IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

ADB, JR.,	:	**NO. 14-21,700**
Plaintiff	:	
	:	
vs.	:	**CIVIL ACTION - LAW**
	:	
AMK,	:	
Defendant	:	

OPINION AND ORDER

Before: Nancy L. Butts, President Judge; Dudley N. Anderson, Judge; Richard A. Gray, Judge; Marc F. Lovecchio, Judge; and Joy Reynolds McCoy, Judge

AND NOW, this **20th** day of **August, 2015,** after an en banc hearing held on July 7, 2015, in regard to the Motion for En Banc Reconsideration filed by the Defendant, AMK, on April 22, 2015, at which time Bradley S. Hillman, Esquire, was present on behalf of Mother, AMK, and the Lycoming County Domestic Relations Office and W. Jeffrey Yates, Esquire, was present on behalf of the Putative Father, ADB, Jr. All of the five Judges presided over the argument.

Procedural History

On December 23, 2014, ADB, Jr. (hereinafter "Father") filed a Complaint to Challenge Paternity. On January 13, 2015, a hearing was held on Father's Complaint to Challenge Paternity which the Court correctly referred to as a Complaint to Establish Paternity and for Genetic Testing. A decision was entered by the Honorable Dudley N. Anderson on January 21, 2015, granting Father's request to establish paternity and for genetic testing. On February 2, 2015, Bradley S. Hillman, Esquire, as Solicitor for the Lycoming County Domestic

Relations Office and on behalf of Mother filed a Motion for Reconsideration. Argument on the Motion for Reconsideration was heard on March 26, 2015, by the Honorable Dudley N. Anderson. On March 30, 2015, an Order was entered denying Mother's Motion for Reconsideration. On April 22, 2015, Mother filed a Motion for En Banc Reconsideration requesting the Court to grant reconsideration and vacate the Trial Court's Order granting genetic testing and grant en banc argument. On April 28, 2015, Mother filed a Notice of Appeal to the Superior Court from the Order entered in this matter on January 21, 2015.

On April 30, 2015, Mother's Motion for En Banc Reconsideration was granted and an argument was scheduled for July 7, 2015, before an en banc panel of the Judges of the Court of Common Pleas of Lycoming County.

On May 21, 2015, a Withdrawal and Discontinuance of the Appeal to the Superior Court was filed by Mother.

Background

The child at issue is ARK born July 15, 2014. At the time of ARK's birth, Mother was residing with Putative Father, although they were not married. Putative Father signed an Acknowledgement of Paternity on July 17, 2014. The parties continued to reside together as a family unit until October, 2014, when they separated. Because Mother received public assistance, she was required to file for support for ARK in October, 2014. Putative Father then filed a motion seeking an order for genetic testing as he believed that he was not the father of the child.

Legal Analysis

The Legislature has created a specific mechanism which allows the father of a child born to an unwed mother to acknowledge paternity of that child with the consent of the mother. 23 Pa.C.S.A. §5103(a) states as follows:

> **"§5103. Acknowledgement and claim of paternity**
>
> (a) **Acknowledgement of paternity** – The father of a child born to an unmarried woman may file with the Department of Public Welfare, on forms prescribed by the department, an acknowledgement of paternity of the child which shall include the consent of the mother of the child, supported by her witnessed statement subject to 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities). In such case, the father shall have all the rights and duties as to the child which he would have had if he had been married to the mother at the time of the birth of the child, and the child shall have all the rights and duties as to the father which the child would have had if the father had been married to the mother at the time of birth. The hospital or other person accepting an acknowledgement of paternity shall provide written and oral notice, which may be through the use of video or audio equipment, to the birth mother and birth father of the alternatives to, the legal consequences of and the rights and responsibilities that arise from, signing the acknowledgement."
>
> 23 Pa.C.S.A. §5103(a)

Pursuant to the statute, an acknowledgement of paternity is a legal finding of paternity and may only be rescinded under specific circumstances.

