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After four years of marriage, a wife sued her husband for divorce a mensa et thoro, certain personal property, and use and possession of the family home. No children had been born of the marriage, but the wife was the custodial parent of two minor children from a previous marriage. The chancellor's order awarded use and possession of the family home to the wife and stepchildren and required the husband to pay one-half of the first and second mortgages and real estate taxes on the home, pendente lite. From this interlocutory order, the husband appealed. The Court of Appeals of Maryland granted certiorari prior to consideration by the court of special appeals, and reversed and remanded the order.

The narrow issue addressed by the court of appeals centered on the scope of the 1978 Maryland Property Disposition Statute's provision authorizing use and possession of the family home. The Property Disposition Statute is governed throughout by concepts of equitable distribution of property upon divorce. Prior to 1979, Maryland courts were limited to distributing property according to title, and awarding alimony and child support according to common law principles of fault, need, and ability to pay. Equitable distribution, by contrast, considers both spouses' contributions to the marriage. The chancellor is required to use alimony and a monetary award to adjust the equities and rights of the parties to marital property when formulating a fair

1. Bledsoe v. Bledsoe, 294 Md. 183, 185, 448 A.2d 353, 354 (1982). Divorce a mensa et thoro is a judicial decree which terminates the obligation and right of cohabitation, without affecting the status of the parties as married persons. See BLACK'S LAW DICTIONARY 431 (rev. 5th ed. 1979). A final judgment of absolute divorce, divorce a vinculo matrimonii, dissolves the marriage bond. Id.

2. The husband argued that since he had owned the home prior to his second marriage, it was not a “family home” within the meaning of the Property Disposition Statute, which excludes property acquired prior to the marriage from the use and possession provisions. MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-01(b) (1980). However, the court held that since the husband had created a tenancy by the entirety after the marriage, the property was the family home for purposes of use and possession upon divorce. Bledsoe v. Bledsoe, 294 Md. 183, 186-87, 488 A.2d 353, 355 (1982).

3. In Brown v. Brown, 287 Md. 273, 275 n.1, 412 A.2d 396, 397 n.1 (1980), the court noted that technically the step relationship terminates upon divorce and thereafter “stepfather” or “stepchild” is used for convenience but does not describe any legal status. The distinction applies here.

4. MD. CTS. & JUD. PROC. CODE ANN. § 3-6A (1980).


decree, and to give the interests of minor children "particular and favorable attention.

The use and possession order is one specific means by which the legislative directive to consider these equities may be implemented by the chancellor. When a spouse with custody of a minor child demonstrates a need to live in a familiar environment, use and possession of the family home for up to three years, in addition to any pendente lite period, may be awarded. In *Pitsenberger v. Pitsenberger*, such an award was upheld against challenges on procedural due process grounds and as an unconstitutional taking of property. In *Pitsenberger*, the Court of Appeals of Maryland emphasized the legitimacy of the order's purpose in protecting children's interests, and held that the award fulfilled the father's obligation to provide shelter for his five minor children.

In the Property Disposition Statute, the relationship between the minor child and the divorcing spouses is not explicitly addressed. In a 1981 case in the court of special appeals, *Strawhorn v. Strawhorn*, the husband argued that the only minor involved, a stepchild, was not included in the legislation for purposes of awarding the use and possession of the family home. On its own initiative, the court of special appeals compared the language of the proposed bill of the Property Disposition Statute with its final enactment. Finding that the original phrase "children of the parties" had been deleted and the word "child" substituted, the court concluded that custody of a minor stepchild would support a use and possession award.

8. MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-05(b)(8) (1980) (property disposition); see also MD. ANN. CODE art. 16, § 1(b)(1)(ii)(1981) (award of alimony). These statutes expressly cross-reference each other. Different principles apply to alimony and child support, so they are usually awarded separately or the amounts for each, within a lump sum, are specified. Donigan v. Donigan, 208 Md. 511, 521, 119 A.2d 430, 434 (1956); Roberts v. Roberts, 160 Md. 513, 524, 154 A. 95, 100 (1931). Maryland's child support statute does not refer to alimony or property disposition. MD. CTS. & JUD. PROC. CODE ANN. § 3-602 (Supp. 1981).


10. MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-06 (1980).


12. Id. at 32-34, 410 A.2d at 1059-60.


14. Id. at 651, 435 A.2d at 468.


Although *Strawhorn* was not cited by name, the court of appeals in *Bledsoe v. Bledsoe* rejected its statutory interpretation. The language at issue in the Property Disposition Statute is not precisely tailored to express legislative intent to include stepchildren. Rather, the language varies within and between sections, and does not mention stepchildren. Both the court of special appeals and the court of appeals agreed that this doubtful or ambiguous language requires the court to look behind the face of the statute, pursuant to its duty to effectuate legislative intent. In *Bledsoe*, the statute as enacted was compared with the comments of the Governor's Commission on Domestic Relations Law accompanying the proposed bill. Since the legislature made custody of a minor child a prerequisite for award of use and possession, and omitted the alternate grounds proposed by the Governor's Commission (that of a spouse with his or her own need to live in the family home) the court concluded that the property depri-
vation must be justified by obligation to the minor child. The change from "children of the parties" to "minor child" was not decisive, as the Strawhorn court held, but mere editing.

The result in Bledsoe is consistent with prior Maryland decisions which limit the word "child" to its ordinary meaning unless expressly expanded. In Flores v. King, the court of special appeals found that a stepchild is not included in the language "a minor child" as used in the state's wrongful-death statute. The question of whether the term "child" included stepchild in a Maryland constitutional provision was addressed by the court of appeals in Brown v. Brown, which involved imprisonment for breach of a contractual agreement to support a dependent stepchild. In Brown, the court held that the phrase "dependent child" is limited to those children entitled to support by virtue of a legal duty, apart from mere contractual obligation, and that stepchildren are not included within the meaning of the provision.

