

# Children's Law Center of Indiana



## **Paternity**

12/30/10

In **In Re Paternity of R.M.**, 939 N.E.2d 1114 (Ind. Ct. App. 2010) (Najam, J. dissenting), the Court reversed the trial court's grant of Mother's motion to dismiss Putative Father's petition to establish paternity of the twelve-year-old child. The Court remanded the case for further proceedings. In early 1996, Mother learned that she was pregnant with the child. Mother was unmarried at the time, and either Putative Father or Presumptive Father could have been the father. Mother told Putative Father that he might be the Father of the child, but Putative Father replied "that he was not ready to be a father and that he believed the baby should be raised in a two[-]parent home." Mother told Presumptive Father that he might be the father and Presumptive Father told Mother that he did not care if he might not be the father and that he would happily raise the child as his own. Mother married Presumptive Father on June 29, 1996, and the child was born on November 5, 1996. Mother and Presumptive Father raised the child together. Over the years, Mother occasionally sent photos of the child to Putative Father. Putative Father saw the child briefly when the child was nine months old, but otherwise Putative Father had no contact with the child between 1996 and 2006. Putative Father paid no child support. Presumptive Father died suddenly in 2006, and since then, the child has received Social Security survivor's benefits of approximately \$1200 per month. Mother and Putative Father dated briefly after Presumptive Father's death. At that time, Putative Father became acquainted with and occasionally visited the child and also occasionally paid money to Mother to help support the child's extracurricular activities. In 2006, Mother and Putative Father submitted samples for a home DNA test; the test results showed a 99.99 percent chance that Putative Father is the child's biological father.

Two years later, on August 15, 2008, Putative Father, acting as the child's next friend, filed a petition to establish paternity. On December 1, 2008, the trial court held an initial hearing at which Putative Father appeared with counsel and Mother appeared pro se. At the hearing, Mother testified that she contested Putative Father's paternity claim and was not certain that he was the child's biological father. Putative Father's attorney offered, and the court admitted into evidence, the results of the home DNA test as well as a handwritten letter from Mother stating that Putative Father was the child's biological father. The court entered an order awarding Putative Father Indiana Parenting Time Guidelines parenting time with the child, requiring Putative Father to pay \$50 interim child support per week, and giving Mother fifteen days to arrange for another paternity test. Mother did not obtain another DNA test due to the cost involved. On May 12, 2009, the court again convened for an initial hearing, at which both

Mother and Putative Father appeared with counsel. Argument was heard, and the court took the paternity petition under advisement. On June 9, 2009, Mother filed her motion to dismiss Putative Father's paternity petition, her brief in support of the motion, and a motion to vacate the order of the December 1, 2008, hearing. Mother alleged that Putative Father's petition was barred by the doctrine of laches. On July 10, 2009, Putative Father filed his response and argued that the home DNA test was proof of his paternity, that the paternity matter was not barred by laches, and that public policy favored proceeding with his paternity claim. Putative Father did not designate the DNA test results as evidence to be considered in response to Mother's motion. On December 16, 2009, the court held a hearing on Mother's motions. The court entered an order on December 18, 2009, vacating the December 1, 2008, order and granting Mother's motion to dismiss the paternity action. The trial court found, inter alia, that: (1) the child was born while Mother was married to Presumptive Father; (2) the child lived in Presumptive Father's and Mother's household from the date of the child's birth until Presumptive Father's death on February 26, 2006; (3) Putative Father never executed a paternity affidavit and did not file an action to establish paternity until August 15, 2008, even though Putative Father knew immediately after the child's conception that there was a possibility that he could be the child's father; (4) IC 31-14-7-1 provides that a man is presumed to be a child's biological father if the man and the child's biological mother are or have been married to each other and the child is born during the marriage; (5) Presumptive Father and Mother were married when the child was born and Presumptive Father is presumed to be the child's biological father under IC 31-14-7-1; (6) Putative Father had standing under Indiana law since the child's conception to file a paternity action to rebut the statutory presumption, but chose to do nothing until nearly two years after Presumptive Father's death to initiate his attempt to rebut the presumption. The trial court's findings also included that Putative Father is now asking the court to insert himself over Presumptive Father as the child's father, take away the child's death benefits, subject the child to lengthy and protracted court proceedings (as it is Putative Father's stated intent to request a change in custody), and destroy the child's belief that the man he called "father" for the first ten years of his life was, in fact, his father. The trial court held that waiting for twelve years to assert a right of which Putative Father was aware and waiting for over two years after a potential change in circumstances barred Putative Father from initiating an action to overcome the presumption of paternity in favor of Presumptive Father. Putative Father appealed.

