Paternity

03/08/07

In **In Re Paternity of E.M.L.G.**, 863 N.E.2d 867 (Ind. Ct. App. 2007), the Court reversed and remanded the trial court's orders granting four putative fathers' requests for genetic testing to disestablish paternity. The Court consolidated four actions for the purposes of this appeal. Each of the four putative fathers signed a paternity affidavit at the hospital when the child was born. The affidavits were signed April 25, 2004, May 2, 2005, September 30, 2005, and February 14, 2006. In each case (1) the State brought an action to establish a child support order based on the father's execution of the paternity affidavit; (2) the hearing was conducted more than sixty days after the father had executed the affidavit; (3) at the hearing, the father requested the trial court to order genetic testing; (4) the trial court granted the father's request for genetic testing and ordered the State to pay for the test, subject to reimbursement by the man if he was determined to be the father, or by the mother if the man was excluded as the father; (5) the State filed motions to correct error which were denied; and (6) the State appealed.

The four putative fathers at issue failed to have their paternity affidavits set aside within the sixty-day time limit as provided for under I.C. 16-37-2-2.1 (2001). Therefore, under I.C. 31-14-7-3 (2001), each man is deemed the legal father. The trial court erred as a matter of law in granting the fathers' requests for genetic testing to disestablish paternity. Id. at 871. The Court noted that, although I.C. 16-37-2-2.1 was amended effective July 1, 2006, the Court was relying on the version of this statute before these amendments became effective, because "this amendment cannot apply retroactively to these cases" in that the fathers signed the affidavits and the trial court proceedings in these cases took place before July 1, 2006.

These actions were filed by the State to establish child support orders based on the fathers' execution of paternity affidavits. The trial court, however, treated them as actions to establish paternity, and, thus, deemed the putative fathers' requests for genetic testing to be sufficient under I.C. 31-14-6-1 which provides that "[u]pon the motion of any party, the court shall order all of the parties to a paternity action to undergo blood or genetic testing." The Court, however, (1) noted that I.C. 31-14-7-3 (2001) provides that "[a] man is a child's legal father if the man executed a paternity affidavit in accordance with [I.C.] 16-37-2-2.1 and the paternity affidavit has not been rescinded or set aside under [I.C.] 16-37-2-2.1;" and (2) found that, inasmuch as each of the four fathers admittedly had signed a paternity affidavit pursuant to I.C. 16-37-2-2.1, and did not rescind or set aside the affidavit within the sixty-day time frame set forth in I.C. 16-37-2-2.1(h), "under the plain, unambiguous language of the statute, paternity was already established." Id. at 869.

The trial court set aside the paternity affidavits based on a statutorily invalid reason - the men's allegations that they were not aware of the legal ramifications of the affidavits when

they signed them. Id. The Court noted that (1) I.C. 16-37-2-2.1(i) provides that "[a] paternity affidavit that is properly executed under this section may not be rescinded more than sixty (60) days after the paternity affidavit is executed unless a court has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit;" (2) none of the putative fathers alleged fraud, duress, or material mistake of fact; and (3) in rescinding the paternity affidavits, the trial court relied on the men's allegations that they were not aware of the legal ramifications of the affidavit when they signed them. Id.

The Indiana Code has no provision for the filing of an action to disestablish paternity. In Re Paternity of H.J.B., 829 N.E.2d 157, 159 (Ind. Ct. App. 2005). Further, a trial court does not have the authority to treat child support proceedings as proceedings to disestablish paternity. E.M.L.G. at 869. The Court noted that (1) the Indiana statutes covering paternity actions provide a means to establish rather than disestablish paternity; and (2) the General Assembly clearly and unequivocally prescribed, at I.C. 31-14-1-1 (1998), that it "favors the public policy of establishing paternity under [Article 14] of a child born out of wedlock." Thus, the Court concluded that the trial court improperly determined that I.C. 31-14-6-1 provides a method by which legal fathers may disestablish paternity outside of the sixty-day time limitation, absent a claim of fraud, duress, or material mistake of fact. Id. The Court opined that the soundness of the public policy underlying its decision is illustrated by the facts of these cases under which, if genetic testing were to disestablish paternity, each of the children would be considered "filius nullius," son of nobody," an outcome which Indiana's paternity statutes were created to avoid and which could carry with it countless detrimental emotional and financial effects. Id. at 870.

In reaching its decision herein, the Court distinguished In Re Paternity of N.R.R.L., 846 N.E.2d 1094 (Ind. Ct. App. 2006), *trans. denied*, which was relied on by the trial court, and its unpublished decision in In Re Paternity of M.H., No. 71A03-9905-JV-182 (Ind. Ct. App. September 20, 1999), which was relied on by the Appellees. The Court noted that N.R.R.L., in which it held that a biological father was entitled to file a petition to establish paternity under the Indiana Code despite the fact that the mother and a different man had executed a paternity affidavit, involved a proceeding to establish the paternity of the biological father, whereas these cases involve proceedings to disestablish paternity. As to M.H. in which the Court held that an executed paternity affidavit created a rebuttable presumption of paternity that could be contested by the father more than sixty days after he had executed the affidavit, the Court stated that Indiana Appellate Rule 65(D) precludes the citing of unpublished cases as precedent. The Court also pointed out that the statutory provisions underlying M.H. had been substantially amended in 2001, before the fathers in these cases executed the paternity affidavits. In that regard, the Court noted that, in 2001, the statutes were changed such that execution of a paternity affidavit no longer operated to create a rebuttable legal presumption that the man was the child's biological father, but rather the affidavit's execution operated to make the man the child's "legal father." Accordingly, the Court stated that its reasoning in M.H. was no longer valid. The Court also held that its analysis in M.H. did not apply to parties who executed paternity affidavits after the effective dates of the 2001 amendments to I.C. 16-37-2-2.1(h), in that the M.H. Court had held that the sixty-day time limit for filing to rescind a paternity affidavit contained in I.C. 16-37-2-2.1(h) did not apply to putative fathers, but the 2001 amendments changed I.C. 16-37-2-2.1(h) to explicitly state that I.C. 16-37-2-2.1(h) did apply to putative fathers. Id. at 870-71.