

Children's Law Center of Indiana



Paternity

09/24/2009

In **In Re Paternity of P.S.S.**, 913 N.E.2d 765 (Ind. Ct. App. 2009), the Court affirmed the trial court's judgment dismissing the child's paternity petition. Four children were born to Mother and Father during their fifteen-year marriage which was dissolved in November 2001. During the dissolution proceedings, the trial court entered an order noting that "[b]efore the presumption that the husband is the father of the [third child] can be rebutted, there must be a [GAL] for the [third child]. Dissolution will be deferred pending resolution of the issue of paternity." Prior to issuance of the trial court's decree of dissolution of marriage, the trial court approved the mediated marital settlement agreement which provided in part that Mother and Father agreed to share joint custody of the three eldest children, while they acknowledged that "the minor [fourth child] was born during the parties' marriage, but that said child is the biological child of a third person, not a party to this case." In August 2005, Mother filed a petition to modify primary placement. After a hearing, the trial court awarded full legal and physical custody of the three children to Mother and ordered Father to pay Mother \$130 per week in child support. The Court of Appeals affirmed the order. On November 24, 2008, the third child, by next friend, Father, filed a petition to establish paternity against Mother and the putative father in juvenile court. On December 11, 2008, the juvenile court dismissed the case, finding that "exclusive jurisdiction vested with the [trial court] when the Petition for Dissolution of Marriage (or similarly named pleading) was filed on or about December 2000," and "[f]or the reason that the subject of child paternity, parenting time, and support were first properly before the [trial court] in the dissolution proceeding and the [trial court] retains exclusive jurisdiction, the [c]ourt is precluded from making those determinations regarding the same child, [third child] in this subsequently filed paternity action." On January 29, 2009, third child, by next friend, Father, filed a motion for relief from judgment. The juvenile court denied the motion, reiterating the continuing exclusive jurisdiction vested with the trial court and also stated that "The Court finds that this Court does not have jurisdiction to ignore any judgment of the [trial court] establishing that [Father] is rebuttably, and perhaps conclusively, the legal father of [third child];" and "The court finds that this Court does not have jurisdiction to modify the judgment of the [trial court] by allowing [Father's] collateral attack in this inappropriate venue to dis-establish paternity of the minor child, [third child]." Third child, by next friend, Father, appealed the juvenile court's denial of the third child's motion for relief from judgment.

The Court found that, because of the substantial public policy concern in paternity actions that "[p]roper identification of parents and child should prove to be in the best interests of the child for medical or psychological reasons," the third child's situation is the inherent exceptional circumstance potentially justifying the extraordinary relief provided under Rule 60(B)(8), and, therefore, the Court found that the trial court incorrectly concluded that it did not have jurisdiction over the matter. Id. at 768.

The Court concluded that the third child, and her next friend, Father, had a full and fair opportunity to take part in the resolution of the paternity issue during mediation and that it would be unfair to give her and Father a second bite at the apple. *Id.* at 769. The Court observed that, although it acknowledged the significance and value of knowing one's parentage, the third child's paternity had already been the subject of judicial proceedings. The Court opined: (1) as a general rule, a child is not normally precluded by a dissolution court's paternity finding from filing a separate action in juvenile court to establish paternity at a later time; (2) here the juvenile court found the third child to be collaterally estopped from raising this issue a second time; (3) collateral estoppel bars subsequent litigation of a fact or issue which was adjudicated in previous litigation if the same fact or issue is presented in a subsequent lawsuit; and (4) a two-part analysis determines whether this doctrine should be applied: whether the party against whom the former adjudication is asserted had a full and fair opportunity to litigate the issue, and whether it would be otherwise unfair under the circumstances to permit the use of issue preclusion in the current action. *Id.* at 768 (citations omitted). The Court noted that in this case, although the third child was not a party to the dissolution proceedings, the trial court appointed a GAL to protect her interests with respect to the issue of paternity, and, consequently, her interests were represented and taken into consideration during the paternity mediation. The Court distinguished *In Re Paternity of J.W.L.*, 672 N.E.2d 966, 968-69 (Ind. Ct. App. 1996), *aff'd by In Re Paternity of J.W.L.*, 682 N.R.2d 519, 521 (Ind. 1997) (summarily affirming Court of Appeals opinion), which the Court pointed out would seem, at first blush, to indicate that an opposite result must be reached. According to the Court, in *J.W.L.*, the putative father argued that the fact that a GAL was appointed to represent the child's interests should have estopped her from raising paternity years after the dissolution decree was entered. The Court of Appeals disagreed, noting that the GAL was appointed during "post-dissolution custody and support matters," which "did not involve an adjudication of paternity or a trial on the merits of the issue," and found that the doctrine of collateral estoppel did not apply. According to the Court, here, in contrast, the GAL was appointed during the dissolution proceedings and the sole reason for the appointment was the protection of the third child's interests during the resolution of the paternity issue. *P.S.S.* at 769.

Riley, J., dissented with separate opinion.