

A Non-parent's Maintenance Obligation

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I. Introduction

Imagine you marry someone with a child from a prior relationship. Initially, you do not mind caring for this child. Then, your marriage sours and you no longer want anything to do with your spouse or the child. However, can your initial conduct of caring for the child unknowingly saddle you with a legal obligation to maintain him/her even when you may not want to? The answer is yes.

This article will explore a non-parent's legal obligation in maintaining a non-biological child. Specifically, it will analyse how and when the two requirements for this obligation are satisfied. At this juncture, one should note that disputes over a non-parent's maintenance obligation usually occur in the context of a divorce between a step-parent and a child's biological parent. Thus, examples from previous cases will focus on this fact pattern.

The abovementioned scenario is but one way in which a non-parent's maintenance obligation can arise. Practically, the non-parent responsible for the child's maintenance can be anyone as long as the court finds that the circumstances justify this obligation.

A. Background

In Singapore, parents have a legal obligation under section 68 of the Women's Charter ("WC")¹ to maintain their children by providing them with necessities such as accommodation, clothing, food and education.²

How and when then, does a non-parent's maintenance obligation come into play? As a child's welfare is of utmost importance in the eyes of the law,³ a non-parent's maintenance obligation

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¹ Women's Charter (Cap 353, 2009 Rev Ed) ("WC").

² *Id.*, at s 68.

³ Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) ("*Elements of Family Law in Singapore*") at [19.132].

comes into play when this welfare is not maintained by the child's biological parents.⁴ With that, we now explore how a non-parent's obligation to maintain a non-biological child arises (**“non-parent's obligation”**).

II. Discussion

A non-parent's obligation is governed by section 70(1) of the WC. This duty arises when:

- a. the non-parent has accepted a child who is not his/hers as a member of his/her family (**“acceptance”**); and
- b. the child's parents fail to maintain the child.⁵

A. *Have you accepted this child as a member of your family?*

Firstly, in determining acceptance, the important question is whether the non-parent had interacted with the child as if he/she was the child's parent.⁶ Preliminarily, a clear-cut scenario where this requirement is satisfied is if there is an express declaration stating the non-parent's acceptance.⁷ Without one, courts will then make inferences from the non-parent's conduct with the child to determine if the former has accepted a child as a member of his family.

Next, one should note that courts will make an initial presumption that the step-parent has accepted the child on the basis that he/she knew of this child before marrying the child's biological parent.⁸ For example, in the case of *TDT v TDS* (**“TDT”**),⁹ the court found that by marrying the child's biological mother knowing the child was from her previous relationship, the step-father had accepted the child into the family.¹⁰

However, this initial assumption may be strengthened or rebutted based on relevant factors.¹¹ As each case is unique, it is impossible to lay down an exhaustive list of factors that courts will

⁴ WC, *supra* n 1, at s 70.

⁵ *Ibid.*

⁶ *TDT v TDS* [2016] 4 SLR 145 (**“TDT”**) at [103] and [109].

⁷ *Id.*, at [104].

⁸ *Id.*, at [132].

⁹ *TDT*, *supra* n 6.

¹⁰ *Id.*, at [132].

¹¹ *Ibid.*

consider. However, this article will highlight the various principles and factors that have been considered previously so you may better understand what to expect in such disputes.

(1) *What contributes to acceptance?*

Firstly, what is crucial in determining acceptance is the voluntary assumption of *parental* responsibility of the child's maintenance.¹² Here, the UK's explanation of parental responsibility is useful as our courts have found support in their proposition. In *D v D*,¹³ when determining parental responsibility, a court will consider where the child lives, who pays for the child, and who exercises discipline over the child.¹⁴

There, the child lived with her grandparents and only spent time with her step-father when she wanted to. The step-father did not exercise influence over his step-daughter as one would expect from a parent, such as by staying updated on her comings and goings.¹⁵ Thus, the court found that he had not assumed parental responsibility over her.

Locally, our courts have also considered similar objective factors in determining acceptance. Objectivity here means that our courts will look at the surrounding facts and the non-parent's interaction with the child and not rely solely on the non-parent's verbal claims.

In *EB v EC* ("**EB**"),¹⁶ the court found that the step-father had accepted the children as members of the family although he claimed that he did not. The children had changed their surname to follow their step-father's and this serious matter required the latter's approval.¹⁷ Furthermore, the step-father had also gone on family holidays, bought gifts for the children and even bought a 7-seater car to accommodate family outings.¹⁸ He had also taken on the role of disciplining the children. Thus, the step-father's bare assertion that he did not recognise the children as part of his family was irrelevant in light of his conduct and the objective facts.¹⁹

¹² *Id.*, at [103].

¹³ *D v D (child of the family)* [1981] 2 FLR 93.

¹⁴ *Id.*, at p 98.

¹⁵ *Ibid.*

¹⁶ *EB v EC* [2004] SGDC 124 ("**EB**").

¹⁷ *Id.*, at [13].

