

county in which A and the petitioner live, and in which both of A's marriages occurred, states that no record of divorce regarding A's first marriage is on file in that court.

There is no documentary evidence, however, as to whether A obtained a divorce or annulment of his first marriage in another jurisdiction (see infra).

ORDER

The department's decision is affirmed.

REASONS

W.A.M. § 2330 provides, in pertinent part:

Eligibility for ANFC requires establishing that a child is deprived of parental support or care for one of the following reasons and that the income and resources available to the parent in custody of the child and the child are insufficient to meet the child's total needs according to Department standards:

1. Death of a parent;
2. Continued absence of a parent;
3. Physical or mental incapacity of a parent;
4. Unemployment - (ANFC-UP).

Under Vermont Law (VSA 15 Section 201, Section 291 as amended by the 1971 Session, and Section 295 (sic) as added by the 1972 Adjourned Session of the Vermont General Assembly) stepparents have liability equal to natural parents for support of stepchildren under the age of eighteen. . . .

Where an applicant for or a recipient of assistance is married to a person other than the father of the children for whose benefit she makes application or receives assistance, determination of initial or continued eligibility shall be made on the same basis as if the stepfather were the natural father. . . .

15 V.S.A. § 511 provides as follows:

(a) Marriages prohibited by law on account of consanguinity or affinity between the parties or on account of either party having a wife or husband living, if solemnized within this state, shall be void without decree of divorce or other legal process.

(b) When the validity of a marriage is uncertain for causes mentioned in subsection (a) of this section, either party may file a libel to annul the same. Upon proof of the nullity of the marriage it shall be declared void by a decree of nullity.

The petitioner alleges that paragraph (a), above, is controlling, and that, as a result, the department cannot terminate her ANFC benefits based on her "void" marriage to A. She further argues that the department cannot reasonably require A to prove that he has not obtained a divorce or annulment in any other jurisdiction. While the petitioner is undoubtedly correct that "proving the negative" with documentary evidence in this case would be an unreasonable factual burden, the hearing officer and the board have grave reservations about declaring her marriage to A void as a matter of law, solely on the basis of A's minimally-supported testimony.

Vermont law is clear that stepparents are legally responsible for the support of their stepchildren. 15 V.S.A. §§ 201 and 296. While the petitioner and A might not have realized it, by getting married they, in effect, declared that A would assume legal responsibility for the petitioner's children. A continues to live with those children, and those children--who are not represented here--may well have an interest in maintaining A's legal

responsibilities to them. Therefore, the board must consider the repercussions beyond this case of any decision that, in effect, "declares" that A is no longer legally responsible for the support of the petitioner's children.

Although the petitioner and A could never physically "prove" that A has not obtained a divorce or annulment from any other jurisdiction, it can be concluded that the validity of A's marriage to the petitioner is, at best, "uncertain" (see 15 V.S.A. § 511(b), supra).¹ This being the case, it is not unreasonable to expect and require the petitioner and A to assume the burden of taking the legal steps necessary to have their marriage declared null and void by a court of competent jurisdiction. Inasmuch as 15 V.S.A. § 511(b), supra) provides a clear and efficient basis to do so, and in view of the fact that the petitioner is now represented by an attorney, there seems little reason for the board to concern itself, at this time, with the question of whether the petitioner's marriage to A is "valid".²

There being no question that the petitioner and A are married in a manner that in every other way conforms to the requirements of Vermont law, unless and until they obtain a legal annulment of their marriage, the department's decision is affirmed.

FOOTNOTES

¹Under Vermont and common law there exists a strong presumption favoring the "legitimacy" of children. In re Estate of Henry Jones, 110 VT 438 (1939); State v. Shaw, 89

VT 121 (1915); see also Fair Hearing No. 5231. Although A is not the natural father of the petitioner's children, similar societal interests dictate that the law should favor the preservation of parental and stepparental responsibility for the support of children.

²A decree of annulment, if obtained, would probably settle the issue of the petitioner's eligibility for ANFC both before and after the date of any decree itself. The petitioner would have the right to a fair hearing if the department did not give full effect (including a retroactive one) to any court decree.

#