

Children's Law Center of Indiana



Paternity Establishment

2/12/18

In **In Re Paternity of B.M.**, 93 N.E.3d 1132 (Ind. Ct. App. 2018), Father appealed the trial court's denial of his Trial Rule 60(B) motion to set aside judgements of paternity for two minors, B.M. and O.M. B.M. was born in December 2005 and Father signed a paternity affidavit in August 2009, despite knowing he was not the child's father. O.M. was born in April 2009, and Father signed a paternity affidavit that same day, despite suspecting he was possibly not the child's father. Father held himself out as the father of both minors until February 2016, when Father made motions to set aside paternity for both children in response to Mother's request for current and retroactive child support. The trial court denied Father's Trial Rule 60(B) motion to set aside judgment of paternity on several grounds: (1) Father did not seek out genetic testing outside of the court setting, (2) Father was the only father the children knew, (3) Father had signed paternity affidavits with the knowledge that the minors were not possibly or logically his, and (4) waited three years after seeking paternity default judgments to make a motion for relief.

The Court of Appeals affirmed the trial court's decision in full, noting that **"The decision of whether to grant or deny a Trial Rule 60(B) motion for relief from judgment is within the sound, equitable discretion of the trial court. Prince v. Marion Cnty Auditor, 992 N.E.2d 214, 217 (Ind. Ct. App. 2013), *trans. denied*. We will not reverse a denial of a motion for relief from judgment in the absence of an abuse of discretion. Id."** Paternity of B.M. at 1135. Father had argued that he was entitled to relief due to fraud, duress, or mistake of fact. Id. The Court observed that Father testified that he knew and/or suspected he was not the biological father of the children, but signed the paternity affidavits anyway. Id. 1136. Father had sixty (60) days after signing the paternity affidavit in which to request genetic testing, but he did not do so. Id. at 1135, citing IC 31-14-7-3. After that sixty day timeframe, a paternity affidavit may only be set aside when there a court determines that there was fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit, and at the request of the man, a genetic test is ordered, and the man is then excluded as the biological father. Id. The Court noted that a legal father may not request a genetic test as a fishing expedition, and may only challenge paternity in rare circumstances with evidence that has become available independently. Id. In the present case, Father held himself out as the father of both minors for years after knowingly signing the paternity affidavits. Id. The Court upheld the trial court's ruling as there was no abuse of discretion in finding that there was no fraud, duress, or mistake of fact in the present case. Id. at 1137.