

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CH,		: NO. 15 – 20,791
	Plaintiff	:
		: CIVIL ACTION - LAW
vs.		:
		:
EB,		:
	Defendant	: Complaint to Establish Paternity

OPINION AND ORDER

Before the court is Plaintiff's Complaint to Establish Paternity and for Genetic Testing, filed June 22, 2015. A hearing on the Complaint was held September 22, 2015.

Plaintiff seeks genetic testing to determine the paternity of KB, born April 10, 2012. Plaintiff testified that he had an affair with Defendant during the period of time during which the child could have been conceived. Defendant admitted the affair in her testimony, but contends she remains married to AB, to whom she has been married since 2009. Plaintiff admits that Defendant was married at the time of his affair with Defendant, that she remained married at the time of the child's birth, and that she remains married at the time of the hearing.

The circumstances presented herein require reference to the law of presumptive paternity:

generally, a child conceived or born during the marriage is presumed to be the child of the marriage; this presumption is one of the strongest presumptions of the law of Pennsylvania; and the presumption may be overcome by clear and convincing evidence either that the presumptive father had no access to the mother or the presumptive father was physically incapable of procreation at the time of conception. However, the presumption is *irrebuttable* when a third party seeks to assert his own paternity as against the husband in an intact marriage.

Amrhein v. Cozad, 714 A.2d 409, 412 (Pa. Super. 1998), quoting Brinkley v. King, 701 A.2d 176 (Pa. 1997).

Here, Plaintiff is a third party seeking to assert his own paternity as against Defendant's husband. The court finds there is an intact marriage which prevents such an attack. The presumption that K is a child of Defendant's marriage is irrebuttable.¹

ORDER

AND NOW, this 22nd day of September 2015, for the foregoing reasons, the Complaint to Establish Paternity and for Genetic Testing is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Mary Kilgus, Esq.
EB,
Gary Weber, Esq.
Hon. Dudley Anderson

¹ Plaintiff's reliance on Spaw v. Springer, 715 A.2d 1188 (Pa. Super. 1998) is misplaced. Although there the Court stated that to establish paternity one must first establish that "there was access at the time of conception followed by the birth of the child", the child in that case was not born to a married woman.