Paternity

01/31/2008

In **In Re Paternity of H.H.**, 879 N.E.2d 1175 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's order setting aside Father's paternity of H.H. When Mother discovered she was pregnant soon after Mother and Father started dating, they both knew Father was not the child's biological father but agreed that he would be the father. Father assisted in birthing classes and assisted during labor. H.H. was born April 6, 2004 and two days later Mother and Father signed and filed a paternity affidavit naming Father as H.H.'s father. They lived together until 2006 and after the separation, Father provided financial support for, and continued to visit H.H. In April 2007, Father petitioned to establish custody, support, and parenting time of H.H. Mother contested the petition on the ground that Father was not H.H.'s biological father. Father acknowledged he was not the biological father, but asserted that he had paternal rights pursuant to the paternity affidavit Mother and Father had signed. The trial court found that the paternity affidavit had been fraudulently executed and set it aside. Father appealed.

Once a mother has signed a paternity affidavit, she may not use the paternity statutes to deprive the legal father of his rights even if he is not the biological father. Id. at 1178. Inasmuch as the Court's holding is based on interpretation and application of the paternity statutes it gave no deference to the trial court's determination. IC 16-37-2-2.1(i) provides:

> When more than sixty days have passed since the execution of a paternity affidavit, the affidavit may not be rescinded unless a court:
>> (1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and
>> (2) at the request of a man described in subsection (h) has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

The Court opined that the legislature did not intend this statute to be used to set aside paternity affidavits executed by a man and a woman who both knew the man was not the biological father of the child, but instead intended it to protect a man who signed a paternity affidavit due to "fraud, duress, or material mistake of fact," a man who signed an affidavit without awareness of the questionable nature of his paternity. Id. at 1177-78. The Court observed that (1) if mothers could manipulate the paternity statutes as Mother has here, men would have no incentive to execute paternity affidavits, and thereby voluntarily accept the responsibility to provide for children financially and emotionally, without genetic evidence proving their paternity; (2) under the trial court's holding, a man could maintain his legal relationship with a child in such a situation only if he had genetic proof of his paternity; and (3) if a woman may "use" a man to support her and her

children until she tires of him, and then "dispose" of him as both partner and father, an unwed father would have no guarantee his relationship with a child could be maintained without proof of a genetic relationship. Id. at 1178. The Court concluded that this could not be the intent of the legislature and it could not further the public policy of this State where "protecting the welfare of children … is of the utmost importance." Id. (citations omitted).

Here, neither Father nor Mother may now challenge Father's paternity of H.H. Id. The Court noted that (1) Father is the only father H.H. has ever known; (2) he was there when she was born, has provided for her financially and emotionally since her birth, and has continued to visit and support her after his separation from Mother; (3) he is her legal parent and has assumed all responsibilities attendant thereto; and (4) changing his legal status at this late date is not in the best interests of H.H., Father, or our State. Id.

The Court remanded so the trial court may decide the issues of custody, support, and parenting time between H.H.'s legal parents. Id.