

6-16-1972

06-16-1972 Preliminary Memorandum

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N
set in 71-6078

No. 71-575-ASX (6/23-1)

Gomez v. Perez

appeal from Texas Ct of Civil Apps, 4th Supreme
Jud Dist (2-1), March 10, 1971, PRD Apr 7,
1971, 466 SW2d 41. Writ of error denied
by Texas Sup Ct July 28, 1971.

Timely

Question presented:

Whether Texas statutes are unconstitutional
as violating due process and equal protection
insofar as they permit a legitimate child to re-
quire support and maintenance from his natural
father, while denying an illegitimate child
the right to require his natural father to
support and maintain him.

Statutes involved:

In fact none are directly involved.
Texas statutes impose a duty of support on
~~husbands~~ spouses to support their minor
children. See decision below.

Facts:

Appellant ^{ant} Linda Gomez came before the trial
court by means of a petition asking that appellee
Perez be found by the court to be the natural

but if it is as AG,
do she have any claim
at all? We need to
know intent in this.

father of appellant's daughter Zoraida, and further asking the court to order appellee to ~~pay~~ pay a reasonable amount of child support for ~~the~~ the illegitimate Zoraida during her minority.

The trial court found that appellant and ✓ appellee were the ~~father and mother~~ father and mother of Zoraida; ~~that~~ that Zoraida was born out of ✓ wedlock; that Zoraida needs the support and maintenance of her father, but that appellee, though able to furnish such support, has failed to do so. The trial court further found that there is no civil liability on the part of a father to support an illegitimate child. [App 37.]

Decision Below [App 18]:

At common law, the father is under no legal obligation for the support and ~~main-~~ maintenance of ~~his~~ his illegitimate children. The majority of the courts in this country have held that without legislation on the subject, the father of illegitimate children cannot be required to provide for their support.

At the present time there is no Texas statute imposing on the father such a duty of ~~support~~ support. At present all but two states have such legislation, and it has been recommended in Texas. It must be recognized, however, that

will find here

a dominant feature of any type of legitimation statutes is the provision for proper standards and safeguards for determining the paternity of an illegitimate child.

The trial court properly held that there was no cause of action in this State to impose the requested liability.

Jurisdictional Statement:

Makes the obvious arguments.

Memo of the State of ~~Texas~~ Texas as amicus:

Urges the Court to apply Labine rather than ~~Kenny~~ Levy.

Appellant's motion to consolidate and expedite:

Requests that the case be consolidated with No. 71-6078, Linda R.S. v. Richard D. and Texas. Texas is an amicus in the present case, and a party in that one, so ~~there~~ there will be no inconvenience. The instant case raises no jurisdictional problems, while jurisdiction was postponed in Linda R.S.

Discussion:

R The memo in No. 71-6078 is attached. Consolidation ~~or holding~~ seems appropriate; *holding does not.*
 (CONSOLIDATE WITH)
~~HOLD~~ for No. 71-6078?

JTR 6/16/72