari.²⁰ The primary issue for consideration by the court of appeals was whether section 5-327 of the Maryland Family Law Code prohibits adoptive parents from reimbursing a natural mother for maternity clothing expenses.²¹

Adopting a child is a relatively new legal concept in America.²² The first state adoption statute was enacted in Massachusetts in 1851.²³ The first Maryland adoption statute was contained in chapter 244 of the Acts of 1892.²⁴ In Maryland, "[a]doption did not exist at common law but is governed by statutes [currently] codified in sections 5-301 through 5-330 of the Family Law Article."²⁵ The term "adoption" itself was only recently defined by the Court of Special Appeals of Maryland as "the means by which the legal relationship of parent and child is created between those not related as such by nature."²⁶

In 1947, the Maryland General Assembly, acting upon the recommendations of a commission appointed in 1945 to study Maryland adoption laws,²⁷ revised then existing law with the enactment of chapter 599, Laws of 1947.²⁸ One of the most noteworthy changes

19. *Id.* at 55, 591 A.2d at 476 (Eldridge, J., concurring).

20. *Id.* at 41-42, 591 A.2d at 469.

21. *Id.* at 42, 591 A.2d at 469.

22. Susan K. LeMay, Note, *The Emergence of Wrongful Adoption As A Cause of Action*, 27 J. FAM. L. 475, 475 (1988-89) ("The status of a parent-child relationship created by adoption is a relatively new concept in American law; the first adoption statute was not enacted until 1851.").

23. *Id.* at 475 n.1; Yasuhide Kawashima, *Adoption in Early America*, 20 J. FAM. L. 677, 677 (1981-82).

24. *L.F.M. v. Department of Social Servs.*, 67 Md. App. 379, 391, 507 A.2d 1151, 1157 (1986). Chapter 244 of the Acts of 1892 is currently codified at MD. CODE ANN., FAM. LAW §§ 5-301 to -330 (1991). *In re Lynn M.*, 312 Md. 461, 463, 540 A.2d 799, 800 (1988).

25. *Stambaugh v. Child Support Enforcement Admin.*, 323 Md. 106, 110, 591 A.2d 501, 503 (1991) (citations omitted); see MD. CODE ANN., FAM. LAW §§ 5-301 to -330 (1991).

26. *L.F.M.*, 67 Md. App. at 391, 507 A.2d at 1157.

27. *Id.*; see John S. Strahorn, Jr., *Changes Made by the New Adoption Law*, 10 MD. L. REV. 20, 21 (1949).

28. *L.F.M.*, 67 Md. App. at 391-92, 507 A.2d at 1157. The statute enacted as chapter 599 of the Laws of 1947 was virtually identical to the one proposed by the commission. *Id.* (citing *Report of the Commission to Study Revision of Adoption Laws of the State of Maryland*, BALTIMORE DAILY REC., June 1, 1946).

in this new law was the inclusion of a legislative policy acknowledging the need for protection of the parties to an adoption (i.e., the child, the natural parents, and the adopting parents).²⁹ With certain minor changes, this statement of legislative intent remains intact today.³⁰

The courts in Maryland have focused upon the preservation of the welfare and interests of the adopted child as the most important of the purposes espoused in section 5-303(b)(1).³¹ The Court of Special Appeals of Maryland held in *Courtney v. Richmond*³² that "[t]he law governing adoptions seeks to protect the child, the natural parents and the adopting parent or parents[.] [T]he rights of the parents, both natural and adoptive, are not absolute, however, but are subject to the best interests of the child."³³ The court further asserted that, although the rights of the natural and adoptive parents should be carefully guarded, the best interests of the child are the primary considerations in every adoption.³⁴

An adoption proceeding is therefore concerned with the limited matter of the status of the child to be adopted.³⁵ Once the trial court decides that it is in the best interests of the child to approve the adoption petition, and the adoption decree is signed, the responsibility and jurisdiction of the court ends.³⁶ *Spencer v. Franks*³⁷ supports this

29. See *L.F.M.*, 67 Md. App. at 392, 507 A.2d at 1157. Chapter 599 of the Laws of 1947 began with the following statement of legislative policy:

The General Assembly declares its conviction that the policies and procedures for adoption are socially necessary and desirable, having as their purpose the three-fold protection of (1) the adoptive child, from unnecessary separation from his natural parents and from adoption by persons unfit to have such responsibility; (2) the natural parents, from hurried and abrupt decisions to give up the child; and (3) the adopting parents, by providing them information about the child and his background, and protecting them from subsequent disturbance of their relationships with the child by natural parents.

