



Paternity

8/26/2004

In **In Re Paternity of A.B.**, 813 N.E.2d 1173 (Ind. 2004), the Court granted transfer and affirmed the trial court's dismissal of Mother's petition to establish paternity. Mother and alleged Father were not married. The Court's facts indicate that: (1) the child was conceived in Missouri where the Mother and alleged Father were employed; (2) Mother moved to Indiana where the child was born; (3) Mother and child moved to Michigan for a brief time then returned to Indiana; (4) Mother filed a paternity action in Missouri which she dismissed a year later; and (5) at the time of the appeal, Mother resided in Missouri and alleged Father resided in Texas. The trial court's findings state that (1) the alleged Father never had contact with the State of Indiana never having visited or lived here; (2) the child was neither conceived nor born here; and (3) the child lives here "now" and has lived here for more than six months.

The trial court correctly dismissed Mother's petition to establish paternity because the court lacked personal jurisdiction over alleged Father, a non-resident of Indiana, in the absence of the sufficient minimum contacts with Indiana required by the Due Process Clause of the Fourteenth Amendment and Trial Rule 4.4.

Id. at 1176. Mother had urged that the trial court properly had jurisdiction to issue an order establishing paternity and to determine custody and parenting time by reason of the Uniform Child Custody Jurisdiction Law (UCCJL) because the child had been an Indiana resident for more than six months and it was in the child's best interest for the trial court to assume jurisdiction. Mother had relied on Matter of Paternity of Robinaugh, 616 N.E.2d 409 (Ind. Ct. App. 1993), in arguing that her paternity action, as a proceeding relating to custody and the adjudication of status, was an exception to the minimum contacts requirement normally associated with personal jurisdiction. Mother did not argue that she had complied with T. R. 4.4, which specifies the grounds for Indiana courts to exercise jurisdiction over non-residents. The Court noted that it did not get a chance to review Robinaugh when it was decided, because review was not requested. In Stidham v. Whelchel, 698 N.E.2d 1152, 1154-55 (Ind. 1998), a paternity action, the Court held that a judgment entered without minimum contacts violates the Due Process Clause of the Fourteenth Amendment, and stated, "A court simply has no power over persons who have no contact with their territory, unless and until there is a response or an appearance and the lack of personal jurisdiction is not protested." Robinaugh was not discussed in Stidham. A.B. at 1175.

The Court also explicitly found Robinaugh to be incorrectly decided to the extent it deemed the UCCJL to supersede the due process protections of the Fourteenth Amendment. The Court, however, pointed out that, whereas the UCCJL arguably applies to paternity actions but does not expressly refer to them, the Uniform Interstate Family Support Act (UIFSA), enacted in 1997, explicitly applies to proceedings “to determine paternity,” I.C. 31-18-2-1, and permits an Indiana tribunal to exercise personal jurisdiction over a nonresident only upon satisfaction of eight enumerated conditions intended to satisfy due process requirements which the Court listed. The Court found that the facts presented in Robinaugh would likely support Indiana jurisdiction under the UISFA in the event the mother had “resided in Indiana with the child” or if “the child resides in Indiana as a result of the acts or directives of the [mother].” I.C. 31-18-2-1(3),(5). A.B. at 1175-76.