

Children's Law Center of Indiana



Paternity Establishment

1/31/18

In **Paternity of I.I.P. v. Rodgers**, 92 N.E.3d 1158 (Ind. Ct. App. 2018), the Court reversed and remanded the trial court's order which dismissed Mother's petition to establish Biological Father's paternity of her four-year-old child. *Id.* at 1164. The child was born on November 21, 2012. Near the time of conception, Mother was in a relationship with Legal Father. Around the same time, Mother also had an intimate relationship with Biological Father, and ended her relationship with Legal Father. When the child was about four months old, Mother and Legal Father resumed their relationship and were married on September 13, 2014. Legal Father established a bond with the child and provided care for her. On January 13, 2015, Mother and Legal Father executed a paternity affidavit to establish his paternity of the child. On November 30, 2015, Legal Father filed a petition to dissolve his marriage to Mother. On March 15, 2016, the dissolution court issued a provisional order in which it found that Legal Father was the child's father, and granted him the right to exercise parenting time with the child during the pendency of the dissolution. On September 9, 2016, Mother filed a Verified Petition to Establish Paternity, identifying Biological Father as the child's father. Mother also moved for genetic testing and moved to join Legal Father as a party to the paternity action. On October 14, 2016, Legal Father moved to intervene in the paternity proceedings, identifying himself as the child's father based on the validly executed paternity affidavit, and moved to dismiss the paternity action. On October 19, 2016, Mother submitted the results of a DNA analysis, which established with a 99.99% probability, that Biological Father is the child's biological parent. The trial court joined Legal Father as an intervening respondent in the paternity action. On February 14, 2017, Legal Father filed a Motion to Dismiss Petition to Establish Paternity, alleging the petition failed to state a claim upon which relief could be granted, was time-barred by the statute of limitations, was barred by laches, estoppel, and *res judicata*, and was contrary to the child's best interests. On February 16, 2017, Biological Father filed a motion to establish his paternity and simultaneously disestablish Legal Father's paternity.

The trial court conducted a paternity hearing on March 14, 2017. On May 9, 2017, the trial court issued its Findings, Conclusions, and Judgment. The trial court: (1) granted Legal Father's motion to dismiss Mother's petition to establish paternity; (2) determined Legal Father had executed a paternity affidavit, and no party timely challenged his paternity or alleged fraud, duress, or material mistake of fact in the execution of the affidavit; (3) concluded that, by signing the paternity affidavit, Mother was estopped from attempting to establish paternity in another man; (4) Biological Father never filed a petition to establish paternity and the time for doing so had expired; and (5) nobody filed a petition as next friend on behalf of the child to establish Biological Father's paternity. Mother and Biological Father appealed.

The Court treated Legal Father’s motion to dismiss Mother’s petition to establish paternity as a motion for summary judgment under Indiana Trial Rule 56. *Id.* at 1161. Quoting *In re Paternity of R.M.*, 939 N.E.2d 1114, 1118 (Ind. Ct. App. 2010), the Court explained that: (1) the court must carefully consider a summary judgment ruling “to ensure that a party was not improperly denied its day in court”; (2) review is limited to the evidentiary materials designated to the trial court; (3) based on the designated facts, the Court “must determine whether there is a genuine issue as to any material fact and whether the moving party is entitled to a judgment as a matter of law”; (4) the Court construes all factual inference in favor of the non-moving party “and resolve[s] all doubts as to the existence of a material issue against the moving party”; (5) the moving party bears the burden of making a *prima facie* showing that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law, at which point the burden shifts to the non-moving party to produce evidence demonstrating the existence of a genuine issue of material fact. *I.I.P.* at 1162.

The Court concluded that Legal Father was not entitled to judgment as a matter of law on Mother’s petition to establish Biological Father’s paternity of her child. *Id.* at 1164. The Court noted that IC 31-14-1-1 states “the [Indiana] general assembly favors the public policy of establishing paternity of a child born out of wedlock.” *I.I.P.* at 1161. Quoting *Drake v. McKinney*, 717 N.E.2d 1229, 1231 (Ind. Ct. App. 1999), the Court observed the ultimate goal of allowing paternity suits “is to promote the welfare of the child.” *I.I.P.* at 1161.

The Court found there was no dispute that Legal Father established paternity by executing a paternity affidavit. *Id.* at 1162. The Court reviewed the paternity affidavit statute, IC 16-37-2-2.1, and concluded there appeared to be no statutory basis for rescinding Legal Father’s paternity affidavit. *Id.* Quoting *In re Paternity of Infant T.*, 991 N.E.2d 596, 600 (Ind. Ct. App. 2013), *trans. denied*, the Court explained it is well established that paternity may be “indirectly disestablish[ed] once it has been established in another man.” *I.I.P.* at 1162. The Court looked to IC 31-14-4-1, which provides in relevant part that a paternity action may be filed by the mother; a man alleging to be the child’s biological father; the mother and alleged father jointly; or the child. *Id.* at 1163. The Court noted the two year statutory limitations for filing a paternity action by the mother or the alleged father. *Id.* Quoting IC 31-14-5-3(b), the Court listed the exceptions to the two year statute of limitations for a mother or a man alleging to be the child’s father to file a paternity action: (1) both the mother and the alleged father waive the limitation on the actions and file jointly; (2) support has been furnished by the alleged father or by a person acting on his behalf, either voluntarily or under an agreement with: (A) the mother; (B) a person acting on the mother’s behalf; or (C) a person acting on the child’s behalf; (3) the mother...files a petition after the alleged father has acknowledged in writing that he is the child’s biological father; (4) the alleged father files a petition after the mother has acknowledged in writing that he is the child’s biological father; (5) the petitioner was incompetent at the time the child was born; or (6) a responding party cannot be served with summons during the two year period. *Id.*

Mother contended the paternity petition was timely filed because she filed it as the child's next friend, and even though the petition did not explicitly contain those words, the trial court should have recognized it as such or granted her leave to amend the petition accordingly. Biological Father argued the trial court disregarded the four applicable exceptions which permitted either him or Mother to file the paternity action more than two years after the child's birth. The Court felt "compelled to express our exasperation over the instability and confusion that the irregularity of these proceedings [had] undoubtedly cause the ... Child—who developed a bond with Legal Father only to be subsequently introduced to a new father figure and inevitably distanced from Legal Father". Id. at 1164. The Court agreed with Mother and Biological Father that Legal Father was not entitled to judgment as a matter of law, and noted that Biological Father and Mother could have effectively disestablished Legal Father's paternity and established Biological Father's paternity if Mother's paternity petition had strictly complied with IC 31-14-5-2(a)-(b) or IC 31-14-5-3(b)(1), (3), or (4). Id. The Court observed the trial court ignored Mother's request to amend her paternity petition. Id. The Court opined there was a material question of fact as to whether Biological Father provided support for the child, since Biological Father testified he had been living with Mother and the child and providing financial support for the child for eight months preceding the paternity hearing. Id. The Court explained the provision of support would permit Biological Father or Mother to file a paternity petition more than two years after the child's birth, thereby establishing paternity in Biological Father and disestablishing paternity in Legal Father. Id. The Court found further proceedings were warranted in this case. Id.