Id. (quoting Laws of 1947, ch. 599).

30. *Id.*; see MD. CODE ANN., FAM. LAW § 5-303(b)(1)-(3) (1991).

31. *Lynn M.*, 312 Md. at 463, 540 A.2d at 800 ("The predominant theme of all these enactments has been to preserve and protect the interests and welfare of the child."); see MD. CODE ANN., FAM. LAW § 5-303(b)(1) (1991). Section 5-303(b)(1) states that the purpose of the statute is to protect "children from: (i) unnecessary separation from their natural parents; and (ii) adoption by individuals who are unfit for the responsibility . . ." *Id.*

32. 55 Md. App. 382, 462 A.2d 1223 (1983).

33. *Id.* at 392, 462 A.2d at 1229 (citation omitted); see also *supra* note 31.

34. *Courtney*, 55 Md. App. at 392, 462 A.2d at 1229 (quoting *Coffey v. Department of Social Servs.*, 41 Md. App. 340, 358, 397 A.2d 233, 243 (1973) (quoting *Winter v. Director of the Dept. of Pub. Welfare*, 217 Md. 391, 395-96, 143 A.2d 81, 84, *cert. denied*, 358 U.S. 912 (1958))).

35. *No. 9979*, 323 Md. at 58, 591 A.2d at 477 (Eldridge, J., concurring).

36. *Id.* at 59, 591 A.2d at 478 (Eldridge, J., concurring); *Falck v. Chadwick*, 190 Md. 461, 467, 59 A.2d 187, 189 (1948) ("The Court is not invested with

position. In *Spencer*, the trial court made provisions for custody and visitation rights after granting a petition for adoption.³⁸ The court of appeals reversed the visitation and custody orders because they were not within the trial court's jurisdiction once the adoption petition was decided.³⁹

One of the primary problems dealt with during such an adoption proceeding and affecting the interests of children is that of compensation paid by the adoptive parents to the natural parent(s). Certain Maryland statutes govern the forms of appropriate and inappropriate compensation related to an adoption.⁴⁰ The Court of Appeals of Maryland, in *Stambaugh v. Child Support Enforcement Administration*,⁴¹ considered these statutes: Article 27, section 35C, of Maryland's Annotated Code and section 5-327 of the Maryland Family Law Code.⁴² The *Stambaugh* court held that there exists a "strong policy in [Maryland] forbidding payments of compensation to a natural parent in exchange for that parent's consent to an adoption."⁴³

Article 27, section 35C, of Maryland's Annotated Code provides that "[a] person may not sell, barter, or trade, or offer to sell, barter, or trade a child for money or property . . . or anything else of value."⁴⁴ Additionally, section 5-327 of the Maryland Family Law Code, entitled "Prohibited Compensation,"⁴⁵ makes the payment of compensation, for or in connection with the placement of an individual for adoption, a criminal misdemeanor punishable by a fine not to exceed \$100 or imprisonment of up to three months, or both.⁴⁶ Section 5-327(a)(1) provides as follows:

An agency, institution, or individual who renders any service in connection with the placement of an individual for adop-

continuous authority . . . to entertain petitions filed from time to time . . . for modification of the decree on proof of altered circumstances of either the natural or adoptive parents.").

37. 173 Md. 73, 195 A. 306 (1937).

38. *Id.* at 77-79, 195 A. at 308-09.

39. *Id.* at 82-83, 195 A. at 310.