> "**§5103. Acknowledgement and claim of paternity**
>
> (g) **Rescission –**
>
> (1) Notwithstanding any other provision of law, a signed, voluntary, witnessed acknowledgement of paternity subject to 18 Pa.C.S. §4904 shall be considered a legal finding of paternity, subject to the right or any signatory to rescind the acknowledgement within the earlier of the following:
>
> (i) sixty days; or
>
> (ii) the date of an administrative or judicial proceeding relating to the child, including, but not limited to, a domestic relations section conference or a proceeding to establish a support order in which the signatory is a party.

> (2) After the expiration of the 60 days, an acknowledgement 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. An order for support shall not be suspended during the period of challenge except for good cause shown."
>
> 23 Pa.C.S.A. §5103(g)

In the present case, Mother, AMK, was unwed. The putative father, ADB, Jr., signed an Acknowledgement of Paternity. He testified that when he and Mother began dating in 2014, he knew she was already pregnant to someone else. He testified that he signed the Acknowledgement of Paternity at Mother's request so that she would not have "legal problems" with Mr. M, the individual that Mother believed might be the father. ADB, Jr., testified that he was willing to raise both of Mother's children as his own "as long as they were together". The Court specifically found that there was not fraud, duress or material mistake of fact (except to the extent it appears both parties were attempting to defraud the alleged biological father).

Mother argues that the instant case is governed by 23 Pa.C.S.A. §5103(a) and (g) and that once it is determined that there is no basis of fraud, duress or material mistake of fact, the Acknowledgement of Paternity may not be challenged as the Acknowledgement of Paternity is a legal finding of paternity.

Putative Father argues, consistent with the Court's previous ruling, that the case of **K.E.M. v. P.C.S.,** 38 A.3d 798 (Pa. 2012) and **R.K.J. v. S.P.K.,** 77 A.3d 33 (Pa. Super. 2013) expands the analysis beyond the statute to consider the best interests of the child. The Court is constrained to find that neither

K.E.M. nor **R.K.J.** expands the analysis of 23 Pa.C.S.A. §5103 to consider the best interests of the child. A critical difference in the **K.E.M.** case versus the case before the Court is the fact that in the present case, the putative father signed a valid Acknowledgement of Paternity. In the **K.E.M.** case, Mother was married at the time of the birth of her child. **K.E.M. v. P.C.S.,** 38 A.3d 798, 800 (Pa. 2012). Mother filed for child support against the individual she had had an affair with during her marriage that she believed to be the father. ***Id.*** at 799-801. The putative father attempted to dismiss the complaint due to fact that mother was married to her husband at the time of the birth of the child and, therefore, there was a presumption of paternity. ***Id.*** at 799. There was no acknowledgement of paternity signed, nor could there be in light of the fact that Mother was wed at the time of the child's birth. ***Id.*** at 799-801.

The same critical difference is present when comparing the case before the Court and **R.K.J.** In **R.K.J.**, mother was legally married at the time of the child's birth. Despite being legally married to another individual, mother and S.P.K. signed an Acknowledgement of Paternity at the child, A.Q.K.'s birth. **R.K.J. v. S.P.K.,** 77 A.3d 33, 35 (Pa. Super. 2013). Though an Acknowledgement of Paternity was signed at the time of the child's birth, it was not a valid acknowledgement of paternity as a specific requirement of the acknowledgement of paternity statute is that "the father of a child born to an unmarried woman may file with the Department of Public Welfare…" 23 Pa.C.S.A. §5103(a). In the **R.K.J.** case, the Court went on to do an extensive analysis in regard to the best interests of the child under the Doctrine of Paternity

by Estoppel. **R.K.J. v. S.P.K.,** 77 A.3d 33, 38-42 (Pa. Super. 2013). Clearly, the **R.K.J.** case differs from the present case in that the present case before the Court, there is a valid Acknowledgement of Paternity that was signed by an unwed mother and purported father. In **R.K.J.**, the fact that the Acknowledgement of Paternity was signed was only one of the many factors the Court considered in the paternity by estoppel argument. ***Id.*** at 40. The Acknowledgement of Paternity which was signed could not be a legal finding of paternity, as it was not in compliance with the statutory requirements.

