

Children's Law Center of Indiana



Paternity

7/19/11

In **In Re Paternity of T.M.**, 953 N.E.2d 96 (Ind. Ct. App. 2011), the Court affirmed the trial court's denial of Father's motion to set aside the paternity affidavit for a fourteen-year-old child and the trial court's denial of Father's request for DNA testing regarding the child's paternity. Father executed a paternity affidavit on June 2, 1995, the day after the child's birth. According to Father, Mother had told him that he was the only possible father of the child. Father was advised of his right to a DNA test, but declined. On September 9, 1997, Father and Mother jointly petitioned to establish support. On September 11, 1997, pursuant to the parties' agreement, the trial court entered an order establishing their parental status, awarded custody of the child to Mother, awarded Father parenting time, and ordered Father to pay the child's medical insurance and \$67 per week in child support. Certain provisions of the order were later modified. At no time did Father request genetic testing or challenge his paternity of the child. For the first fourteen years of the child's life, Father held himself out to be the child's father, paid child support, provided health insurance at times and exercised primary physical custody and parenting time for substantial periods of time.

In February 2009, the child began living with Father and Stepmother. Stepmother purchased a DNA kit from Walgreens in September 2009, and Father and the child took mouth swabs, which were mailed to Identigene in Salt Lake City, Utah, for testing. Mother did not give permission for the child to participate in this test. On December 1, 2009, Identigene issued its results by email informing Father that he was not the child's biological father. On February 12, 2010, Father moved to set aside his paternity affidavit and for DNA paternity testing, alleging that his execution of the paternity affidavit was a result of fraud and material mistake of fact. The trial court held a hearing on August 31, 2010, during which it also conducted an in-camera interview of the child. At the hearing, the trial court did not admit the DNA results into evidence following Mother's objection that the results were not properly certified. Mother testified that she and Father had a sexual relationship at the time of the child's conception, that she was not "seeing" anybody else at the time, and that there was no reason for Father not to believe her when she told him he was the child's father. On October 27, 2010, the trial court denied Father's petition. The court: (1) found no fraud, duress, or mistake of fact; (2) observed that the information relied upon by Father in petitioning to rescind his paternity affidavit resulted from a "mail-in" paternity test, the results of which were not obtained through the course of ordinary medical care or inadvertent discovery; (3) observed Mother's testimony regarding her exclusive relationship with

Father; (4) found that Mother believed Father was the child's biological father. The trial court denied Father's motion to correct errors, and Father appealed.

The Court found no abuse of discretion in the trial court's refusal to admit mail-in kit DNA test results, conducted without the consent of both parents, as support for Father's motion to set aside his paternity affidavit filed approximately fourteen years after Father executed the affidavit. *Id.* at 99. The Court stated that once a man has executed a paternity affidavit in accordance with IC 16-37-2-2.1, he is the child's legal father unless the affidavit is rescinded pursuant to the same statute. *J.M. v. M.A.*, 950 N.E.2d 1191 (Ind. 2011). *T.M.* at 98. Quoting IC 16-37-2-2.1, the Court noted that a properly executed paternity affidavit may not be rescinded more than sixty days after it is executed 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 who is a party to a paternity affidavit, has ordered a genetic test, and the test indicates that the man is excluded as the father of the child. *T.M.* at 98. The Court said that a man who executed a paternity affidavit may not fail to timely request genetic testing under IC 16-37-2-2.1 and then, as a matter of course, request such testing as a fishing expedition. *Id.* at 99. The Court said that Father's challenge is largely premised upon his assumption that the DNA test results were admissible and reliable, but the trial court concluded that they were not. *Id.* The Court observed that the single DNA test came from a mail-in kit, the test specifically stated that it was not to be used for legal purposes, and there was no information from the purported laboratory where the tests were conducted, or the persons conducting those tests, establishing a foundation to support the reliability of their results. *Id.* The Court opined that, in the absence of admissible test results to the contrary, the trial court specifically credited Mother's belief that the child was Father's biological child and that she and Father were in an exclusive relationship at the time of the child's conception. *Id.* The Court stated that the trial court was within its fact-finding discretion to make this credibility assessment, and the Court will not reweigh that evidence. *Id.*