

CHAPTER 257

CHILDREN; CUSTODY OF, ILLEGITIMATE

CUSTODY

257.01 PLACING OUT, RECORDS

HISTORY. Amended, 1951 c 644 s 1.

All other things being equal, the natural parents have the paramount right to the care and custody of a child, but such right is not absolute and must yield to the child's welfare. The burden is upon those who claim the contrary to overcome that presumption by satisfactory proof. Under certain conditions the child's wishes may be taken into consideration. Where a father had ignored the child for more than ten years and offered no excuse for his conduct, he had to all intents and purposes abandoned the child, and the child's best interest required that she be permitted to remain with her aunt. *State ex rel v Vorlicek*, 229 M 497, 40 NW(2d) 350.

The natural parents have the first right to the care and custody of the child, unless the best interests of the child require it to be given into the hands of someone else. Custody of a 4½-year-old child, who had been in the care of her maternal grandparents since her mother's death three months after her birth, was properly awarded to the child's father, who had subsequently remarried where it appeared that all parties involved were of good character and that the child would be properly cared for, regardless of which party was awarded her custody. *State ex rel v Boehland*, 237 M 144, 53 NW(2d) 814.

257.02 SURRENDER OF PARENTAL RIGHTS

Artificial insemination, its socio-legal aspects. 33 MLR 145.

257.03 NOTICE TO COMMISSIONER OF PUBLIC WELFARE

HISTORY. 1893 c 17 s 5; GS 1894 s 2936; RL 1905 s 3121; 1913 c 314 s 3; GS 1913 s 6545, 6551; 1915 c 61 s 3; Ex1919 c 51 s 3; GS 1923 s 4562, 7916, 7922; MS 1927 s 4562; 1935 c 112 s 1; 1949 c 227 s 1; 1951 c 644 s 2.

Placements for adoption with agency assistance. 36 MLR 397.

257.04 VISITATION

HISTORY. Amended, 1949 c 227 s 2.

257.05 IMPORTATION

HISTORY. Amended, 1949 c 21 s 1.

The settlement of a minor pauper follows that of the father and if the child first came to Minnesota on April 8, 1947, he has not been in Minnesota long enough to acquire settlement here, and if the father resides in California and the child becomes a public charge the county, has recourse, under the bond, to secure the return of the child to California. OAG Jan. 14, 1949 (339-D-4).

257.08 Repealed, 1953 c 613 s 4.

257.081 DEFINITIONS

HISTORY. 1953 c 613 s 1.

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257.09 Repealed, 1953 c 613 s 10.

257.091 AGENCIES CARING FOR AND PLACING CHILDREN; FITNESS; LICENSES; SUPERVISION

HISTORY. 1953 c 613 s 3.

257.10 Repealed, 1953 c 613 s 2.

257.101 FOSTER CARE FACILITIES; ADEQUACY; LICENSES; SUPERVISION

HISTORY. 1953 c 613 s 6.

257.11 Repealed, 1953 c 613 s 6.

257.111 REVOCATION OF LICENSES

HISTORY. 1953 c 613 s 7.

257.12 Repealed, 1953 c 613 s 6.

257.121 BURDEN OF PROOF

HISTORY. 1953 c 613 s 8.

257.123 VIOLATIONS, MISDEMEANORS

HISTORY. 1953 c 613 s 9.

257.16, 257.17 Repealed, 1953 c 613 s 10.

257.177 TRAVELING EXPENSES

No authority has been granted to a county permitting the purchase of an automobile for the use of the county welfare board. OAG Oct. 24, 1947 (125-A-2).

There is no statute authorizing the county board to purchase an automobile for the use of the county welfare board. The provisions for payment of travel and other necessary expenses do not include such purchases. OAG Oct. 24, 1947 (125-A-40).

ILLEGITIMATE

257.18 COMPLAINT, WHEN TAKEN; PROCEDURE; WARRANT

Artificial insemination, its socio-legal aspects. 33 MLR 145.

