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# Recent Developments: Mulligan v. Corbett: A Child Conceived during Marriage, but Born after Divorce Is Considered Legitimate, Thus a Self-Proclaimed Biological Father Is Not Entitled to Blood Testing Absent a Showing It Is in the Best Interests of the Child

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## RECENT DEVELOPMENT

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### ***MULLIGAN V. CORBETT: A CHILD CONCEIVED DURING MARRIAGE, BUT BORN AFTER DIVORCE IS CONSIDERED LEGITIMATE, THUS A SELF-PROCLAIMED BIOLOGICAL FATHER IS NOT ENTITLED TO BLOOD TESTING ABSENT A SHOWING IT IS IN THE BEST INTERESTS OF THE CHILD.***

**By: Megan K. Green**

The Court of Appeals of Maryland held that a child conceived while the mother was married, but born after the marriage dissolved, is not "born out of wedlock" and is presumed to be a legitimate child. *Mulligan v. Corbett*, 426 Md. 670, 45 A.3d 243 (2012). The court further held that unless the self-proclaimed father rebuts the presumption of legitimacy, he may not utilize the Paternity subtitle of the Family Law Article; in order to obtain blood testing, he must first prove it is in the best interests of the child. *Id.* at 699-700, 45 A.3d at 260-61.

On March 26, 1999, Amy Mulligan ("Mrs. Mulligan") married Thomas Mulligan ("Mr. Mulligan"). In April 2008, the couple separated. According to William Corbett ("Corbett"), in March 2009 he began a sexual relationship with Mrs. Mulligan prior to the dissolution of her marriage. On September 25, 2009, the Circuit Court for Frederick County entered a judgment for absolute divorce. On January 23, 2010, about four months after the divorce, Mrs. Mulligan gave birth to Gracelyn. Mrs. Mulligan asked Corbett to sign the birth certificate as Gracelyn's father, but Corbett first requested blood testing. Mrs. Mulligan denied the request. Following Gracelyn's birth, Mrs. Mulligan returned to the family home to live with Mr. Mulligan. Mr. Mulligan took on the role of Gracelyn's legal father, despite the fact that he might not be her biological father.

On February 25, 2010, Corbett filed a complaint in the Circuit Court for Fredrick County against Mrs. Mulligan to determine paternity. The circuit court, relying on the Estates and Trusts Article, denied Corbett's request for blood testing. According to the court, the Paternity subtitle is applicable only when the child lacks a presumed father. The court concluded that Mr. Mulligan was Gracelyn's presumed father and that blood testing would not be in Gracelyn's best interest.

On appeal, the Court of Special Appeals of Maryland addressed the issue of whether Corbett was entitled to blood testing in order to determine paternity. The court concluded that Gracelyn was "born out of

wedlock," and therefore analyzed Corbett's request for blood testing under the Paternity subtitle. Consequently, the Court of Special Appeals reversed the judgment and remanded to the lower court. Mrs. Mulligan filed a petition for a writ of certiorari, which the Court of Appeals of Maryland granted.

The Court of Appeals of Maryland, acknowledging that this case was one of first impression, began its analysis by considering the different legal avenues to establish paternity. *Mulligan*, 426 Md. at 685, 45 A.3d at 282. The Paternity subtitle of the Family Law Article provides a putative father the right to require blood testing in order "to establish his paternity" of a child born out of wedlock. *Id.* at 691-92, 45 A.3d at 256 (citing Md. Code Ann., Fam. Law §§ 5-1002(c), 1029). The Estates and Trusts Article provides another outlet to determine paternity, although under this statute, a child conceived during marriage is presumed legitimate, and blood testing is only granted if it is in the best interests of the child. *Id.* at 678, 45 A.3d at 247-48. The court recognized the reciprocal nature between the Estates and Trusts Article and the Paternity subtitle, acknowledging that a paternity action can be brought under either statute. *Id.* at 679, 45 A.3d at 248.