40. See MD. CODE ANN., FAM. LAW § 5-327 (1991) (prohibiting certain compensation in adoption proceedings); MD. ANN. CODE art. 27, § 35C (1987 & Supp. 1990) (prohibiting "child selling").

41. 323 Md. 106, 591 A.2d 501 (1991). The *Stambaugh* court sought to determine whether a natural mother could waive liability on the part of a natural father, for past or future child support, pursuant to a divorce decree, in exchange for the father's consent to adoption of the children by the mother's second husband. *Id.* at 108, 591 A.2d at 502.

42. *Id.* at 112, 591 A.2d at 504.

43. *Id.*

44. MD. ANN. CODE art. 27, § 35C (1987 & Supp. 1990).

45. See MD. CODE ANN., FAM. LAW § 5-327 (1991).

46. *Id.* § 5-327(a)(1), (d).

tion may not charge or receive from or on behalf of either the natural parent of the individual to be adopted, or from or on behalf of the individual who is adopting the individual, any compensation for the placement.⁴⁷

Section 5-327(a)(2) provides a narrowly limited exception to the general rule: "This subsection does not prohibit the payment, by any interested person, of reasonable and customary charges or fees for hospital or medical or legal services."⁴⁸ The medical expenses exception is permitted because it is deemed to directly benefit the child's best interests, consistent with the underlying policy of Maryland's adoption laws.⁴⁹ Section 5-327 was the governing law for *In re Adoption No. 9979*.

Two primary issues faced the court in construing this section and its application to the facts of the case. The first was whether the language "individual who renders any service in connection with the placement of an individual for adoption" governs the natural mother as a person rendering a service to the adoptive parents.⁵⁰ The second was whether a reimbursement for maternity clothing expenses falls within the section's exception for medical expenses.⁵¹

Commentators suggest that section 5-327 is not intended to govern payments made directly to the natural mother by the adoptive parents but only to third party intermediaries.⁵² The language of section 5-327 supports this argument. Section 5-327 governs payments made on behalf of the natural parent of the individual to be adopted to agencies, institutions or individuals who render services in connection with the placement.⁵³ The section says nothing about payments made directly to the natural parent. If literally construed, however, the natural parent could be considered an "individual who

47. *Id.* § 5-327(a)(1). Section 5-327 of the Family Law Article has been amended to include a provision requiring accounting reports in independent adoptions. See MD. CODE ANN., FAM. LAW § 5-327(c) (Supp. 1992). For purposes of this Note, the amendment has no consequence, and reference to section 5-327 is to the version in force at the time *No. 9979* was decided.

48. MD. CODE ANN., FAM. LAW § 5-327(a)(2) (1991).

49. *No. 9979*, 323 Md. at 49, 591 A.2d at 473. The court of appeals recognized that "a lack of clothing could have an adverse effect upon the health and welfare of the natural mother," and upon the unborn child as well, but noted that "the same could be said for the lack of food or shelter, and reimbursement for those expenses would not constitute payment of customary medical expenses." *Id.*

50. See *id.* at 42-45, 591 A.2d at 469-71.

51. See *id.* at 42-43, 49-50, 591 A.2d at 470, 473.

52. *Id.* at 61-62, 591 A.2d at 479 (Eldridge, J., concurring); see Carol L. Nicolette & Libby C. Reamer, Comment, *Regulatory Options for Surrogate Arrangements in Maryland*, 18 U. BALT. L. REV. 110, 120 (1988).

