

Children's Law Center of Indiana



Paternity

10/5/10

In **In Re Paternity of P.S.S.**, 934 N.E.2d 737 (Ind. 2010), the Court affirmed the juvenile court's denial of Father's motion for relief from judgment. The juvenile court had dismissed Father's petition to establish another man's paternity of the sixteen-year-old third child of Father's marriage to Mother. Four children were born during the marriage of Father and Mother. In November 2001, the Allen Circuit Court approved the parties' mediated settlement in which they agreed that the fourth child born during the marriage is the biological child of a third person and that Father and Mother would share joint custody of the remaining three children. On the record it does not appear that the third child's paternity was vigorously contested in the dissolution court. Seven years later, in November 2008, Father, acting as "next friend" of the sixteen-year-old third child born during the marriage, filed a pro se petition in Allen Juvenile Court to establish another man as the child's father. Mother and Putative Father were named as respondents. Father sought reimbursement for the child's birth expenses and for child support that Father had paid. Father alleged fraud by Mother and Putative Father, neither of whom answered the petition. On December 11, 2008, the juvenile court dismissed Father's petition because Allen Circuit Court, the dissolution court, had exclusive jurisdiction in the dissolution proceedings and the issue of paternity had been raised and resolved in the dissolution proceedings. Father appealed, and the Court of Appeals analyzed his motion for relief from judgment under Indiana Trial Rule 60(B)(8). The Court of Appeals unanimously held that the juvenile court erred in concluding that it lacked jurisdiction to entertain the motion, but affirmed the juvenile court's judgment, concluding that the third child was collaterally stopped from seeking a paternity determination. **In Re Paternity of P.S.S.**, 913 N.E.2d 765 (Ind. Ct. App. 2009). The Indiana Supreme Court granted transfer, and affirmed the juvenile court's judgment on slightly different grounds.

The Court declined to entertain Father's attempted but untimely appeal, observing that a motion for relief from judgment is not a substitute for a direct appeal. *Id.* at 741. The Court noted that the trial court's December 11, 2008, order of dismissal was an appealable final order and therefore it had to be challenged by way of a timely notice of appeal or a timely motion to correct error as set out in Ind. App. R. 9A(1) or Ind. Trial Rule 59(C). *Id.* at 740. The Court stated that Father was thus required to file either a notice of appeal or a motion to correct error by January 12, 2009, but he did not file a motion until January 29, 2009, which was not timely. *Id.* The Court observed that Ind. App. R. 9A(5) provides that the right to appeal shall be

forfeited (except for reasons not applicable here) if the notice of appeal is not timely filed. Id. Father's January 29 motion was styled as a "Motion to Correct Error Pursuant to Indiana Trial Rule 60(B)(2)", but the Court opined that a motion for relief from judgment under T.R. 60(B) is not a substitute for a direct appeal. Id. The Court noted that the burden is on the movant to establish ground for T.R. 60(B) relief, and the motion is addressed to the equitable discretion of the trial court. Id. at 740-41. The grant or denial of the T.R. 60(B) motion "will be disturbed only when that discretion has been abused." Fairfield v. Fairfield, 538 N.E.2d 948, 949-50 (Ind. 1989). P.S.S. at 741. The Court observed that Father advanced no argument (such as newly discovered evidence or extraordinary circumstances occurring since the entry of the trial court's dismissal order) explaining how the trial court may have abused its discretion. Id. Instead the substance of Father's claim is a challenge to the merits of the trial court's dismissal order. Id.