



University of Baltimore Law Review

Volume 12
Issue 1 Fall 1982

Article 9

1982

Casenotes: Domestic Relations — Divorce and Separation — Term Minor Child in Maryland Property Disposition Statute Does Not Include Stepchild for Award of Use and Possession of the Family Home. *Bledsoe v. Bledsoe*, 294 Md. 183, 448 A.2d 353 (1982)

Elizabeth A. Hambrick-Stowe
University of Baltimore School of Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>

 Part of the [Law Commons](#)

Recommended Citation

Hambrick-Stowe, Elizabeth A. (1982) "Casenotes: Domestic Relations — Divorce and Separation — Term Minor Child in Maryland Property Disposition Statute Does Not Include Stepchild for Award of Use and Possession of the Family Home. *Bledsoe v. Bledsoe*, 294 Md. 183, 448 A.2d 353 (1982)," *University of Baltimore Law Review*: Vol. 12: Iss. 1, Article 9.

Available at: <http://scholarworks.law.ubalt.edu/ublr/vol12/iss1/9>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

DOMESTIC RELATIONS — DIVORCE AND SEPARATION —
TERM MINOR CHILD IN MARYLAND PROPERTY DISPOSI-
TION STATUTE DOES NOT INCLUDE STEPCHILD FOR
AWARD OF USE AND POSSESSION OF THE FAMILY HOME.
Bledsoe v. Bledsoe, 294 Md. 183, 448 A.2d 353 (1982).

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.¹ 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 home² to the wife and stepchildren,³ 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.⁴ The Property Disposition Statute is governed throughout by concepts of equitable distribution of property upon divorce.⁵ 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.⁶ Equitable distribution, by contrast, considers both spouses' contributions to the marriage.⁷ 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, 448 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).

5. See the extended discussion in Note, *Property Disposition Upon Divorce in Maryland: An Analysis of the New Statute*, 8 U. BALT. L. REV. 377 (1979).

6. *Timanus v. Timanus*, 178 Md. 640, 642-43, 16 A.2d 918, 920 (1940).

7. *Bender v. Bender*, 282 Md. 525, 534-35 n.7, 386 A.2d 772, 778 n.7 (1978); MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-05(b)(1) (1980).

decree,⁸ and to give the interests of minor children "particular and favorable attention."⁹

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.¹⁰ In *Pitsenberger v. Pitsenberger*,¹¹ 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.¹²

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*,¹³ 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.¹⁴ 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.¹⁵ Finding that the original phrase "children of the parties" had been deleted and the word "child" substituted,¹⁶ the court concluded that custody of a minor stepchild would support a use and possession award.¹⁷

-
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).
 9. Act of May 29, 1978, ch. 794, 1978 Md. Laws 2304-05 (preamble to Property Disposition Statute).
 10. MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-06 (1980).
 11. 287 Md. 20, 410 A.2d 1052 (1980).
 12. *Id.* at 32-34, 410 A.2d at 1059-60.
 13. 49 Md. App. 649, 435 A.2d 466 (1981), *vacated in part*, 294 Md. 322, 450 A.2d 490 (1982).
 14. *Id.* at 651, 435 A.2d at 468.
 15. *See* *Blumenthal v. Clerk of Circuit Court*, 278 Md. 398, 404-05, 365 A.2d 279, 283 (1976) (all legislative sources of information expressly approved for judicial use). For judicial use of more extensive legislative history, *see, e.g.*, *Brown v. Brown*, 287 Md. 273, 412 A.2d 396 (1980); *Atlantic, Gulf & Pacific Co. v. State Dep't of Assessments & Taxation*, 252 Md. 173, 249 A.2d 180 (1969); *Barrett v. Charlson*, 18 Md. App. 80, 305 A.2d 166 (1973).
 16. *See* Act of May 29, 1978, ch. 794, 1978 Md. Laws 2304-05 (preamble to Property Disposition Statute).
 17. *Strawhorn v. Strawhorn*, 49 Md. App. 649, 435 A.2d 466 (1981), *vacated in part*, 294 Md. 322, 450 A.2d 490 (1982). This conclusion was made in Note, *Property*