53. See MD. CODE ANN., FAM. LAW § 5-327(a)(1) (1991).

renders any service in connection with the placement of an individual for adoption"⁵⁴

The Maryland Senate addressed this very issue in 1989, when Senate Bill 58 was introduced.⁵⁵ The original purpose of Senate Bill 58 was to broaden section 5-327's language to include within its prohibition payments made to natural parents.⁵⁶ Senate Bill 58 ultimately was not enacted as a revision of section 5-327, but as an entirely separate law, Article 27, section 35C.⁵⁷

Like Maryland, the overwhelming majority of jurisdictions in this country also prohibits the payment of monetary or other compensation to a child's natural parents in an effort to attain their consent to an adoption, or the termination of their parental rights.⁵⁸ In fact, almost all jurisdictions have enacted statutes prohibiting certain forms of compensation for the natural parents' consent to an adoption with expressly limited exceptions for certain medical and legal expenses.⁵⁹

One such example is illustrated by the decision of the Court of Appeals of Texas in the case of *Kingsley v. State*.⁶⁰ The facts of *Kingsley* are substantially similar to *In re Adoption No. 9979*. The defendant in *Kingsley* was an attorney who had reimbursed a natural mother for a variety of expenses she incurred during pregnancy, including maternity clothing.⁶¹ *Kingsley* concerned the application of the Texas Penal Code Annotated, section 25.06, prohibiting the payment of compensation to acquire or maintain the possession of

54. *See id.*

55. *See* S.B. No. 58, 1989 Md. Leg. Sess.

56. *No. 9979*, 323 Md. at 62, 591 A.2d at 479-80 (Eldridge, J., concurring).

57. *Id.* at 62-63, 591 A.2d at 480 (Eldridge, J., concurring); *see* MD. ANN. CODE art. 27, § 35C (Supp. 1992).

58. *See In re Adoption of Kindgren*, 540 N.E.2d 485 (Ill. App. Ct. 1989) (consent for adoption given for illegal payment of money is void as against public policy); *People v. Daniel*, 241 Cal. Rptr. 3 (Cal. App. 1987) (father's conviction for attempting to sell his daughter to family for \$90,000 upheld under criminal statute prohibiting sale or attempted sale of a person); *State v. Roberts*, 471 So. 2d 900 (La. Ct. App. 1985) (payment of \$3,000 in exchange for consent to adoption of a baby is illegal); *People v. Michelman*, 403 N.Y.S.2d 417 (N.Y. Sup. Ct. 1978) (New York Social Welfare Law § 371(12) deemed to prohibit "arrangements" made for unauthorized placement of child, and particularly the business that arises from such placement).

59. *See Nicolette & Reamer, supra* note 52, at 119-20. As of 1981 at least 41 states had enacted legislation prohibiting the payment of compensation beyond expenses connected with the adoption itself. *Id.* at 119 n.71; *see* Claire Berman, *Laws on Private Adoptions*, PARENTS MAGAZINE, Feb. 1983, at 67, 71 ("For example, in California no payment may be made in connection with an adoption beyond the medical and living expenses of the mother through the pregnancy.").

60. 744 S.W.2d 191 (Tex. Ct. App. 1987).

61. *Id.* at 192.

a child for the purpose of adoption.⁶² The Texas statute provides exceptions, similar to Maryland's section 5-327, including reimbursement for medical expenses.⁶³ The court held that payments for maternity clothes are not legal or medical expenses.⁶⁴ Although *Kingsley* appears to be the only case, outside of Maryland, that specifically deals with the question of maternity clothing expenses, other jurisdictions have adjudicated the validity of similar expenses.⁶⁵

In a five-to-two decision, the Court of Appeals of Maryland held that reimbursement for maternity clothing expenses incurred by the natural mother is prohibited by section 5-327.⁶⁶ The court also held that the due process rights of the natural mother were violated by the entry of this order without notice to her or an opportunity

62. *Id.* at 192-93.

63. See TEX. PENAL CODE ANN. § 25.06 (Vernon 1986). Section 25.06 provides as follows:

Sale or Purchase of Child

(a) A person commits an offense if he:

(1) possesses a child or has the custody, conservatorship, or guardianship of a child whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for the purposes of adoption; or

(2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

.....

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child.

.....

Id.

64. *Kingsley*, 744 S.W.2d at 193.

