

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AC,		: NO. 15 – 21,642
	Plaintiff	:
		: CIVIL ACTION - LAW
vs.		:
		:
AB,		:
	Defendant	: Complaint to Establish Paternity

**OPINION AND ORDER**

Before the court is Plaintiff’s Complaint to Establish Paternity and for Genetic Testing, filed December 31, 2015, in which Plaintiff seeks to establish his paternity of the minor child at issue, MDB. A hearing was held on February 9, 2016, and by Order of that date, the parties were directed to undergo genetic testing. The DNA Test Report issued February 12, 2016, indicates a probability of paternity of 99.99999998%. A further hearing was held February 23, 2016 to address the issue of estoppel as Defendant raised that issue by asking, “Why now?” The child is almost ten years old.

In circumstances such as these, the trial court is directed to “determine if the putative father has failed to timely exert his parental claim. Part of that determination should examine whether [the mother and husband] by their actions frustrated [Plaintiff’s] ability to seek [to establish his paternity].” TEB v. CAB, 74 A.3d 170, 175 (Pa. Super. 2013). “[I]f a biological father is not obstructed from pursuing his parental claim and he acquiesces in the fiction that someone else is his child’s father, the doctrine of estoppel may be invoked to bar his later attempt to assert his rights.” Id. The overarching consideration, however, is “the best interests of the involved child.” KEM v. PCS, 38 A.3d 798, 810 (Pa. 2012).

In the instant case, as noted above, the subject child, MDB is almost ten years old, having been born on May 3, 2006. She currently lives with her mother, Defendant herein, and her mother's fiancé, WS. Defendant and WS have resided together since 2007, and they have a son together, who was born in 2003. They plan to be married on February 29, 2016.

Plaintiff met Defendant in 2004 and at the time of MDB's conception in 2005, Defendant was, according to Plaintiff, going "back and forth between" WS and Plaintiff. Shortly after Defendant learned she was pregnant with MDB, Plaintiff was arrested; he was then convicted and sentenced and served eight years incarceration in a federal prison. Defendant had informed Plaintiff that he might be MDB's father, and she kept in contact with him during the first two years of his incarceration by occasional letters and telephone calls, and took MDB to visit Plaintiff on at least one occasion when she was two years old. Plaintiff continued to telephone Defendant during his incarceration to ask about MDB and once she was old enough, he would speak to her on the phone. At Defendant's request, Plaintiff did not tell MDB he might be her father; instead, Plaintiff was described by Defendant to MDB as "an old friend" of Defendant's. Plaintiff sent money on several birthdays and Christmases in order for Defendant to buy gifts for MDB. Plaintiff was released from incarceration in November 2014 and asked to see MDB but Defendant would not allow it. She stopped returning his phone calls and he filed the instant petition.

Defendant and WS and MDB and her half-brother live together as a family and WS has acted as MDB's father since at least 2007. MDB believes that WS is her father. WS testified, however, that he believes MDB has a right to know who

her biological father is and that at some time in the future he plans to tell her that Plaintiff is her biological father.

Defendant does not want MDB to know that Plaintiff is her biological father, but was unable to state any cogent reason why not, simply questioning why he waited so long to pursue court action. She does not dispute that she prevented any development of any father-daughter relationship which Plaintiff attempted (as limited as it might have been due to his incarceration).

Plaintiff does not intend to disrupt the family structure which Defendant and WS have established; he merely seeks to make known to MDB that he is her father, and to have contact with her and offer his support (financial as well as emotional).

Considering all the circumstances, the court finds that Plaintiff has not abandoned MDB, that he has continuously attempted to establish himself in MDB's life but has been frustrated in those attempts by Defendant's efforts to keep him out. Plaintiff is not, therefore, estopped from asserting his paternity. Further, the court finds that it is in MDB's best interests to allow Plaintiff to take his place in her life as her father. WS will remain her step-father and nothing this court does will disrupt the bond that has developed. The court trusts Defendant and WS will explain the situation to MDB in the manner they find best for her, and thus Plaintiff will be directed to not contact her until the logistics of the matter may be addressed in Family Court.<sup>1</sup>

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<sup>1</sup> The court assumes Plaintiff will file a petition for custody in order to establish the best way to re-introduce himself into MDB's life, this time as her father, rather than simply a friend of her mother's.

**ORDER**

AND NOW, this            day of February 2016, for the foregoing reasons, the court hereby determines that AC is the biological and legal father of MDB, born May 3, 2006 to AB.

AC is directed to refrain from contacting MDB until permitted to do so and under the conditions imposed on such by any further court order which might be entered, or upon agreement of Defendant and WS.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DRO (PC)  
Gary Weber, Esq.  
Hon. Dudley Anderson