

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

CK,	: NO. 13-20,143
Plaintiff	:
	:
vs.	: CIVIL ACTION - LAW
	:
ASB,	:

OPINION AND ORDER

And now this 1st day of April, 2013, this order is entered pursuant to a hearing held on March 12, 2013 in regards to a Complaint to Establish Paternity and for Genetic Testing filed by CK (hereinafter Father) on January 28, 2013. Present at the hearing was Father with his counsel Heather Willis, Esquire and Mother who was unrepresented.

Facts and Procedural History

Mother and Father met approximately four or five years ago and subsequently began a romantic relationship three years ago. The couple was never married. During the course of the relationship Mother became pregnant. On April 26, 2012 EXK was born. Father was present at the birth and signed an acknowledgement of paternity at that time. Before and after the birth, Father had been being questioned by friends and family as to whether he was sure that he was the Father of the baby. Two to three weeks after the birth of his son Mother started seeing an old boyfriend behind Father's back; Father saw them together. The birth

certificate arrived approximately six weeks later; due to a clerical error the birth certificate stated "father unknown." At that time Father signed a second acknowledgement of paternity. Sometime during the summer of 2012, during a phone call with maternal grandmother, Father learned that Mother had genetic testing completed on another individual and that the test results indicated that individual was not the father. Mother acknowledges that she had a one-time affair on August 4, 2011 and that paternity testing on the individual indicated that he is not the father.

Father testified he did not feel misled at the time when he signed the second acknowledgement of paternity but he feels misled now. He further testified that there is now doubt in his mind as to whether he is the Father. Father has continued a relationship with the child, continues to pay support has visitation with the child and holds the child out as his own.

Discussion

In Pennsylvania the law governing paternity is 23 Pa. C.S. § 5102 it states the following:

Children declared to be legitimate

(b) DETERMINATION OF PATERNITY.-- For purposes of prescribing benefits to children born out of wedlock by, from and through the father, paternity shall be determined by any one of the following ways:

- (1) If the parents of a child born out of wedlock have married each other.
- (2) If, during the lifetime of the child, it is determined by clear

and convincing evidence that the father openly holds out the child to be his and either receives the child into his home or provides support for the child.

(3) If there is clear and convincing evidence that the man was the father of the child, which may include a prior court determination of paternity.

In this case the parties were never married therefore the child was not conceived or born into a marriage therefore 23 Pa. C.S. 5102 (b) is the applicable law. Father did sign two acknowledgements of paternity and even though he testified that he questions whether he is the biological father of the child he continues to provide support, have visitation, and hold the child out as his own. The fact that Father continues to hold himself out as the Father establishes paternity pursuant to 23 Pa. C.S. § 5102 (b) (2) and it brings in the concept of paternity by estoppel. “[A] putative father who is not a child’s biological father is estopped from challenging paternity after he has held himself out as the child’s father or provided support.” *Ellison v. Lopez*, 2008 PA Super 242. Estoppel applies if Father held himself out as the child’s father. *Weidman v. Weidman*, 808 A.2d 576 (Pa. Super. 2002)

Estoppel in paternity actions is merely the legal determination that because of a person’s conduct (ie. Holding the child out as your own or support the child) that the person, regardless of his true biological status, will not be permitted to deny parentage. Where the presumption of paternity does not apply because the parties weren’t married and if the facts include estoppel evidence such evidence must be considered. If the trier of fact finds that one or both parties are estopped then no blood tests will be ordered. Estoppel is established by clear and convincing evidence.

Freedman v. McCandless, 654 A.2d 529 (1995).

However, the Court is not bound to apply paternity by estoppel in cases where Father's actions are based upon Mother's fraud regarding the child's paternity. *Doran v. Doran*, 820 A.2d 1279 (Pa. Super. 2003) Fraud must be averred w/ particularity and it must be proven by clear and convincing evidence. **Pa.**

R.C.P. 1019(b). Fraud is proven through the following test:

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

(*Ellison v. Lopez*, 2008 PA Super 242 (citing *B.O. v. C.O.*, 590 A.2d 313, 315 (Pa. Super. 1991) (see also *Glover v. Severino*, 2008 PA Super 51) "A misrepresentation need not be an actual statement; it can be manifest in the form of silence or failure to disclose relevant information when good faith requires disclosure" *Glover*, 2008 PA Super 51 (citing *In re Adoption of R.J.S.*, 889 A.2d 92, 98 (Pa.Super. 2005). "Fraud comprises anything calculated to deceive whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture." *Glover*, 2008 PA Super 51 (quoting *In re Adoption of R.J.S.*, 889 A.2d 92, 98 (Pa.Super. 2005).

In the present case Father argues that the fraud exception applies because Mother cheated on him during the course of their relationship around the time of conception. Father argues that he was not aware of this indiscretion until after the birth of his son and after he signed the acknowledgement of paternity.

In *Glover v. Severino*, 2008 PA Super 51, the father financially supported his child and had visitation; the lower court found that father was estopped from

questioning paternity because of those factors. The case was appealed and the appellate court held that father's actions were based upon the belief that he was in fact the father and mother had never informed him that there was a possibility that he was not the father. *Id.* The court found fraud and found that estoppel did not apply. *Id.*

Glover is distinguishable from the present case in the fact that after Father learned of that fact that Mother had an affair and that someone else could be the father of the child, Father continued to support the child, have visits, and hold the child out as his own. Due to those facts the Court finds that estoppel does apply and the fraud exception is not applicable.

Father's Complaint to Establish Paternity and for Genetic Testing is hereby DISMISSED.

By the Court,

Joy Reynolds McCoy, Judge