

Children's Law Center of Indiana



Paternity Establishment

7/11/13

In **In Re Paternity of Infant T.**, 991 N.E. 2d 596 (Ind. Ct. App. 2013), the Court affirmed in part, reversed in part, and remanded with instructions for the trial court to enter an order establishing Biological Father's paternity. In this nonadversarial case, Biological Father conceived a child with an unknown egg donor. Surrogate Mother was pregnant with the child so conceived. During Surrogate Mother's pregnancy, Surrogate Mother, Surrogate Mother's Husband, and Biological Father jointly filed an agreed petition with the trial court to establish Biological Father's paternity and to "disestablish" Surrogate Mother's maternity, and included affidavits in support of the petition. The trial court denied the agreed petition and certified its order for interlocutory appeal. While the appeal was pending, Surrogate Mother gave birth to the child, and the parties submitted to genetic testing, which the parties assert on appeal confirmed the statements made in their affidavits. The trial court declined to consider the genetic testing results, stating that it lacked jurisdiction due to the pending appeal. The Court of Appeals did not consider the results of the genetic tests, because they were not properly before the Court on this appeal. *Id.* at 598 n.3.

The Court opined that the trial court erred when it denied the agreed petition with respect to Biological Father's pre-birth request to be named the child's father. *Id.* at 599. In denying Biological Father's request, the trial court reasoned that Surrogate Mother's Husband was the legal father of the child unless Biological Father could present clear and convincing evidence to the contrary after the child's birth. *Id.* The Court said that the trial court erred as a matter of law. *Id.* The Court quoted **K.S. v. R.S.**, 669 N.E. 2d 399, 405 (Ind. 1996), and stated that, although Surrogate Mother's Husband was the child's presumptive father, the Indiana Supreme Court has made it clear that a joint stipulation between the birth mother and the putative father "constitute[s] sufficient evidence to rebut the presumption." **Infant T.** at 599. The Court also looked to IC 31-14-14-1, which states that a paternity action may be jointly filed by the expectant mother and a man alleging that he is the biological father of her unborn child and to IC 31-14-8-1, which states that the court may enter a finding that a man is the child's biological father without first holding a hearing if the parties have filed a joint petition alleging that the man is the child's biological father. *Id.* The Court observed that, in the instant case, all parties stipulated in their jointly filed agreed petition that Biological Father is the child's father. *Id.*

The Court held that Surrogate Mother's petition to disestablish maternity is not cognizable and, as such, the trial court properly dismissed her petition. *Id.* at 600-01. The Court looked to **In Re Paternity & Maternity of Infant R.**, 922 N.E. 2d 59 (Ind. Ct. App. 2010), *trans. denied*,

in which the infant's birth mother acted as a surrogate for the biological parents, who were married. Infant T. at 599. In Infant R., the trial court granted the biological father's petition, but denied the biological mother's petition, holding that the birth mother is the legal mother under Indiana law. Infant R. at 60. Infant T. at 599. In Infant R., 922 N.E.2d 61-62, the Court of Appeals reversed the trial court's decision, holding that:

- (1) "equity should provide an avenue of relief" for petitions to establish maternity and
- (2) while Indiana's statutory scheme for the establishment of paternity is not wholly applicable to a petition to establish maternity, it nonetheless "provide[s] a procedural template" for the establishment of maternity.

Infant T. at 599-600.

The Court said that, considering Indiana paternity statutes as a template for Surrogate Mother's petition to disestablishing maternity, it is well established that the Indiana Code has no provisions for the filing of an action to disestablish paternity. Id. at 600. Quoting In Re Paternity of H.J.B. ex rel. Sutton v. Boes, 829 N.E. 2d 157, 159-60 (Ind. Ct. App. 2005), the Court observed that paternity may be only "indirectly disestablish[ed] once it "has been established in another man." Infant T. at 600. The Court said that the rationale for this distinction is to avoid having a child declared a "son of nobody," which "would carry with it countless 'detrimental financial and emotional effect[s].'" H.J.B. at 160 and n. 4. Infant T. at 600. The Court opined that: (1) it would not be in the best interests of the child and would be contrary to public policy, to allow the birth mother to have the child declared without a mother; and (2) it would be inconsistent to allow for petitions to disestablish maternity when petitions to disestablish paternity are forbidden. Id. at 600.

The Court said that its holding does not exclude the indirect disestablishment of maternity, where a putative mother petitions the court to establish her maternity, proving her maternity by clear and convincing evidence, not simply by affidavit or stipulation. Id. at 600-01. The Court explained that, if the putative mother satisfies her burden of proof, the establishment of her maternity would indirectly disestablish maternity in the birth mother. Id. at 601. The Court noted that Indiana law presumes the birth mother is the child's biological mother, and that this presumptive relationship will stand unless another woman establishes that she is in fact the child's biological mother. Id. The Court also acknowledged Biological Father's comment in his appellate brief that his wife will be adopting the child. Id. at 598 n.2.