IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

K.B., JR.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-20,505
	:	
S.B. and R.B. II,	:	
Defendants	:	

ORDER

The issue before the court in this case is whether the court should order genetic testing to establish the paternity of a child born into an intact marriage. The plaintiff, Putative Father, argues that the presumption of paternity should not apply because the marriage was entered into a mere three weeks before the birth of the child. Moreover, he argues that Mother should be estopped from denying his paternity because of her conduct and actions holding him out as the father of the child prior to the marriage. The court finds that the presumption of paternity applies in this case, and that once the presumption applies, the issue of estoppel is never reached.

Factual Background

The relevant facts are not in dispute. Mother and Presumptive Father were married on February 5, 2004, and have remained married. The child was born on February 26, 2004.

Discussion

There are two doctrines which may render blood testing to establish paternity irrelevant: the presumption of paternity and the doctrine of paternity by estoppel. These are two legal fictions. Both of them establish conclusively the paternity of a child, despite the biological reality.

The presumption of paternity embodies the fiction that a child born to a married woman is the child of the woman's husband. It has traditionally been one of the strongest presumptions known to the law. John M. v. Paula T., 571 A.2d 1380 (Pa. 1990). Several years ago, however, the Pennsylvania Supreme Court, in a plurality opinion, weakened the presumption somewhat. The court held the presumption should apply only when it will further the policy of protecting the family unit; when the family unit is no longer intact, the presumption will not apply. Brinkley v. King, 701 A.2d 176 (Pa. 1997). This holding was adopted by a majority in Fish v. Behers, 741 A.2d 721 (Pa. 1999).

The purpose behind the presumption of paternity is the preservation of the family, the basic and foundational unit of society. The presumption protects intact families by shielding them from unwarranted interferences from outsiders—even individuals who have had intimate relationships with a member of that family. Strauser v. Stahr, 726 A.2d 1052, 1055 (Pa. 1999). As the Supreme Court held in John M. v. Paula T., supra at 1388-89, "Whatever interests the putative father may claim, they pale in comparison to the overriding interests of the presumed father, the marital institution and the interests of this Commonwealth in the family unit. These interests are the cornerstone of the age-old presumption and remain protected by the Commonwealth today."

The analysis to follow in determining whether blood tests should be ordered was summarized by the Pennsylvania Supreme Court in Strauser:

> The essential legal analysis in these cases is twofold: first, one considers whether the presumption of paternity applies to a particular case. If it does, one then considers whether the presumption has been rebutted. Second, if the presumption has been rebutted or is inapplicable, one then questions whether estoppel applies. Estoppel may bar either a plaintiff from making the claim or a defendant from denying paternity. If the presumption has been rebutted or does not apply, and if the facts of the case include estoppel evidence, such evidence must be considered.

Strauser, supra, at 1055.

The Putative Father concedes that he cannot rebut the presumption by showing Husband did not have access to Wife at the time of conception, or that Husband is impotent. Therefore, the court need only consider whether the presumption of paternity applies in this case. The presumption applies "in any case where the policies which underlie the presumption, stated above, would be advanced by its application, and in other cases, it does not apply." Brinkley, supra, at 181; *see also* Strausser, supra, at 1055. The policies underlying the presumption are "the overriding interests of the presumed father, the marital institution and the interests of this Commonwealth in the family unit." Brinkley, supra, at 179, quoting John M. v. Paula T., supra, at 1388-89.

In the case before this court, there is an intact marriage to protect. Therefore, the presumption applies. Putative Father argues that *this particular marriage* is not worthy of protection because it was entered into three weeks before the birth of the child. The court does not agree. New marriages are just as worthy of protection as old marriages, perhaps even more so as they are more fragile, and therefore less likely to withhold the strain and stress of custody actions filed by the wife's alleged former paramour.

The appellant in Strausser made a similar argument, namely that the marriage at issue in that case was not worthy of protection because the marriage lacks love and intimacy, and exists in name only. He argued that the couple had experienced conflict caused by adultery, that the husband suspected the child at issue was not his child, and that the husband exhibited an attitude of indifference toward the mother and child. For these reasons, he argued, the husband and wife did not enjoy the traditional marriage and family unit. The Pennsylvania Supreme Court held that while these assertions may be factual, it is in precisely such a situation that the presumption of paternity serves its purpose by allowing the couple, despite past mistakes, to strengthen and protect their family unit. This court must reach the same conclusion in the case before us.

Putative Father argues that even if the court finds the presumption of paternity applies, the court should still consider the estoppel issue. This argument was clearly rejected by the Strausser court, which found that the question of estoppel does not arise "unless and until" the presumption of paternity has been rebutted or is inapplicable. Id. at 1057.

In conclusion, the court must dismiss Putative Father's petition, as paternity is conclusively established by the marriage. Therefore, blood testing is irrelevant and he has no standing to pursue a custody action.

O R D E R

AND NOW, this _____ day of June, 2004, for the reasons stated in the foregoing opinion, the Petition for Legal and Partial Custody and to Determine Paternity, filed by the plaintiff on April 20, 2004, is dismissed.

BY THE COURT,

_____
Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray, J.
Richard Gahr, Esq.
Christian Lovecchio, Esq.
Gary Weber, Esq.