Paternity

2/25/11

In **In Re Paternity of D.L.** 943 N.E.2d 1284 (Ind. Ct. Ap. 2011), the Court of Appeals granted Mother's petition for rehearing in **In Re Paternity of D.L.**, 938 N.E.2d 1221 (Ind. Ct. App. 2010), to clarify the opinion. The Court affirmed the opinion in all respects, and provided additional clarification.

In the D.L. opinion at 938 N.E.2d 1221, the Court reversed the trial court's denial of First Adjudicated Father's (First Father's) request for relief from his obligation to pay support for the child. First Father admitted to paternity of the child at a 1995 hearing held on Mother's petition to establish paternity. Mother was granted physical custody of the child and First Father was ordered to pay child support. After more than ten years had passed, the trial court granted First Father custody of the child. Mother thereafter sought to regain custody of the child; Mother and First Father submitted an agreed entry approved by the trial court in which physical custody of the child was returned to Mother and First Father agreed to DNA testing to determine paternity. The DNA tests showed that First Father was not the child's biological father.

Mother and another man (Second Father) then formally established paternity in a separate cause after genetic testing established that Second Father is the child's biological father. In the separate cause, the trial court ordered the child's birth record amended to change the child's legal father from First Father to Second Father.

First Father then asked the trial court to be relieved from paying his child support arrearage, which the trial court denied. First Father appealed, presenting two arguments: (1) that the trial court erred in failing to disestablish paternity and (2) that the trial court erred in denying his request to terminate his child support arrearage. The Court concluded that First Father had waived his first argument, but noted that Second Father's paternity had been established. The Court concluded that First Father's paternity had been disestablished for all intents and purposes and relied on IC 31-14-11-23, which provides, "If a court vacates or has vacated a man's paternity of a child based on fraud or mistake of fact, the man's child support obligation, including any arrearage, terminates." The Court concluded that First Father's paternity was vacated due to mistake of fact, and therefore his child support, including any arrearage, must be terminated.

The Court held that the proper way for a presumed father to seek a court order vacating paternity is to file a motion to disestablish paternity, a motion to vacate paternity order, or a Trial. Rule 60(B) motion for relief from judgment. Id. at 1285. The Court held that First Father had waived his argument that the trial court erred in failing to disestablish paternity because he did not pursue the proper avenues. Id. However, the Court opined that, in the unique circumstances of this particular case, paternity was already established in Second Father, so First Father was now not the child's legal parent. Id.

The Court clarified that in this case the mistake of fact on which First Father's paternity of the child was based was that First Father believed he was the child's father at the time he affirmed paternity verbally in front of the trial court. Id. at 1286.

The Court disagreed with Mother's argument that the Court's opinion is inconsistent with the long-held precedent that a father may not challenge a paternity order by actively seeking genetic testing to prove he is not the father of the child. Id. The Court said that any confusion can be dispelled by keeping the question of disestablishment of paternity distinct from the question of whether termination of child support arrearage is proper. Id. The Court noted that it had specifically stated in the opinion at 938 N.E.2d 1228 that IC 31-14-11-23 governs the remedied to be implemented once a man's paternity has been vacated, *not the propriety of vacating paternity*. D.L., 943 N.E.2d 1286 (emphasis added).