The court looked to prior case law to determine which statutory scheme was appropriate for the instant case. *Mulligan*, 426 Md. at 686, 45 A.3d at 252. Specifically, the court compared the present case to *Turner v. Whisted*, where two men sought paternity of the same child, one of whom was married to the mother during the child's birth. *Id.* at 686, 45 A.3d 253 (citing *Turner v. Whisted*, 327 Md. 106, 109-10, 607 A.2d 935, 936-37 (1992)). The *Turner* court held that the child, who was born during wedlock, was presumed legitimate, and therefore the appropriate statutory scheme was the Estates and Trusts Article. *Mulligan*, 426 Md. at 687, 45 A.3d 253 (citing *Turner*, 327 Md. at 111-17, 607 A.2d at 937-40).

The court also looked to *Monroe v. Monroe*, where a mother sought to disestablish paternity of her child, who was born out of wedlock, through blood testing. *Mulligan*, 426 Md. at 687-88, 45 A.3d at 253-54 (citing *Monroe v. Monroe*, 329 Md. 758, 760, 621 A.2d 898, 899 (1993)). The Court of Appeals, relying on public policy considerations, denied the blood testing, finding that the purpose of legitimation is best served when a child born out of wedlock is legitimated without going through the legal process. *Mulligan*, 426 Md. at 688-89, 45 A.3d at 254 (citing *Monroe*, 329 Md. at 771-773, 621 A.2d at 904-05).

The court then embarked on a definitional analysis of the statutes in determining which was more appropriate. *Mulligan*, 426 Md. at 695-98, 45 A.3d at 258-60. The court held that a child conceived during a marriage, but born after divorce was not "born out of wedlock" in a legal sense. *Id.* at 697, 45 A.3d at 259. The court elaborated, holding that the

dissolution of a marriage during pregnancy does not in itself delegitimize the child. *Id.* In doing so, the court rejected the intermediate appellate court's literal construction of "born out of wedlock," finding the phrase synonymous with illegitimate. *Id.* at 696, 45 A.3d 243 at 258. Under the Court of Appeals' interpretation of "born out of wedlock," Gracelyn, conceived during marriage, was presumed to be a legitimate child of Mr. Mulligan. *Id.* at 700, 45 A.3d at 261. In light of this interpretation, the court concluded that Corbett, lacking status as a putative father, was not afforded rights within the Paternity subtitle. *Id.* at 699-700, 45 A.3d at 260-61. The court went on to hold that Corbett was not barred from bringing forth the issue under the Estates and Trusts Article if he established that blood testing was in the best interests of the child. *Id.* at 700, 45 A.3d at 261.

The dissent believed that Corbett was improperly barred from utilizing the Paternity subtitle of the Family Law Article, asserting that it was intended to apply in situations where a child's biological parents were not married at the time the child was born. *Mulligan*, 426 Md. at 709-10, 45 A.3d at 266-67 (Barbera, J., dissenting). The dissent took issue with the fact that the majority cited no authority to support their holding regarding the synonymy between the terms "born out of wedlock" and "illegitimate." *Id.* at 706, 45 A.3d at 264 (Barbera, J., dissenting). The dissent also claimed that the majority's decision subverted the policy behind the Paternity subtitle, which aimed to legitimize children whose parents were not married at the time of the child's birth. *Id.* at 709, 45 A.3d at 267 (Barbera, J., dissenting).

In *Mulligan*, the Court of Appeals of Maryland held that a child conceived during marriage, but born after divorce, is presumed legitimate, thus barring a self-proclaimed biological father from utilizing the Paternity subtitle. Under this subtitle, a putative father may request blood testing as a matter of law. As a result of the court's interpretation of the synonymy of "illegitimate" and "born out of wedlock," a greater burden is placed on a self-proclaimed biological father, who must prove a child's presumed father is not the child's biological father before utilizing Section 5-1002(c) of the Family Law Article. If a self-proclaimed biological father is unable to do this, he must take the tougher path to establish paternity by using the Estates and Trusts Article, and show blood testing would be in the child's best interests. This decision precludes a self-alleged biological father from pursuing issues of paternity with the benefit of a blood test, which is often the most relevant evidence in a paternity action. Ultimately, this decision narrows the instances in which the Paternity subtitle can be utilized, which could undermine the statute's purpose of legitimizing children.