

Do grandparents have to support their grandchildren?

In terms of our common law the maternal and paternal grandparents of a child born in wedlock are obliged to support him/her, if the child's parents are unable to do so. Up to date, however, only the maternal grandparents (the mother's parents) have a duty of support towards an extra-marital child but there was no such duty on the parents of the father (paternal grandparents).

In a recent important decision in the Cape Provincial Division of the High Court it has been decided that the common law has to be developed in this respect and it is necessary, in order to keep the common law in step with the values enshrined in our Constitution, to impose a legal duty on paternal grandparents to support their extra-marital grandchildren to the same extent to which maternal grandparents are liable. The Court has (correctly in our submission) found that the previous position constituted unfair discrimination on ground of birth amounting to the infringement of the dignity of such a child born out of wedlock and is clearly contrary to the best interests of extra-marital children. In terms of our Bill of Rights a child has a right to equality before the law and not to be unfairly discriminated against, a right to human dignity. The Court has emphasized the paramouncy of a child's best interest in every matter concerning a child.

It is obvious that there is a dramatic increase in maintenance claims against grandparents and writer agrees wholeheartedly with the decision by the Court that there is no reason whatsoever why only the grandparents of the mother should have a duty of support in the case of an extra-marital child. It must, however, be noted that the duty of grandparents will only arise if the natural parents can not support the children properly and the financial position of all the parties with a duty to support will obviously be taken into account to decide on a pro rata contribution towards the maintenance.

The good news for grandparents is that there is also a retrospective duty on children to support there parents should the need arise.