

KELLY A. MONN, Plaintiff, v. TIMOTHY A. MONN, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action, DRS 2003-00500, In Support

The Uniform Act on Blood Tests to Determine Paternity; Support Appeal; Medical History; Fraud

1. The Uniform Act on Blood Tests to Determine Paternity gives the Court the authority to order tests if "paternity, parentage or identity of a child is a relevant factor." 42 Pa.C.S.A. §6133.
2. Blood tests should never be ordered unless it is to establish paternity in a proceeding where paternity is a relevant fact and has not already been determined in a prior proceeding.
3. Even if paternity is a relevant fact and has not been determined in a prior proceeding, if a presumption of paternity applies or if a parent is estopped from denying paternity, no blood tests will be ordered.
4. The presumption of paternity is one of the strongest presumptions in Pennsylvania law and states that a child conceived or born in a marriage is a child of the marriage.
5. The presumption of paternity applies in any case where the policies which underlie the presumption would be advanced by its application, and in other cases, it does not apply. The underlying policy is to preserve the marriage and family unit.
6. Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child), that person, regardless of his true biological status, will not be permitted to deny parentage.
7. Evidence of fraud is relevant to the application of paternity by estoppel.
8. If a parent, after discovering the fraud, continues to act as a parent to the child, that parent is estopped from denying paternity.
9. The Court must determine whether the blood tests are in the best interest of the child, keeping in mind that the potential negative ramifications of a blood test on the child are irreversible.

Appearances:

Barbara B. Townsend, Esq., *Counsel for Plaintiff*

Michael B. Finucane, Esq., *Counsel for Defendant*

OPINION

Statement of Facts

1. On July 26, 1994, Kelly gave birth to D.M.M. It is undisputed that Kelly A. Monn (hereinafter "Kelly") and Timothy A. Monn (hereinafter "Tim") are the biological parents of D.M.M.
2. On September 17, 1994, Kelly and Tim married.
3. On September 5, 1996, Kelly gave birth to M.L.M.
4. On May 16, 1997, Tim had a vasectomy.
5. In the early fall of 2000, Kelly informed Tim that she was pregnant with H.A.M. and was involved in an extramarital affair.
6. On June 29, 2001, Kelly gave birth to H.A.M.
7. There was conflicting testimony as to whether or not Kelly informed Tim around the time of M.L.M.'s birth that he may not be the biological father of M.L.M. However, around the time she conceived with H.A.M. in the early fall of 2000, both parties acknowledge that Tim was aware that the possible father of H.A.M. was also possibly the biological father of M.L.M.
8. After Kelly informed Tim in the early fall of 2000 that he may not be the biological father of either M.L.M. or H.A.M., he continued for three years to hold M.L.M. out as his daughter.
9. Tim was present at H.A.M.'s birth, had his name placed on the birth certificate as H.A.M.'s father, and without interruption for two and a half (2½) years held out H.A.M. as his son.
10. Tim acted as a father to both M.L.M. and H.A.M. in the following manner:
 - a. Tim financially supported both children.
 - b. Tim placed both children on his health insurance.
 - c. Tim named both children on his income tax returns as his dependents and children.
 - d. Tim provided both children with his last name.
 - e. Tim allowed both children to refer to him as "daddy."
 - f. Tim took care of the children's everyday needs, including feeding and bathing.
 - g. Tim assisted in the medical care of both children.
 - h. Tim held both children out to his family and friends as his own.

Procedural History

1. On August 7, 2003, a support conference was held, during which Tim requested genetic testing of M.L.M. and H.A.M. before being ordered to pay support.
2. Tim's request was not granted and an Order of Court was signed on August 7, 2003, ordering Tim to pay child support for M.L.M., H.A.M., and D.M.M.
3. On August 25, 2003, Tim filed an appeal to the Court's Order of August 7, 2003. Tim did not object to paying child support for D.M.M., but requested a blood test be done on M.L.M. and H.A.M. before the support order regarding them was finalized.
4. On October 8, 2003, a hearing was held on Tim's request for DNA testing on M.L.M. and H.A.M. Tim characterized the appeal as a request for genetic testing for health reasons.