Where in a proceeding to determine paternity the evidence preponderates against the state as to the two occasions on which the mother of the child rests the paternity of the child, the state fails to sustain the burden of proof which rests upon it, and there must be a new trial. *State v Overby*, 227 M 111, 34 NW(2d) 355.

Paternity proceedings are civil in nature and are governed by the rules of procedure applicable to civil actions. The mother of an illegitimate child has a definite personal financial interest in the amount of award for support of the child made by the court, and as an "aggrieved party" is entitled to appeal from a support order. *State v Sax*, 231 M 1, 42 NW(2d) 680.

Abandonment committed by the alleged father on the Red Lake Indian reservation by a tribal Indian against another tribal Indian cannot be prosecuted in the

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courts of Minnesota; and in such case an illegitimate child is entitled to the aid allowed to dependent children. OAG Sept. 9, 1948 (240-K).

Illegitimacy proceedings is a civil proceeding and not a criminal action. OAG March 10, 1951 (779-K).

A minor may be proceeded against in illegitimacy proceedings. OAG April 14, 1947 (840-C-2).

257.19 COMPLAINT BY MOTHER

Where while illegitimacy proceedings were pending the defendant married the prosecutrix, her testimony subsequent to marriage and without the defendant's consent was inadmissible. *State v Feste*, 205 M 73, 285 NW 85.

In proceedings to determine paternity a conviction may be had on the uncorroborated testimony of the complainant, but her testimony must be sufficiently clear and convincing; and in the instant case the verdict based on the uncorroborated statement of the complainant, which was not sufficiently clear and convincing, is so against the weight of the testimony that a new trial should be granted. *State v Engstrom*, 226 M 301, 32 NW(2d) 553.

In a paternity suit, the burden of proof rests upon the state. *State v Overby*, 227 M 111, 34 NW(2d) 355.

The provision of the statute placing upon the county attorney the duty to prosecute was intended to furnish the mother his assistance in conducting the trial and does not deprive the mother of any of her interests in the proceedings. The mother has a definite personal financial interest in the amount of the award and is an "aggrieved party" entitled to appeal from the support orders. *State v Sax*, 231 M 1, 42 NW(2d) 680.

A woman living apart from her husband under a decree of separate maintenance is still married to the husband and notwithstanding the separation, any child born to her is presumed to be the child of the husband. There is no need for an adjudication of paternity under such circumstances. OAG June 14, 1950 (840-C-2).

A complaint charging paternity must be subscribed by the complainant before the justice of the peace or before the clerk of the municipal court authorized to issue the warrant. OAG March 11, 1953 (840-C-2).

257.20 ACTION; PROCEEDINGS ON RETURN OF WARRANT

In illegitimacy proceedings where defendant was present in the justice court with his father at the time of the hearing, and the justice explained the nature of the charges and the court's duty, and no request for counsel was made and the defendant waived the reading of the complaint and an examination and the defendant and his father signed recognizances for the defendant's appearance in the district court, the refusal of the district court to direct the court to dismiss the action or remand the case to the justice court because the complaining witness had not been present in the justice court and the defendant had not been examined under oath, and the defendant had not been represented by counsel, was proper. Statutory provisions prescribing the procedure of the justice may be waived by the conduct of the defendant. *State v Becker*, 231 M 174, 42 NW(2d) 704.

Each action to establish paternity must stand on its own facts. In the instant case the credibility of witnesses was a matter resting almost entirely with the trier of fact and complainant's testimony was not so obviously untrue as not to be entitled to credent credibility. The evidence sustained a finding that defendant was the father of complainant's child. *State v Christensen*, 236 M 390, 53 NW(2d) 117.

In illegitimacy cases a record should be made by the justice of preliminary examinations. The justice is paid 15 cents a folio, which he usually shares with the stenographer making the transcript. It is not fatal to the jurisdiction where no transcript is made if defendant has participated in the preliminary hearing with knowledge that no record was being made. OAG Jan. 23, 1950 (840-C-5).

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257.23 TRIAL; EXAMINATION; JUDGMENT OF PATERNITY; BOND FOR SUPPORT

Omission of authorization permitting the court to require the father to furnish bond or other security. 31 MLR 71.

