

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

J.W.,	:
Plaintiff	:
	:
v.	: No. 92-20,932; 02-21,546; 03-21,789
	: 04-20,740
R.W.,	:
Defendant	:

**ORDER**

In this case the Husband, J.W., has asked the court to annul the parties' marriage, order paternity testing, and eliminate his child support obligation for the child, J.W., born on July 3, 1988. The basis for these three requests is his allegation that in 1987 the defendant, R.W., defrauded him into marrying her and acting as the father of the child. Specifically, Husband claims he married Wife solely because she told him she was pregnant and led him to believe he was the father of the child. He further claims Wife did not tell him she had sexual relations with another man during the period the child could have been conceived. Father now doubts he is the biological father of the child, who is sixteen years old.

**Annulment**

23 Pa.C.S.A. §3305(5) states that a marriage shall be deemed voidable and subject to annulment:

Where one party was induced to enter into the marriage due to fraud, duress, coercion or force attributable to the other party and there has been no subsequent voluntary cohabitation after knowledge of the fraud or release from the effects of fraud, duress, coercion or force.

To prove fraud, the alleging party must establish, by clear and convincing evidence:

(1) a misrepresentation, (2) a fraudulent utterance, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the

misrepresentation, and (5) damage to the recipient as a proximate result. Moser v. DeSetta, 589 A.2d 679, 682 (Pa. 1991); Sekol v. Delsantro, 763 A.2d 405 (Pa. Super. 2001). The concealment of a material fact can amount to a culpable misrepresentation no less than does an intentional false statement. Moser, supra, at 682.

Husband alleges that the only reason he married Wife was because she notified him she was pregnant and led him to believe he was the father of the child. He claims Wife deceived him by failing to tell him she had engaged in sexual relations with another man during the time in which the child's conception could have occurred.

In Pfeifer v. Pfeifer, 173 A. 437, 438 (Pa. 1934), a case precisely on point, the Pennsylvania Supreme Court held that a husband cannot establish fraud based upon a woman's untrue statement regarding his paternity of a child, if the husband engaged in sexual intercourse with the woman before the marriage. In reaching this conclusion, the Supreme Court cites and applies the case of Allen's Appeal, 99 Pa. 196 (Pa. 1882):

*Allen's Appeal, 99 Pa. 196*, in substance states that when a man enters into the solemn covenant of marriage with a pregnant woman, he must be conscious of his having had previous connection with her before he would enter into the solemn obligation and although she may have falsely assured him that the child was his, if he chooses to rely on that assurance he must bear it as a misfortune. The libellant had connection with this woman previous to his marriage with her and he relied upon her assurance that he was the father of the child. "The law makes no provision for the relief of a blind credulity." If a man marries a woman, knowing her to be pregnant and believing that he is the father of the child, he cannot set up the fraud if afterwards discovered.

*See also* Travis v. Travis, 182 Pa. Super. 273 (1957); Santer v. Santer, 115 Pa.

Super. 1 (1934); Schwindt v. Schwindt, 66 Pa. Super. 217 (1917). Here,

Husband admits he had sexual relations with Wife before marriage; therefore, he cannot obtain a divorce or annulment based upon fraud.

Further, the court finds Husband's testimony to be entirely unbelievable. To the contrary, the court finds credible the Wife, who testified that during the time she and Husband were dating she engaged in sex with G.W., her former

paramour, on one occasion, while Husband was visiting relatives in Allentown. Wife also testified she did not conceal this incident from Husband, but told him about it within a week of its occurrence, when Husband returned from Allentown. Wife at that time had a daughter fathered by G.W. Husband knew G.W. was the girl's father. We also believe Wife's testimony that her pregnancy was not the sole reason Husband decided to marry her. Rather, Husband gave her a pre-engagement ring before he left for basic training on November 11, 1987, which was prior to the time Wife learned she was pregnant. Furthermore, the court finds that when Wife told Husband she was pregnant during a telephone call in late November or early December of 1987, Husband told her he was happy about the pregnancy, and it was he who proposed marriage. Wife, on the other hand, had some reservations about marriage. Furthermore, the subject of the child's paternity never came up from the time Husband learned about the pregnancy until Spring of 2004, when the child was sixteen years old. In short, Mother never made a fraudulent utterance regarding the child's paternity.

The court's assessment of credibility is supported by the e-mail sent by Father to Mother on March 22, 2004, which expresses his doubts about being the child's biological father and states, "Especially since I knew you were with Greg, and following you 'conveniently' wanted to have sex with me without a condom on Halloween." The court believes this confirms our finding that Husband knew Wife had sexual relations with G.W. during the time the child could have been conceived.

The court therefore finds there is no fraud in this case because:

(1) Husband knew Wife had sex with another man during the period the child could have been conceived, (2) Wife never deceived Husband about the child's paternity, and (3) Wife's pregnancy was not Husband's sole reason for the marriage. Husband has therefore failed to prove a misrepresentation, a fraudulent utterance, intentional inducement to act, or justifiable reliance upon a misrepresentation.

### **Paternity by Estoppel**

Clearly, the presumption of paternity does not apply in this case, since the parties' marriage is no longer intact. Fish v. Behers, 741 A.2d 721 (Pa. 1999); Brinkley v. King, 701 A.2d 176 (Pa. 1997). Paternity by estoppel, however, applies if Father held himself out as the child's father. Weidman v. Weidman, 808 A.2d 576 (Pa. Super. 2002). Nonetheless, the court should refuse to apply the doctrine of paternity by estoppel if the court finds that Husband would not have held out the child as his own had it not been for the Wife's fraud regarding the child's paternity. Doran v. Doran, 820 A.2d 1279 (Pa. Super. 2003).

As discussed fully above, this court has found that Mother did not commit fraud. Therefore, the court rejects Husband's allegations and arguments regarding fraud, and finds that paternity by estoppel applies. Since Husband is the legal father of the child via paternity by estoppel, blood testing results would be irrelevant, and therefore Husband's petition for paternity testing and his petition to dismiss child support will be dismissed.

**ORDER**

AND NOW, this \_\_\_\_\_ day of August, 2004, for the reasons stated in the foregoing opinion, it is hereby ordered that: (1) The Complaint for Annulment, filed on June 11, 2004, is dismissed; (2) The Petition for Paternity Testing, filed on June 15, 2004, is dismissed; and (3) The Petition to Dismiss Child Support Order, filed on June 11, 2004, is dismissed.

It is further ordered that cases #92-20,932 and #02-21,546 shall be consolidated under docket #02-21,546.

BY THE COURT,

\_\_\_\_\_  
Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray, J.  
Joy McCoy, Esq.  
Randi Dincher, Esq.  
Gary Weber, Esq.