Plaintiffs argue that discovery is not complete and therefore their pleadings need not be more specific. This Court held in *College v. Gothie,* 4 Frank. C. Leg. J. 58 at 61 (1980):

> "However, in our judgment, the fact that that right (discovery) exists in the defendant improperly ignores the basic issues whether the defendant is required to plead . . . with more specificity for:
>
> 1. The purpose of fact pleading as it is mandated in Pennsylvania not only is intended to inform the contesting parties of the issues which they will be required to meet at the ultimate trial of the matter, but it is also intended to provide the Court with a trial format establishing the parameters of the issues. The discovery procedures do not serve this second purpose.
>
> 2. The Rules of Civil Procedure are based on the fact pleading system. It is therefore necessary that the pleadings set forth the facts specifically even though the facts could also be determined by discovery. Thus the fact that discovery procedures are available does not excuse the plaintiff from more specifically pleading the material facts on which its cause of action is based.
>
> Procedure should not be made unnecessarily complicated by requiring the defendant to resort to discovery proceeding to obtain information which the plaintiff could properly plead in his complaint when such information constitutes the basis on which his cause of action is based.' 2 Anderson Pa. Civil Practice Rule 1017.11, page 490."

See also *Caleco v. Wilson College and Squires Appliances,* No. A.D. 1982 - 79 (Jan. 10, 1983) and *Smuro v. Gsell,* No. A.D. 1982 - 359, (Mar. 1, 1983).*

Defendants' second preliminary objection in the nature of a motion for more specific pleading will be sustained.

ORDER OF COURT

NOW, this 28th day of April, 1983, the defendants preliminary objection in the nature of a demurrer is dismissed. The preliminary objection in the nature of a motion for a more specific pleading is sustained.

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*Editor's Note - *Caleco v. Wilson College and Squires Appliances* has not been reported in this Journal. *Smuro v. Gsell* is reported at 6 Franklin 52 (1983).

The plaintiffs are granted leave to file an amended complaint within twenty (20) days of the date hereof.

Exceptions are granted plaintiffs and defendants.

McDONALD V. DAYWALT, C.P. Franklin County Branch, No. F.R. 1982-986

Support - Statute of Limitations - 42 Pa. C.S.A. Sec. 6704 - Constitutionality

1. The purchase of several food items, volunteer labor to lay a floor and a gift of a rifle to a child do not amount to voluntary contribution of support under 42 Pa. C.S.A. Sec. 6704.

2. Pennsylvania law relies on the prevention of stale and fraudulent claims as a legitimate state interest in child paternity cases.

3. Due to scientific advances in the area of blood testing in paternity cases, problems of proof after the elapse of time have been alleviated.

4. Since support for a legitimate child may be sought at any time during minority and support for an illegitimate child may be sought only within six (6) years after birth or two (2) years after support or acknowledgement, a disparity of treatment in violation of the equal protection clause of the U.S. Constitution exists.

5. 42 Pa. C.S.A. Sec. 6404(b) is unconstitutional insofar as it imposes a two-year statute of limitations upon actions brought to establish the paternity of a child born out of wedlock.

John R. Walker, District Attorney, Attorney for the Plaintiff

Timothy W. Misner, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, J., July 26, 1983:

This support action was commenced by the filing of a complaint for support on November 24, 1982 in the Court of Common Pleas of Clinton County, and the certification and order by that court transmitting the complaint to the Clerk of this court

for filing and procedure pursuant to the Pennsylvania Civil Procedural Support Law. The complaint inter alia alleges that the plaintiff seeks support from the defendant for the support of the parties' four children, and further alleges that the parties were never married but lived together as man and wife for 17 years. At a hearing in the Domestic Relations Office before Domestic Relations Officer Woods on February 7, 1983, the defendant refused to acknowledge paternity of the four children and was advised of his right to a trial on the issue of paternity, and an attorney to represent him on that issue in any support proceedings. On March 17, 1983, both parties appeared in court and the defendant advised that he had belatedly secured an attorney to represent him but that attorney could not be present for trial on that date. The continuance was granted on the condition that the defendant pay the plaintiff the sum of money she stated was out of pocket as a result of coming to Franklin County from Clinton County for the trial. On May 3, 1983, the defendant's answer containing new matter denying that defendant was the father or person responsible for the support of the four children was filed. The new matter alleged that the support action was barred by the Statute of Limitations by reason of the defendant last having resided with the plaintiff in September 1976. Trial without jury was held on May 16, 1983.