**The Court reviewed Mother's motion to dismiss as a motion for summary judgment, considering only those facts that the parties designated to the trial court, to determine whether there is a genuine issue as to any material fact and whether Mother is entitled to a judgment as a matter of law.** *Id.* at 1120. The Court, citing Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267, 1269-70 (Ind. 2009), observed that in summary judgment, the moving party bears the burden of making a *prima facie* showing that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. R.M. at 1118. Once the movant satisfies the burden, the burden then shifts to the non-moving party to designate and produce evidence of facts showing the existence of a genuine issue of material fact. Dreaded, Inc. at 1269-70. R.M. at 1118. The Court said that it must carefully review a decision on summary judgment to ensure that a party was not improperly denied its day in court. *Id.*

**The Court opined that laches may bar a paternity action if the party asserting the defense establishes all of its elements.** *Id.* at 1119-20. The Court said that courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. *Id.* at 1119. (Multiple citations omitted). Laches requires: (1) inexcusable delay in asserting a known right; (2) an implied waiver arising from knowing acquiescence in existing conditions; and (3) a change in circumstances causing prejudice to the adverse party. *Id.* The Court disagreed with Father’s contention that laches do not apply in paternity cases due to case law (*Trent v. Trent*, 829 N.E.2d 81 (Ind. Ct. App. 2005)), holding that laches does not apply in child support cases. *R.M.* at 1119. The Court cited *In Re Paternity of K.H.*, 709 N.E.2d 1033 (Ind. Ct. App. 1999), where the Court of Appeals considered the defense of laches in a similar paternity case. *R.M.* at 1119. In *K.H.*, the Court held that the guardianship petitioner had not demonstrated all three elements of laches. *K.H.* at 1036. *R.M.* at 1119-20. The Court said that a paternity action is not necessarily a child support proceeding and Putative Father is a potential obligor, not the person who would receive support for the child; thus, the reasoning in *Trent* and similar cases is inapplicable here. *R.M.* at 1120.

**The Court concluded that an issue of fact exists as to whether Putative Father’s delay prejudiced Mother or the child; therefore, the evidence before the trial court was insufficient to grant summary judgment.** *Id.* at 1122. In considering laches, the Court quoted *SMDfund, Inc. v. Fort Wayne-Allen Cnty. Airport Auth.*, 831 N.E.2d 725, 731 (Ind. 2005), stating, “laches does not turn on time alone.” *R.M.* at 1120. The Court said that unreasonable delay which causes prejudice or injury is necessary. *Id.* The Court said that, with regard to paternity actions, disturbance in the child’s life that will result from a paternity action is insufficient to establish prejudice. *Id.* To determine whether there is no genuine issue of material fact and whether Mother is entitled to judgment as a matter of law, the Court reviewed Mother’s two designated exhibits in her motion to dismiss. In her motion to dismiss, Mother designated the child’s birth certificate and her affidavit. Mother’s affidavit recited the facts listed in the opening discussion of the case and added the following: (1) Mother is not aware that Putative Father took action to register with the Putative Father Registry; (2) the child had a close, loving relationship with Presumptive Father who provided all of the child’s financial support; and (3) Mother and Presumptive Father had a daughter born in 1998. The Court observed that the trial court’s finding in support of the third requirement of laches (a change in circumstances causing prejudice to the adverse party) was not supported by Mother’s designated evidence. *Id.* at 1121-22. Specifically, there was no designated evidence on: (1) the child would lose Presumptive Father’s Social Security benefit or, even if so, Putative Father would be unable to pay child support or the amount ordered would be less than the child receives as Presumptive Father’s Social Security benefit; (2) Putative Father’s intention to ask the court for a change of custody; (3) the child’s beliefs regarding Putative Father or Presumptive Father other than the child’s close, loving relationship with Presumptive Father. *Id.* The Court said that “prejudice to [the child] is the primary concern and that determination involves a fact-sensitive consideration of the child’s best interests, including factors beyond finances and family stability. *Id.* at 1122.