

Children's Law Center of Indiana



Custody and Parenting Time Paternity Establishment

12/13/2018

In **In Re Paternity of K.H.**, 116 N.E.3d 504 (Ind. Ct. App. 2018), the Court held that: (1) Father had standing to establish paternity under the paternity statutes; (2) the evidence in the record supported the trial court's determination of Father's paternity; (3) the trial court did not err in taking judicial notice of CHINS records; (4) the trial court did not err in admitting the MMPI testing into evidence; and (5) the trial court did not err in deny Father's motion to change the child's surname.

The child was born out of wedlock to Mother and Father in 2014, and in 2017, the state filed a CHINS petition, due to Mother driving the child in a car with illegal drugs and her subsequent arrest. Father learned of the child's existence for the first time during the CHINS proceeding. Father filed a petition to establish paternity in Noble County, which was later removed to Kosciusko County, which was later amended to be a petition to establish paternity, custody, parenting time, and name change, as the child's next friend. Mother filed motions to dismiss these petitions as time barred in his own right and therefore could not file a petition to establish paternity as next friend, and the trial court denied Mother's motions. The child was placed with Father during the CHINS. During the CHINS, Mother underwent a psychological evaluation and three diagnostic surveys, including the MMPI. The individual conducting the evaluation warned that while the results may not be accurate due to overreporting, Mother presented as having a variety of pathologies, including Posttraumatic Stress Disorder, Severe Cannabis Use Disorder, Severe Amphetamine-Type Substance Use Disorder; Moderate Sedative, Hypnotic, or Anxiolytic Use Disorder; and Moderate Cocaine Use Disorder. Although Mother objected to use of administering professional as not properly qualified based on her training, the trial court qualified her as expert and admitted the psychological examination over Mother's objection that Walker (the administering professional) was not qualified to administer the MMPI. The trial court also took judicial notice of the CHINS proceeding, over Mother's objection that he proceedings were confidential and not relevant. The trial court issued its judgment of paternity and custody order, granting sole physical and legal custody to Father, to be effective upon the CHINS court's approval or upon the closure of the CHINS proceedings. The trial court ordered that the child's surname would remain the same. Mother and Father both appealed.

Father had standing to initiate a paternity action under the paternity statute to do so, and DCS did not have exclusive standing to initiate a paternity proceeding under the CHINS statute; consequently, the trial court did not err in denying Mother's motion to dismiss Father as a party to the paternity proceeding. *Id.* at 511. Mother argued that Father was time-barred in his own right from filing a petition to establish paternity, that he could not file as next friend of the child, and that DCS was the only proper party to initiate a paternity proceeding while a CHINS case was pending. *Id.* 509-10. The Court first noted that this issue would be

reviewed *de novo*, and that unambiguous statutes under review would be given their clear and plain meaning in order to give effect to the legislative intent. *Id.* at 509. IC 31-34-15-6 provided, at the time Father filed his petition, that if a child born out of wedlock was alleged to be a CHINS, then DCS must refer the child's case for the filing of a paternity petition if the alleged father's identity is known, and if DCS believes it would be beneficial to establish paternity. The statute also provides that DCS must sign the paternity petition as the child's next friend. *Id.* Mother argued that the requirement for DCS to sign as the child's next friend gave DCS the exclusive authority to start a paternity action, and further, required DCS to start a paternity action unless it deemed that doing so would not be beneficial to the child. *Id.* at 509-10. The Court found Mother's argument to be unsupported by the statute. *Id.* at 510. The Court opined that allowing DCS to refer a case for paternity establishment if it reasonably believed doing so would be beneficial was permissive; such permissive wording does not compel DCS to establish paternity, and does not give it exclusive authority to do so during a CHINS petition. *Id.* Since DCS did not make a determination or a referral, there was no exclusive mandate for DCS to sign a paternity petition as the child's next friend. *Id.* The Court also noted that "statutes relating to the same general subject matter are in *pari materia* and should be construed together to produce a harmonious statutory scheme." *Id.* citing Clark v. Kenley, 646 N.E.2d 76, 78 (Ind. Ct. App. 1995), *trans. denied*. At the time Father filed his paternity action, IC 31-14-4-1 provided for seven categories of people who can file paternity actions, one of whom is Father, and another of whom is DCS in a CHINS proceeding, if paternity has not already been established. *Id.* The Court noted that Mother's reading of IC 31-34-15-6 would render at least five of the categories of people meaningless just because a CHINS petition had been filed, and that Mother's interpretation would result in ongoing paternity cases being dismissed if a CHINS was initiated, resulting in DCS relitigating the same issues. *Id.* The legislature did not intend such a result. *Id.* at 510-11. Lastly, the Court noted that IC 31-14-5-2(a) provides that a person less than eighteen (18) years of age may file a petition if the person is competent except for the person's age. A person who is otherwise incompetent may file a petition through the person's guardian, guardian ad litem, or next friend." *Id.* at 511. Prior case law permits a putative father to file a paternity action as a child's next friend. *Id.* (internal citations omitted).