Although *Strawhorn* was not cited by name, the court of appeals in *Bledsoe v. Bledsoe*¹⁸ rejected its statutory interpretation.¹⁹ 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,²⁰ and does not mention stepchildren.²¹ 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,²² pursuant to its duty to effectuate legislative intent.²³ 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)²⁴ the court concluded that the property depri-

Disposition Upon Divorce in Maryland: An Analysis of the New Statute, 8 U. BALT. L. REV. 377, 388 n.75 (1979), cited by the court. Although the appellee in *Strawhorn* cited this article in his brief, he did not cite it for the discussion of whether stepchildren were contemplated by the legislature or the effect of the enacted language. Rather, it was cited as support for the claim that the use and possession order is not child support. Brief for Appellee at 19, *Strawhorn v. Strawhorn*, 49 Md. App. 649, 435 A.2d 466 (1981), *vacated in part*, 294 Md. 322, 450 A.2d 490 (1982).

18. *Bledsoe v. Bledsoe*, 294 Md. 183, 448 A.2d 353 (1982).

19. *Id.* at 192, 448 A.2d at 357-58.

20. The preamble speaks of "both spouses and any children they may have," and "minor children in the family." Act of May 29, 1978, ch. 794, 1978 Md. Laws 2304-05. However, MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-06 (1980) reads simply, "a minor child." This is characteristic of the vague and varied language in equitable distribution statutes. For example, Delaware's alimony statute refers to "a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home." DEL. CODE ANN. tit. 13, § 1512(b)(3) (1981) (open to broad interpretation, including a stepchild). However, authorization for use and possession of the family home is limited to "the party with whom any children of the marriage will live." *Id.* § 1513(a)(8) (would not include a stepchild); *see also* N.J. STAT. ANN. § 2A:34-23 (West 1981-82); N.Y. DOM. REL. LAW § 236B1.e., 5.d.(3) (McKinney Supp. 1982); 23 PA. CONS. STAT. ANN. §§ 102(a)(2)(4), 501(b)(7) (Purdon 1981 & Supp. 1982); UNIFORM MARRIAGE AND DIVORCE ACT, §§ 102, 303, 307B, 309 (1973).

21. The definition subsection of the Property Disposition Statute does, however, expressly enlarge the phrase "minor child" to include a dependent handicapped child over the age of 18. Clearly, some legislative consideration was given to categories of children that would support the use and possession order. *See* MD. CTS. & JUD. PROC. CODE ANN. § 3-6A-01(d) (1980).

22. *See State v. Fabritz*, 276 Md. 416, 421, 348 A.2d 275, 278 (1975) (only where doubt or ambiguity exists in statutory language may the court look to the purposes and objectives of the enactment), *cert. denied*, 425 U.S. 942 (1976).

23. *Bledsoe v. Bledsoe*, 294 Md. 183, 189, 448 A.2d 353, 356-57 (1982); *Strawhorn v. Strawhorn*, 49 Md. App. 649, 655, 435 A.2d 466, 470 (1981), *vacated in part*, 294 Md. 322, 450 A.2d 490 (1982). For the intricate and multitudinous rules of statutory construction which courts have developed, *see generally*, 73 AM. JUR. 2d *Statutes* §§ 142-341 (1974).

24. This disposes of the argument which, though not directly addressed by the court

vation must be justified by obligation to the minor child.²⁵ The change from "children of the parties" to "minor child" was not decisive, as the *Strawhorn* court held, but mere editing.²⁶

The result in *Bledsoe* is consistent with prior Maryland decisions which limit the word "child" to its ordinary meaning unless expressly expanded.²⁷ In *Flores v. King*,²⁸ 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.²⁹ The question of whether the term "child" included stepchild in a Maryland constitutional provision³⁰ was addressed by the court of appeals in *Brown v. Brown*,³¹ 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.³²