65. See *Brod v. Matter of an Adoption*, 522 So. 2d 973 (Fla. Dist. Ct. App. 1988) (intermediary for adoptive parent may pay documented living expenses of natural mother); *In re Carballo* by Tersigni, 521 N.Y.S.2d 375 (N.Y. Fam. Ct. 1987) (attorney acting as intermediary, to seek an adoptive family for child, is not entitled to fees or reimbursements); *In re Adoption of Baby Boy M.G.*, 522 N.Y.S.2d 822 (N.Y. Sup. Ct. 1987) (fee paid to adoption agency, licensed in Arizona but not in New York, is improper); *In re Adoption of Alyssa, L.B.*, 501 N.Y.S.2d 595 (N.Y. Sup. Ct. 1986) (adoptive parents not required to reimburse maternal grandmother for money given to natural mother to purchase an automobile); *In re Baby Girl D.*, 517 A.2d 925 (Pa. 1986) (only medical payments that directly benefit child are reimbursable; counseling of natural mother, housing expenses, medical expenses unrelated to birth, not reimbursable); *Gorden v. Cutler*, 471 A.2d 449 (Pa. Super. Ct. 1983) (lying-in expenses deemed to directly benefit child are properly reimbursable).

66. *No. 9979*, 323 Md. at 40, 591 A.2d at 469.

to contest it.⁶⁷ As a result, the trial court's order compelling the natural mother to repay the \$488.00 was vacated.⁶⁸ The concurrence, written by Judge Eldridge and joined by Judge Rodowsky, agreed that the natural mother's due process rights were violated by an order to repay the money but disagreed with the majority's reasoning as to the scope of section 5-327's coverage.⁶⁹

The majority opinion begins with a summary of the appellants' arguments and then proceeds to answer each in turn.⁷⁰ The court rejected appellants' first argument, that section 5-327 does not apply to payments made directly to the natural parent(s) but only to doctors, lawyers and other third-party intermediaries.⁷¹ The court held that a natural parent is included in the category of one who "renders any service in connection with the placement of an individual for adoption"⁷² The court stated that it "may not be the warmest possible prose, but it literally does include the natural parents."⁷³ The court also rejected appellants' argument that Article 27, section 35C, was enacted because section 5-327 does not address compensation made to the natural parent.⁷⁴

The court next rejected appellants' contention that the word "compensation" in section 5-327 means profit accruing to the natural mother, not reimbursement for legitimate expenses.⁷⁵ Finally, in

67. *Id.* at 51-52, 591 A.2d at 474 (citation omitted) ("[I]t is clear in the case before us that core concepts of due process would be violated by the entry of an order directing repayment by the natural mother when she had been given no notice that such an order might be entered and no opportunity to contest it.").

68. *Id.* at 52, 591 A.2d at 474.

69. *See id.* at 52, 591 A.2d at 474 (Eldridge, J., concurring).

70. *See id.* at 42-43, 591 A.2d at 470. Appellants' arguments can be itemized as follows: 1) the statute does not apply to payments made to the natural parent; 2) the statute only governs payments made which result in profit to the recipient and not mere expense reimbursement; and 3) payment for maternity clothing qualifies as a payment for reasonable and customary charges for medical expenses as permitted by section 5-327(a)(2). *Id.*

71. *Id.* at 43-44, 591 A.2d at 470-71.

72. MD. CODE ANN., FAM. LAW § 5-327(a)(1) (1991).

73. *No. 9979*, 323 Md. at 44, 591 A.2d at 471. The court based this assessment in part on a report concerning independent adoptions, from a committee of Maryland judges, that contained no suggestion that payments made to the natural parents would be exempted. *Id.* at 45, 591 A.2d at 471 (discussing REPORT OF THE SUBCOMMITTEE TO STUDY UNIFORM PROCEDURES FOR HANDLING INDEPENDENT ADOPTIONS, COMMITTEE ON JUVENILE AND FAMILY LAW OF THE MARYLAND JUDICIAL CONFERENCE, 57-66 (Nov. 1, 1988)).

