



## **Paternity**

5/12/2006

In **In Re Paternity of N.R.R.L.**, 846 N.E.2d 1094 (Ind. Ct. App. 2006), the Court affirmed the trial court's order denying a motion to dismiss the paternity petition and joining the adjudicated father as a party to the proceeding. The motion to dismiss had been filed by the mother and the adjudicated father. When the child was born on October 12, 2002, the mother and the adjudicated father executed a paternity affidavit which was subsequently filed, along with a petition for child support, in the Marshall Circuit Court (herein, the trial court). On October 8, 2004, in the Marshall Superior Court, the petitioner filed to establish his paternity of the child, naming the mother as the sole respondent. The mother and the petitioner stipulated to genetic testing which showed the petitioner to be the child's biological father. Subsequently, the Marshall Superior Court adjudged the petitioner to be the child's father, ordered that he was to have visitation, and ordered the parties to submit to a custody evaluation. Then, the case was transferred to the trial court. The mother filed a motion to dismiss the petitioner's paternity action, and the adjudicated father filed a motion to intervene. The adjudicated father, then, filed his Notice of Joinder in Motion to Dismiss, and the petitioner filed a motion to join adjudicated father. After a hearing, the trial court denied the motion to dismiss but granted petitioner's motion to join the adjudicated father as a party. The adjudicated father filed an appeal which asserted that the petition should have been dismissed because it did not name him as a necessary party to the action.

**Although the adjudicated father is a necessary party to the paternity action, any error arising from failure to name him as a party was remedied when the trial court allowed him to intervene.** *Id.* at 1096. The Court reviewed statutory provisions regarding establishing paternity by use of a paternity affidavit, as well as by use of "a genetic test that indicates with at least a ninety-nine percent (99%) probability that the man is the child's biological father." I.C. 31-14-7-1(3). See also I.C. 16-37-2-2.1; I.C. 31-14-2-1; I.C. 31-14-7-2(b); and I.C. 31-14-7-3. The Court noted that the adjudicated father (1) is listed as the father on the child's birth certificate; (2) with the mother, jointly executed a paternity affidavit two days after the child's birth, making him the child's legal father; and (3) was named in a child support action regarding the child which was initiated by the mother and in which the trial court's Chronological Case Summary at February 20, 2004 states, "Paternity Established." The Court held that the adjudicated father is the child's legal father pursuant to I.C. 31-14-7-3, and, as such, is a necessary party to the petitioner's paternity action. See I.C. 31-14-5-6. *Id.* at 1095-96.

After noting its similarities to this case, the Court distinguished In Re Paternity of K.L.O., 815 N.E.2d 906 (Ind. Ct. App. 2004), in which the appeals court had reversed the trial court's denial of the biological father's motion to dismiss which had been based on failure of the mother to join the child's legal father as a necessary party to the action she had filed to establish paternity in the biological father. The Court pointed out that, although the adjudicated father here and the "legal" father in K.L.O. were each statutorily the given child's legal father by virtue of having executed a paternity affidavit, in K.L.O., the "legal" father was never a party to any action to establish paternity, unlike here where the adjudicated father's "intervention remedied any error arising from the failure to name him as a party to the paternity action." N.R.R.L. at 1097.

**The petition does state a claim for which relief can be granted, and thus the trial court did not err when it denied the motion to dismiss the petition.** Id. at 1098. The Court treated the motion to dismiss as an Indiana Trial Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. The Court noted that such a motion tests the legal sufficiency of a claim rather than the facts supporting it, and that granting such a motion is proper if it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances. Id. at 1095-96.

The Court opined that the legislature has stated that it "favors a public policy of establishing paternity under [title 31, article 14] of a child born out of wedlock." I.C. 31-14-1-1. The Court noted that (1) although the adjudicated father's execution of the paternity affidavit had established him as the child's legal father, it did not preclude another man's attempting to establish paternity of the child; and (2) genetic testing established the petitioner's status as the biological father, thus raising the presumption under I.C. 31-14-7-1(3) that he is the child's biological father. In footnote 3 of its opinion, the Court stated:

Under Indiana Code Section 16-37-2-2.1(k), "the court shall set aside the paternity affidavit upon a showing from a genetic test that sufficiently demonstrates that the person who executed the paternity affidavit is excluded as the child's biological father." We do not reach the issue of whether the genetic test establishing [the petitioner] to be the child's biological father necessarily excludes [the adjudicated father] as the child's biological father. Such a finding would be grounds for the trial court to set aside [the adjudicated father's] paternity affidavit. See Indiana Code Section 16-37-2-2.1.

Id. at 1097.