

Children's Law Center of Indiana



Paternity

07/08/2008

In **In re Paternity of M.M.**, 889 N.E.2d 846 (Ind. Ct. App. 2008), the Court reversed and remanded for court-ordered genetic testing the trial court's dismissal of Legal Father's motion for rescission of his paternity affidavit and paternity testing. Legal Father executed a paternity affidavit three days after the child's birth and subsequently was ordered to pay child support. About seven months later, following two genetic tests excluding him as the biological father, Legal Father filed a petition for modification of child support, and moved for rescission of the paternity affidavit and for DNA testing. The motion was denied by the trial court.

Some extraordinary circumstances will permit a challenge to paternity despite the strong public policy in favor of the establishment of paternity. Here, Legal Father was the victim of either Mother's intentional deception or misapprehension of the critical fact of paternity. *Id.* at 848-49. The Court cited IC 16-37-2-2.1(i) as providing that when more than sixty days have passed since the execution of the paternity affidavit, the affidavit may be rescinded only when a court:

- (1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and
- (2) at the request of a man described in subsection (h)[, the man who executed the paternity affidavit,] has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

According to the Court, citing **In Re Paternity of H.H.**, 879 N.E.2d 1175, 1177 (Ind. Ct. App. 2008), this statute reflects the legislature's intent to provide assistance to a man who signed a paternity affidavit due to fraud, duress, or material mistake of fact. *Id.* at 847-48. The Court stated that, (1) although it agreed that the public policy in favor of establishing paternity of a child born out of wedlock is important and embodied in the paternity statutory scheme, there is a co-existing substantial public policy in correctly identifying parents and their off-spring; and (2) a legal father may challenge paternity only in extreme and rare instances and the challenge must be made by evidence that has become available independently of court action. **M.M.** at 848 (citations omitted). The Court noted that, here, (1) Legal Father testified without contradiction that Mother had advised him he was the only potential father; (2) two genetic tests showed otherwise; and (3) thus, Legal Father provided unrefuted testimony of circumstances amounting to either fraud or a material mistake of fact. *Id.* The Court held that this satisfied the first prong of IC 16-37-2-2.1(i), but the affidavit could be rescinded only if the court-ordered genetic test requested by the Legal Father excludes the Legal Father as the child's biological father.

While IC 16-37-2-2.1(b)(2) requires that hospital personnel shall "verbally explain ... the legal effects of an executed paternity affidavit," there is no corollary statutory provision allowing rescission of the paternity affidavit due to a lack of verbal explanation. *Id.* at 848 n.1.