Unfortunately, the Court must conclude that the best interest of the child analysis has no place in the application of the Acknowledgement of Paternity Statute, 23 Pa.C.S.A. §5103 as currently written. There is no case law which specifically supports this contention when there is a valid Acknowledgement of Paternity. The circumstances in which a valid acknowledgement of paternity may be challenged after the 60 day rescission period is narrowly limited to only the basis of fraud, duress, or material mistake of fact. The result of this allows a mother and the person of her choosing to select the father of the child, without consideration of who is actually the biological father. The unfortunate reality of the present case is that A.R.K., the child at issue in this case, will most likely grow up without a father, biological or not. To avoid such injustices to children and to lessen the power given to mothers to choose the father of her child, the Court strongly urges the legislature to require genetic testing to establish paternity rather than a simple signature.

ORDER

AND NOW, this **20th** day of **August, 2015,** for the foregoing reasons, Plaintiff ADB, Jr.'s Complaint to Challenge Paternity filed on December 23, 2014, is DISMISSED.

By the Court,

Joy Reynolds McCoy, Judge

Nancy L. Butts, President Judge, joins this opinion.

Richard A. Gray, Judge, joins this opinion.

Dudley N. Anderson, Judge, files a dissenting opinion.

Marc. F. Lovecchio, Judge, files a concurring opinion.

IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

ADB, JR.,	:	**NO. 14-21,700**
Plaintiff	:	
	:	
vs.	:	**CIVIL ACTION - LAW**
	:	
AMK,	:	
Defendant	:	

DISSENTING OPINION

The overarching goal of the courts in this Commonwealth when addressing issues involving minor children is to provide for the best interest of those children. We look to their best interest in custody cases, juvenile hearings, dependency and termination proceedings, and even in paternity matters where the parties are married. The glaring exception is 23 Pa.C.S. Section 5103(g)(2), which constrains judges from looking to the child's best interest where he or she just happens to have been born to unmarried parents. I have detected from the opinions of the appellate courts that they are troubled by this seemingly irrational exception.

While I understand the majority's belief that the court is constrained to apply Section 5103, I believe we should acknowledge the fact that our courts have already applied the "best interest" standard to married couples although formerly the only way to overcome the presumption of paternity by estoppel was by a showing of fraud, duress or mistake of fact. *See, e.g.,* Sekol v. Delsantro, 763 A.2d 405 (Pa. Super. 2000). In K.E.M. v. P.C.S., 38 A.3d 798, 800 (Pa. 2012), and RKJ vs. SPK, 77 A.3d 33 (Pa. Super. 2013), our appellate courts have wisely held that the doctrine of estoppel now applies only "where it can be shown, on a developed record, that it is in the best interest of the involved child." If the doctrine of estoppel[1] is to be applied

[1] As I stated in my opinion denying reconsideration, I believe "[t]he directive of Section 5103(g)(2) is a form of paternity by estoppel. See JC v. JS, 826 A.2d 1 (Pa. Super. 2003) (Estoppel in paternity actions is merely the legal determination that because of a person's conduct that person, regardless of his true biological status, will not be

only where it advances the interest of the child in those cases where the parties are married, does it make sense that where the parties are *un*married, after sixty days they are time-barred by statute from asserting such a sensible principle?

Consider the case at hand, where the parties meet after mother became pregnant and live together for a short period of time, during the later stages of pregnancy and during the first couple of months of the child's life. During this brief relationship the subject child is born and the plaintiff unwisely signs an acknowledgment of paternity, whether out of ego, sympathy, lust, or some other misplaced value. The parties then separate and now have no contact and the plaintiff has no relationship with this child. Nonetheless, because of his failure to repudiate the acknowledgment within sixty days of the child's birth, defendant now has an eighteen-year obligation.

The application of this principle can certainly lead to unjust and, perhaps, even absurd, results. Suppose, completely hypothetically, that mother reconnects with the biological father, they marry, live together for years, and then separate. They receive during the marriage an annuity in the form of child support and then, incredibly, even though the biological father has lived in a state of matrimony with mother, bonded with the child and has custody rights, he has no financial obligation for *his child* because the plaintiff has the obligation imposed on him by the majority.

I am accepting the appellate courts' invitation, albeit inferred, to put this matter at issue. I dissent.

Date: August 20, 2015

Dudley N. Anderson, Judge

---

permitted to deny parentage). The statute bases the estoppel provided for therein on the conduct of signing an acknowledgment of paternity.

IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

ADB, JR.,	:	**NO. 14-21,700**
Plaintiff	:	
	:	
vs.	:	**CIVIL ACTION - LAW**
	:	
AMK,	:	
Defendant	:	

CONCURRING OPINION

I join the majority opinion, but write separately to address the concerns raised by the dissent and express some of my own.

With the advances in DNA testing being such that a child's biological father can be determined to a 99.9% certainty, it seems somewhat archaic that paternity, at least for support purposes, is still being determined by legal fictions such as the presumption of paternity, paternity by estoppel, and signed acknowledgements. I firmly believe that individuals who participate in the acts that result in the creation of a child should bear the consequences of their actions and be required to financially support their offspring, unless their parental rights have been terminated and the child is being adopted by another. If paternity testing occurred at the birth of the child, it would eliminate a mother's ability to defraud a husband or a putative father. The testing could be performed at the hospital shortly after the birth of the child and added as part of the hospital bill. While knowledge of the true biological parentage of the child could result in the break-up of some marriages or

relationships, at least such would likely occur before the child has developed an emotional bond with the man who is not the child's biological father. Furthermore, if the biological father were required to financially support the child, perhaps such would provide an incentive to develop a relationship with the child.[1] Nevertheless, as a trial court judge, I am not charged with making policy decisions, but rather applying the laws as passed by the legislature and interpreted by the appellate courts.

In 23 Pa.C.S.A. §5103(g), the legislature has clearly made a policy decision that an acknowledgement is conclusive after sixty days absent fraud, duress or material mistake of fact. The object of all statutory construction is to effectuate the intent of the legislature. 1 Pa.C.S.A. §1921(a). When the language of a statute is clear, the courts cannot ignore the letter of the law under the guise of pursuing its spirit. 1 Pa.C.S.A. §1921(b). Therefore, contrary to the dissent's position, the courts cannot superimpose a best interests of the child exception onto section 5103(g).

The reason why the Pennsylvania appellate courts can impose such an exception onto the presumption of paternity and the doctrine of paternity by estoppel is these are common law doctrines created by the courts in the first place. Therefore, the appellate courts can modify these doctrines or abrogate them in their entirety. *See* ***K.EM. v. P.C.S.,*** 38 A.2d 798, 806-808 (Pa. 2012).

I also understand the concerns expressed in the dissent that unmarried

[1] Although I realize there will always be some men who don't want to be bothered with developing a relationship with their child, I believe some men would think if they are going to be strapped with the financial responsibilities, they might as well reap the rewards of a relationship with the child.

parents are being treated differently than married parents, due to the fact that acknowledgements are only signed by unmarried parents and a best interests of the child exception does not apply to acknowledgements. While an equal protection challenge was successful due to the different treatment of the children of divorced parents and the children of married parents in the context of college support, see ***Curtis v. Kline (Appeal of Dep't. of Public Welfare)***, 542 Pa. 555, 680 A.2d 904 (1996), an equal protection challenge was not asserted in this case; therefore, any such claim is waived. ***Commonwealth v. Piper***, 450 Pa. 307, 328 A.2d 845, 847 n.5 (1974).

Finally, the equities of this case do not warrant relief from the acknowledgement for any of the parties in this case. Apparently, both parties signed the acknowledgement knowing full well that Plaintiff was not the child's biological father. They colluded with each other. By signing the acknowledgement, both parties agreed that Plaintiff would have the rights and responsibilities of the father of the child. Absent a challenge by biological father who may have been defrauded by the parties' actions, Plaintiff should be precluded from avoiding his responsibilities for the child and Defendant should be precluded from denying Plaintiff's parental rights as this is exactly what the parties "signed" up for. The parties should not be rewarded and, more importantly, the innocent child should not be potentially rendered fatherless due to the parties' deception. If anything, the parties should be thankful that they are not being criminally prosecuted, because the acknowledgement contained a signed, witnessed statement subject to 18 Pa.C.S.A. §4904 (relating to unsworn falsifications to authorities). See 23 Pa.C.S.A. §5103(a),

(c)(1)(i) and (ii).

Date: August 20th, 2015

Marc F. Lovecchio, Judge