

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In re: Estate of STEVEN P. STROBLE : OC-41-20-0062
: :
: Orphans' Court Division

OPINION AND DECREE

AND NOW, this 20th day of December 2022, the Court hereby issues the following OPINION and DECREE concerning the Petition to Establish Paternity and for Declaratory Judgment Pursuant to 42 Pa.C.S.A. § 7535 and the Motion for Entry of Order Authorizing Genetic Testing filed by Petitioner Felicia L. Diefenderfer ("Petitioner").

BACKGROUND

Decedent Steven P. Stroble ("Decedent") died intestate on January 25, 2020 at the age of 44. His parents Randy and Karen Stroble (the "Strobles") survived him, and filed a Petition for Grant of Letters on February 5, 2020. The Petition indicated that the Strobles were Decedent's sole heirs, as he died without a wife or children. Letters of administration were granted to the Strobles that same day.

On November 12, 2021, Petitioner filed a Petition to Establish Paternity and for Declaratory Judgment Pursuant to 42 Pa.C.S.A. § 7535 (the "Petition"), asserting that counsel for the Strobles "had recently learned that Decedent may be the biological father of Petitioner," and had therefore "informed Petitioner of her potential interest in Decedent's estate...." Petitioner averred that she is in fact Decedent's biological daughter, and therefore as his sole surviving child she is the primary heir to his estate.

Petitioner asserted that “[t]here has not been a determination by any court as to the paternity of Petitioner,” and seeks such a determination. Specifically, Petitioner requested that this Court compel the Stobles and Petitioner’s mother Jodi Lynn Hill (“Ms. Hill”) to submit to genetic testing, which would enable the Court to determine whether the Stobles are Petitioner’s biological grandparents and thus whether Decedent is Petitioner’s biological father.¹

On December 1, 2021, the Stobles filed an Answer to the Petition, indicating that at the time of Decedent’s death they had no knowledge that he possibly had a biological child. The Stobles did not object at that time to the genetic testing proposed by Petitioner, but averred that its cost should be borne solely by Petitioner rather than by the parties equally.

The Court initially scheduled a hearing on the Petition for January 11, 2022. At the time scheduled for hearing, the parties requested a continuance to attempt to reach a resolution and for the Court to conduct a search of Lycoming County adoption records.² The Court rescheduled the matter for April 12, 2022.³

On March 29, 2022, Petitioner filed a Motion for Entry of Order Authorizing Genetic Testing (the “Motion”). The Motion indicated that as the Court had been unable to locate any relevant adoption records in Lycoming County, Petitioner wished to renew her request for genetic testing. Petitioner proposed that genetic

¹ Decedent’s body was cremated and is thus unavailable for genetic testing.

² The Court ultimately did not locate any relevant records in Lycoming County.

³ To accommodate the Court’s schedule, the Court postponed the hearing to April 27, 2022; at the request of the parties and the Lycoming County Domestic Relations Office the hearing was continued a final time to July 1, 2022.

testing of herself, Ms. Hill, and the Stobles occur at the Lycoming County Domestic Relations Office, with costs to be borne solely by Petitioner.

On April 7, 2022, the Stobles – through new counsel – filed an Answer to the Motion, this time objecting to genetic testing as proposed by Petitioner. Specifically, the Stobles averred that neither statute nor case law permit the entry of an order compelling them to submit to genetic testing under the circumstances presented here.

The Court scheduled argument on all outstanding issues for July 1, 2022. At argument, counsel for the Stobles explained that the essence of their position is that because they are non-parties to any paternity dispute involving Decedent, Petitioner and Ms. Hill, the Court does not have authority to order them to submit to genetic testing. The Stobles acknowledged that in cases of intestate succession, 20 Pa.C.S.A. § 2107 allows persons born out of wedlock to establish the identity of their father by, *inter alia*, presenting “clear and convincing evidence that the man was the father of the child,” and that pursuant to this section courts have compelled posthumous testing of a decedent’s blood to determine whether he was the father of a putative heir. They argued, however, that the statute and relevant case law only mentions the mother, putative father, and child, and that no source supports a finding of authority to order *grandparents* to submit to genetic testing after their child’s death.

Additionally, the parties introduced as Joint Exhibit 1 an Acknowledgment of Paternity signed on May 29, 2007 by Ms. Hill and Joseph Diefenderfer concerning

Petitioner.⁴ The Strobls argued that this Acknowledgment of Paternity conclusively establishes Joseph C. Diefenderfer as Petitioner's father in all legally relevant ways, and thus precludes Petitioner from seeking to establish that Decedent is her biological father for inheritance purposes.

