

**RHODA L. DIXON**, Appellant, *v.* **LOUISE LEE RICKS-FLEMMING**, Appellee

APPEAL FROM THE MONTHLY & PROBATE COURT FOR MONTSERRADO  
COUNTY

Heard: April 10, 1984. Decided: May 11, 1984.

1. A child born unto a couple not joined by matrimony rites either under the Liberian customary law or the Christian law is considered illegitimate.
2. An illegitimate child belongs exclusively to the mother until he/she has been legitimized by the purported father.
3. A father of a child who is not married to the child's natural mother will have priority to the custody of the child once he legitimizes the child.
4. If the natural father dies prior to legitimizing his child, the right of the mother to custody remains paramount, unless and until it can be shown to the satisfaction of the court that she is morally and economically unfit to retain custody of the child.
5. When a couple is married, they have joint custody of the child of their union. Upon the death of one of the parents, the surviving parent has superior right to custody.
6. The fact that a child has lived with a guardian or custodian over a protracted period does not necessarily give the guardian or custodian superior right to custody of the child.
7. Where the child is born to an unmarried couple, and the father has not legitimized said child, the natural mother has superior right to custody of the child. However, if it is reasonably determined to the satisfaction of the court that the mother is legally incompetent, the individual with whom the child has lived, especially for a long time, has superior right to custody of the child as against all others, including the legally incompetent mother.

On October 28, 1973 appellant, Rhoda L. Dixon, and one Thomas Lomax bore a child out of wedlock whom they named Louise Lomax. Subsequently, the child was sent to live with her paternal grandmother, Louise Ricks Fleming of Monrovia, and attended the School of Prime System (S.P.S), a private school in Monrovia.

After the father's death, the child (still a minor) was sent out of Monrovia by the grandmother to live with an unnamed person in Clay Ashland, where she then attended a

public school. Whereupon, the natural mother and appellant in this case, filed for custody of her child. The appellee, the paternal grandmother, maintained that she had taken care of the child for nine years, both before and after the death of the father, therefore it would be in the best interest of the child for her to retain custody. The lower court sustained the contentions in favor of appellee/ respondent. The petitioner appealed. The Supreme Court determined that it had to decide two pertinent issues:

1. Under the existing laws in our jurisdiction, what is the legal status of a child born out of holy wedlock?
2. Who is entitled to custody of such a minor child whose father is no longer alive.

After a careful examination of the facts, the Supreme Court *reversed* the decision of the lower court.

*George E. Henries* for petitioner/appellant. *Joseph P. Findley* for respondent/appellee

MR. CHIEF JUSTICE GBALAZEHE delivered the opinion of the Court.

On October 28, 1973, one Thomas Edwin Lomax of Monrovia begot of the loins of Miss Rhoda L. Dixon, out of holy wedlock, a baby girl called Louise S. Lomax. During the lifetime of the putative father, the child lived with the paternal grandmother, Mrs. Louise Ricks-Fleming in Monrovia and attended The School of Prime System (S.P.S). However, after the father's death, the child was enrolled in a public school in Clay Ashland where she now lives with another person. This change of school and residence apparently gave rise to the filing of this petition by the natural mother, Rhoda L. Dixon, in the Monthly and Probate Court of Montserrado County for the custody of the said minor child. Mrs. Fleming, the respondent herein, even though summoned to appear in court with the child, neither filed an answer nor objected to the petition. Instead, during the trial and with leave of the court, she took the stand and testified to the effect that she is the grandmother with whom little Louise had lived for the past nine (9) years, both before and after the supposed father's death. She therefore maintained that she would be the best person to be awarded custody of the child. The court sustained the contentions of the respondent as against the petitioner, the natural mother, to which the latter excepted and has appealed to this court for a final review.

From the facts and the contentions of the parties as ruled upon by the trial judge, the salient issues presented for our consideration are:

1. Under the existing laws in this jurisdiction, what is the legal status of a child who is born out of holy wedlock?

2. Who is entitled to the custody of such a minor child whose father is not alive?

According to the New Domestic Relations Law and various case law authorities, a child born out of wedlock is exclusively presumed to be illegitimate unless such a presumption is rebutted by evidence of legitimization by its supposed father. And being illegitimate, the said child belongs to the mother and, as such, can only inherit from the mother and not from the father who, in law, remains doubtful. But as pointed out earlier, an illegitimate child can be legitimized by the father at any time, and when that is done the child will be qualified in law to inherit from the father. The father will also have priority to the custody of the child where he does not cohabit with the natural mother. Domestic Relations Law, Rev. Code 9:4.91; Decedent Estates Law, Rev. Code 8:3.5.

However, in order to resolve this issue, it is proper to state what constitutes childbirth in wedlock in this jurisdiction. Wedlock is another word for marriage. In our country, marriages are brought about either by the performance of Christian rites or the payment of dowry the under customary law. Both modes of matrimony are recognized as valid and unless either is performed between a man and woman before a child is born to them, such child is illegitimate under the law at birth and, therefore, belongs exclusively to the mother until he/she is legitimized by the supposed father. 39 AM. JUR. 2d., *Husband and Wife*, § 7; *Manney and Kaymah v. Money*, 2 LLR 618 (1927).

