

Children's Law Center of Indiana



Paternity
2/17/10

In **In Re Paternity and Maternity of Infant R.**, 922 N.E.2d 59 (Ind. Ct. App. 2010), the Court reversed the juvenile court's denial of a joint petition to establish paternity and maternity of a child. The Court remanded the case with instructions for the juvenile court to conduct an evidentiary hearing and to grant relief just and proper under the circumstances assuming that Wife's Sister is shown to be the child's biological mother by clear and convincing evidence. Husband and Wife purportedly agreed with Wife's Sister that the embryo of Husband and Wife would be implanted into Wife's Sister. On December 24, 2008, Husband, Wife, and Wife's Sister jointly petitioned the juvenile court to establish the paternity and maternity of the unborn child. The child was born to Wife's Sister in February, 2009, and Husband executed a paternity affidavit to establish his paternity of the child. The juvenile court heard argument on the remaining request for establishment of maternity, but no evidence was taken. On May 26, 2009, the juvenile court denied the petition, finding that Indiana law does not permit a non-birth mother to establish maternity and that Indiana law holds the birth mother is the legal mother.

The Court reviews questions of law de novo and owes no deference to the trial court's conclusions. Id. at 60, citing W.C.B. v. State, 855 N.E.2d 1057, 1059 (Ind. Ct. App. 2006), trans. denied.

The Court concluded that equity provides an avenue for relief in this case, and found that, in these narrow circumstances, the paternity statutes provide a procedural template to challenge the putative relationship between the child and Wife's Sister. Id. at 61-62. The Court noted IC 31-10-2-1-, which states that, "[i]t is the policy of this state...to recognize the importance of family and children in our society...to acknowledge the responsibility each person owes to the other...[and] strengthen family life by assisting parents to fulfill their parental obligations [.]". Id. at 60. The Court also opined that it is well-settled that it is in the best interests of a child to have his or her biological parentage established, quoting In Re Paternity of S.R.I., 602 N.E.2d 1014, 1016 (Ind. 1992). Infant R. at 60. The Court also said that "no legislation enacted in this State specifically provides procedurally for the establishment of maternity; it is presumed that a woman who gives birth to a child is the child's biological mother." Id. at 61. The Court went on to state that "we are confronted with reproductive technologies not contemplated when our Legislature initially sought to provide for the establishment of legal parentage for biological parents." Id. The Court further said: (1) if equity ignores technological realities that the law has yet to recognize, a child born in the circumstances

alleged herein would denied the opportunity afforded to other children, that is, to be legally linked to those with whom the child shares DNA; (2) a woman who has carried a child but who is not biologically related to that child would be denied a remedy available to putative, but not biological fathers, that is, the removal of incorrect designation on a birth certificate and avoidance of legal responsibilities for another person's child; (3) public policy in correctly indentifying a child's birth mother should be no less compelling than correctly identifying a child's biological father; (4) when a legislative purpose is clear, construction to carry out such purpose shall be given to a statute even though such construction is contrary to the strict letter of the statute. Id. at 61-62.

The Court said that Wife must establish her biological motherhood of the child by clear and convincing evidence, which would involve more than simply an affidavit or stipulation between the parties. Id. at 62. The presumptive relationship that Wife's Sister is the Mother of the child will stand unless Wife establishes that she is in fact the child's mother. Id.