We make the following Findings of Fact.

1. The plaintiff is Lucille A. McDonald, who resides at Box 4, North Bend, Clinton County, Pennsylvania.

2. The defendant is Ellis M. Daywalt, who resides at 6144 Furnace Road, Waynesboro, Franklin County, Pennsylvania.

3. The plaintiff and defendant commenced living together at plaintiff's home in North Bend, Pa. in September 1958. With the exception of a short period of time in 1959 and 1960 when the parties lived together at the home of the defendant's grandmother near Waynesboro, they at all times lived at plaintiff's home in North Bend until April 19, 1977, when the defendant returned to Franklin County.

4. When the parties commenced living together the plaintiff had four children and was married but separated from her husband.

5. During the approximately 18½ years the parties lived together the plaintiff had six children:

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% transfer tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the Auctioneer to resell the property.

The balance due shall be paid to the Sheriff BY NOT LATER THAN MONDAY, SEPTEMBER 19, 1983 AT 4:00 E.D.S.T. OTHERWISE ALL MONEY PREVIOUSLY PAID WILL BE FORFEITED AND THE PROPERTY WILL BE RESOLD AT 1:00 P.M. ON FRIDAY, SEPTEMBER 23, 1983, in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

SHERIFF'S SALES, cont.

NOTICE OF MANAGEMENT POLICY

In recent months, we have been experiencing an increasing number of persons making payment for legal notice advertisements, directly, rather than through legal counsel. There is nothing wrong with this, of course, and we are happy to receive the payments. But, a problem has been developing. When we deliver the receipt and proof of publication to the customer, especially in estates, they invariably get lost, and this is not discovered until many months later, at accounting time. Then the editor has to look back through all his records, and, most times, has to prepare a new proof of publication. Oftentimes, the new proof has to be prepared without charge, because we have no sufficient record of what became of the first one. This cost to the Journal is important, but if you have ever observed our manual bookkeeping system, as efficient as we have tried to make it, you would see that this added difficulty is making your editor's remaining hair turn grey. To make an additional record entry, furthermore, will probably not help much towards getting the proof to where it belongs.

Accordingly, it will be Journal policy, from now on, not to deliver the proof of publication to the person making payment, unless that person is named on the account receivable card as the intended recipient of such proof or his or her secretary, so that we know the proof is going directly back there. In all other cases, the proof of publication will, instead, be mailed to the designated attorney listed on the card. Receipts for payment will continue to be delivered to the payor, and if the attorney wishes such a receipt for his or her file, a separate request for same will have to be made by the attorney. Exceptions will be made on sufficient explanation.

MANAGING EDITOR

Barbara McDonald d/o/b April 26, 1959.
Trudy McDonald d/o/b unknown.
Patricia L. McDonald d/o/b August 20, 1964.
Robert A. McDonald d/o/b December 13, 1965.
Ellis M. McDonald d/o/b December 3, 1968.
Cindy J. McDonald d/o/b December 8, 1969.

6. The plaintiff was married to Mr. McDonald until sometime subsequent to the birth of Ellis, and prior to the birth of Cindy.

7. This support action initiated by the plaintiff seeks support from the defendant for Patricia L. McDonald, Robert A. McDonald, Ellis M. McDonald and Cindy J. McDonald, who plaintiff alleges were fathered by the defendant as well as Barbara and Trudy who are beyond the age for support.

8. During the 18½ years the parties lived together the defendant assisted in the maintenance, support and care of the children; introduced them and the plaintiff as his family, helped in the care and improvement of the plaintiff's home, and gave no indication that the six children born while the parties lived together were not his children.

9. The defendant denies that he is the father of Patricia, Robert, Ellis, and Cindy. He testified that the plaintiff admitted sexual relationships with other men which produced these children.

10. The plaintiff denied that she had a sexual relationship with any other men during the period of time that she and the defendant lived together.

11. We find that the defendant is the father of Patricia L. McDonald, Robert A. McDonald, Ellis M. McDonald and Cindy J. McDonald.

12. Subsequent to the defendant leaving the plaintiff and returning to Franklin County on April 19, 1977, the plaintiff never requested or in any way sought any support from the defendant for the children, and the defendant never sent or gave any money for support of the children.

13. Subsequent to April 19, 1977, the defendant never sent any birthday or Christmas presents or cards to his children, and no evidence was introduced that he in any way acknowledged that they were his children.

