

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

JJ,		: No. 12-21,482
	Plaintiff	:
		:
vs.		:
		:
BF,		: CUSTODY
	Defendant	:

OPINION AND ORDER

AND NOW, this **20th** day of **November 2012**, after a hearing held on November 13, 2012, at which time JJ was present and unrepresented, Mother was also present and unrepresented, and TF, maternal grandmother the individual who has primary custody of the minor child at issue, was present with her counsel Christina Dinges, Esquire. This hearing was held in regard to a Complaint to Establish Paternity and for Genetic Testing filed by JJ on October 22, 2012.

Mother and JJ (hereinafter JJ) had a short sexual relationship approximately fourteen years ago. At some point after the relationship had ended Mother informed JJ that she was pregnant. At the time that Mother conceived she was unmarried and having sexual relations with JJ and two other men, CW and BB. At first Mother told JJ that he was the father of the child and then later she recanted. After the child was born Mother would periodically bring the baby over to visit with JJ.

Mother was not married when the child was born but was in a relationship with CW. After the child's birth she continued in a relationship with CW who treated the

minor child in question like his daughter. In June of 2012 paternity testing established that CW was not the child's biological father. At that time Mother again told JJ that he might be the father.

JJ has petitioned the Court to order genetic testing to establish if he is or is not the biological father of the child. The maternal grandmother who has primary custody of the minor child opposes the genetic testing. Mother also opposes the genetic testing. Mother stated to the Court that her daughter does not want the testing done and that the girl already has a father in CW.

In Pennsylvania the law on paternity is well defined. There is the presumption of paternity which states that if a child is conceived during the marriage or born into the marriage there is a presumption that Mother's husband is the father. *Brinkley v. King*, 701 A.2d 176, 177 (1997). This presumption can only be rebutted by clear and convincing evidence of sterility or that the husband had no access to the wife at the time of conception. *Id.* "[T]he *presumption is irrebuttable* when a third party seeks to assert his own paternity as against the husband in an intact marriage." *Martin v. Martin*, 710 A.2d 61, 63 (Pa. Super 1998) (quoting *Brinkley* at 179). The policy behind the presumption is to preserve the marriage and family unit. *Martin* at 65 (Pa. Super 1998) (*see also Brinkley*).

Alternatively, there is paternity by estoppel. With paternity by estoppel the putative father is estopped from challenging paternity if he has held the child out as his own child. *Ellison v. Lopez*, 2008 PA Super 242 (*see also Weidman v. Weidman*, 808 A.2d 576 (Pa. Super. 2002)).

In the present case the presumption of paternity does not apply because Mother was not married when the child was conceived or born. Paternity by estoppel does not apply either as JJ never held the child out as his own nor is he challenging paternity in that sense. JJ is seeking to establish paternity.

Counsel for grandmother argues that JJ should be estopped from pursuing paternity based on public policy that children should be secure in knowing who their parents are and that this child already has a father so disrupting the existing relationship could cause undue harm. It is true that in certain circumstances an individual can be estopped from pursuing custody to secure the best interests of the child and to prevent undue harm. *K.E.M. v. P.C.S.*, 38 A.3d 798, 801 (Pa. 2012). However, the facts in this case do not support that argument. In Court Mother stated that her daughter did not want the genetic testing to be done which leads the Court to believe that the child is aware that there is some question of her paternity. Furthermore, the child would not be aware of the genetic testing itself as a sample was previously submitted by her which could be used in this test as well.

The Court finds that as neither estoppel nor the presumption of paternity applies in this case it is hereby ORDERED and DIRECTED that JJ shall undergo genetic testing at the Lycoming County Domestic Relations Office. JJ shall immediately contact Lycoming County Domestic Relations to schedule a time for testing; he must be prepared to pay for the cost of the testing, thirty-two dollars (\$32), in full prior to testing. The genetic testing results are to be forwarded to the Court for the Court to distribute. For the convenience of Domestic Relations, the Court has JJ residing at 1238 Isabella Street, Williamsport, PA 17701 and Mother residing at 518 Bickel Alley Jersey Shore, PA

17740 if these addresses are incorrect the Court must immediately be notified of the correct address.

By The Court,

Joy Reynolds McCoy, Judge

JRM/frs