

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JLL, II,		: NO. 12 - 20,891
	Plaintiff	:
vs.		:
		: DOMESTIC RELATIONS SECTION
MAW,		:
	Defendant	: Paternity

OPINION AND ORDER

Before the court is Plaintiff's Complaint to Establish Paternity and for Genetic Testing, filed June 28, 2012. A hearing was held July 18, 2012.

The child at issue is PLL, born September 13, 2011. Plaintiff seeks an order for genetic testing because he "wants to know for sure" that he is the Father of the child. Plaintiff signed an acknowledgment of paternity on September 14, 2011, however, and therefore paternity has been established and no testing will be ordered unless Plaintiff can show fraud, duress or material mistake of fact. See 23 Pa.C.S. Section 5103(2).¹ Considering the evidence adduced at the hearing, the court finds Plaintiff has failed to make the requisite showing.

It appears Defendant maintained in the past and continues to maintain that Plaintiff is P's father. Plaintiff was present at P's birth and participated in her caretaking until recently. The parties had an argument sometime in June 2012 during which Defendant stated to Plaintiff something to the effect of "P is not your kid". Defendant explained the statement as having been made in anger, with the intent to hurt Plaintiff's feelings, as she had been raised to "kick 'em when they're down." No one else has been named as a possible father and Plaintiff has no evidence that anyone else might be the father.

To constitute fraud, one party must represent to the other some fact which turns out not to be true. Ordinarily, in the context of paternity, the misrepresentation involves naming someone as the father when in fact they are not. In this case, Defendant named Plaintiff as the

¹ "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."

father and does not now deny that fact. Therefore, the court finds no fraud which would entitle Plaintiff to set aside the acknowledgment and obtain an order for genetic testing.

Duress has not been raised and there was no evidence of duress.

With respect to material mistake of fact, as with fraud, Plaintiff has not shown that there was a mistake of fact, but only that Defendant told him during a moment of anger that he was not P's father. The court cannot find any mistake of fact which would justify setting aside the acknowledgment.

While the parties are free to pursue private testing, in the eyes of the law, paternity has been conclusively established and testing will not be ordered.

ORDER

AND NOW, this 19th day of July 2012, for the foregoing reasons, Plaintiff's Complaint to Establish Paternity and for Genetic Testing is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: JL, II, Williamsport, PA 17701
MW, Montoursville, PA 17754
Gary Weber, Esq.
Hon. Dudley Anderson