14. In February 1978, the defendant visited at plaintiff's

home.

15. In February 1982, the defendant visited the plaintiff's home and he and Trudy went into town and purchased coffee, hamburger, bread and milk. Plaintiff prepared the dinner and defendant ate with the plaintiff and the children that were home. He also visited an older child and then returned to sleep on the couch in plaintiff's home.

16. In March 1982, the defendant visited plaintiff and helped another man lay linoleum on the kitchen floor in plaintiff's home.

17. In small game season either 1981 or 1982, the defendant gave his son, Ellis, his 22 rifle because the boy had asked him for the rifle.

DISCUSSION

The Act of 1978, April 28 P.L. 202, No. 53 Sec. 10(88) as amended, 42 Pa. C.S.A. Sec. 6704 provides inter alia:

> "(b) Limitation of actions. - All actions or proceedings to establish the paternity of a child born out of wedlock brought under this section must be commenced within six years of the birth of the child, except where the reputed father shall have voluntarily contributed to the support of the child or shall have acknowledged in writing his paternity, in which case an action or proceeding may be commenced at any time within two years of any such contribution or acknowledgement by the reputed father."

Clearly plaintiff has failed to bring an action within six years of the birth of her four children for whom she is seeking support. The complaint was filed on November 24, 1982, when the youngest of the four children was twelve-years-old. The plaintiff seeks support under that portion of Section 6704(b), supra, which permits commencement of an action within two years of the date of a voluntary contribution to the support of the children by the reputed father.

The evidence presented revealed that the defendant had three contacts with the plaintiff and/or the children in the two-year period preceding the filing of the support complaint. The first incident occurred in February of 1982 when the defendant visited at plaintiff's home. At that time, he and his older-acknowledged daughter went to a grocery store and purchased several items including ground beef, bread, milk and coffee.

These items were then used by the plaintiff to prepare the evening meal which defendant shared. It is not at all surprising that the defendant purchased these food items for plaintiff to use in preparing a meal for the defendant and those children at home that evening considering that the defendant dropped in un-announced. We fail to see how this gesture of providing food to be used for one's own consumption can be construed as a contribution to support.

The second contact occurred the next month in March of 1982 when the defendant again stopped in at plaintiff's house and offered his assistance to a man who was applying a vinyl floor covering to the kitchen floor. The defendant did not purchase the linoleum; he merely volunteered his labor. Defendant's assistance in the form of manual labor hardly seems unusual considering the fact that these parties had shared their lives for nearly twenty years. However, this spontaneous offer of help in laying a new floor does not amount to a contribution of support to the four children.

The third contact occurred during the small game hunting season of either 1981 or 1982. At that time, defendant was hunting with Ellis and the boy asked him for his .22 rifle. The defendant testified that Ellis had always asked him for that rifle so the defendant gave it to him. The Pennsylvania Superior Court in *Commonwealth v. Lee,* 284 Pa. Super. 521, 426 A. 2d 168 (1981) acknowledged that the word "support" is not restricted solely to monetary contributions; it also encompasses providing the child with items necessary for the child's care. However, in *Lee,* the Court held that a single Christmas gift of a dress does not evidence voluntary support. Similarly, in the case at bar, a gift of a rifle does not amount to a voluntary contribution to support since such an act does not support a finding that the defendant had acknowledged paternity. *Commonwealth ex rel. Atkins v. Singleton,* 282 Pa. Super. 390, 395, 422 A. 2d 1347 (1980).

In *Bernhart v. Korach,* Pa. Super. , 452 A. 2d 1050 (1982), and *Hummel v. Smith,* 301 Pa. Super. 276, 447 A. 2d 965 (1982), the Superior Court established the principle that a mother seeking to show that payments or gifts by a putative father constituted support must prove by a preponderance of the evidence that the payments or gifts were made under circumstances from which it can be reasonably inferred that in making them the putative father was recognizing the child or children as his own. Notwithstanding *Commonwealth v. Young,* 275 Pa. Super. 588, 419 A. 2d 57 (1980) and *Commonwealth ex rel. Atkins v. Singleton,* 282 Pa. Super. 390, 422 A. 2d 1347 (1980), we are not persuaded the gifts and

labor contribution of the defendant rose to the level of a recognition by defendant of the children as his own to toll the two-year statute of limitations imposed by the Act of 1978, supra.