The *Brown* analysis was cited by the court of appeals as especially relevant to the issues in *Bledsoe*.³³ 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.³⁴ For the duration of a marriage, stepparents may be required by law to support stepchildren.³⁵ The state's interest in requiring such support is the conservation of public resources, and relieving the burden borne by taxpayers through welfare programs.³⁶ However, that duty terminates upon dissolution of the

of special appeals in *Strawhorn*, was put forth by the wife in that case: that the order for use and possession runs to the spouse and so the spouse's need could support the order. Brief for Appellee at 16-17, *Strawhorn v. Strawhorn*, 49 Md. App. 649, 435 A.2d 466 (1981), *vacated in part*, 274 Md. 322, 450 A.2d 490 (1982). A use and possession order could be justified as fulfillment of the obligation to provide habitation, *Quinn v. Quinn*, 11 Md. App. 638, 643, 276 A.2d 425, 427 (1971), but only to the wife and only on the basis of demonstrated need for shelter, not the familiar environment. Even if the wife's need for shelter is established, that, in itself, would probably not justify use and possession of the family home when other housing would be adequate and would not deprive the supporting spouse of control of the property interest in the family home. *Barcelow v. Barcelow*, 64 A.D.2d 1024, 409 N.Y.S.2d 311 (1978).

25. *Bledsoe v. Bledsoe*, 294 Md. 183, 190-91, 448 A.2d 353, 357-58 (1982).

26. *Id.* at 192, 448 A.2d at 358.

27. *Id.* at 192-93, 448 A.2d at 358-59.

28. 13 Md. App. 270, 282 A.2d 521 (1971).

29. *Id.* at 274-75, 282 A.2d at 523-24.

30. See MD. CONST. art. III, § 38.

31. 287 Md. 273, 412 A.2d 396 (1980).

32. *Id.* at 283-84, 412 A.2d at 402.

33. *Bledsoe v. Bledsoe*, 294 Md. 183, 448 A.2d 353, 358 (1982).

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).

36. *Komm v. Department of Social & Health Serv.*, 23 Wash. App. 593, 598, 597 P.2d 1372, 1374-75 (1979).

marriage.³⁷ Prior to *Strawhorn*, neither in Maryland nor in other jurisdictions having comparable equitable distribution statutes has a substantial continuing obligation been made, in the form of a use and possession order, when the only minor was a stepchild.³⁸

The state unquestionably has a strong interest in the welfare of minors.³⁹ When children are born of the marriage, the guidelines provided by the Maryland Property Disposition Statute appropriately balance the adult's economic, and the children's emotional, interests.⁴⁰ But to continue the financial obligation⁴¹ of a stepparent after divorce would be a drastic change,⁴² arguably unconstitutional,⁴³ and certainly

37. See, e.g., *Kaisor v. Kaisor*, 93 Misc. 2d 36, 402 N.Y.S.2d 171 (1978); WASH. REV. CODE § 26.16.205 (1974).

38. A substantial occupancy order, for five years, was awarded to the wife in a Kentucky 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 housing arrangements. *McDowell v. McDowell*, 378 S.W.2d 814 (Ky. 1964).

39. See *Yarborough v. Yarborough*, 290 U.S. 202, 220 (1933) (Stone, J., dissenting); *Ross v. Pick*, 199 Md. 341, 351, 86 A.2d 463, 468 (1952). See generally 59 AM. JUR. 2d *Parent and Child* § 9 (1971).

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 N.Y.S.2d 185 (1978).

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).

42. *Bledsoe v. Bledsoe*, 294 Md. 183, 192, 448 A.2d 353, 358 (1982).

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 challenged on alternate constitutional grounds. One argument would seek to establish such an award as an unconstitutional taking of property, *Bureau of Mines v. George's Creek Coal & Land Co.*, 272 Md. 143, 157, 321 A.2d 748, 756 (1974) (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) (unconstitutional to compel bus company to charge fixed minimal rate for schoolchildren); *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 Chesapeake 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.

Elizabeth A. Hambrick-Stowe

Baltimore, 72 Md. 587, 595-96, 20 A. 141, 142-43 (1890), *aff'd*, 165 U.S. 719 (1897); Washington Statewide Org. of Stepparents v. Smith, 85 Wash. 2d 564, 572, 536 P.2d 1202, 1207 (1975) (Utter, J., concurring). A substantive economic due process argument would fail, since there need only be a rational relation to a legitimate state interest where ordinary social and economic legislation is concerned. Governor v. Exxon Corp., 279 Md. 410, 423-25, 370 A.2d 1102, 1111 (1977), *aff'd*, 437 U.S. 117 (1978).

44. Brown v. Brown, 287 Md. 273, 284, 412 A.2d 396, 401 (1980).

45. Berkowitz, *Legal Incidents of Today's "Step" Relationship: Cinderella Revisited*, 4 FAM. L.Q. 209, 226-27 (1970).