74. *No. 9979*, 323 Md. at 46-48, 591 A.2d at 472-73. Article 27, § 35C, was enacted to provide penalties for those engaging in baby selling. Thus, the court found it inconceivable that the legislature would exclude payments made to natural parents from the only statute dealing with prohibited payments. *Id.* *See generally infra* note 93.

75. *No. 9979*, 323 Md. at 48-49, 591 A.2d at 473. The court relied on the customary

rejecting appellants' contention that "reimbursement for maternity clothing falls within the statutory exemption for payment of 'reasonable and customary charges or fees for hospital or medical or legal services,'" ⁷⁶ the court determined that "[f]actually, and logically," payments for maternity clothing are not medical expenses.⁷⁷ The court finally held that "[s]ection 5-327 provides a general prohibition against all payments, followed by a narrow exception for 'reasonable and customary charges or fees for hospital or medical or legal services'" that does not encompass reimbursement for maternity clothing.⁷⁸

The language of section 5-327 seems clear in its prohibition of certain types of payments and compensation to the natural mother. If so, it is the duty of the court to give the clear and unambiguous language of such a statute its natural connotation.⁷⁹ Judge Eldridge's concurrence, however, raises some interesting questions, not only as to the clarity of the legislature's intent, but also as to whether the trial court had continuing jurisdiction after the entry of the adoption decree.⁸⁰

As held in *Spencer*, once the trial court has determined that it is in the best interests of the child to grant an adoption decree, its responsibility ends.⁸¹ Here, the trial judge entered the final adoption decree on October 25, 1989; thus, the trial court's jurisdiction ended on that date. The trial court's order requiring the natural mother to repay the \$488.00, however, issued on December 14, 1989, nearly two months later, and at a time when it had no authority to take such action.⁸² The majority opinion does not address this discrepancy directly but does state that when the trial judge approved the adoption he expressed concern about the \$488.00 and requested legal memoranda on the issue.⁸³ Although the trial judge initially addressed the

usage and various definitions of the word "compensation," which led to the conclusion that the word is broad enough to include, but not limited to, profit alone. *Id.*

76. *Id.* at 49, 591 A.2d at 473 (quoting MD. CODE ANN., FAM. LAW § 5-327(a)(2) (1991)).

77. *Id.*

78. *Id.* at 50, 591 A.2d at 473.

79. *Stambaugh v. Child Support Enforcement Admin.*, 323 Md. 106, 110, 591 A.2d 501, 503 (1991) (citing *Trimble v. State*, 321 Md. 248, 582 A.2d 794 (1990)).

80. *See No. 9979*, 323 Md. at 52, 591 A.2d at 474 (Eldridge, J., concurring). Judge Eldridge agreed that the circuit court's December 14, 1989 order must be vacated because the natural mother was not present at any of the proceedings and was given no notice of that order. Judge Eldridge disagreed, however, with the majority's interpretation of section 5-327. *Id.*

81. *Spencer v. Franks*, 173 Md. 73, 83, 195 A. 306, 310; *see supra* note 36.

82. *No. 9979*, 323 Md. at 54-55, 591 A.2d at 476 (Eldridge, J., concurring).

83. *Id.* at 41, 591 A.2d at 469.

\$488.00 before the final adoption decree was entered, he still approved the adoption.⁸⁴ One could infer from the entry of the final order that the judge considered it in the best interests of the child to grant the adoption despite the possible violation of section 5-327. If that is the case, either the trial judge's jurisdiction ended with the entry of the final decree or he should not have signed the order until this issue was resolved.⁸⁵

The concurrence also disagrees with the majority position that section 5-327 was intended to govern reimbursement payments made by the adopting parents to the natural parents.⁸⁶ The concurrence asserts that section 5-327(a)(1) was intended to prohibit third-party intermediaries from attaining a profit from arranging adoptions:⁸⁷ "It stretches the bounds of credulity to interpret the phrase 'individual who renders any service in connection with the placement of an individual for adoption . . . ' as including the natural mother who often, due to economic circumstances, may be forced to place her child with another family."⁸⁸ Although the majority opinion acknowledges that such an interpretation does not constitute the "warmest possible prose," it concludes that the text does literally fit the facts of the case.⁸⁹ In fact, the majority could not conceive of anyone rendering a greater service to the adoption process than the natural mother of the child.⁹⁰ Even though the language of section 5-327 does not specifically include third parties or natural parents, but only "individuals," among those who may not receive compensation for the placement of a child, one may reasonably interpret the section to include payments made to the natural parents.