On July 8, 2022, the parties filed a joint Stipulation of Facts (the "Stipulation"). In addition to those facts discussed above, the Stipulation established the following:

- Ms. Hill and Decedent never married;
- Ms. Hill married Joseph Diefenderfer on June 1, 2007, separated on or around December 2010, and divorced on February 10, 2012;
- Ms. Hill listed Petitioner as a "child[] of the marriage" in her divorce complaint against Joseph Diefenderfer and sought primary custody, but the final Decree in Divorce did not provide for custody, child support, or other relief with respect to Petitioner and Joseph Diefenderfer;
- Petitioner was born on May 27, 1995, and the Certification of Birth provided at that time did not list a father;
- A birth certificate for Petitioner dated June 14, 2007 lists Joseph Diefenderfer as Petitioner's father;
- Neither Ms. Hill nor Joseph Diefenderfer cancelled the May 29, 2007 Acknowledgment of Paternity within sixty days of its execution; and
- Petitioner's last name was changed from Hill to Diefenderfer on or around August 2007, but she was never formally adopted.

⁴ Petitioner was born on May 27, 1995, and therefore the Acknowledgment of Paternity was signed shortly after her 12th birthday.

ANALYSIS

The parties agree on the relevant facts, and agree that there are two legal issues before the Court: whether this Court has authority to compel the Strobles to submit to genetic testing,⁵ and whether the execution of the Acknowledgment of Paternity by Ms. Hill and Joseph Diefenderfer precludes Petitioner from attempting to establish Decedent's paternity.

A. Authority to Compel Genetic Testing of Non-Parties to Paternity Dispute

As noted above, 20 Pa. C.S. § 2107(c)(3) provides that in cases of intestacy, a person "shall be considered the child of [her] father when the identity of the father has been determined [by] clear and convincing evidence that the man was the father of the child...." Although § 2107 does not mention genetic testing, the Superior Court of Pennsylvania has previously endorsed a lower court's determination to permit posthumous testing of a decedent's blood for purposes of determining paternity under § 2107. In *Estate of Greenwood*, the petitioner averred that she was the illegitimate daughter of the decedent and sought testing of blood samples held by the Allegheny County Coroner in relation to an investigation into the cause of his death.⁶ Noting that § 2107 placed no time limit upon the litigation of the question of paternity in cases of intestacy, the Superior Court held that "where a decedent's blood sample is available for testing... it is a 'relevant' factor which should not be

⁵ No party has suggested that the Court may forcibly remove blood or other genetic material from any person against their will. More precisely, then, the issue is whether the Court may order the Strobles to submit to genetic testing and punish their subsequent refusal.

⁶ *In re Estate of Greenwood*, 587 A.2d 749, 750 (Pa. Super. 1991).

withheld from [modern] testing mechanisms... to facilitate a resolution on an issue of paternity....”⁷

In addition to § 2107, the Court in *Greenwood* mentioned the Uniform Act on Blood Tests to Determine Paternity.⁸ The act, which “appl[ies] to all civil matters,” grants a court the authority “upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved,” to “order the mother, child and alleged father to submit to blood tests” whenever “paternity, parentage or identity of a child is a relevant fact....”⁹ Should a party refuse to submit to such testing, “the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.”¹⁰ Although the court in *Greenwood* could clearly not order a decedent to submit to blood testing pursuant to the Act, the Superior Court found the policy underlying the Act supportive of courts’ broad authority to resolve questions of paternity either at the request of a claimant or *sua sponte*.

Three years after *Greenwood* was decided, the Superior Court addressed a petitioner’s request to exhume a decedent’s body for posthumous blood testing to

⁷ *Id.* at 754, 757. One of the principles cited by the Court in support of testing in *Greenwood* was the “public policy... in favor of eliminating the stigma of illegitimacy....” It is not clear that this public policy applies with the same force to the case at hand, in light of the fact that Joseph Diefenderfer signed an Acknowledgment of Paternity of Petitioner and was listed as Petitioner’s father on her birth certificate.

⁸ *Id.* at 751, 756. *Greenwood* cited the prior version of the Uniform Act on Blood Tests to Determine Paternity, the present version of which became effective on March 19, 1991, a mere eight days after *Greenwood* was decided. The relevant portions of the past and present versions of the Act are materially identical.

⁹ 23 Pa.C.S. § 5104(b)(1), (c).

¹⁰ 23 Pa.C.S. § 5104(c).

establish that the decedent was the father of petitioner's child.¹¹ The Superior Court noted without comment that petitioner had requested that the orphans' court order the decedent's parents to submit to genetic testing rather than exhume his body, but the orphans' court denied the request because "neither by statute nor case law could the decedent's parents be required to submit to blood testing."¹²

Both of these cases dealt with the testing of a decedent's blood when that blood was available. The Uniform Act on Blood Tests to Determine Paternity, governing the majority of cases in which blood testing is sought to establish a living party's paternity, explicitly authorizes the court to compel genetic testing of the "mother, child and putative father." Similarly, 23 Pa.C.S. § 4343, governing paternity issues in domestic relations support matters, empowers the court to "require the child and the parties to submit to genetic tests."¹³ The parties here have not cited, though, and the Court has not found, any explicit statutory authority allowing a court to compel unwilling parents of a putative father – whether alive or deceased – to provide a sample of blood for genetic testing.