The second issue is to determine who is entitled to the custody of a minor child whose father is not alive. According to the weight of authority, even when a child is born in wedlock, upon the death or demise of one of the natural parents, the surviving parent has the sole right to custody unless and until it can be proved to the satisfaction of the court that the surviving parent is morally as well as economically unfit to care for the child. The welfare of the child in most cases controls the determination of the court as to who should take custody of the child. It is even possible that a court might decide to award custody and/or guardianship to a perfect stranger, or to some relative who can sufficiently provide for the needs of the child. Domestic Relations Law, Rev Code, 9:4.1; 39 AM. JUR 2d., *Husband and Wife*, §10. The environment need not be luxurious, but one that would afford the child a healthy and moral upbringing, satisfactory for learning and enterprise. All these provisions need not necessarily be luxurious, but basic enough to produce a useful child to society. 25 AM. JUR., *Habeas Corpus*, § 30, at 26.

As earlier mentioned a child born out of wedlock belongs to the mother, and is illegitimate

until the relationship is legalized. This means, even while the father is alive, he cannot properly challenge the mother's right to custody in the absence of legitimization, not to talk about the status of the child after his death, especially where he has failed to legitimize the child before his death. In such a case the mother still has paramount right of custody until it can be proven to the satisfaction of the court that said mother is morally and economically unfit to retain the child, the court in each case being mindful of the welfare of the child. Domestic Relations Law, Rev. Code, 9:4.1; *Nimley et al. v. Kaba and Nimley*, 14 LLR, 82 (1960). See also *Daniels v. Daniels*, 16 LLR 58 (1964).

The next issue for our resolution is to determine whether or not the length of time a child stays with a party, indeed, constitutes parentage of a minor child. It would appear that no matter how long a child stays with a person, other than his/her natural parents, does make such child the child of the custodian. While the parents are alive and living together they possess joint custody of their minor child. Upon the demise of one of the parents, the other has superior right to custody of the child that is, assuming that they lived in wedlock. Where they never lived in wedlock, the natural mother always possesses the paramount right to the care and custody of the child. But where the mother is found to be legally incompetent to take custody of her child, it would appear that a person who has had custody of the child, especially for a long time, to the satisfaction of reasonable people and of the court, may have priority before all others, including the legally incompetent mother. The reverse is indeed true, where the natural mother is legally qualified and is willing to take custody of her child. 7 AM. JUR., *Custody*, § 64; 39 AM. JUR. 2d., *Husband and Wife*, § 31.

In the current case, there appears to be nothing on the record to show this Court that Edwin Lomax and Rhoda Dixon were married as husband and wife, either by Christian rites or by customary marriage. Louise Lomax, the minor child subject of this controversy, is therefore presumed to have been born out of wedlock when all the attending facts and circumstances of the case are fitted together. Furthermore, there is no showing on the record that said minor Louise Lomax was ever legalized by Edwin Lomax, deceased, while he was alive. From the information Rhoda Dixon has provided this Court regarding her salary and other responsibilities, there is no showing that these were not inadequate to give her custody of her minor child, nor were any immoral tendencies or attitudes imputed to her character to have dissuaded the lower court from awarding her custody of the child. It is therefore an error to have denied Miss Rhoda Dixon custody of her child in preference to a stranger-in-law who preferred to leave the child with another out in Clay Ashland while admittedly attending to her business in Monrovia.

The question of child care and custody in an age in which a myriad of married couples is dominated by centrifugal forces necessitating a multiplicity of divorces, and when

everywhere more and more children are born out of wedlock, the question of child care and custody is bound to seriously bother and concern our courts in the years ahead. With the increasing number of detached and uncommitted relationships of our modern parents, there is also the growing desire for each parent to claim custody of the issues of these *ad hoc* amorous relationships. It is therefore befitting that such issues are treated with the utmost seriousness so that the laws of care and custody of minor children can adequately serve the needs of our society. These questions are oftentimes emotionally charged with overtly pitiful mothers and ostensibly concerned fathers vying for the sympathy of the courts in fierce legal tussles to obtain custody of children much the same way we often battle to acquire ownership of some valuable chattels or city lot. However, a fundamental difference between laymen and lawyers is that, except in a few cases, the former approaches litigation emotionally and morally while the latter approaches it calmly and legally. As a Court we are bound to interpret the laws as they are, while moral and emotional times are relegated to other suitable places. Hence, the laymen frequently find it difficult to understand judicial decisions. The courts, however, do not make the laws but merely interpret them. Therefore, the only remedy to achieving the laws the public wants is to appeal directly to the lawmakers to enact the laws we all desire.

That is to say, we observed from the records certified to this Court that the lower court became much embroiled in this litigation and was carried away emotionally in rendering its decision. The judgment of the lower court was much more emotional than legal, and in view of these facts and the relevant laws controlling in this case, we are convinced that the judgment from which this appeal comes should be and the same is hereby reversed. The custody of said minor child, Louise S. Lomax, is hereby awarded to her natural mother, Rhoda L. Dixon, without delay. Costs are disallowed. And it is hereby so ordered.

*Judgment reversed.*