The evidence in the record clearly supported the trial court's determination of Father's paternity of the child. *Id.* at 512. Mother argued that Father failed to establish paternity, which the Court interpreted as a challenge to the sufficiency of the evidence supporting the trial court's determination. *Id.* at 511. The Court noted that generally, "the testimony of a mother regarding an act of sexual intercourse with the putative father, coupled with the probability of conception at such time, is sufficient to support the trial court's determination that he is the father of the child." *Id.* (internal citations omitted). The Court noted the following: (1) the child was born in September 2014; (2) Father had a sexual relationship with Mother in December 2013 or January 2014; (3) Mother testified she had sexual intercourse with Father in a time frame consistent with the child's conception; (4) Mother did not identify anyone else as a putative father; and (5) Mother, the party now contesting paternity, admitted to Father's paternity at the evidentiary hearing. *Id.* at 511-12. Evidence of an act of intercourse coupled with a probability of the correct timeframe of conception is sufficient to support a trial court's judgment. *Id.* (citing D.M. v. C.H., 380 N.E.2d 1269, 1270 (1978)). While Mother's admissions alone were not sufficient to establish paternity, they were evidence which supported the trial court's determination of paternity. *Id.* at 512. Mother's arguments that Father did not establish when the sexual

intercourse took place, when the child was born, and did not preclude anyone else from being the father ignored Mother's own testimony to the contrary. Id.

Mother waived her claim regarding the trial court taking improper judicial notice because she did not object at trial; waiver notwithstanding, the trial court did not err in taking judicial notice of the CHINS records. Id. at 512. Mother argued that the trial court improperly took judicial notice of facts contained within the CHINS records. Id. At the trial, Mother objected to these records based on relevancy and confidentiality concerns, but not that judicial notice was improper. Id. The Court noted that a party may not object on one ground at trial and argue a different basis on appeal. Id., citing Francies v. Francies, 759 N.E.2d 1106, 1113 (Ind. Ct. App. 2001). Furthermore, Father requested that the trial court take judicial notice of certain CHINS records, not specific facts, and Indiana Evidence Rule 201(b)(5) provides that a court may take judicial notice of the records of a court of this state. Id.

Mother did not establish any deficiency in Walker's qualifications to administer of the MMPI, and consequently there was no abuse of the trial court's discretion in admitting the MMPI; furthermore, even if the trial court had erred in admitting the evidence, it would not merit reversal. _____. Mother argued that Walker was not qualified to administer the MMPI pursuant to the qualifications policy Mother admitted as evidence, which Mother argued showed that Walker was required to hold a doctorate or certification/membership in a professional organization in order to administer the MMPI. Id. at 512. However, the Court noted that the same policy also provided that the test could be administered by persons without the listed credentials as long as they were under the supervision of a qualified person. Id. at 513. Since Walker administered the test under the supervision of a qualified user, Mother did not establish error in the admission of the test results. Id. The Court noted that a claim of error based on evidentiary admissions must affect a party's substantial rights. Id. Since the trial court made only two findings about Mother's mental health, neither of which was tied to the MMPI results, Mother's substantial rights were not impacted by the admission of the evidence. Id.

The trial court's decision to not change the child's surname was supported by the evidence and was not an abuse of discretion or erroneous. Id. at 514. The Court noted that when a name change is requested in a paternity proceeding, the court may consider many factors, including: (1) whether the child holds property under a certain name; (2) whether the child is identified in public and private by a certain name; (3) the degree of confusion a name change might cause; (4) the child's desires, if the child is mature enough to express them; and (5) what name appears on records relating to the child. Id. at 513, citing C.B. v. B.W., 985 N.E.2d 340, 343 (Ind. Ct. App. 2013), *trans. denied*. The Court also cited case law holding that a child born out of wedlock is served best when the child knows and is identified with both parents, that a child's surname connect the child with a parent, and the custodial parental is often connected with a child in countless ways on a daily basis. Id. at 513-14, citing C.B. at 348. The trial court's decision to not change the child's surname was supported by the following evidence: (1) the child knew her full name; (2) retention of that name would promote consistency for the child; (3) Father presented no evidence on the enumerated factors or the child's best interests in changing the name; (4) Father was the custodial parent and would be continually identified with him on a daily basis; and (5) the retention of Mother's surname would be a tangible reminder of the child's connection to Mother. Id. at 514.