Discussion

This matter came before the Court when Timothy A. Monn filed an appeal to a support order regarding M.L.M. and H.A.M. Tim is requesting DNA testing on M.L.M. and H.A.M. for health reasons and is asking that the tests be ordered without the Court making a final determination of paternity. Also, Tim is requesting that the DNA tests be done before the support order is affirmed. This Court cannot "hold in abeyance its analysis of the facts in this case" as they pertain to paternity because the determination of whether or not blood tests can be done revolves around the determination of paternity. (Tim's Memo.)

No statute or case law in Pennsylvania allows for a deviation from the analysis of paternity when a blood test is being requested. Therefore, there is no deviation allowed when a parent asserts that he/she wants a blood test solely for the purpose of establishing an accurate medical history for the child[ren].

Under 42 Pa.C.S.A §6133, the Uniform Act on Blood Tests to Determine Paternity, the court has the authority to order tests if "paternity, parentage or identity of a child is a relevant factor." In *Wachter, Father* asked for a paternity test "solely to satisfy his curiosity and for the sake of the child." *Wachter v. Ascero*, 379 Pa.Super. 618, 622, 550 A.2d 1019, 1021 (1988). The trial court honored father's request, but the Superior Court said, "blood tests should not have been ordered in this case, even for humanitarian purposes, and should never be ordered unless it is to establish paternity in a proceeding where paternity is a relevant fact and has not already been determined in a prior proceeding." *Id.* at 623.

While paternity is a relevant fact in the instant case and has not been determined in a prior proceeding, if a presumption of paternity applies or if a parent is estopped from denying paternity, no blood tests will be ordered. *Brinkley v. King*, 549 Pa. 241, 250, 701 A.2d 176, 180 (1997).

The Pennsylvania Supreme Court, in *Brinkley*, a plurality opinion, set forth a twofold analysis to employ when determining if blood tests should be ordered in a case involving the question of paternity. *Id.* First, one is to consider whether the presumption of paternity applies. *Id.* The presumption of paternity is one of the strongest presumptions in Pennsylvania law which "is that a child conceived or born in a marriage is a child of the marriage." *Id.* at 244. To rebut this presumption "it must be proved by clear and convincing evidence that at the time of conception, the husband either was not physically capable of procreation or had no access to the wife." *Id.*

While the Court in *Brinkley* states that the presumption of paternity still exists as to an intact family, the court reevaluates the presumption of paternity when the family is no longer intact. *Id.* at 250. The Court held that "the presumption of paternity applies in any case where the policies which underlie the presumption ... would be advanced by its application, and in other cases, it does not apply." *Id.* at 250-251. The underlying policy is to preserve the marriage and family unit. *Id.* at 249.

In the present case, although the children were conceived and born during the marriage, the presumption is not applicable as there is not presently an intact family. The parties separated in February, 2003.

The second step in the Court's twofold analysis is to question whether estoppel applies. *Id.* at 250. This Court gets to the second step only because it determined that the presumption is inapplicable. *Id.*

Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child) that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father. As Superior Court has observed, the doctrine of estoppel in paternity actions is aimed at "achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding the paternity of the child." *Id.* at 248 n.5 (citations omitted).

If this Court finds that Tim is estopped from denying paternity, no blood tests will be ordered. *Id.* at 250.

Tim is estopped from denying paternity and thus no blood tests will be ordered because he clearly supported both children financially, emotionally, and physically and held them out as his own. Tim financially supported both children from the time of their births. Even though Tim was almost certain H.A.M. was not his biological child due to the fact that he had a vasectomy, he never asked for blood tests when Kelly told him she was having an affair but rather chose to support H.A.M. and treat him as his own. Both children have Tim's last name. He placed both children on his health insurance. Tim has named both children on his income tax returns as his dependents and children. He has allowed both children to refer to him as "daddy." Tim had taken care of the children's everyday needs, including feeding and bathing, from the time of each child's birth until he and Kelly separated. He had assisted in the medical care of both children. He held both children out as his own to all his family and friends until the support conference. Tim testified that he continues to see the children for periods of custody and intends to keep doing so.

