

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

L.B.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,241
	:	
B.H.,	:	
Defendant	:	
	:	
N.C.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,438
	:	
T.B.,	:	
Defendant	:	

OPINION and ORDER

The above two cases have been consolidated in one opinion because they involve the same question: Under what circumstances can a man rescind an acknowledgement of paternity? Both of the defendants voluntarily signed an acknowledgment of paternity at the hospital shortly after the child was born. Each man knew he was not the child's biological father, or at least had serious doubts about his paternity. Each signed the acknowledgement because he was romantically involved with the mother at the time. However, each had a change of heart once he and the child's mother separated.

Factual Background

The factual background of both cases is briefly set forth as follows. In the case of L.B. v. B.H., Father and Mother were dating prior to the time the child was

conceived, which the ultrasound determined took place on Christmas Eve 2001. However, the couple separated some time in December 2001 and had no sexual relations on Christmas Eve. Father knew Mother was dating another man during this time. In January or February 2002, Father and Mother reconciled. Father knew Mother was pregnant, and he was present at the doctor's office when they learned the conception date. When the doctor was asked whether there was any way the date was wrong, the doctor replied in the negative.

Mother's due date was set at September 16, 2002. The baby was born on August 15, 2002. Mother testified the child was born four weeks premature, evident by the child's low birthweight, and that Father was aware the child was premature. Mother also testified that the child was obviously not fully Caucasian.¹ Mother further testified that Father knew full well the child was not his when he signed the acknowledgement of paternity, and the court finds her credible on these issues. In fact, Father's own testimony indicated that he seriously doubted he was the child's father.

The couple continued to reside together after the child's birth, and Father testified that during this time he cared for the child as if she were his own.² The couple split up again during the first three months of 2003, and have not reconciled. The testimony differed as to what sort of relationship Father has had with the child since separation, but the court finds that Father has had little, if any relationship with the child.

Mother filed a petition for child support on September 3, 2003, and Father subsequently filed a petition for blood testing. Mother opposes the petition, and wants Father to remain the child's legal father, despite the fact that she is almost 100% certain

¹ Both Father and Mother are Caucasian. The reputed father is Hawaiian.

² He denied, however, holding out the child as his own to the public and to family members. This was disputed by Mother.

he is not the biological father, and she knows the identity of the man who probably is the father.

In the case of N.C. v. T.B., the parties met when Mother was three months pregnant. They never married nor lived together, although they had sexual relations and Mother stayed at Father's residence on occasion. Father was at the hospital when the child was born on September 27, 2001, and he signed an acknowledgement of paternity knowing full well he was not the biological father. Father testified that he signed the acknowledgement because he watched the child being born, he wasn't thinking straight, and it seemed like the right thing to do.

After the child's birth, Mother and Father continued their relationship, seeing each other mainly on weekends. Father never held the child out as his own, never financially supported the child, and the only contact he had with the child was when Mother came to visit him.

The couple separated in November 2002, one year after the child's birth. Father has only seen the child once since that time—by accident, at a party. The child knows Father only as one of Mother's friends, and has never considered him her father. Mother does not oppose Father's request to rescind his acknowledgment of paternity. She knows who the biological father is, and wants him held responsible.

Discussion

The statute at issue³ is 23 Pa.C.S.A. §5103(g), which states that a signed, voluntary, witnessed acknowledgment of paternity shall be considered a legal finding of paternity. The signer has sixty days to rescind the acknowledgment. Subsection (2) states:

³ The court notes that the doctrine of paternity by estoppel is an additional way in which a man can be deemed the father of a child who is not biologically his own. Where there is an acknowledgement of paternity, the existence or absence of paternity by estoppel does not alter the application of the statute.

After the expiration of the 60 days, an acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, which must be established by the challenger through clear and convincing evidence.

Neither of the fathers in the cases before the court has met this burden under the statute. The father in L.B. v. B.H. made a half-hearted attempt to prove fraud, but the testimony clearly demonstrated that the child's mother did not deceive him into believing he was the child's father. The father in N.C. v. T.B. attempted to convince this court there was a material mistake of fact in that he did not fully understand what he was signing, and he did not receive the accompanying sheet that explains the rights and duties which arise from signing the acknowledgement. Neither of these things, even if true, constitutes a material mistake of fact. The acknowledgment form itself clearly states: "Voluntary acknowledgment of paternity by the father in completion of this form, with the consent of the mother, gives the father all the rights and duties as to the child which he would have had if he had been married to the mother at the time of the child's birth." The form also quotes 23 Pa.C.S.A. §5103(g)(2), warning the signer of the limited way of challenging the acknowledgement once it is signed. Moreover, the acknowledgement is in the form of an affidavit, stating, "I, [man's name], freely and voluntarily acknowledge that I am the biological father of the child named above. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities)." Anyone who signs an acknowledgement of paternity, with all of these explicit statements contained in it, will certainly have a difficult time proving material mistake of fact.

In short, neither of the men involved in these two cases has established a basis for rescinding his acknowledgment of paternity by clear and convincing evidence. Therefore, their requests to rescind the acknowledgement and obtain blood tests to disprove their paternity must be denied.

This conclusion is disturbing, because it means that both these young men will be saddled with the responsibility of fatherhood for children who are not their own. Although both men freely signed the acknowledgement, and must be held responsible for doing so, it appears their intentions at the time were good. Under the circumstances, it is difficult to believe either of the fathers in the case before the court will ever establish a very close relationship with their daughters. Therefore, although it may be of economic benefit to the children to hold these men legally responsible it would, in this court's opinion, be far better for everyone concerned if the actual biological father were held responsible. The law rightly imposes a duty of financial support on a legal father. Unfortunately, the law cannot create dedicated, involved fathers. These girls need a loving father in their lives. Sadly, that appears unlikely.

Despite these misgivings, the court must follow the law. The statute at issue here is clear and unambiguous, and the court declines to distort the law in an attempt to reach a different result. Our conclusion is supported by the case of Warfield v. Warfield, 2003 Pa. Super. 16, 815 A.2d 1073 (2003), in which the Superior Court held that a putative father was precluded from rescinding an acknowledgement of paternity although a blood test proved he was not the biological father. In her concurring opinion, Judge Beck wrote, "The law simply does not protect a party who, despite being certain he is not the biological father of a child, acknowledges paternity of that child." Id. at 1078. Further, in McConnell v. Berkheimer, 2001 Pa. Super. 224, 781 A.2d 206 (2001) the Superior Court reversed an order for blood tests where the court did not have a basis for rescinding the acknowledgment of paternity.

Should the legislature decide to alter the law to give courts more latitude in such situations, the court would applaud such a change. Until then, our conclusion is mandated.

ORDER

AND NOW, this _____ day of March, 2004, for the reasons stated in the foregoing opinion, it is ordered that:

1. The exception filed by B.H. to the Master's order of December 22, 2003 is dismissed.
2. The Petition for Paternity Testing/Petition to Reopen Record filed by B.H. is denied.
3. The Motion for Paternity Testing filed by T.B. is denied.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Rita Alexyn, Esq.
Joy McCoy, Esq.
L.B.
N.C.
Domestic Relations (RMW)
Domestic Relations (JJ)
Domestic Relations (PC)
Family Court
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