

# Children's Law Center of Indiana



## Paternity

6/9/10

In **J.M. v. M.A.**, 928 N.E.2d 230 (Ind. Ct. App. 2010), the Court reversed the trial court's denial of Father's Motion to Set Aside the Determination of Paternity, which had been entered as a default judgment. The Court remanded the case with instructions that the trial court vacate its orders adjudicating Father as the child's legal father and requiring Father to pay child support. Because the State had conceded that Father is not the child's biological father, the Court also ordered that the trial court must set aside the paternity affidavit. Father and Mother began a relationship in 1998 when Mother was four months pregnant. Both Father and Mother were aware that Father was not the biological father of Mother's child. On January 7, 1999, Mother gave birth to the child, and Father signed a paternity affidavit acknowledging that he is the child's "natural father." At the time Father signed the paternity affidavit, he was six days away from his eighteenth birthday, and, according to him, he signed the affidavit because he was told it was necessary to allow the child's maternal grandmother to establish guardianship of the child. Sometime later the child's maternal grandmother was granted guardianship over the child. Over ten years later, the State filed a Petition for Entry of Support and Health Insurance Coverage after grandmother applied for benefits on the child's behalf, and a hearing was set for May 22, 2009. Father was served with notice of the hearing on April 14, 2009. On May 21, 2009, Father pro se requested a continuance because he was "out of state on business and cannot make it home on time" and he was "trying to obtain legal counsel but [was] having financial difficulties." On May 22, 2009, the trial court denied Father's request for a continuance, stating that Father "had over a month and failed to hire counsel." The trial court entered a default judgment, adjudicating Father as the child's father, ordering Father to pay \$47 a week child support, and scheduling a compliance and support modification hearing. On August 11, 2009, Father, who was represented by an attorney, filed a Motion to Set Aside Determination of Paternity. At the hearing on Father's Motion, Father established that at the time he signed the paternity affidavit, he was six days away from his eighteenth birthday. Mother testified that Father was not the child's biological father, that Father was aware of this at the time he signed the paternity affidavit, and that Mother was not sure why Father signed the affidavit. During the compliance portion of the hearing, the State established that Father's child support was \$663.48 in arrears, that Father had been in compliance with the support order since July 8, 2009, and requested that Father pay a small amount to liquidate the arrears. The trial court observed that: (1) Father had not taken any steps to disestablish his paternity until the State had filed its petition on April 7, 2009; (2) Father had received notice of the May 22 hearing; (3) Father failed to appear at the May 22 hearing; and (4) Father's request for continuance of the May 22 hearing had been

denied. The trial court concluded that “Father’s lack of appearance at the hearing ratified the previously signed affidavit of paternity” and that Father had “effectively signed and is going to be held to the legally binding affidavit, which constitutes a ‘poor man’s adoption’ of [the child].” The trial court ordered that Father continue to pay \$47 per week plus \$10 per week to arrears.

**The Court found that Father has established that his failure to attend the May 22, 2009, hearing was the consequence of excusable neglect and that relief from judgment is both necessary and just.** *Id.* at 234. The Court agreed with Father’s characterization of his motion to set aside the determination of paternity as a motion for relief from judgment under Ind. Trial Rule 60(B). Although Father did not specify the provision of T.R. 60(B) on which he based his motion, he argued on appeal that his failure to appear at the May 22 hearing was attributed to excusable neglect. The Court, quoting *Munster Cmty. Hosp. v. Bernacke*, 874 N.E.2d 611, 613 (Ind. Ct. App. 2007), said that when ruling upon a Rule 60(B) motion, “[t]he trial court must balance the need for an efficient judicial system with the judicial preference for deciding disputes on the merits.” *J.M.* at 234. The Court concluded that the default judgment resulted in an unjust determination. *Id.* at 232. The Court noted Father’s request for a continuance the day before the hearing because he was out of state on a work assignment and needed more time to hire an attorney and found that, under these facts and circumstances and in light of the extensive consequences of the trial court’s default order, Father has established that his failure to attend the May 22 hearing was the consequence of excusable neglect. *Id.* at 234. The Court opined that relief from judgment is both necessary and just. *Id.*

**The Court concluded that a material mistake of fact existed at the time Father executed the paternity affidavit, and, because Mother testified and the State conceded that Father is not the child’s biological father, the Court need not remand for genetic testing, and the trial court must set aside the paternity affidavit.** *Id.* at 237. The Court cited IC 16-37-2-2.1, the paternity affidavit statute, which states that after sixty days have passed since the execution of the affidavit, the affidavit may not be rescinded unless a court:

- (1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and
- (2) at the request of a man described in subsection (h), has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

*Id.* at 235.

The Court noted that: (1) it is undisputed that Father was a minor when he signed the paternity affidavit; (2) Father signed the affidavit without the benefit of counsel; (3) Father maintained he believed he was signing the affidavit to grant guardianship of the child to the grandmother; (4) Grandmother was granted guardianship of the child, thus Father’s explanation is consistent with the course of events; (5) Mother testified that Father is not the child’s biological father and

that she was four months pregnant when they began the relationship. Id. at 235-36. The Court did not agree with the trial court's conclusion that Father's failure to appear at the May 22 hearing "ratified" the previously signed paternity affidavit. Id. at 236. The Court also disagreed with the trial court's conclusion that by signing the paternity affidavit, Father had effectively executed a "poor man's adoption." Id. The Court emphasized that the General Assembly has set forth specific provisions governing adoption in the Indiana Code; accordingly, a man cannot adopt a child simply by executing a paternity affidavit because it circumvents the legislative process. Id. The Court also said that if the State determines that a putative father is not the child's biological father, the State has an obligation not to pursue a paternity action against the putative father. Id. at 237. The Court said that this obligation is consistent with the best interests of the child and it protects the biological father and a putative father who is not the child's biological father. Id.

**Father's argument alleging judicial bias on the part of the Commissioner failed because Father did not object to the Commissioner's comments at trial and Father did not argue on appeal that the alleged bias rose to the level of fundamental error.** Id. at 239. Father alleged that the Commissioner exhibited bias by: (1) attempting to solicit an objection to an exhibit after the attorney representing the State had stipulated to its admission; (2) exhibiting condescension toward witnesses and Father's counsel during the hearing; (3) concluding the denial of Father's motion before he was finished presenting evidence; and (4) questioning Father's counsel on what was the point in calling a witness who would verify that Father was not the father of the child, and stating before Mother was to testify that Father was not the father of the child, that "[i]t doesn't matter." The Court did not intend for the result to be interpreted as approval of the trial court's dismissive and condescending rhetoric during the September 15, 2009, hearing and found such behavior among Indiana's judiciary to be undesirable. Id.