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Paternity

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In **In Re Paternity of B.N.C.**, 822 N.E.2d 616 (Ind. Ct. App. 2005), the Court affirmed the trial court's granting of the adjudicated father's motion to correct error. (Two siblings, B.N.C. and T.M.C, were involved in the original consolidated paternity case. B.N.C.'s paternity was not at issue in this appeal, however. Thus, the child referenced herein is T.M.C.) The mother was engaged in sexual intercourse with both the putative father and the adjudicated father at or near the time the child was conceived. She was in a relationship with the adjudicated father when she gave birth to the child in 1995. A day after the birth, the mother and adjudicated father executed a paternity affidavit acknowledging the adjudicated father as the child's biological father. They also filed a joint petition for paternity. About a month later, the trial court entered a judgment establishing the adjudicated father's paternity of the child. At some point the mother advised the putative father of the possibility that he could be the child's biological father, and about eight months after the child's birth he filed a petition to intervene and a petition to establish paternity. Two months later he filed a motion to dismiss his petitions, which the trial court granted. In 2004, the putative father filed a second petition to intervene and a petition for an order for DNA testing, both of which the trial court granted without a hearing. A month after the filing, the adjudicated father filed a motion to correct error requesting that the order for DNA testing be withdrawn on the grounds that the putative father lacked standing to intervene and had not filed a petition to establish paternity. A week later, the Wabash County prosecutor notified the court that the putative father, the mother, and the child had undergone DNA testing and that the test results had been received and sealed. Three days after that, the adjudicated father filed a motion for protective order requesting that the test results remain sealed until further order of the court. About a month after that, the trial court held a hearing and entered an order finding that the Motion to Correct Errors should be granted and that the putative father had waived his opportunity for genetic testing by previously filing and dismissing a Verified Petition to Establish Paternity in 1995. The court further directed that information regarding DNA testing should remain sealed, pending further order of the court. The putative father appealed seeking to overturn the trial court's ruling on the motion to correct error on the basis of either extrinsic fraud or fraud upon the court.

The putative father failed to establish that the mother and adjudicated father engaged in a "deliberately planned and carefully executed scheme" to improperly influence the trial court to issue the paternity judgment. Therefore, the trial court did not abuse its discretion in granting the adjudicated father's motion to correct

error. Id. at 620. The Court distinguished the theories of extrinsic fraud and fraud upon the court:

While extrinsic fraud and fraud on the court are closely aligned, as both require more than perjury, there are differences between the two. Extrinsic fraud may be found where the fraudulent matter prevented a trial of the issue in the case or improperly procured the exercise of the court's jurisdiction. In other words, it is fraud outside the issues of the case. Fraud upon the court, on the other hand, has been more narrowly limited to the most egregious of circumstances where an unconscionable plan or scheme was used to improperly influence the court's decision and such acts prevented the opposing party from fully and fairly presenting his case.

Glover v. Torrence, 723 N.E.2d 924, 933 (Ind. Ct. App. 2000). In the context of fraud on the court, "an unconscionable plan or scheme" has been defined as "a deliberately planned and carefully executed scheme to defraud." Pinter v. Pinter, 641 N.E.2d 101, 104 (Ind. Ct. App. 1994). The Court noted that Indiana Trial Rule 60(B)(3) prohibited the putative father's filing a motion for relief from the 1995 judgment on grounds of extrinsic fraud because such a motion must be filed not more than one year after the judgment is entered. However TR 60 (B) "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or for fraud upon the court." Id. at 619.

The adjudicated father testified that he was "certain" that he was the child's biological father when he executed the paternity affidavit. The mother testified that when she executed the affidavit, she was "pretty sure" the adjudicated father was the child's biological father, although she did have a doubt. The Court held that the mother's uncertainty fell short of knowing that the adjudicated father was not the child's biological father. Id. at 619-20.