IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

DSF	:		
	Plaintiff	:	NO: 09-21636
		:	
vs.		:	
		:	
		:	
MLT	:	CIVIL ACTION	
	Defendant	:	

O P I N I O N

This matter comes before the Court on Plaintiff's Complaint to Establish Paternity and For Genetic Testing. The Plaintiff, DSF, avers that he engaged in sexual relations with the Defendant, MLT, from approximately September of 2008 through January of 2009. MLT was married to JT during the same time period. MLT gave birth to a son, K.T., on September 22, 2009. DSF is seeking a Court order directing MLT and her son, K.T., to submit to genetic testing.

The presumption that a child born to a married woman is a child of the husband is always the starting point in a contest involving the parentage of a child born during coverture. T.L.F. v. D.W.T., 796 A.2d 358 (Pa.Super. 2002). "The presumption of paternity, i.e., the presumption that a child conceived or born during a marriage is a child of the marriage, has been described by our Supreme Court as 'one of the strongest presumptions known to the law.'" Vargo v. Swartz, 940 A.2d 459, 463 (Pa.Super. 2007)(citing *Strauser v. Stahr*, 726 A.2d 1052, 1053-4 (Pa. 1999). The policy underlying the presumption is the preservation of marriages. Although the presumption of paternity no longer applies when there is no longer an intact

family to preserve, it is unrebuttable if the family is intact at the time paternity is challenged.

In Vargo, *supra*, the Pennsylvania Superior Court stated,

> The presumption of paternity is unrebuttable when, at the time the husband's paternity is challenged, mother, her husband, and the child comprise an intact family where the husband as assumed parental responsibilities for the child….**Under other circumstances**, the presumption may be overcome by clear and convincing evidence that either of the following circumstances was true at the time of conception: the presumptive father, i.e., the husband, was physically incapable of procreation because of impotency or sterility, or the presumptive father had no access to his wife, i.e, the spouses were physically separated and thus were unable to have had sexual relations. Id. at 463.
>
> (Citations omitted)(Emphasis added).

It is undisputed that the Defendant, MLT, was married at the time that she engaged in sexual relations with DSF. According to the testimony presented, MLT and her husband, JT, were married in approximately 1999. They have two daughters together, ages 12 and 3 1/2 , in addition to K.T. At some point, in approximately 2008 or 2009 MLT and JT separated. MLT began living with Mr. F in September of 2009. Her relationship with Mr. F ended on approximately January 2, 2009. At that time MLT reunited with her husband, JT. MLT and JT reside together with their children, and have done so since January of 2009. JT testified that he takes care of K.T., holds him out to the public as his own, and it is his intent for the marriage to stay together.

The Plaintiff filed his Petition seeking to establish paternity on December 24, 2009. As Mr. and Mrs. T have been back together, and residing with their children since January of 2009, this Court finds that Mr. and Mrs. T comprise an intact family. Moreover, it is clear that MLT's husband, JT, has assumed parental responsibilities

for the child, K.T. Accordingly, this Court finds that the presumption of paternity applies and is unrebuttable. As blood tests may only be ordered to determine paternity when the presumption of paternity has been overcome, Plaintiff's request for genetic testing is DENIED. Id. (citing *E.W. v. T.S.*, 916 A.2d 1197, 1202-3 (Pa.Super. 2007).

ORDER

AND NOW, this 13th day of January, 2010, following an evidentiary hearing on this matter, the Plaintiff's Petition to Establish Paternity and For Genetic Testing is DENIED. The Plaintiff is directed to pay the sum of $69.68 for court costs and service fees to the Domestic Relations Office.

BY THE COURT,

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Richard A. Gray, J.