

# Children's Law Center of Indiana



## Custody and Parenting Time

11/23/16

In **Sheetz v. Sheetz**, 63 N.E.3d 1077 (Ind. Ct. App. 2016), the Court affirmed the trial court's order requiring Husband to pay child support for G.B.S., who was conceived while Husband was in prison. *Id.* at 1083. The Court found that Husband was equitably estopped from rebutting the presumption that he is the biological father of G.B.S., the oldest of three children born during Husband's marriage to Wife. *Id.* Husband and Wife were married on April 2002, and Husband was sent to prison shortly thereafter. While Husband was in prison, Wife became pregnant by another man. When Wife was about twelve weeks pregnant, she told Husband that she was pregnant and that another man was the father of her expected child. Wife offered to file for divorce, but Husband said not to do so. Husband and Wife agreed that: (1) Wife would not tell the biological father that she was pregnant with his child; and (2) Husband and Wife would raise the child "as their own child." Shortly after Husband's release from prison, Wife gave birth to G.B.S. on May 17, 2003. Husband was present at the birth and signed the birth certificate as "father". Husband did not want Wife to contact the biological father of G.B.S., to seek child support from the biological father, or to institute paternity proceedings. Husband and Wife had two more children during their marriage. For the next twelve years, Husband held G.B.S. out to the world as Husband's son. Of the three children born during his marriage to Wife, Husband had the "closest relationship" with G.B.S. In 2010, when Husband and Wife were discussing the possibility of a divorce, Wife asked Husband if they should tell G.B.S. that Husband is not his biological father. Husband replied that whether they were married or divorced, he is the father of G.B.S.

Wife filed for divorce in May 2014, and claimed that G.B.S. and the other two children were children of the marriage. Husband did not object to Wife's claim that G.B.S. was a child of the marriage. The trial court entered provisional orders for Husband to pay child support for all three children, and Husband did not object to paying child support for G.B.S. The week before the September 2015 final divorce hearing, Wife, upon the advice of G.B.S.'s counselor, told G.B.S. that Husband is not his biological father. At the final hearing, Husband and Wife stipulated that: (1) they agreed Husband is not the biological father of G.B.S., who was born during their marriage; and (2) Wife, by so stipulating, was not waiving the right to seek child support for the benefit of G.B.S. In dissolving the parties' marriage, the trial court found: (1) Husband induced Wife to forego establishment of paternity and child support for G.B.S. from the child's biological father; (2) Husband promised that he would support G.B.S.; and (3) Wife firmly believed that she and Husband would be responsible for G.B.S. The trial court concluded that Husband was

estopped from denying his obligations to G.B.S. because to hold otherwise would be unjust. The court awarded custody of G.B.S. and the other two children to Wife, ordered Husband to pay child support for G.B.S. and the other two children, and deferred the issue of Husband's parenting time until the previously issued no contact order is terminated. Husband appealed the order requiring him to pay child support for G.B.S.

**The Court held that, under the circumstances of this case, Husband was equitably estopped from rebutting the presumption that he is the biological father of G.B.S.** Id. at 1083. Citing Russell v. Russell, 682 N.E.2d 513, 517 (Ind. 1997), the Court noted that a dissolution court must determine whether a child is a child of the marriage. Sheetz at 1080. The Court also looked to IC 31-9-2-13, which states that "child" means "a child...of both parties to the marriage" and includes "[c]hildren born out of wedlock to the parties" and "[c]hildren born or adopted during the marriage of the parties." Id. The Court noted that: (1) in a dissolution action, a man is presumed to be a child's biological father if the man and the child's mother are married to each other and the child is born during the marriage; (2) this presumption can be rebutted by direct, clear, and convincing evidence; (3) a stipulation between the parties is not enough to rebut this presumption; (4) the types of evidence used to rebut the marriage presumption for paternity include that the husband was impotent or sterile, the husband was absent during the entire time that the child must have been conceived, and DNA testing. (Multiple citations omitted.) Id.

The Court said that equitable estoppel is a judicial remedy by which a party may be precluded by his own acts or omissions from asserting a right to which he otherwise would have been entitled or from pleading or proving an otherwise important fact. Id. Citing 28 Am. Jur. 2d *Estoppel and Waiver* (2011) at section 27, the Court explained that the purpose of equitable estoppel is to preclude a party from asserting a right when he has led another to form the reasonable belief that the right would not be asserted, and loss or prejudice to the other would result if the right were asserted. Sheetz at 1080-81. The Court observed that Wife reasonably believed Husband would not challenge his paternity of G.B.S. and then relied on Husband's promise by not filing a paternity action against G.B.S.'s biological father. Id. at 1081. Based on IC 31-14-5-3(b), which requires the mother to file a paternity action not later than two years after the child is born, the Court noted that Wife's opportunity to establish paternity in G.B.S.'s biological father had long passed. Id. The Court said none of the exceptions to the statute likely applied to the Sheetz case. Id.

Citing Levin v. Levin, 645 N.E.2d 601, 604 (Ind. 1994), the Court said: (1) the doctrine of equitable estoppel springs from equitable principles, and it is designed to aid in the administration of justice, where, without its aid, injustice might result; and (2) the doctrine is not limited to circumstances involving an actual or false representation or concealment of an existing material fact. Sheetz at 1081. The Court noted that, in Levin, the Indiana Supreme Court applied the doctrine of equitable estoppel to prevent a husband from denying his obligations to support his non-biological child conceived through artificial insemination by the agreement of the husband and wife during their marriage. Levin at 604. Sheetz at 1082. The Court opined that public policy supported applying equitable estoppel in the Sheetz case to avoid leaving G.B.S. without a father. Id. at 1083. The Court acknowledged that public policy also favors requiring a

biological father to pay support for his child, but said that, when faced with two competing policies, under the facts of the Sheetz case, the policy of not making a child fatherless prevailed. Id. at 1083 n.6. The Court was “confident” that the trial court would not have accepted the parties’ stipulation that Husband is not the natural father of G.B.S. had the court known that such acceptance would mean that G.B.S. would be fatherless. Id. at 1083 n.7.

The Court observed that applying the principles of equitable estoppel requires the good judgment of the factfinder looking at the circumstances of each case. Id. at 1083. The Court concluded equitable estoppel was appropriate in the Sheetz case because: (1) Husband told Wife when she was pregnant that he would raise G.B.S. as his own child and did so for twelve years; (2) Husband told Wife not to tell G.B.S.’s biological father, not to seek support from him, and not to file a paternity action; and (3) Wife relied on Husband’s representations and did not establish paternity in the biological father of G.B.S. Id. The Court noted that, even if equitable estoppel did not apply, the Court would remand the case to the trial court with instructions for it to withhold acceptance of the parties’ stipulation until paternity was established in the biological father of G.B.S. Id. at 1083 n.7. The Court said that, to the extent that Husband is allowed parenting time with the other children when the no-contact order is terminated, Husband is entitled to parenting time with G.B.S. Id. at 1083 n.8.