

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WD,		: DOCKET NO. 14-21,275
	Plaintiff,	:
		: CIVIL ACTION
vs.		:
		:
CS,		: PATERNITY
	Defendant.	: DOMESTIC RELATIONS SECTION

**OPINION AND ORDER**

Before the court is Plaintiff’s complaint to establish paternity and for genetic testing pursuant to 23 Pa. C.S. 4343. A hearing was held on October 21, 2014. For the reasons that follow, Plaintiff’s complaint is GRANTED.

**Factual Background**

CS (“Mother”) learned that she was pregnant in mid-January 2014, while she was dating Plaintiff, WD. The parties were involved in a sexual relationship from the end of November until mid-January, 2014. Based upon the date of Mother’s previous menstrual cycle, Mother’s doctor calculated the date of conception as early November, approximately two weeks prior to the start of the parties’ relationship. Given the date of conception provided by the doctor, the parties believed that the father of the child was ES, with whom Mother had previous sexual relationship. ES and Mother have a child together who is about one and a half years old. Upon learning the date of conception, Mother and ES reconciled and currently live together. After the first ultrasound during the pregnancy, the doctors moved the due date, which changed the estimated date of conception to around December 5, 2014. As a result, Mother believes that either the Mr. WD or ES could be the biological father and advised them both of this shortly after the ultrasound.

On August 2, 2014 Mother gave birth to twin boys. Mother was not married. Two days later, on August 4, 2014, ES and Mother executed an acknowledgement of paternity form, filed with the Department of Public Welfare pursuant to 23 Pa. C.S. § 5103.<sup>1</sup> Although Mother kept Mr. WD informed about the birth via texts and pictures, there was no evidence that Mr. WD was informed, consented or was complicit in the execution of the acknowledgment of paternity listing ES as the father. Mr. WD did not sign the acknowledgment of paternity form nor any document with respect to paternity. There is no evidence that Mr. WD received a copy of the acknowledgement of paternity form or any of the legal warnings provided to the signatories by law. After the birth, Mother and Mr. WD observed a resemblance with Mr. WD.

On September 18, 2014, within 60 days from the date that Mother and ES executed the acknowledgment form, Mr. WD filed the instant petition challenging paternity. The twin boys were one month old at that time. Following the birth, Mother and ES visited the NIC unit together throughout the two weeks that such care was needed. Initially ES and mother were going to have a genetic test done privately but then ES refused. After the filing of this petition, ES has reportedly come to accept and consent to the blood testing. Mother reports that ES has bonded with the babies. Reportedly there is no opposition by any party or ES to paternity testing. However, more than 60 days has passed from the date the acknowledgment of paternity form was executed and neither signatory submitted a written rescindment.

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<sup>1</sup> That acknowledgement of paternity form is considered conclusive evidence of paternity without approval by the court. 23 Pa.C.S. § 5103(c). The form must and does outline rights, responsibilities and obligations of the signatories. Either signatory may cancel the acknowledgment by either party by submitting a signed written statement within 60 day after the form is signed or the date of a court proceeding, whichever is sooner. The form provides notice to the signatories that “[a]fter the 60 days expires, the 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.” Executing the acknowledgment of paternity confers all the rights and duties regarding the child as if the parents had been married to each other at the time of birth. The form further provides that if either party has doubts to paternity, he or she is advised to consult with an attorney for legal advice and that either party may request genetic testing. The form warns: “PLEASE NOTE: By signing this Acknowledgment of Paternity form, you give up the right to genetic testing to determine paternity, unless you cancel the Acknowledgment in writing within 60 days of signing the form.”

## Discussion

This Court concludes that Mr. WD has established by clear and convincing evidence that he is entitled to genetic testing.<sup>2</sup> Under the specific circumstances of this case, the acknowledgment of paternity executed by Mother and ES does not bar Mr. WD's challenge and complaint to establish paternity. In the present case, Mother and ES executed an acknowledgment of paternity on August 4, 2014, and have not rescinded that acknowledgment within 60 days. However, Mr. WD filed his complaint on September 18, 2014 to establish paternity well within the 60 day time period.<sup>3</sup> Therefore, the Court believes that since Mr. WD properly challenged paternity within 60 days, he is not required to establish fraud, duress or material mistake of fact to establish paternity.

Given the specific circumstances of this case the acknowledgement is not conclusive as to a claim by Mr. WD where he challenged the acknowledgement prior to the expiration of 60 days.<sup>4</sup> Furthermore, there was a mistake of fact as to the date of conception based upon the doctor's initial estimate, which allowed events to unfold as they did. While Mother kept Mr. WD and ES informed about parentage, Mother and ES executed the acknowledgement form knowing that there was a reasonable possibility that Mr. WD parented one or both of the twins. There was no evidence that Mr. WD was aware of the acknowledgment being executed or was complicit in its execution. Mr. WD presented his challenge when the babies were only one month old. Given the circumstances, the Court finds that Mr. WD acted promptly in establishing

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<sup>2</sup> In the present case there is no presumption of paternity from marriage because mother was unmarried. Furthermore, due to the extremely young age at the time of the challenge and these proceedings, paternity by estoppel is not applicable as a matter of law. *See, e.g., V.E. v. W.M.*, 2012 PA Super 203, 54 A.3d 361, 368 (Pa. Super. 2012).

<sup>3</sup> An acknowledgment of paternity is conclusive evidence of paternity. 23 Pa.C.S. § 5103(d). "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." 23 Pa.C.S. § 5103 (g)(2).

<sup>4</sup> The acknowledgment form is dated August 4, 2014; the instant challenge was filed September 18, 2014.

paternity. The Court's findings are by clear and convincing evidence. The court notes that no party has voiced any objection to blood testing in this matter.

Accordingly, the Court enters the following Order.

**ORDER**

AND NOW, this \_\_\_\_ day of **October**, 2014, it is hereby ORDERED and DIRECTED that Plaintiff's Complaint to "Establish Paternity and for Genetic Testing is GRANTED. The parties ES and the minor children, Alexander and Benjamin, shall submit to genetic testing through the Domestic Relations Office and comply with the requirements for testing. Mother, Mr.ES, Mr. WD, Alexander and Benjamin shall undergo genetic testing at the Lycoming County Domestic Relations Office. Mr. WD shall contact the Lycoming County Domestic Relations Office to undergo genetic testing as soon as possible but no later than ten days from the date of this Order. At the time he appears at the Office, he must be prepared to pay the cost of \$73.30 in full prior to the testing. Payment must be in the form of a money order. Once Mr. WD has paid for the testing in full and undergone his testing, the Domestic Relations Office shall contact Mother to schedule the testing of herself, ES and the minor infant children. Mother and Mr. Erick Sangl are ordered to appear with the minor children, Alexander and Benjamin, at the time directed by the Domestic Relations Office. The genetic testing results shall be forwarded to the Court for distribution, a determination as to whether further proceedings shall be scheduled, and for any other relief the Court may deem appropriate

BY THE COURT,

**October 23, 2014**  
Date

\_\_\_\_\_  
Richard A. Gray, J.

cc: Domestic Relations (PC)  
WD  
CS  
ES