Paternity

12/16/14

In **In Re Paternity of T.H.**, 22 N.E.3d 804 (Ind. Ct. App. 2014), the Court affirmed the trial court's denial of Father's petition to rescind or vacate his paternity affidavit. Id. at 805. Mother gave birth to the child on September 21, 1998. The following day, Father, who was seventeen years old, in foster care, and residing in a group home, visited Mother at the hospital. Father had engaged in sexual relations with Mother and believed himself to be the child's father. While he was visiting Mother at the hospital, Father signed a paternity affidavit, affirming that he was the child's natural father. On May 10, 2002, Mother filed a petition to establish child support. On July 17, 2002, the trial court conducted a hearing on Mother's petition and ordered Father to pay support in the amount of $75 per week. Mother continued to have physical custody of the child and Father was awarded the "right to reasonable visitation." On August 23, 2004, the trial court heard Mother's petition on visitation and did not enter an order "as [F]ather did not indicate that he desires to visit with his son." In February 2008, Father sent a letter to the trial court requesting a paternity test. The trial court denied Father's request in August 2008, noting that Father "signed the paternity affidavit nearly 10 [years] ago. It is too late to challenge the affidavit. Indiana law is clear that [F]ather may not undo his paternity." On September 27, 2012, Father appeared before the trial court on the State's petition for rule to show cause. Father agreed to pay weekly child support of $75, increased by $30 per week toward the accrued arrearage. On May 28, 2013, on Father's motion to modify child support, the trial court reduced his arrearage payment to $5 per week, but affirmed its weekly child support order. On September 14, 2013, Father filed his Petition to Rescind or Vacate Paternity Affidavit, asserting coercion, duress, and mistake of fact during the signing of the affidavit at the time of the child's birth. On October 3, 2013, following a hearing, the trial court denied Father's petition. The trial court concluded that: (1) far too much time had passed between the signing of the affidavit in September 1998 and the present; (2) when custody and support orders were first entered by the court at the hearing on August 1, 2002, four years after the affidavit was signed, no mention of DNA testing or any issue of Father's paternity was raised at that time; (3) Father affirmatively ratified the affidavit when he filed a request for a hearing to resolve problems with visitation on October 2, 2000; (4) at a hearing on November 17, 2000, the court awarded Father parenting time in accordance with the guidelines; (5) the first request for DNA testing occurred in 2008. On October 29, 2013, Father filed a motion to correct error, which the court denied on March 13, 2014 after conducting a hearing. In its order, the trial court stated that, while Father's circumstances as a foster child, who signed the paternity affidavit without the presence of a parent or guardian, were less than ideal, these circumstances did not establish grounds for the relief requested, particularly at this late date and after the intervening hearings on support and custody when Father was twenty

years, four months old, and on Father's request for a visitation order when Father was nineteen years old, which operated as a ratification of the paternity affidavit. Father appealed.

The Court concluded that the trial court did not abuse its discretion in denying Father's Petition to Rescind or Vacate Paternity Affidavit. Id. at 809. Citing In Re Paternity of H.J.B., 829 N.E.2d 157, 159 (Ind. Ct. App. 2005), the Court observed that the Indiana Code has no provision for the filing of an action to disestablish paternity. T.H. at 807. The Court noted that, at the time Father executed the paternity affidavit, the Indiana statutes provided two ways to establish paternity: (1) in an action under IC 31-14; or (2) by executing a paternity affidavit in accordance with IC 16-37-2-2.1. Id. Citing IC 16-37-2-2.1, the Court noted that any request for genetic testing must be made within sixty days after the paternity affidavit is executed, and a properly executed affidavit may not be rescinded more than sixty days after it is executed except in cases of fraud, duress, or material mistake of fact. Id. at 808.

Father focused on the duress and mistake of fact prongs of the statute in an attempt to rescind the affidavit. Father asserted that, at the time of signing the affidavit, he was a minor, acting without legal representation, and was put under duress by Mother and the maternal grandmother. Father testified that, when he executed the affidavit: (1) he was seventeen years old, was in a foster home, and no parent or guardian was present when he visited Mother and the child in the hospital; (2) he was excited and wanted to see the baby; (3) he believed that signing the affidavit would merely give the child his last name; (4) Mother and the maternal grandmother told him he would never see the child if he didn't do what he was supposed to do and threatened to go to the news and get his group home closed down. Id. Father claimed that the statutory modification to IC 16-37-2-2.1, which gives the child's mother and the man identified as the child's father the opportunity to consult with a chosen adult if they are under the age of eighteen before signing the affidavit and states that the affidavit is voidable if this opportunity is not provided, highlights the problematic and coercive situation that he, as a minor, was operating under, and that a special consideration should be made for him.

In response to Father's claim, the Court said that Mother's testimony dispelled Father's contentions that he was unaware of what he was signing and did not have the opportunity to consult with a parent or guardian. Id. at 808. The Court noted Mother testified that: (1) upon handing the paternity affidavit to Father for his signature, the nurse explained "everything" to "both of them"; and (2) prior to signing the affidavit, Father telephoned his mother and told her that he knew the child was his, he didn't care what his mother said, and he was going to sign the paper. Id. Citing In Re Paternity of R.C., 587 N.E.2d 153, 157 (Ind. Ct. App. 1992), the Court said that it has repeatedly emphasized that allowing a party to challenge paternity when the party has previously acknowledged himself to be the father should only be allowed in extreme and rare circumstances. Id. at 808-09. The Court opined that this case is not one of those rare circumstances. Id. at 809. The Court observed that at no point during these proceedings did Father enunciate a belief that he is not the child's biological father. Id. The Court said that, in essence, Father's argument boiled down to an invitation to reweigh his and Mother's credibility and to find in his favor, which is not a task reserved for the Court of Appeals. Id.