

Children's Law Center of Indiana



Paternity Establishment

3/29/2012

In **In re Paternity of S.C.**, 966 N.E.2d 143 (Ind. Ct. App. 2012) (Riley, J. dissenting), the Court affirmed the trial court's granting of Presumed Father's Verified Petition for Relief from judgment for Fraud upon the Court. The trial court had concluded that the paternity affidavit filed July 30, 2008 and the paternity judgment were void as a matter of law, as Mother knew there was a reasonable probability that Presumed Father was the actual father of the child, not Affiant Father. The Court further concluded that Mother had engaged in an unconscionable plan or scheme to defraud the court.

Mother and Affiant Father (referred to as Affiant Father because he signed the paternity affidavit relating to the child), had a sexual relationship. Sometime during her relationship with Affiant Father, Mother also had a sexual relationship with Presumed Father (referred to as Presumed Father because under IC 31-14-7-1(3), a man who takes a DNA test that shows a 99% probability that he is the father of a child is presumed to be the father of that child). Mother became pregnant, and gave birth to the child July 28, 2008. Mother had Affiant Father present at the birth of the child, and Affiant Father signed a paternity affidavit, although he did not do so until July 30, 2008. Presumed Father, on July 29, 2008, filed a petition in Fayette County requesting that paternity of the child be established, and alleged that he was the father. Presumed Father also requested that Mother and the child be required to submit to a DNA test. Mother was served with this request on July 30, 2008, the same day Affiant Father signed the paternity affidavit. Mother and the child submitted to DNA tests on July 31, 2008. The test results, issued on August 4, 2008 and sent to Mother and Presumed Father on October 15, 2008, showed a 99.9997% probability that Presumed Father was the father of the child. On August 15, 2008, Mother's attorney filed an appearance in the Fayette County case that Presumed Father had filed, and filed a motion to dismiss for lack of subject matter jurisdiction, failure to state a claim, and improper venue. On October 21, 2008, Affiant Father filed a pro se petition to establish paternity in Hancock County alleging that he was the father of the child, based on the paternity affidavit. On the same day, Affiant Father and Mother filed an agreed entry titled "Verified Joint Stipulation Establishing Paternity and Agreed Entry." Consequently, Hancock County issued an order establishing paternity in Affiant Father on October 22, 2008. On the same day as that order was issued [October 22, 2008], Fayette County held a hearing on Presumed Father's motion to establish paternity. During the hearing, Mother's counsel served Presumed Father with the documents from Hancock County and entered them into evidence in the Fayette County proceedings. Fayette County dismissed Presumed Father's petition, but allowed him to refile an Amended Complaint within ten days. Presumed Father did not refile

within the allotted time. Presumed Father took no further action until June 2010, when he, by counsel, filed his Verified Petition for Relief of Judgment for Fraud Upon the Court in Hancock County. Presumed Father then alleged that the paternity order was obtained through fraud, and sought to intervene in the Hancock County proceedings. The Hancock County court granted his petition after a hearing, finding that fraud was perpetrated on the court in obtaining the judgment.

Mother argued on appeal that Presumed Father's claim was never properly pursued, as he filed deficient pleadings and then did not file an amended complaint, and Affiant Father's paternity was conclusively established by the paternity affidavit. *In re Paternity of S.C.*, 966 N.E.2d at 148. Mother then argued that Presumed Father's rights were not affected in any way by the Hancock County court's ruling establishing paternity in Affiant Father, because Presumed Father could have kept pressing his case. *Id.* The Court dismissed Mother's arguments that this appeal should turn on the issue of paternity, and stated that the "the correctness of the trial court's ruling does not hinge upon the questions of whether [Presumed Father] is, in fact, the biological father of [the child] and whether his legal endeavors to this point comport with statutory guidelines. Rather, we conclude that this case implicates the power of the trial court to vacate an order that it later concludes was issued under a fraudulent pretext." *Id.* at 149.

The Court noted that in order to prove fraud, Presumed Father had to establish that an unconscionable plan or scheme was used to improperly influence the court's decision, and that such plan or scheme prevented Presumed Father from fully and fairly presenting his case. *Id.* at 147. The standard of review in a case where a judgment has been set aside on grounds of fraud is two tiered; first, the Court must determine whether the evidence supports the findings, and then whether the findings support the judgment. *Id.* at 149.