In addition to the twofold analysis described above, this Court is aware that "evidence of fraud is relevant to the application of paternity by estoppel." *J.C. v. J.S.*, 826 A.2d 1, 4 quoting *Hamilton v. Hamilton*, 795 A.2d 403, 407 (Pa.Super. 2002). The issue of fraud is relevant only to M.L.M., not H.A.M., as Tim knew that H.A.M. was not his biological child from the outset but chose to hold H.A.M. out as his own. In *J.C. v. J.S.*, Father, who wanted his support obligation modified, accused Mother of misleading him for a period of not less than six years in the belief that D.S. was his biological child. 826 A.2d 1, 2 (2003). The parties were married at the time D.S. was conceived; however, Father was aware that Mother had an affair around the time of conception. *Id.* The parties remained married for approximately six (6) years after the birth of D.S.

Id. They separated in 1995 and Father admits he found out from Mother in January or February, 1997, that he was not the biological father of D.S. Id. Father proudly admits that he has continued to act as D.S.'s father in every way and at the time of this hearing had regular custodial time with him and enjoys "a good relationship" with him. Id. at 2-3.

The trial court determined that even after knowing for at least four (4) years that D.S. was not his biological child, Father "acted at all times and in all ways as D.S.'s father and he is the only person D.S. knows as father." Id. at 3. Father supported D.S. "emotionally, physically and financially, and he continues to do so today." Id. The Superior Court in this case affirmed the trial court's determination that paternity by estoppel applies and thus the petition to modify was denied. Id. at 5. In affirming the trial court, the Superior Court recognized that "the critical fact here is that, even after learning he was not D.S.'s biological father, Father continued to act as D.S.'s father." Id. at 4. This case is distinguishable from other fraud cases in that in this case Father continued to support D.S. in every way after Mother's admissions, whereas in Kohler and Doran, once the fraud was revealed to the fathers, they discontinued their roles as fathers. Id. Kohler v. Bleem, 439 Pa.Super 385, 654 A.2d 569, 576 (1995), and Doran v. Doran, 820 A.2d 1279 (Pa.Super. 2003).

In the present case, Tim asserts that Kelly did not tell him that M.L.M. may not be his biological child until she told him of H.A.M.'s conception. Even assuming that Kelly did not tell Tim until this point, Tim held himself out and acted as M.L.M.'s father for approximately three years after being told he may not be her biological father. As in J.C. v. J.S., even if there had been fraud on the part of Kelly, Tim is now estopped from denying paternity.

At the core of this analysis, the Court must determine whether the blood tests are in the best interest of the children. Jones v. Trojak, 535 Pa. 95, 103, 634 A.2d 201, 203 (1994). The concern in Jones was that the "potential negative ramifications of a blood test on the child are irreversible." Id. Although Tim claims that Kelly has already spoken to the children about the paternity issue, at the hearing there was no testimony suggesting that occurred and no evidence to suggest that the children see Tim as anyone but their father. Blood tests would call into question this relationship that most surely exists and, whether by biology or conduct, it makes no difference to the children.

Conclusion

This Court has no authority to order a blood test, even if requested solely on the grounds of medical reasons, without first doing a paternity analysis. If a presumption of paternity applies or if a parent is estopped from denying paternity, no blood tests will be ordered. Brinkley v. King, 549 Pa. 241, 250, 701 A.2d 176, 180 (1997). The legal analysis in this case is twofold. First, the Court considered whether the presumption of paternity applies. Id. In this case we determined it did not since there is no longer an intact family to protect. Second, the Court considered whether estoppel applied. Id. We determined that estoppel did apply so as to prevent Tim from denying paternity of both H.A.M. and M.L.M. Although there may have been fraud in regards to M.L.M., Tim is still estopped from denying her paternity because he continued to hold her out and treat her as his own for years after discovering that she may not be his biological child.

ORDER OF COURT

And now this 30th day of October, 2003, it is hereby ordered and decreed that:

1. Defendant's request for blood testing on M.L.M. and H.A.M. is denied.
2. The August 7, 2003, Order of Court establishing child support for M.L.M., H.A.M., and D.M.M. is affirmed.