The Supreme Court of the United States has explained that a "compelled physical intrusion beneath [a person's] skin and into his veins to obtain a sample of his blood for use in a criminal investigation" constitutes an "invasion of bodily integrity [that] implicates an individual's 'most personal and deep-rooted

¹¹ *Wawrykow v. Simonich*, 652 A.2d 843 (Pa. Super. 1994).

¹² *Id.* at 843-44. Ultimately, the Superior Court held that posthumous testing of an interred decedent's blood would be appropriate if the petitioner could satisfy the general standard of "reasonable cause" to exhume decedent's body. *Id.* at 847.

¹³ 23 Pa.C.S. § 4343(c)(1).

expectations of privacy.”¹⁴ Although compelled genetic testing for civil purposes does not implicate the weighty constitutional privileges afforded to criminal defendants, it constitutes no less of an invasion of privacy. Unlike a sample of breath or urine taken to answer the specific question of whether a person has used drugs or alcohol, “it is possible to extract [more] information” from a genetic sample.¹⁵ The Court will not compel such an invasion of privacy absent explicit authorization.

As noted above, the Uniform Act on Blood Tests to Determine Paternity provides such authorization only with respect to the mother, child, and putative father, and if one of those persons refuses to submit to an ordered blood test, the Court may either “resolve the question of paternity, parentage or identity of a child” against the refusing party, or it may “enforce its order if the rights of others and the interests of justice so require.” There is no similar authorization to enforce such an order, or resolve the issue of paternity adversely, against any other person. Furthermore, the cases addressing various requests for genetic testing to establish paternity similarly fail to provide such authorization.

For these reasons, the Court finds that it lacks the power to compel the Stobles to submit to genetic testing upon penalty of an adverse resolution of paternity, contempt, or other consequence.

¹⁴ *Missouri v. McNeely*, 569 U.S. 141, 148 (2013).

¹⁵ *Birchfield v. North Dakota*, 579 U.S. 438, 464 (2016).

B. Acknowledgment of Paternity

The Strobles assert that the May 29, 2007 Acknowledgment of Paternity signed by Ms. Hill and Joseph Diefenderfer is an independent bar to the relief Petitioner seeks. Acknowledgments of paternity are governed by 23 Pa.C.S. § 5103, which provides that the filing of an acknowledgment of paternity results in:

“the father... hav[ing] 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... hav[ing] 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.”

Section 5103(d) provides that an acknowledgment of paternity “constitute[s] conclusive evidence of paternity without further judicial ratification **in any action to establish support**” (emphasis added).

The language of § 5103 establishes a reflexive relationship between the child and the father signing the acknowledgment of paternity, and establishes an evidentiary rule in support actions. Nothing in that section, however, appears to *per se* preclude a person born out of wedlock from presenting clear and convincing evidence that they should be “considered the child of” another man in probate actions pursuant to § 2107.¹⁶

Here, Petitioner has not sought to establish paternity pursuant to § 2107 by any means other than genetic testing. Because the Court holds that it does not

¹⁶ Inasmuch as § 2107(c)(3) states that “the identity of the father” may be determined by “clear and convincing evidence that the man was the father of the child, which may include a prior court determination of paternity,” an acknowledgment of paternity may undermine attempts to establish by clear and convincing evidence that another man was the “father of the child” at issue.

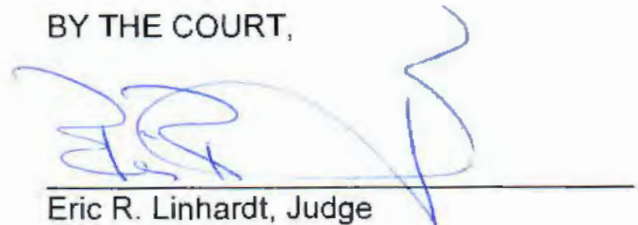
have the power to order the Strobes to submit to genetic testing, the Court need not address in detail the effect of the May 29, 2007 Acknowledgment of Paternity on Petitioner's request for genetic testing.

DECREE

For the foregoing reasons, the Court concludes that it is without authority to compel the Strobes to submit to genetic testing for the purposes of ascertaining whether Petitioner is Decedent's biological daughter. Therefore, the Court DENIES Petitioner's Motion for Entry of Order Authorizing Genetic Testing, and DISMISSES Petitioner's Petition to Establish Paternity and for Declaratory Judgment Pursuant to 42 Pa.C.S.A. § 7535.

IT IS SO DECREED this 20th day of December 2022.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Thomas Burkhart, Esq.
Alexandra Sholley, Esq.
Gary Weber, Esq. (Lycoming Reporter)