Paternity

12/14/2007

In **In Re Paternity of M.M.B.**, 877 N.E.2d 1239 (Ind. Ct. App. 2007), the Court reversed the trial court's order granting Father's motion to vacate two paternity orders requiring him to pay child support for two children. In two separate proceedings in 1990, based on petitions filed jointly by Mother and Father, court orders were issued establishing Father's paternity of Mother's two children and ordering Father to pay child support. Subsequently, Father moved to Tennessee, fathered three more children, and eventually married the mother of the three children. Father continued to pay child support for, and have parenting time with, the original two children until he went to prison in 1996. In 2002, when he was released from prison, he picked up the two children and took them to his home in Tennessee where they lived for the next thirteen months with Father's other three children. This ended when Father was told of an overheard conversation between Mother's two children which implied that they were not the biological children of Father. Father sought genetic testing which disclosed a 0.00% probability that Father was the biological father of Mother's two children. When Father told Mother of this, she admitted that she knew he was not the children's biological father, and asked him to return the children to Indiana, which he did. Thereafter, he lost track of the two children. On January 31, 2005, Father filed a motion to vacate paternity petitions and accompanying child support orders for Mother's two children. The trial court granted Father's request and proffered three reasons for doing so: (1) Father was not competent when he signed the paternity affidavits because he "was not able to read or understand the documents;" (2) Father's "admissions [of paternity] were based upon the false statements of [M]other made in court;" and (3) "it would be unfair that he support children that are not his biological children to the economic detriment of his younger children." The State appealed.

Trial court erred in vacating Father's paternity of the children and the accompanying support orders. Father's request for relief under Trial Rule 60(B) was outside the equitable discretion of the trial court, inasmuch as Father did not stumble upon the genetic evidence of his non-paternity inadvertently, but rather he actively sought the evidence to address his suspicions that he might not have been the children's biological father. Id. at 1245. The Court noted that in Fairrow v. Fairrow, 559 N.E.2d 597, 598 (Ind. 1990), the Indiana Supreme Court found that the purported father of a child was entitled to relief from a child support order based on newly discovered medical evidence proving that he could not be the child's father, which evidence resulted from genetic testing suggested by his doctor after being informed that

the child was experiencing symptoms of sickle cell anemia. In Fairrow at 599-600, the Supreme Court referred to the case as very unusual and emphasized that

> [T]he gene testing results which gave rise to the prima facie case for relief in this situation became available independently of court action. In granting relief to a party who learned of his non-parenthood through the course of ordinary medical care, we do not intend to create a new tactical nuclear weapon for divorce combatants. One who comes into court to challenge a support order on the basis of non-paternity without externally obtained clear medical proof should be rejected as outside the equitable discretion of the trial court.

M.M.B. at 1243-44. Here, the Court reviewed appellate cases issued subsequent to Fairrow which denied requests for relief from child support orders filed pursuant to Trial Rule 60(B). M.M.B. at 1244-45. The most recent case, Tirey v. Tirey, 806 N.E.2d 360, 363 n.2 (Ind. Ct. App. 2004), *trans. denied*, holds that "externally obtained" medical proof, as required by Fairrow, "means that the evidence establishing non-paternity was not actively sought by the putative father, but was discovered almost inadvertently in a manner that was unrelated to child support proceedings." M.M.B. at 1245.