In *Astemborski v. Susmarski,* Pa. , 451 A. 2d 1012 (1982), the Supreme Court of Pennsylvania reviewed the decision of the Court of Common Pleas of the Sixth Judicial District which held unconstitutional the statute of limitations imposed by the Act of 1978, supra, as violative of the Equal Protection Clause of the Fourteenth Amendment of the U. S. Constitution. The Court reversed the trial court holding:

> "[1] Thus, to be sustained on equal protection grounds, a statute of limitations governing assertion of paternity claims must satisfy two related requirements. First, the period during which claims may be asserted 'must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf.' Id. at , 102 S. Ct. at 1555, 71 L. Ed. 2d at 778. Second, the time limitation imposed 'must be substantially related to the State's interest in avoiding the litigation of stale or fraudulent claims.' Id. Examining this Commonwealth's six year statute of limitations in light of these requirements, we find no denial of equal protection."

On its face *Astemborski* would appear dispositive of the constitutional question in Pennsylvania. However, it has been brought to the attention of this Court that on June 20, 1983 the Supreme Court of the United States issued an order to the Pennsylvania Supreme Court directing a reconsideration of *Astemborski* and the constitutionality of the state law which discriminates against children born out of wedlock and thereby deprives illegitimate children of their right to make a claim for support beyond the six-year period. *Pickett v. Brown,* No. 82-5576 decided June 6, 1983 was cited in the United States Supreme Court Order.

In view of this highly unusual development we feel compelled to consider the constitutionality of the statute of limitations here aplicable in the light of *Pickett v. Brown,* 51 U.S. Law Week 4655.

Applicable Tennessee law provided for the filing of a petition which could lead both to the establishment of paternity and to enforcement of the father's duty of support, but with a few exceptions required the petition to be filed within two years of the child's birth. Francis Annette Pickett filed her petition against Braxton Brown in May 1978 seeking to establish that he was the father of her son born November 1, 1968 and to secure support

LEGAL NOTICE

NOTICE OF WINDING UP PROCEEDING
OFFICE RENTALS CO.
A PENNSYLVANIA CORPORATION
To: All Creditors of Office Rentals Co.

NOTICE IS HEREBY GIVEN that Office Rentals Co., a Pennsylvania corporation, whose principal office is located at 545 East Catherine Street, Chambersburg, Pennsylvania, has filed a Certificate of Election to Dissolve and is winding up its business.

Dated August 1, 1983.
OFFICE RENTALS CO.
By Esther G. Gift
Secretary

8-12, 8-19

28006; thence in the said center line, North 5 degrees 14 minutes East 80 feet to an existing nail; thence North 10 degrees 28 minutes 57 seconds East 165 feet to a set nail and washer in the place of beginning.

BEING and intended to be Lot 2 and containing 1.567 acres, as shown on draft of Thomas Michael Englerth, R.E., dated April 19-22, 1977, duly approved for subdivision and recorded in Franklin County, Pa., Deed Book Vol. 749, Page 637.

THE above-described real estate is part of the same which Ronald L. Clark and Angeline M. Clark a/k/a Angeline Clark, conveyed to Joseph S. Peloso, Sr., by deed dated June 17, 1977, and recorded in Franklin County, Pa., Deed Book Vol. 743, Page 901, and which the said Joseph S. Peloso, Sr., joined by his wife, Mary Grace Peloso, conveyed to Joseph S. Peloso, Jr., single, by deed dated June 20, 1977, and recorded in Franklin County, Pa., Deed Book Vol. 744, Page 194. The said Joseph S. Peloso, Jr., appointed Angeline M. Peloso (formerly Clark) as his attorney infact, by power of attorney dated July 3, 1978, and recorded in Franklin County, Pa., Deed Book Vol. 765, Page 350.

SUBJECT to all easements, restrictions and rights of way as may appear of record.

AND FURTHER SUBJECT to the reservations of 25 feet from the center line of LR 28006 for the future widening of the right of way.

AND FURTHER excepting and reserving unto the Grantor, his heirs and assigns, the full free right and liberty to the uninterrupted use of the water supply and connecting lines situate on the tract herein conveyed for the benefit of lands retained by Grantor,

SHERIFF'S SALES, cont.

as shown on the survey of Thomas Michael Englerth, R.E., dated April 19-22, 1977, and recorded in Franklin County, Pa., Deed Bok Vol. 749, Page 637, the same to terminate upon the alienation of Lot 4 on said survey.

