

Children's Law Center of Indiana



Paternity Establishment

7/3/2012

In **In re the Paternity of S.C.**, 970 N.E.2d 248 (Ind. Ct. App. 2012) (Riley, J. dissenting), the Court granted Mother's request for a rehearing, and reaffirmed its original opinion. In doing so, the Court held that there was sufficient evidence to warrant the Hancock County trial court's vacating of a paternity judgment in which Mother assisted Legal Father in establishing paternity in himself, while there was a competing petition to establish paternity in Presumed Father, on grounds of fraud upon the court.

The Court, in the original opinion of **In re Paternity of S.C.**, 966 N.E.2d 143 (Ind. Ct. App. 2012) (Riley, J. dissenting) affirmed the Hancock County trial court's ("Hancock Court") grant of Presumed Father's Motion for Relief From Judgment For Fraud Upon the Court. In that case, Legal Father, with the help of Mother, filed an action in Hancock Court that sought to establish paternity in Legal Father. This action was filed while another paternity action was pending for the child in the Fayette County trial court ("Fayette Court"). The Fayette Court paternity action was filed by Presumed Father. Mother and Legal Father did not inform Hancock Court of the Fayette Court proceedings, even though they knew of the Fayette Court paternity action. The Hancock Court granted Legal Father's petition to establish paternity the day before a hearing in the Fayette Court paternity proceedings. Presumed Father was served with Legal Father's paternity order from the Hancock Court at the Fayette Court proceedings. The Fayette Court dismissed Presumed Father's proceedings. Presumed Father later filed a motion in Hancock Court to set aside Hancock Court's paternity order, alleged that fraud had been committed upon Hancock Court in obtaining the order that establish paternity in Legal Father. Hancock Court granted the motion and vacated its earlier paternity judgment, and the Court affirmed that ruling. In affirming that ruling, that Court stated, "In conjunction with that petition, [Presumed Father] sought and received an order compelling Mother and [the child] to submit to a DNA test before they left the hospital. The day that order was served upon Mother...[Legal Father] and Mother executed an affidavit of paternity identifying [Legal Father] as [the child's] biological father... The DCC [DNA Diagnostics Center] indicates there is a 99.9997% likelihood that [Presumed Father] was [the child's] biological father." In her petition for rehearing, Mother argued that the Court erred in stating that "the purported DNA test had been ordered by the Fayette Circuit Court."

The Court determined that Mother's arguments regarding the validity and admissibility of the paternity test were irrelevant with regards to the Hancock Court's order setting aside the paternity judgment for fraud upon the Court; the Court held that the issue to be

determined was whether Mother committed fraud upon the Hancock Court by failing to inform it of the Fayette Court proceedings. Id. at 250-51. After reexamining the facts supporting the statement that Mother based her argument upon, the Court stated that “[a]lthough someone at the hospital where [the child] was born obviously believed that the hospital was under court order to perform a paternity test, it perhaps went too far to indicate that the record establishes that the Fayette Circuit Court ordered the test.” Id. at 250. The Court further noted that the record did support the trial court’s finding that a DNA test was performed, and this was a test that Mother did not seek. Id.

The Court opined that it was enough that there was evidence to support the Hancock Court’s finding that Mother did not inform the Hancock Court of the Fayette Court proceedings, and that Mother knew there was a reasonable probability that Presumed father was the biological father of the child. Id. at 250-51. In doing so, it noted that the Hancock Court order vacating its previous paternity order was not premised on: (1) adequacy of service of process upon Mother by Presumed Father regarding the Fayette Court proceedings; (2) the viability of the Fayette Court proceeding initiated by Presumed Father; and (3) the admissibility of the DNA tests performed on Mother and the child. Id. at 250. In contrast, the Court noted that the Hancock Court’s order was based on a finding that a paternity action was filed and pending in the Fayette Court, and Mother knew of this action when she participated in the Hancock Court action. Id. The Court determined that this was enough to support the Hancock Court’s judgment, and the Court’s own previous opinion. Id. at 250-51.