

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

RJ, Plaintiff	: NO. 14-20, 349
	:
vs.	:
	: CIVIL ACTION - LAW
	:
KS, Defendant	:

OPINION AND ORDER

And now this 20th day of May, 2014, this Order is entered pursuant to a hearing held on April 2, 2014 in regard to a Complaint to Establish Paternity and for Genetic Testing filed by RJ (hereinafter Father) on March 18, 2014. Present at the hearing was Father with his counsel John Smay, Esquire, and Mother with her counsel Michael Morrone, Esquire.

Facts and Procedural History

Mother and Father had a sexual relationship in August 2008. Father was active in the military and visiting the Williamsport area on leave. The couple was never married. Mother became pregnant, and ACS (hereinafter Child) was born on May 8, 2009.

In July, 2009, Mother entered into a custody stipulation concerning Child with EZ. At a time set for a contempt hearing held July 1, 2011, Mother informed EZ he was not the biological father. There was no further action in the custody file.

In August 2010, Mother filed for child support against EZ. In July of 2011 Mother suspended the child support order filed against EZ.

For a period of time, Father was stationed overseas. Mother contacted Father on Facebook and asked him to contact her. In approximately January of 2011, during a Skype conversation, Mother revealed Father had a two and one-half year old daughter. Mother requested Father have genetic testing performed. In June, 2011, during a period of military leave, Father and child had genetic testing. In January, 2012, Father exercised custody of Child for a period of one month in Florida during a period of his military leave. Father left the military in September of 2013. In May of 2013, Father moved to the Williamsport area. From May, 2013, until January, 2014, Father exercised regular custody. In January, 2014, the parties had a disagreement and Mother ceased allowing Father to exercise periods of custody. Mother offered little dispute to the facts as outlined by Father.

Mother filed a Petition to Involuntarily Terminate the Parental Rights of EZ in order for Mother's Father, Thomas Schwanbeck, to adopt the minor child on October 22, 2013. In the Petition, Mother alleged EZ had no contact with the minor child since she was approximately two years old. Mother filed a Petition for Adoption on January 7, 2014. Ultimately, EZ signed his Consent to Adoption. Mother filed a Petition to Confirm Consent on March 14, 2014. By Order dated March 20, 2014, the Petition to Confirm Consent was stayed.

Father filed for custody on February 18, 2014. At a custody conference held on March 14, 2014, Father's custody complaint was dismissed because paternity had not been established. On March 18, 2014, Father filed a Complaint to Establish Paternity and for Genetic Testing through the Office of Domestic Relations. A hearing on the Complaint to Establish Paternity and for Genetic Testing was held April 2, 2014, and is presently before the Court. Both parties were given until April 28, 2014, to submit Briefs on the issue. Father filed a brief on April 28, 2014.

Discussion

In Pennsylvania the law governing paternity is 23 Pa. C.S. § 4343 it states the following:

“ Whether the paternity of a child born out of wedlock is disputed that determination of paternity shall be made by the court in a civil action without a jury. A putative father may not be prohibited from initiating a civil action to establish paternity”.

23 Pa. C.S. § 4343

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). “[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**).

With paternity by estoppel the putative father is estopped from challenging paternity if he has held the child out as his own child. [T]he doctrine of estoppel embodies the fiction that, regardless of biology, in the absence of a marriage, the person who has cared for the child is the parent. An individual may be estopped from challenging paternity where that person has by his or her conduct accepted a given person as the father of the child. This Court, sitting en banc, has explained: [T]he legal determination that because of a person's conduct (e.g. holding out the child as his own, or support the child) that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father. As the Superior Court has observed, the doctrine of estoppel by paternity actions is aimed at 'achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding paternity of the child.

V.E. v. W.M., 54 A.3d 368, 369-370 (Pa. Super. Ct. 2012)(internal citations omitted).

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 against Father as he has held the child out as his own and is he not challenging paternity in that sense. Father is seeking to establish paternity. Mother should be held to her own conduct, of holding RJ out as the Father.

Father should not 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).

The Court can find no harm to the child by allowing for the paternity action to proceed. According to Mother's own pleadings the child receives no support, nor has contact with EZ. Mother alleged EZ had failed to perform parental duties.

Mother argues that Pennsylvania Rule of Civil Procedure 1930.6 limits Father's ability to proceed with the current action because an order was already entered for both custody and support.

(a) Scope. This rule shall govern the procedure by which a putative father may initiate a civil action to establish paternity and seek genetic testing. Such an action shall not be permitted if an order already has been entered as to the paternity, custody or support of the child, or if a support or custody action to which the putative father is a party is pending.

Pa. R.C.P. No. 1930.6

This rule is applied to the parties subject to the initial action. Father was not a party to either the custody or support action, nor did he have any knowledge of the action to attempt to intervene or challenge the orders.

[C]ourts have been most firm in sustaining prior adjudications (or formal acknowledgments) of paternity based on the need for continuity, financial support, and potential psychological security arising out of an established parent-child relationship.

R.K.J. v. S.P.K., 2013 PA Super 259 (Pa. Super. Ct. 2013).

None of the needs outlined above are met by barring Johnson's right to proceed with a paternity action. There is no current support order regarding the

minor child. No support is being received by Mother from EZ. As of August 1, 2011, Mother suspended any support Order.

There is no active custody case, although a custody Order exists between Mother and EZ. At a hearing July 1, 2011, Mother informed EZ he was not the biological father of the minor child. Through her Petition for Involuntary Termination, Mother alleged EZ had had no contact with the minor child since she was approximately two years old. Mother offered no testimony regarding a parent – child relationship between EZ and the minor child. On February 21, 2014, EZ signed his Consent for Adoption.

Further, the Explanatory Comment of Rule 1930.6 reads “Rule 1930.6 governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding”. Father’s case began as a custody proceeding, the custody Petition was dismissed and RJ was directed to file for Genetic testing. RJ has filed the instant petition through the Domestic Relations office, making himself a potential obligor to support.

Father’s Complaint to Establish Paternity and for Genetic Testing is hereby GRANTED.

It is therefore ORDERED and DIRECTED that RJ and ACS shall undergo genetic testing at the Lycoming County Domestic Relations Office. RJ shall immediately report to the Lycoming County Domestic Relations Office to undergo genetic testing. At the time he appears at the Office, he must be prepared to pay

the cost of \$96.00 in full prior to the testing. Payment must be in the form of a money order. Father should appear at Domestic Relations Office within fourteen days of the date of this Order. Father should report to Deb Praster at the Domestic Relations Office at this time. Once Father has paid for the testing in full and undergone his testing, the Domestic Relations Office shall contact Mother to schedule the testing of herself and the child. Mother is ordered to appear with the child, ACS, at the time directed by Domestic Relations. The genetic testing results are to be forwarded to the Court for distribution.

By the Court,

Joy Reynolds McCoy, Judge