AND FURTHER under and subject to the condition and restriction that no junk or derelict vehicles shall be kept or parked upon the real estate unless the same be within a garage.

BEING sold as the property of Charles Douglas Lehman and Linda Kaye Lehman, Writ No. AD 1983-171.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% transfer tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the Auctioneer to resell the property.

The balance due shall be paid to the Sheriff BY NOT LATER THAN MONDAY, SEPTEMBER 19, 1983 AT 4:00 E.D.S.T. OTHERWISE ALL MONEY PREVIOUSLY PAID WILL BE FORFEITED AND THE PROPERTY WILL BE RESOLD AT 1:00 P.M. ON FRIDAY, SEPTEMBER 23, 1983, in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

ANNOUNCEMENT

Welcome back to President Judge Eppinger. No proponent of personal fanfare, no seeker for others to share his woes, the Judge has just come through months of recuperation from serious surgery with the simple proclamation that until further notice he will be available to receive motions in Chambers during certain hours. In deference to the above attitudes of our Judge, exhibited other times heretofore, we shall not elaborate on his statement here, except to congratulate him in this success, wish him continued progress toward full recovery, and point out that we are looking for him soon to make some more contributions of his writing talents to this Journal.

FRANKLIN COUNTY LEGAL JOURNAL STAFF

and maintenance for the child. Brown denied that he was the father of the child and moved to dismiss the suit on the ground that it was barred by the two-year limitation. The lower court held the statute of limitations unconstitutional as violative of the Equal Protection Clause.

On appeal the Tennessee Supreme Court reversed the lower court. The United States Supreme Court noted probable jurisdiction in 1982, heard arguments on April 27, 1982, and held the Tennessee statute unconstitutional. Speaking for a unanimous court Justice Brennan held:

> "In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny. Although we have held that classifications based on illegitimacy are not 'suspect,' or subject to 'our most exacting scrutiny,' *Trimble v. Gordon,* 430 U.S., at 767; *Mathews v. Lucas,* 427 U.S., at 506, the scrutiny applied to them 'is not a toothless one....' Id., at 510. In *United States v. Clark,* supra, we stated that 'a classification based on illegitimacy is unconstitutional unless it bears "an evidence and substantial relation to the particular...interests [the] statute is designed to serve."' 445 U.S., at 27. See also *Lalli v. Lalli,* 439 U.S., at 265 (plurality opinion) ('classifications based on illegitimacy ...are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests'). We applied a similar standard of review to a classification based on illegitimacy last Term in *Mills v. Habluetzel,* 456 U.S. 91 (1982). We stated that restrictions on support suits by illegitimate children 'will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest.' Id., at 99.
>
> "Our decisions in *Gomez and Mills* are particularly relevant to a determination of the validity of the limitations period at issue in this case. In *Gomez* we considered 'whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children.' 409 U.S., at 535. We stated that 'a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally,' id., at 538, and held that 'once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother.' Ibid. The Court acknowledged the 'lurking problems with respect to proof of paternity,' id., and suggested that they

could not 'be lightly brushed aside.' Ibid. But those problems could not be used to form 'an impenetrable barrier that works to shield otherwise invidious discriminations.' Ibid." (Page 4657)

"Finally, the relationship between a statute of limitations and the State's interest in preventing the litigation of stale or fraudulent paternity claims has become more attenuated as scientific advances in blood testing have alleviated the problems of proof surrounding paternity actions. As Justice O'Connor pointed out in Mills, these advances have 'dramatically reduced the possibility that a defendant will be falsely accused of being the illegitimate child's father.' Id., at 104, n. 2 (concurring opinion). See supra, at . See also *Little v. Streater,* 452 U.S. 1, 6-8, 12, 14 (1981). Although Tennessee permits the introduction of blood test results only in cases 'where definite exclusions [of paternity] is established,' Tenn. Code Ann. Sec. 36-228 (1977); see also Sec. 24-7-112 (1980), it is noteworthy that blood tests currently can achieve a 'mean probability of exclusion [of] at least. . .90 percent. . .' Miale, Jennings, Rettberg, Sell & Krause, Joint AMA-ABA Guidelines: Present Status of Serologic Testing in Problems of Disputed Parentage, 10 Family L.Q. 247, 256 (1976). In *Mills,* the Court rejected the argument that recent advances in blood testing negated the State's interest in avoiding the prosecution of stale or fraudulent claims. 456 U.S., at 98, n. 4. It is not inconsistent with this view, however, to suggest that advances in blood testing render more attenuated the relationship between a statute of limitations and the State's interest in preventing the prosecution of stale or fraudulent paternity claims. This is an appropriate consideration in determining whether a period of limitations governing paternity actions brought on behalf of illegitimate children is substantially related to a legitimate state interest."

