

Children's Law Center of Indiana



Paternity

12/21/10

In **In Re Paternity of D.L.**, 943 N.E.2d 1284 (Ind. Ct. Ap. 2011), the Court of Appeals granted Mother's petition for hearing to clarify the opinion and reaffirmed it in all respects. See this website for discussion of the Court's opinion on rehearing, which was issued on 2/25/11.

In **In Re Paternity of D.L.**, 938 N.E.2d 1221 (Ind. Ct. App. 2010), the Court reversed the trial court's denial of First Adjudicated Father's (First Father's) request for relief from his obligation to pay his child support arrearage. The Court remanded the case for a calculation of the amount of First Father's child support arrearage that pertains to the child's younger brother and the formulation of an appropriate payment plan for that arrearage. The child was born on December 16, 1993. On April 24, 1996, Mother and the Washington County prosecutor petitioned to establish paternity and compel support, alleging that First Father was the biological father of the child and the child's younger brother. On June 13, 1996, at a hearing on the petition, First Father admitted to being the father of the child and the child's younger brother. On June 26, 1996, the trial court entered a finding that First Father was the children's legal father. First Father was subsequently ordered to pay child support for both children. On July 8, 2008, First Father, pro se, filed a motion to modify custody. On September 8, 2008, a hearing was held, at which both parties and the child appeared. On September 30, 2008, the trial court issued an order which granted First Father physical custody of the child and modified child support to \$12.00 per week plus \$26.00 toward arrearage. On March 4, 2009, the trial court entered an agreed order which provided that primary physical custody of the child be returned to Mother, that First Father's child support payment remain at \$12.00 per week, and that the parties submit to DNA testing to determine the child's paternity. On March 20, 2009, the trial court issued an order entering the DNA test results into evidence, which showed that First Father was not the child's father. First Father, Mother, and the prosecutor appeared at a July 22, 2009, hearing on a petition to modify custody and support. The prosecutor informed the trial court that she had advised Mother to get new paternity established for the child, based on genetic testing that showed another man (Second Father) was the child's biological father. The prosecutor also told the trial court that First Father's child support had been recalculated to \$48.53 for the child's younger brother, to take effect from March 20, 2009. The prosecutor said she had explained to First Father that until a new paternity is established, First Father is still responsible for the arrearage of approximately \$9000 as well as the new support order established for the child's younger brother. First Father told the prosecutor that he should be relieved of the support arrearage relating to the child and requested court appointed counsel to represent him. The trial court appointed counsel for First Father.

On September 25, 2009, in a separate cause number, the trial court issued an order which established Second Father as the child's legal father pursuant to Mother's and Second Father's stipulation. The court ordered the child's birth record amended to change the legal father to Second Father. Mother retained custody of the child, and Second Father was granted reasonable visitation. On October 1, 2009, the prosecutor filed an information for rule to show cause, alleging that First Father had been ordered to pay support of \$12.00 per week beginning on October 3, 2008, and was \$9007.71 in arrears. At the January 20, 2010, hearing the prosecutor informed the court that First Father had been paying more than required to reduce his arrearage, which was \$8595.71 as of January 15, 2010. The prosecutor requested that First Father comply with the order to pay \$12.00 per week until the arrearage was satisfied. First Father's attorney contended that First Father should not be held responsible for the amount of support arrearage relating to the child because it would be "inequitable and unjust." The trial court concluded, *inter alia*, that First Father's evidence of non-paternity was not "stumbled upon" through a medical test, but instead was a deliberate attempt to see whether his belief of non-paternity was in fact true. On January 29, 2010, the trial court issued an order denying First Father's request to reevaluate the child support arrearage with respect to the child, and finding that First Father had an arrearage of \$8595.71 as of January 15, 2010. First Father appealed.

The Court concluded that because First Father's paternity was vacated due to mistake of fact, his child support, including any arrearage must be terminated. *Id.* at 1226. The Court was not persuaded by First Father's argument that his case satisfies the requirements for rescission of a paternity affidavit pursuant to IC 16-37-2-2.1(j), and therefore his paternity should be disestablished. *Id.* at 1225. The Court opined that IC 16-37-2-2.1(j) does not apply here because First Father's paternity was established by a court proceeding pursuant to IC 31-14, rather than by affidavit. *Id.* The Court also said that the objective of disestablishing paternity which was established by a proceeding under IC 31-14 may be properly pursued via a motion to disestablish paternity, a motion to vacate paternity order, or a Trial Rule 60(B) motion for relief from judgment. *Id.* The Court said that First Father did not file any such motions, present an oral request, or offer any argument before the trial court on this matter, so his argument that the trial court erred by failing to disestablish paternity is waived. *Id.* The Court went on to say that, if paternity has been established in Second Father, it follows that First Father's paternity of the child has been disestablished. *Id.* The Court resolved First Father's argument as to his child support arrearage by referring to IC 31-14-11-23, which provides, "If a court vacates or has vacated a man's paternity of a child based on fraud or mistake of fact, the man's child support obligation, *including any arrearage*, terminates." (Emphasis in opinion). *Id.* at 1226. The Court said it need not dwell on First Father's argument that Mother misled First Father concerning his paternity because IC 31-14-11-23 applies where a man's paternity is vacated based on fraud or mistake of fact. *Id.* Because First Father's paternity was established based on mistake of fact, his child support for the child, including his arrearage, terminates pursuant to IC 31-14-11-23. *Id.* Because this case is a matter of first impression as to the application of IC 31-14-11-23, the Court observed: (1) because IC 31-14-11-23 terminates child support, including arrearage, where fraud or mistake of fact occurred in establishing paternity, the trial court's determination

that First Father is still responsible for his child support arrearage even if he was deceived is inconsistent with the statute; and (2) IC 31-14-11-23 does not require that genetic testing proving non-paternity be obtained inadvertently as discussed in Farrow v. Farrow, 559 N.E.2d 597, 600 (Ind. 1990). Id. at 1227-28. The Court clarified that IC 31-14-11-23 governs the remedy to be implemented once a man's paternity has been vacated, not the propriety of vacating paternity. Id. at 1228.