Paternity

03/08/07

In **Paternity of Davis v. Trensey**, 862 N.E.2d 308 (Ind. Ct. App. 2007), the Court affirmed the trial court's denial of Father's motion for continuance and motion to correct error. While she was pregnant, Mother informed Father that he was probably the father of the child. Mother was engaged to another man, and when the child was born on July 21, 2005, the Mother gave the child her fiancé's last name and she and her fiancé executed a paternity affidavit indicating that the fiancé was the child's father. On January 30, 2006, the County Prosecutor's Office filed a petition to establish paternity in Father. Father appeared at an April 19, 2006 hearing at which the trial court ordered Mother, Father, and the child to submit to genetic testing. The results showed a 99.9943 percent chance that Father was the child's biological father. (The fiancé was also ordered to submit to a genetic test and, by it or some means not in the record, he was excluded as possibly being the child's biological father.) At the June 21, 2006 hearing, Father stated that he had learned the results of the genetic test only two weeks earlier and requested a continuance to consult with an attorney. The trial court noted that Father had "had two months, at least, to make contact with an attorney," and denied the continuance request. At the conclusion of the hearing, the trial court entered an order establishing paternity in Father, changing the child's last name, and directing Father to pay child support. Father a filed a motion to correct error which was denied. Father appealed.

The trial court did not abuse its discretion by denying Father's motion for continuance of the paternity hearing so he could obtain counsel. Id. at 311. The Court noted that (1) more than four months had elapsed between Father's awareness of the paternity suit against him and the hearing at which he asked the trial court for a continuance in order to obtain counsel; and (2) Father's remarks when requesting a continuance reflected his awareness that it would take but a few days to obtain counsel. The Court stated that, under these circumstances, it agreed with the trial court's observation that Father lacked diligence in this matter and that his predicament at the hearing was of his own making. Id.

Methods of attacking the presumption of paternity created by a paternity affidavit are not limited to the procedure set out in I.C. 16-37-2-2.1. Id. at 313. The Court applied the statutes as amended in 2006, and held that this paternity action was not governed by the paternity affidavit statute, I.C. 16-37-2-2.1, but instead by I.C. 31-14-4 et seq., pursuant to which the trial court correctly ordered Father's genetic test and entered a finding of paternity against Father based upon the results thereof. Id. at *2. The Court noted: (1) under I.C. 16-37-2-2.1(m), executing a paternity affidavit "conclusively establishes the man as the legal father of the child;" and (2) that presumption of paternity can be rebutted. According to the Court, the methods available to negate the paternity affidavit vary depending upon the identity of the party that wishes to rebut paternity. The Court agreed with Father that rebuttal under

I.C. 16-37-2-2.1 was not properly accomplished, but reiterated that the rebuttal procedures under I.C. 16-37-2-2.1 are applicable for "a man who is a party to a paternity affidavit under" I.C. 16-37-2-2.1(h), and that man, the fiancé, had not initiated this paternity action. Therefore, according to the Court, I.C. 16-37-2-2.1 did not apply. The Court held that, inasmuch as the Prosecutor's Office filed this paternity action, the action is governed by I.C. 31-14-4-1 which authorized the Prosecutor's Office to file it, and by IC 31-14-6-1 which authorizes "any party" in such a paternity action to petition for genetic testing and compels trial courts to grant those motions. The Court noted that, in this case, the resulting tests eliminated the fiancé who executed the paternity affidavit as the father and established Father as the biological father. In support, the Court quoted I.C. 31-14-7-1(3) as stating "[a] man is presumed to be a child's biological father if … the man undergoes a genetic test that indicates with at least a ninety-nine percent (99%) probability that the man is the child's biological father." The Court stated: (1) it found no language in I.C. 31-14-4 et seq. preventing the Prosecutor's Office from filing a paternity action in a case where a man filed a paternity affidavit more than sixty days before; (2) therefore, the instant paternity action was authorized under I.C. 31-14-4 et seq.; and (3) "this conclusion is consistent with the strong public policies in favor of identifying the correct biological father and allocating the child support obligation to that person as explained by our Supreme Court." Id. at 312-13.

The Court posited that, in effect, Father was urging the Court to declare that I.C. 16-37-2-2.1 "trumps" I.C. 31-14-4. The Court, however, disagreed with the underlying premise that those two statutes are in conflict. The Court noted that, (1) in 2006, the Indiana General Assembly amended both statutes and "it appears the General Assembly did not perceive a conflict between those two provisions;" and (2) "the language employed in the provisions does not evince any incompatibility." Id. at 313.

By entering a finding of paternity in Father, the trial court implicitly negated the fiance's paternity affidavit. Id. at 314.