In *Astemborski,* supra, Justice Flaherty speaking for a unanimous Supreme Court of Pennsylvania also held: "Since that statute is substantially related to a legitimate state interest, viz. the prevention of stale or fraudulent claims, it is not constitutionally infirm under a Fourteenth Amendment challenge even though the statute may operate, as it has in this case, to deprive an illegitimate child of its right to make a claim for support beyond the six year limit." (Page 1015).

It has long been the law in Pennsylvania that in paternity cases the results of blood tests are admissible in evidence to exclude the named defendant as an illegitimate child. In *Turek v. Hardy,* Pa. Super. , 458 A. 2d 562 (1983), the Superior Court held that evidence of Human Leukocyte Antigen (HLA) tests are

admissible in evidence and may be considered as some proof of paternity if a proper foundation is laid.

Due to the scientific advances made in the area of blood testing in paternity cases, the problems of proof which heretofore existed have been alleviated if not altogether eliminated. Since support for a legitimate child may be sought at any time during minority while support for a child born out of wedlock may only be sought during the first six years of the child's life or two years after support or acknowledgement, a disparity of treatment in violation of equal protection guarantees exists. U.S.C.A. Const. Amend. 14. Furthermore, we conclude this additional burden is no longer justified by the Commonwealth's interest in preventing the assertion of stale or fraudulent claims.

Therefore, we conclude that the Act of 1978, April 28, P.L. 202 as amended, 42 Pa. C.S.A. Sec. 6704(b) is unconstitutional insofar as it imposes a two-year statute of limitations upon actions brought to establish the paternity of a child born out of wedlock. Plaintiff in the instant case successfully established the defendant's paternity by showing that the parties had lived together for more than eighteen years and children were born during this period of cohabitation, that the defendant assisted in the children's care and financial support while living with them, and that the defendant introduced the plaintiff and children as his family. A duty of support is thereby owing the four children named in plaintiff's petition for support.

ORDER OF COURT

NOW, this 26th day of July, 1983, Ellis M. Daywalt is found to be the father of Patricia L. McDonald, born August 20, 1964; Robert A. McDonald, born December 13, 1965; Ellis M. Daywalt, born December 3, 1968, and Cindy J. McDonald, born December 6, 1969, and he owes a duty of support to his children from and after November 29, 1982.

Ellis M. Daywalt and Lucille A. McDonald are ordered to appear at the Domestic Relations Office, 100 Lincoln Way East, Chambersburg, Pa. 17201 before Robert J. Woods on August 17, 1983, at 11:00 o'clock A.M., for a conference, after which the Domestic Relations Hearing Officer may recommend that an order for support be entered against the Defendant.

You are further ordered to bring to the conference:

(1) a true copy of your most recent Federal Income Tax Return, as filed,
(2) your pay stubs for the preceding six months, and
(3) a complete Income and Expense Statement.

If you fail to appear for the conference or to bring the required documents, the court may issue a warrant for your arrest.

MILES V. MILES, C.P. Franklin County Branch, No. F.R. 1980 - 96 - S

Support - Income Capacity - Overtime Pay

1. There is no legal distinction between overtime and other pay or assets.

2. A 40 hour work week is not such a standard as to give rise to a presumption earnings based on 40 hours per week represent the extent of one's earning capacity.

3. Where a defendant has been working overtime continuously for several years, the overtime pay may be used as evidence of earning capacity.

Robert E. Graham, Jr., Esq., Attorney for Plaintiff

Kenneth E. Hankins, Jr., Esq., Attorney for Defendant

OPINION AND ORDER

KEITH B. QUIGLEY, P.J., *Specially Presiding, July 11, 1983:

This case arises out of a petition by plaintiff, Shirley, for increased support payments for herself and the parties' minor child, Anthony. The original support order was entered on April 28, 1981, and the current petition for an increase was made on February 14, 1983. An order has been issued by a Hearing Officer

*Editor's Note: President Judge of the 41st Judicial District.