What is more troublesome, however, is that section 5-327 governs one who renders such a service and charges or receives payments "from or on behalf of" the natural or adoptive parents.⁹¹ This language is a clear indication that section 5-327 is intended to govern third-party actions during the adoption process.

Maryland Senate Bill 58, later enacted as Article 27, section 35C, also supports this argument.⁹² Article 27, section 35C, enacted to prohibit the sale of children by the natural parents, was originally intended as a revision to section 5-327.⁹³ This underscores the opinion

84. *Id.*

85. *See Spencer*, 173 Md. at 83, 195 A. at 310.

86. *No. 9979*, 323 Md. at 60, 591 A.2d at 478 (Eldridge, J., concurring).

87. *Id.* at 61, 591 A.2d at 479 (Eldridge, J., concurring).

88. *Id.*

89. *No. 9979*, 323 Md. at 44, 591 A.2d at 471.

90. *Id.*

91. MD. CODE ANN., FAM. LAW § 5-327(a)(1) (1991).

92. *See* S.B. No. 58, 1989 Md. Leg. Sess.

93. *No. 9979*, 323 Md. at 62-63, 591 A.2d at 479-80; *see infra* note 74. Article

that section 5-327 was meant to govern third parties only; if it governed payments made to the natural parents then section 35C would appear superfluous.⁹⁴

Finally, the majority opinion relies in part upon the *Report of the Subcommittee to Study Uniform Procedures for Handling Independent Adoptions*⁹⁵ as a part of its interpretation of section 5-327.⁹⁶ According to the majority opinion, the report strongly favors application of the section's prohibitions to the natural and adoptive parents.⁹⁷ Yet, section 5-327 was originally enacted in 1947 and the report was compiled in 1988 as an opinion of four trial judges concerning the application of the statute.⁹⁸ The report is not a part of the actual legislative history of section 5-327 such that it would indicate the prospective intent of the General Assembly.⁹⁹ It does, however, represent an interpretation of the section by the Maryland courts.¹⁰⁰

Judge Eldridge's concurrence culminates in the following assessment of the case:

In light of the language and legislative history of § 5-327, this statute, containing only a criminal sanction, should not be construed to encompass a small reimbursement for maternity clothing from the adopting parents to the natural mother on the theory that the natural mother "render[ed] [a] service in connection with the placement of an individual for adoption."¹⁰¹

In light of both the legislative history of section 5-327 and the enactment of Article 27, section 35C, as well, it seems that section 5-327 was not originally intended to govern the natural parent(s).

27, § 35C, of the Maryland Annotated Code provides as follows:
Child sale, barter, or trade prohibited.

(a) *In general.* — A person may not sell, barter, or trade, or offer to sell, barter, or trade a child for money or property, either real or personal, or anything else of value.

MD. ANN. CODE art. 27, § 35C (Supp. 1992).

94. *No. 9979*, 323 Md. at 63, 591 A.2d at 480 (Eldridge, J., concurring).

95. *See No. 9979*, 323 Md. at 63-64 n.6, 591 A.2d at 480 n.6 (Eldridge, J., concurring) (discussing the majority's misplaced reliance on the REPORT OF THE SUBCOMMITTEE TO STUDY UNIFORM PROCEDURES FOR HANDLING INDEPENDENT ADOPTIONS, COMMITTEE ON JUVENILE AND FAMILY LAW OF THE MARYLAND JUDICIAL CONFERENCE (Nov. 1, 1988)).

96. *See No. 9979*, 323 Md. at 45, 591 A.2d at 471.