Compulsory use of blood grouping tests in paternity cases. 35 MLR 515.

Where in a proceeding to determine paternity the evidence preponderates against the state as to the two occasions on which the mother of the child rests the paternity of the child, the state fails to sustain the burden of proof which rests upon it, and there must be a new trial. *State v Overby*, 227 M 111, 34 NW(2d) 355.

The trial court in making an award for the support of an illegitimate child should carefully inquire into the financial standing and ability of the father, and a record should be made thereof so as to enable the reviewing court to determine whether the award was supported by the evidence. The amount of the award is for the trial court to determine without a jury; but the same rules as to the sufficiency of the evidence to sustain the award apply as when the amount of the award was fixed by the jury. *State v Sax*, 230 M 1, 42 NW(2d) 680.

In illegitimacy proceedings, corroboration of complainant's testimony is not required by statute. *State v Becker*, 230 M 174, 42 NW(2d) 704.

The father of an illegitimate child may be prosecuted for child abandonment in the county in which the mother resides. OAG Feb. 6, 1948 (133-B-1).

The place of settlement of the wife is that of her husband, and the place of settlement of two illegitimate children of the wife is that of the mother. OAG Jan. 7, 1949 (339-D-3).

The place of settlement of an illegitimate minor child is that of the mother, and if thereafter the mother marries the reputed father and moves to another location, the legal settlement for purposes of poor relief of the mother and child are not retroactively affected by the mother's marriage and removal. OAG Sept. 8, 1950 (339-D-3).

Upon preliminary examination in filiation procedures the defendant may claim privilege against self-incrimination and this rule may apply to civil cases where the effect of the defendant answering a question would tend to furnish evidence to incriminate the defendant. OAG July 29, 1948 (605-B-36).

In paternity proceedings the expenses incurred in connection with confinement and maintenance of the child as provided for in the judgment may be enforced after adoption proceedings. OAG July 2, 1953 (840-A-3).

In paternity proceedings expenses incurred by the mother in connection with her confinement and the care and maintenance of the child prior to judgment may be included in the judgment against adjudicated father. OAG July 13, 1949 (840-C-3).

The record of preliminary examination must be made by the justice, but where the defendant participated in a preliminary hearing with knowledge that no record was being made, failure to make the record was not fatal to the jurisdiction. OAG Jan. 23, 1950 (840-C-5).

Mother of a child has a claim which may be filed in probate court against the estate of deceased father adjudged to pay mother for support of illegitimate child. If the deceased adjudged father made a written admission of paternity and signed same before attesting witnesses, the child might inherit. OAG Feb. 9, 1948 (840-C-9).

When a child is adopted the father's responsibility determined by judgment in a paternity proceeding ceases and money in the hands of the welfare board paid, pursuant to section 257.23, should be restored to the father. OAG Feb. 25, 1948 (840-C-10).

In paternity proceedings a judgment docketed against the adjudged father is a lien on any land owned by the judgment debtor in the county where the judgment is docketed to the extent of any past due sums required to be paid. OAG Oct. 18, 1948 (840-C-10).

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A judgment declared and filed in a paternity proceeding is not final, and the district court may upon application and proper showing modify its order so as to increase or decrease the amount of payments provided for the support of the child. OAG Nov. 23, 1949 (840-C-10).

In settlement with an adjudicated father of an illegitimate child made under authority of the court the approval of the director of social welfare is not required; and the fact that the judge orders a settlement for a lump sum or in instalments does not affect the matter of such approval. That judges do in practice consult with the director of social welfare in such matters is a matter of policy or convenience not based on statutory authority. OAG Nov. 24, 1947 (840-C-12).

Paternity proceedings are civil and not criminal in nature. The defendant need not personally be present to enter his plea. Whether the defendant should be personally present at the hearing when the court fixes the terms of support order is a question for the court to determine under the rules laid down by the supreme court in *State v Sax*, 231 M 16. OAG Sept. 19, 1952 (840-C-12).