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Likewise in *TDT*, the court looked at the fact that the step-father had provided the child, Q, with accommodation, gifts and even a club membership.²⁰ Thus, the step-father's actions had shown a voluntary assumption of parental responsibility over Q despite his claim that Q had never acknowledged him and that they had a distant relationship.²¹ The court further added that another strong indicator of acceptance was whether the child was encouraged to address the non-parent in parental terms like "mum" or "dad".²²

Ultimately, courts are concerned with the quality of the relationship between the non-parent and the child.²³ Thus, even in a situation where you may have assumed parental responsibility based on some mistaken fact, the court can still find acceptance.²⁴

For example, in *AAE v AAF*,²⁵ a step-father had taken care of a child under the mistaken belief that the child was his. The court suggested that the step-father's unawareness of the child's paternity was immaterial in finding "acceptance".²⁶ Importantly, the step-father had continued to nurture and care for the child even after knowing the mistake.²⁷ Thus, even if he later suggests that he would not have accepted the child had he known the latter's paternity, the court does not have to accept this bare assertion and erase the inference from his behaviour over many years.²⁸

(2) *What does not contribute to acceptance?*

In contrast, what then, might weaken a court's finding of acceptance? Our courts have sought guidance from the English case of *P v P*.²⁹ There, the step-father wanted to accept the children. He tried to discipline them and have them address him as "father" but the biological mother evinced a clear intention to prevent him from having any control over her children.³⁰ If a similar

²⁰ *TDT*, *supra* n 6.

²¹ *Id.*, at [129].

²² *Id.*, at [103].

²³ *Id.*, at [107]. See also *Halsbury's Laws of Singapore Family Law* Vol 11 at [130.649].

²⁴ *Elements of Family Law in Singapore*, *supra* n 3, at [12.091].

²⁵ *AAE v AAF* [2009] 3 SLR(R) 827.

²⁶ *Id.*, at [28]–[30].

²⁷ *Id.*, at [30].

²⁸ *Elements of Family Law in Singapore*, *supra* n 3, at [12.073].

²⁹ *TDT*, *supra* n 6, at [109] following *P v P* [1969] 1 WLR 898 ("*P v P*").

³⁰ *P v P*, *supra* n 29, at p 900–901.

situation arose in Singapore, the biological mother's intention would be a relevant factor in the court's assessment of acceptance.³¹

B. *Has the child's parents failed to maintain him/her?*

Next, section 70 stipulates that a non-parent's obligation to maintain the child arises when the child's parents fail to do so.³² Failure to maintain does not have to mean a total failure.³³ Once the child's parents have failed to *adequately* maintain their child, this requirement is satisfied.³⁴

(1) How is adequate maintenance measured?

Firstly, in deciding whether a child is adequately maintained such that a non-parent's maintenance obligation need not arise, the court will look at the child's current standard of living and whether the current maintenance meets the child's needs.³⁵ In *EB*, the children's mother was unable to fully maintain her children in the lifestyle they were used to on her own.³⁶ Meanwhile, the biological father was only paying nominal maintenance of \$2 per month.³⁷ This was evidently inadequate for the children's needs and thus the step-father's maintenance obligation under section 70(1) was triggered.

(2) Is biological parents' financial means relevant?

Secondly, courts do not require proof that a child's biological parents lack the financial means to provide for their child.³⁸ Instead, the maintenance applicant just has to show that the biological parent did not adequately provide for the child, irrespective of their means.³⁹

This is because section 70 operates as an emergency arrangement to provide for a child with immediate needs.⁴⁰ It safeguards a child's welfare by ensuring that they are adequately

³¹ *TDT*, *supra* n 6, at [109] following *P v P*, *supra* n 29.

³² *WC*, *supra* n 1.

³³ *EB*, *supra* n 16, at [24].

³⁴ *TDT*, *supra* n 6, at [112].

³⁵ *AJE v AJF* [2011] 3 SLR 1177 at [11].

³⁶ *EB*, *supra* n 16.

³⁷ *Ibid.*

³⁸ *TDT*, *supra* n 6.

³⁹ *Ibid.*

⁴⁰ Debbie Ong, "Family Law" (2011) 12 SAL Ann Rev at [15.6].

provided for until permanent arrangements can be made.⁴¹ Seen in this light, it would be too burdensome for the maintenance applicant if he/she must ascertain the biological parents' lack of financial means in order to successfully seek maintenance for the child. This is especially so in instances where a child's parents may be uncontactable.⁴² Once the two requirements of section 70 are satisfied, your non-parent obligation will arise.

III. Conclusion

When a non-parent has accepted a child into his family, he cannot relinquish this responsibility by simply changing his mind.⁴³ Evidently, this obligation is important to protect a child who may be left without maintenance.⁴⁴

To some, it may seem that a step-parent is penalised because of an unfit biological parent. Understandably, this obligation may be burdensome since you may be amidst an acrimonious divorce. However, while seemingly unfair, one should not forget that ultimately, a guiltless child should not bear the brunt of this undesirable situation.

⁴¹ *Ibid.*

⁴² *TDT, supra* n 6, at [114].

⁴³ *TDT, supra* n 6, at [122].

⁴⁴ *EB, supra* n 16, at [21].