97. *Id.*

98. *Id.* at 63-64 n.6, 591 A.2d at 480 n.6 (Eldridge, J., concurring).

99. *Id.*

100. *Id.*

101. *Id.* at 64-65, 591 A.2d at 481 (Eldridge, J., concurring) (alteration in *No. 9979*).

One of the greatest obstacles to the protection of adopted childrens' rights in this country is the growing black market for babies. As noted in a recent *Time Magazine* article, "[a]doptive parents won't blink an eyelash over paying \$20,000 to \$30,000 for a healthy white baby."¹⁰² The same article went on to say that the escalating price tag of this "business" often creates a license to steal.¹⁰³ It is against this backdrop that *In re Adoption No. 9979* was decided. The court stated unequivocally that the prohibition of section 5-327 is general in nature, and that the exception for medical expenses is a narrow one.¹⁰⁴ Widening that exception to include compensation for maternity clothing expenses will indirectly add an additional source of income to an already booming and sometimes illegal business. The court's decision will thus prevent this exception from becoming a loophole for the expansion of that business.

Yet, the commentary noted above also asserts that, in many states, a pregnant teen quickly realizes that with a child she becomes eligible for Medicaid, food stamps and other welfare monies totalling as much as \$8,000 yearly.¹⁰⁵ Giving the child up for adoption often results in "nothing but the pain of loss and the ridicule of her peers."¹⁰⁶ To interpret section 5-327 so narrowly as to prevent the payment of a legitimate expense that indirectly benefits the child may further the epidemic of teen-age mothers necessarily on welfare. Likewise, allowing adoptive parents to assist pregnant women with their expenses during pregnancy affords these women options to care for themselves and their unborn children.

The court's holding in *No. 9979*—that section 5-327 pertains to reimbursement for maternity clothing expenses—represents one more obstacle in an already long and complicated process. In order to countermand this result, one recommendation is for the Maryland General Assembly to explicitly permit reimbursement for reasonable maternity clothing expenses and other reasonable expenses that indirectly benefit the health and well-being of the unborn child. To do so might alleviate some of the burden on our welfare and public assistance system by further promoting valid adoptions that are in the child's best interests.

In *In re Adoption No. 9979*, the Court of Appeals of Maryland has answered an important question regarding whether expenses incurred by a natural mother during pregnancy are reimbursable by adoptive parents. The court held that reimbursement by adoptive

102. Gibbs, *supra* note 4, at 88.

103. *Id.*

104. *No. 9979*, 323 Md. at 50, 591 A.2d at 473.

105. Gibbs, *supra* note 4, at 86.

106. *Id.* at 86-87.

parents for maternity clothing expenses is prohibited by section 5-327 of the Maryland Family Law Code.¹⁰⁷ Under its interpretation of section 5-327, the court considered the natural mother "an individual who renders [a] service in connection with the placement of an individual for adoption." As such, the natural mother is generally prohibited from accepting compensation by section 5-327(a)(1) of the Maryland Family Law Code.¹⁰⁸ The court further held that such expenses are not encompassed by the language of section 5-327(a)(2), which provides an exception for "reasonable and customary charges or fees for hospital or medical or legal services."¹⁰⁹

Although the result reached in this case is arguably correct, one wonders whether it is truly consistent with the legislative intent underlying Maryland's adoption law (*i.e.*, the preservation and protection of the best interests of the adopted child). Permitting reimbursement to a natural mother for legitimate maternity clothing expenses, which arguably provides an indirect benefit to the health and well-being of an unborn child, seems more consistent with the policy objective of Maryland's adoption statutes. The Maryland General Assembly might wish to reconsider the scope of section 5-327's coverage in light of the court's decision in this case and the policy objectives of our adoption laws.

Donald A. Rea

107. *No. 9979*, 323 Md. at 40, 591 A.2d at 469.

108. *See MD. CODE ANN., FAM. LAW § 5-327(a)(1)* (1991).

109. *No. 9979*, 323 Md. at 50, 591 A.2d at 473.