A lump settlement paid by the father in the illegitimacy proceedings for support and maintenance of the child, belongs to the child even after adoption. OAG Dec. 12, 1951 (840-C-13).

Money paid by the father in compliance with the judgment of the court in affiliation proceedings for the care, maintenance and education of the child belongs to the child even after adoption. OAG Aug. 30, 1948 (840-E-13).

257.24 FATHER TO PAY ALL EXPENSES

The statute imposed upon a father of an illegitimate child a duty towards the mother, a duty to the child, and a duty to protect the public against the child becoming a public charge. A judgment of paternity is a condition precedent to the mother's right under the statute to bring a civil action against the father of an illegitimate child to recover expense of confinement, medical and funeral expenses. *State v Sax*, 231 M 1, 42 NW(2d) 680.

257.28 SETTLEMENT

The common law rules with reference to illegitimate children and their fathers are completely superseded by statute except as to the immunity afforded the father by provision for a lump sum settlement, with approval of the court, of all obligations for care, maintenance, and education of the child. *State v Sax*, 231 M 1, 42 NW(2d) 680.

Settlement with an adjudicated father of an illegitimate child is not required to be proof by the director of social welfare, but the judge may fix the amount which he deems proper without consent of the county welfare board or the director or guardian. OAG Nov. 24, 1947 (840-C-12).

A lump sum settlement paid by the father in the illegitimacy proceedings for support and maintenance of the child, belongs to the child even after adoption. OAG Dec. 12, 1951 (840-C-13).

257.31 RECORDS, PRIVATE

The provisions of sections 15.17 and 382.16, relating to the inspection of public records, do not abrogate the provisions of section 257.31. OAG Feb. 8, 1949 (851-I).

257.32 COMMISSIONER OF PUBLIC WELFARE AS LEGAL GUARDIAN

The director of social welfare may transfer a ward to a state hospital for psychiatric examination and observation. OAG April 14, 1948 (88-A-26).

257.33 DUTIES OF COMMISSIONER OF PUBLIC WELFARE

Awards for support of an illegitimate child are based on the father's duty to support throughout the minority of the child and not on the liability for support

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only to the age of 16, even though the father is not punishable in criminal prosecution for failure to support a child after its 16th birthday. *State v Sax*, 231 M 1, 42 NW(2d) 680.

- 257.34 Renumbered 257.175.
- 257.35 Renumbered 257.176, subdivision 1.
- 257.36 Renumbered 257.176, subdivision 2.
- 257.37 Renumbered 257.176, subdivision 3.
- 257.38 Renumbered 257.177.

CHAPTER 259

CHANGE OF NAME, ADOPTION

259.01-259.09 Repealed, 1951 c 508 s 13.

CHANGE OF NAME

NOTE: Excepted from Rules of Civil Procedure insofar as inconsistent or in conflict therewith. See Rule 81.01 and appendix A.

259.10 PROCEDURE

HISTORY. Amended, 1951 c 535 s 1.

ADOPTION

259.21 DEFINITIONS

HISTORY. 1951 c 508 s 1.

Adoptions in Minnesota. 36 MLR 383.

Quasi adoption. 36 MLR 401.

Prior to the enactment of Laws 1951, Chapter 508, an illegitimate child, although adopted by a person not its father, inherited from his natural father just as does a legitimate child. In this action there was no abuse of discretion by the industrial commission in dividing the benefits of its award equally between the widow and the natural child of the deceased employee. A child within the meaning of the Workmen's Compensation Act is any child who is entitled by law to inherit. Minor children, under 16, are conclusively presumed to be wholly dependent. *O'Dell v Hingeveld*, 235 M 223, 50 NW(2d) 476.

A contract to adopt a child must be proved by clear and convincing evidence and if the alleged contract is oral, the proof must be so clear, cogent, and convincing as to leave no reasonable doubt as to its existence and terms. A contract to adopt a child cannot be implied from circumstances and partly where the circumstances are more consistent with the nonexistence of such a contract than with its existence. *In're Berge's Estate*, 234 M 31, 47 NW(2d) 428.