

Children's Law Center of Indiana



Paternity

08/07/2007

In **In Re Paternity of C.M.R.**, 871 N.E.2d 346 (Ind. Ct. App. 2007), the Court vacated and remanded the trial court's order requiring that the deceased alleged father's former girlfriend and her children by him submit to DNA testing to determine whether the older child of a different mother was also the child of the deceased alleged father. The alleged father had established paternity of the two children of the former girlfriend before he died intestate on July 10, 2002. On April 6, 2005, the mother of an older child filed a petition to establish the deceased alleged father's paternity of the older child, and the Title IV-D prosecuting attorney entered his appearance. On June 28, 2005, the Title IV-D prosecuting attorney (the State) filed on the older child's behalf a motion for paternity testing using genetic samples from the alleged father's autopsy. The trial court granted the motion. On July 7, 2006, the State filed a motion for genetic testing pursuant to IC 31-14-6-1. IC 31-14-6-1 states, "Upon the motion of any party, the court shall order all of the parties to a paternity action to undergo blood or genetic testing. A qualified expert approved by the court shall perform the tests." The motion stated that the alleged father's remains were insufficient to yield usable results and requested that the former girlfriend and her two children by him be tested to determine by way of comparison whether the deceased alleged father was the father of the older child for the "sole purpose" of ascertaining whether the older child was eligible for social security survivor benefits. The motion was served on the former girlfriend, but neither she nor her children were named as parties to the paternity action. The former girlfriend opposed the motion for genetic testing, but on September 26, 2006, the court entered an order for the genetic testing. The former girlfriend petitioned to certify the order for interlocutory appeal. The trial court certified its order over the State's objection on November 16, 2006. The Court accepted jurisdiction on January 18, 2007.

The Court held that the order for genetic testing was void due to a failure to join necessary parties. *Id.* at 351. The Court did not address the parties' arguments because, its cursory review of the record revealed that several necessary parties had not been joined in the paternity action. *Id.* at 349. According to the Court, the alleged father's estate and possibly the former girlfriend and her children should have been included as parties. The Court held that inasmuch as the alleged father was deceased and his estate unopened and unrepresented, there was no one to challenge the validity of the order for genetic testing or any final paternity judgment on his behalf. Thus, the Court concluded that the order for genetic testing was void and the alleged father's estate must be joined as a necessary party thereby giving it an opportunity to appear, answer, and raise appropriate defenses to the paternity action. *Id.* at 350. As to the former girlfriend and

her children by the alleged father, the Court noted that IC 31-14-6-1 contemplates that only parties to a paternity action may be ordered to undergo genetic testing. Id. Regarding the children of the former girlfriend and the deceased alleged father, according to the Court, assuming that the children are the alleged father's heirs and are receiving social security survivor benefits as a result of his death, they would certainly claim an interest relating to the subject of paternity action, and disposing of the action in their absence as parties might impair or impede their ability to protect that interest, especially in view of the fact that there is a limit to the benefits that can be paid to family members as a whole. Therefore, the children should be joined as parties and given an opportunity to appear, answer, and raise appropriate defenses, including the five-month limitation period following death for establishing paternity, as set forth in IC 31-14-5-5. Id. at 350-51. The Court specifically disagreed with the State's contention that the former girlfriend and her children by the alleged father would be unable to raise IC 31-14-5-5 as an affirmative defense in any case. The Court distinguished S.V. v. Estate of Bellamy, 579 N.E.2d 144 (Ind. Ct. App. 1991) on which the State relied, inasmuch as, in finding IC 29-1-2-7(b) to prohibit a paternity action commenced more than five months after the alleged father's death only to the extent it seeks to establish a right of inheritance, S.V. failed to account for IC 31-6-6.1-6(d), the predecessor of IC 31-14-5-5, which is "a statute of limitations applicable to paternity actions in general." Id. at 351.