



## Paternity

5/10/2005

In **Paternity of B.W.M.**, 826 N.E.2d 706 (Ind. Ct. App. 2005), the Court reversed and remanded the trial court's granting of the alleged father's motion to dismiss the child's paternity action. Mother and John Miller were married in August 1990. The child was born in December 1990 and the birth certificate indicates that the child's parents are John and Mother. In June 1999, the Miller's marriage was dissolved; Mother was awarded custody of the child as well as another child born during the Miller's marriage; and John was ordered to pay child support. In October 2001, John filed a Petition to Vacate Child Support Order Pending DNA Testing, or in the Alternative, to Modify Child Support. Pursuant to a February 2002 hearing, the trial court found that DNA Testing determined that John was not the child's biological father and vacated John's support order with regard to the child. In April 2004, the child filed his Petition to Establish Paternity against the alleged father through the Marshall County Title IV Prosecutor. In May 2004, the alleged father filed a motion to dismiss, arguing that "[p]aternity of said child was established January 9, 1991 as per the attached certificate of birth..." In September 2004, the trial court granted the alleged father's motion to dismiss, finding that John was the legal father of the child for the first twelve years of his life and that the alleged father had been "foreclosed from the opportunity to ever have any meaningful contact with this child while growing up, and [the alleged father is] now resistant to any action to have his paternity legally established..." The child appealed. *Id.* at 706-7.

**The dismissal of this action violated the public policy of correctly identifying parents and their offspring.** *Id.* at 706. The Court noted: (1) A child under the age of eighteen may file a paternity action through a guardian, guardian ad litem, or next friend. I.C. 31-14-5-2(a). (2) Our supreme court has held that "[a] child born to a married woman, who is fathered by a man other than her husband is deemed to be a 'child born out of wedlock.'" *K.S. v. R.S.*, 669 N.E.2d 399, 402 (Ind. 1996). (3) "The general assembly favors the public policy of establishing paternity under this article of a child born out of wedlock." I.C. 31-14-1-1. (4) Our supreme court noted in *In re S.R.I.*, 602 N.E.2d 1014, 1016 (Ind. 1992):

[S]tability and finality are significant objectives to be served when deciding the status of children of divorce. On the other hand, there is a substantial public policy in correctly identifying parents and their offspring. Proper identification of parents and child should prove to be in the best interests of the child for medical or psychological reasons. It also plays a role in the just determination

of child support; we have already declared that public policy disfavors a support order against a man who is not the child's father.

Id. at 707.

**The Court held that it was error for the trial court to dismiss the paternity action without giving the child the chance to establish whether the alleged father was his father.** Id. at 708. The Court saw no reason that a child should be rendered permanently fatherless through no fault of his own when he could have the chance to prove who his father is. The Court held that even if the child and the alleged father never established an emotional connection, the child was entitled to financial support from his biological father. It noted that the trial court's dismissal of the paternity action when it was aware that John had recently been proven not to be the child's father created a situation in which the child's legal father was taken away from him, but he was powerless to establish who his biological father might be. Id. The Court further noted that both the supreme court and the appeals court had previously looked with displeasure on parents attacking their paternity through motions to modify child support, and stated its strong disapproval of John's action in filing the petition to vacate his child support obligation and the trial court's action in granting the petition. Noting, however, that the mother had chosen not to appeal that decision, the Court opined that there was no reason the child should be made to suffer for the poor decision making of the adults in his life.