Paternity

6/23/11

In **J.M. v. M.A.**, 950 N.E.2d 1191 (Ind. 2011), the Indiana Supreme Court reversed the trial court's decision as to paternity and remanded the case to give Father the opportunity, as agreed to by the parties at oral argument, to challenge the paternity affidavit in the manner outlined by IC 16-37-2-2.1. Father and Mother began a relationship in 1998 when Mother was already four months pregnant. Father, then age seventeen, signed a paternity affidavit on the day Mother gave birth to the child. The child's guardian receives benefits from the Elkhart County Title IV-D office, and the State sought to collect child support for the child from Father in 2009. Elkhart County prosecutors filed a "Petition for Entry of Support and Health Insurance Coverage" on April 7, 2009, and a court hearing was set on May 22, 2009. On May 21, 2009, Father sent an email to his girlfriend in which he requested a continuance, saying he was traveling out of state and his attempts to find counsel had been unsuccessful. The girlfriend recorded Father's message on a court "minute sheet" and tendered it on the day of the hearing. The trial court, concluding that Father had had over a month to find counsel, denied the continuance request, conducted the hearing, entered a default judgment and a temporary support order, and ordered Father to appear for a compliance hearing. On August 11, 2009, Father, now with counsel, moved to set aside the paternity affidavit. The trial court heard this motion at the same time set for the compliance hearing, September 15, 2009, and declared that Father's "lack of appearance at [the support hearing] ratified the previously signed affidavit of paternity." Father filed an appeal, characterizing his motion to set aside the paternity determination as a motion for relief from judgment under Indiana Trial Rule 60(B). The Court of Appeals held that the trial court abused its discretion in denying Father's motion to set aside the paternity affidavit. J.M. v. M.A., 928 N.E.2d 230 (Ind. Ct. App. 2010). The Court of Appeals concluded that because "a material mistake of fact existed at the time Father executed the paternity affidavit," Mother's testimony that Father was not the biological father and the State's concession that Father is not the biological father, it was not necessary to remand for genetic testing. Id. at 239. The Court of Appeals directed that the paternity affidavit be set aside, and vacated the trial court's order adjudicating Father as the legal father and the order for child support. The Supreme Court granted transfer.

The Court opined that in order for a court to rescind a paternity affidavit, paternity testing must exclude the man as the biological father, and the parties' words or agreement cannot supplant the statutory requirements of IC 16-37-2-2.1. Id. at 1193. The Court quoted IC 16-

37-2-2.1, stating that, to set aside a paternity affidavit, the statute specifically requires fraud, duress, or a material mistake of fact at the time of the execution of the paternity affidavit, *and* genetic testing that excludes the man as the child's biological father (emphasis in opinion). Id. at 1192-93. Father's petition alleged facts that, if formally proven, could establish that a material mistake of fact might have existed at the time he signed the paternity affidavit, specifically: (1) he signed the affidavit under a belief that he was doing so to enable a guardianship to be established; (2) he was a minor who acted without legal assistance. Id. at 1193. The Court went on to say that, in order for a court to rescind a paternity affidavit, paternity testing must exclude the man as the biological father. Id.