The Brown analysis was cited by the court of appeals as especially relevant to the issues in Bledsoe. In the absence of legal and moral parental obligations to the stepchild, the court found that a use and possession award would inequitably burden the stepparent, since it would depend on a tortured expansion of the term "child" as used in the Property Disposition Statute. For the duration of a marriage, stepparents may be required by law to support stepchildren. The state's interest in requiring such support is the conservation of public resources, and relieving the burden borne by taxpayers through welfare programs. However, that duty terminates upon dissolution of the


26. Id. at 192, 448 A.2d at 358.
27. Id. at 192-93, 448 A.2d at 358-59.
29. Id. at 274-75, 282 A.2d at 523-24.
30. See MD. CONST. art. III, § 38.
32. Id. at 283-84, 412 A.2d at 402.
34. Id. at 193-94, 448 A.2d at 359.
35. See, e.g., 14 C.F.R. § 233.20e (1982); MD. ADMIN. CODE tit. 7, § 07.03.02.05(c) (1982).
marriage.\textsuperscript{37} Prior to Strawhorn, neither in Maryland nor in other jurisdic-
tions having comparable equitable distribution statutes has a sub-
stantial continuing obligation been made, in the form of a use and
possession order, when the only minor was a stepchild.\textsuperscript{38}

The state unquestionably has a strong interest in the welfare of
minors.\textsuperscript{39} When children are born of the marriage, the guidelines pro-
vided by the Maryland Property Disposition Statute appropriately bal-
ance the adult's economic, and the children's emotional, interests.\textsuperscript{40}
But to continue the financial obligation\textsuperscript{41} of a stepparent after divorce
would be a drastic change,\textsuperscript{42} arguably unconstitutional,\textsuperscript{43} and certainly

\textsuperscript{37} See, e.g., Kaisor v. Kaisor, 93 Misc. 2d 36, 402 N.Y.S.2d 171 (1978); Wash. Rev.

\textsuperscript{38} A substantial occupancy order, for five years, was awarded to the wife in a Ken-
tucky case, but the state's supreme court reduced this to a mere sixty days because the
only child involved was the husband's stepdaughter. In effect, the wife and
stepchild were not given use and possession, but only adequate time to make other

\textsuperscript{39} See Yarborough v. Yarborough, 290 U.S. 202, 220 (1933) (Stone, J., dissenting); 

\textsuperscript{40} Pitsenberger v. Pitsenberger, 287 Md. 20, 32, 410 A.2d 1052, 1058 (1980). For
example, regardless of the child's need to live in the familiar environment, after the
statutory limit of three years is over, the property is distributed either by title
or as marital property. Md. Cts. & Jud. Proc. Code Ann. § 3-6A-06(e),(f) (1980). In other jurisdictions lacking such a limit, the use and possession may be
extended while children live at home or until all minor children reach the age of
majority. See, e.g., Duncan v. Duncan, 379 So.2d 949 (Fla. 1980); Singer v. 
Singer, 342 So.2d 861 (Fla. App. 1977); Biven v. Biven, 62 A.D.2d 1145, 404

\textsuperscript{41} Arguably, in Bledsoe the payments for the mortgages and real estate taxes on the
house could be construed as contribution by the husband as a concurrent tenant, 
thereby protecting his interest in the property, not as financial support of the
stepchildren. See Colburn v. Colburn, 265 Md. 468, 475-76, 290 A.2d 480, 484
(1972).

\textsuperscript{42} Bledsoe v. Bledsoe, 294 Md. 183, 192, 448 A.2d 353, 358 (1982).

\textsuperscript{43} After Bledsoe, if the Property Disposition Statute is expressly amended to include
stepchildren in section 3-6A-03, the award of use and possession may be chal-
genl. on alternate constitutional grounds. One argument would seek to establish
such an award as an unconstitutional taking of property, Bureau of Mines v. 
(state constitutional provisions have same meaning as federal), either for public
benefit without compensation or for private use. See, e.g., Leet v. Montgomery
County, 264 Md. 606, 616, 287 A.2d 491, 497 (1972) (unconstitutional to compel
property owner to remove abandoned cars left by trespassers at his own expense);
Capital Transit Co. v. Bosley, 191 Md. 502, 514, 62 A.2d 267, 273 (1948) (uncon-
stitutional to compel bus company to charge fixed minimal rate for schoolchil-
dren); Perellis v. Mayor of Baltimore, 190 Md. 86, 93, 57 A.2d 341, 344-45 (1948)
(unconstitutional to close portion of public highway when primary purpose or
effect was private benefit).

A substantive due process and equal protection challenge, on the other hand,
would focus on whether the state's interest in the emotional welfare of minor
children is sufficiently compelling so that the stepparent's property deprivation is a
permissible exercise of legislative authority. See Bruce v. Director, Dep't of Ches-
apake Bay Affairs, 261 Md. 585, 600-03, 276 A.2d 200, 208-09 (1971); Stevens v. 
City of Salisbury, 240 Md. 556, 564, 214 A.2d 775, 779 (1965); Ulman v. Mayor of
inconsistent with a fair and equitable adjustment of the spouses' property interests, when balanced by the lack of a parental relationship.44

In Bledsoe, the Court of Appeals of Maryland clarifies that such a radical innovation is a legislative, not judicial, prerogative to make. The courts may not, on their own initiative, move in the direction of assimilating the status of the stepchild to the natural child.45 However, the step relationship is increasingly common in contemporary society. Its prevalence suggests that legislators would better serve both adults and children by expressly addressing the scope of statutory schemes, and setting forth those rights and obligations, if any, which are to flow between stepparents and stepchildren.

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