The Court held that the first element, a plan or scheme, was readily apparent in this matter. *Id.* at 150. The Fayette County hearing on Presumed Father's flawed petition was set for October 22, 2008. *Id.* On October 21, 2008, five days after Mother learned the DNA results indicating that Presumed Father was the biological father of the child, and one day before the Fayette County hearing, Affiant Father and Mother collaborated in the filing of the Hancock County Petition to Establish Paternity and Agreed Entry. *Id.* at 151. Despite Mother's claims that this petition was not intended to establish paternity, it was titled as a petition to establish paternity, and one of the requests for relief was for the trial court to issue an order naming Affiant Father as the father of the child. *Id.* The Court noted that the timing of the petition and the hearing was also part of the plan. The petition was filed the day before the Fayette County hearing, and the order issued the day of the Fayette County hearing. *Id.* Mother argued that this is just coincidental, but the trial court concluded that the Hancock County proceeding influenced the Fayette County proceeding, and the Court determined that this was not an unreasonable conclusion. *Id.* Especially since the parties failed to inform Hancock County about the pending Fayette County proceedings, the filing of the verified petition the day before the pending hearing in Fayette County was unconscionable. *Id.*

The second element, that the unconscionable plan was intended to influence the trial court's decision, was determined by the Court to be present. *Id.* at 151, 152. The Court reasoned that it was reasonable for the trial court to conclude that the timing of the Hancock County filing and the failure to inform the Hancock County court of the existence of the pending

Fayette proceedings were motivated by the desire to influence the Hancock County court in Affiant Father's and Mother's favor. Id. at 152. Without that information, the Court noted, there was no reason for Hancock County to inquire further into the question of the child's paternity. Id. at 151.

In addition to intending to influence the court, the plan must also be shown to have actually influenced the trial court. In writing its findings of fact and conclusions of law, Hancock County clearly indicated that it felt it had been strongly influenced this unconscionable plan. Id. Since the Hancock County court is in the best position to determine whether or not the plan influenced its decision, the Hancock County court did not err in finding the existence of an unconscionable plan intended to influence its decision, which did in fact influence its decision. Id.

The Court determined that Presumed Father had shown the final element of fraud, which was that the unconscionable plan prevented Presumed Father from fully and fairly presenting his case. Id. The Court stated that the argument that even though Hancock County issued an order establishing Affiant Father as the father of the child, that Presumed Father was still able to pursue his case and none of his rights were affected, was a misconception of the phrase "fully and fairly presenting his case or defense." Id. The phrase is not meant to mean that it only applies to judgments that are completely immune from direct or collateral attacks. Id. at 152. The Court referred to case law in explaining what it meant to be prevented from fully and fairly pursuing a case, and noted that in In re Paternity of Tompkins, 8518 N.E.2d 500 (Ind. Ct. App. 1988), the Court had reversed and set aside paternity affidavit on grounds of fraud upon the court. Id. (citing In re Paternity of Tompkins, 8518 N.E.2d 500). The facts suggested that the prior husband and mother knew that the prior husband was not biological father of child. Id. The prior husband's action appeared to have been planned in an attempt to prevent child from determining who his true biological father was. Id. The scheme to suppress the true paternity succeeded when the court declared prior husband to be the child's biological father. Id. (citing In re Paternity of Tompkins, 8518 N.E.2d 500, 507 (Ind. Ct. App. 1988)). Mother knew at the time she and Affiant Father executed the paternity affidavit that there was a possibility that Affiant Father was not the child's father, and that Presumed Father was the child's father. In re Paternity of S.C., 966 N.E.2d at 152. There is evidence that Mother had cause to doubt Affiant Father's paternity of the child when she executed the paternity affidavit attesting under oath that Affiant Father was the child's father. Id. She repeated that sworn testimony in the October 22, 2008 Verified Petition to Establish Paternity and agreed Entry. Id. This was part of that plan to suppress who the child's biological father was, which resulted in the issuance of the Hancock County court order that prevent Presumed Father from having his actual day in court. Id.

The Court addressed public policy considerations in coming to its decision, reasoning that its decision did not go against public policy in making the child a "child of no one," and was in fact support by a strong public need to correctly identify parents of children. Id. at 152-53. Mother and the dissenting judge argued that de-establishing paternity was contrary to public policy and essentially made the child a "child of no one." Id. at 152. The Court dismissed this argument for several reasons; first, because Affiant Father clearly cared for the child and was determined to make himself a father for the child, and had in fact been supporting the child; second, because there was no reason to believe that Presumed Father would not continue to

pursue his paternity action; and third, because it was not likely that Mother would not seek to have paternity of the child established. *Id.* at 153. The Court noted that there was public policy in favor of its decision—the policy that it is important for parents, children and society for biological, psychological, and economic reasons to correctly identify parents and their children. *Id.* (citing *Russell v. Russell*, 682 N.E.2d 513, 517 n.7 (Ind. 1997)). Lastly, the Court reasoned there were several options before the parties regarding the child’s paternity and support; these options included performing another DNA test if the first test was considered faulty or legally inadmissible, and acting upon the new DNA test resulting by pursuing child support proceedings against Presumed Father, or allowing Affiant Father to initiate adoption proceedings. *Id.* at 153.