

Children's Law Center of Indiana



Paternity Establishment

5/8/2014

In **In Re Paternity of D.M.**, 9 N.E.3d 202 (Ind. Ct. App. 2014), the Court reversed the trial court and concluded that because there were no custody, support, or other issues to determine regarding a stillborn child, the State had no authority to bring the action to establish paternity.

Mother, a minor, gave birth to a stillborn child. Alleged Father was unaware that Mother was pregnant until Mother gave birth, and denied being the father of the child. Mother sought the assistance of the prosecutor's office in establishing paternity, and assigned her support rights to the State of Indiana. The State then filed a petition to establish paternity as next friend of the child. Alleged Father filed a motion to dismiss, arguing that because there were no prenatal, birth, or postnatal expenses, there was no cause of action for paternity by the State. At a hearing before the trial court, Mother testified that Alleged Father was the only person with whom she had sexual relations. Maternal Grandmother testified that they wanted to establish paternity for closure, respect, and to know the truth, and that there had been no expenses associated with the pregnancy. Maternal Grandmother also testified that they were paying for blood pressure medication for Mother, but did not offer other evidence that the blood pressure condition was a result of the pregnancy. Mother's family paid for the costs of cremation. The State also acknowledged at trial that no money was owed to the State, but later stated that it might seek reimbursement of Medicaid costs in the future. The trial court issued an order denying Alleged Father's Motion to Dismiss, and ordered him to take a DNA test. Alleged Father appealed.

Since Alleged Father would owe no support to Mother even if his paternity was established, the State had no authority under Indiana's Child Support Program to bring the paternity action. *Id.* at 207. A child support bureau is given statutory authority under IC 31-25-4-13.1(b) to contract with prosecuting or private attorneys to undertake services described at IC 31-25-4-17; these services include collecting support payments, assisting in obtaining a support order where none exists, and assisting "mothers of children born out of wedlock in establishing paternity and obtaining a support order". *Id.* at 206. Mother, in general, would have been permitted to request the State's assistance in pursuing paternity, and the State would have been authorized to do so. *Id.* at 207. However, the "express purpose" of the Indiana Child Support Program is to enforce child support obligations by providing services; these services cannot be uncoupled from their purpose. *Id.* In this case, there was no child support at issue, and therefore, no services to assist in enforcing support rights were required. *Id.*

The State had no authority under Indiana statutory law to bring an action to establish paternity, since a stillborn child has none of the interests for which a prosecuting attorney is permitted to establish paternity. Id. at 208. IC 31-14-4-2(a) provides that if the mother requests, the prosecuting attorney shall file a paternity action and represent the child in the paternity action. Id. at 208. IC 31-14-5-8 provides that “[a]n action not otherwise barred is not barred by... (1) the death or stillbirth of the child...” Id. at 207. The Court noted that previous case law held that a prosecutor’s only interest in bringing a paternity action is to represent the child’s interests. Id. at 208 (citing Clark v. Kenley, 646 N.E.2d 76, 78-79 (Ind. Ct. App. 1995)). That Clark Court gave the following permissible interests of a child for which a prosecutor could establish paternity: (1) inheritance rights, (2) social security survivor benefits, (3) employee death benefits, (4) proceeds of life insurance policies, (5) establishment of familial bonds, (6) indoctrination into cultural heritage, and (7) knowledge of family medical history. D.M. at 208 (citing Clark, 646 N.E.2d at 79). The D.M. Court opined that since a stillborn child had none of these interests, the State had no authority under these statutes to bring the action to establish paternity of the child. D.M. at 208.

Under certain circumstances, paternity could still be established for a stillborn child, just not in an action brought by the State. Id. at 208. IC 31-14-5-8, as previously noted, provides that when not otherwise barred, paternity can be established for a stillborn child. Id. at 207. IC 31-14-4-1 supplies a list of people who may establish paternity; this includes the mother of the child, who may do so within two years of the child’s birth. Id. at 208. Once paternity is established, the court shall order the father to pay half of the reasonable and necessary expenses of the pregnancy and childbirth, which includes the cost of prenatal care, the delivery, the mother’s hospitalization, and postnatal care. Id. “Therefore, in an appropriate case, paternity of a stillborn child may be established for the purpose of recouping those costs.” Id. In a footnote, the Court opined that while it sympathized with Mother’s and Mother’s family’s desire to establish paternity for closure, truth, and respect, those reasons are “not issues that the paternity statutes are intended to remedy.” Id. at 208 n.3.