



**Paternity Establishment**  
**GAL/CASA**  
4/30/2019

In **Litton v. Baugh**, 122 N.E.3d 1034 (Ind. Ct. App. 2019), the Court affirmed the trial court decision and held that it had properly dismissed Mother and Biological Father's petition to establish paternity.

Mother was in a relationship with Jason Baugh ("Legal Father.") They had one child together in 2005 and then became estranged at some point in 2008. During their estrangement, Mother had a brief relationship with Biological Father before resuming her relationship with Legal Father. Mother had another child, K.B. ("Child.") Legal Father executed a paternity affidavit listing himself as Child's biological father. In 2010, Mother's relationship with Legal Father ended.

Later in 2010, Mother married Andy Boyd ("Stepfather.") Shortly thereafter, Legal Father filed a petition to establish paternity regarding Child and his older child with Mother. The trial court issued an order establishing paternity of the two children. Mother and Legal Father were awarded joint legal custody of the children, Mother was granted primary physical custody of the children, and Legal Father was awarded parenting time pursuant to the Indiana Parenting Time Guidelines. In 2017, Legal Father filed a petition to modify custody. Mother then contacted Biological Father and asked him to take a private DNA test. Biological Father complied and the results revealed that there was a 99.9% probability that Biological Father was Child's biological father. Mother and Biological Father then filed a joint verified petition to establish paternity. At the time, Biological Father was incarcerated at the Marion County Jail. Legal Father was joined as a necessary party and Legal Father also filed a motion to intervene that was granted. The trial court then appointed a Guardian ad Litem. Biological Father and Mother then filed a petition to amend the caption so that they would be listed as next of friend's for the Child.

The trial court concluded that the Child was bonded with Legal Father had a nine year relationship with him, Child also was bonded with her older sibling, Mother and Biological Father had not acted in the best interest of the Child, and that Biological Father was merely tangentially involved in the Child's life as he was a recovering opiate addict who had other children whose lives' he is not involved in. The trial court found that Mother could not collaterally attack the prior paternity affidavit which she was a party to. However, the same was not true for the Biological Father as he was not a party to the earlier paternity affidavit. The trial court dismissed Biological Father's paternity affidavit without prejudice. Biological Father now appeals. Biological Father asserts that the trial court erred by dismissing his petition to establish paternity.

**Legal Father's paternity could be indirectly established by establishing paternity in Biological Father.** Id. at 1040. Legal Father executed a paternity affidavit and filed a paternity

action, resulting in a court order establishing his paternity. *Id.* at 1039. The Court noted that there are only two circumstances under which a paternity affidavit may be set aside. *Id.* Under IC 16-37-2-2.1, another individual must file a motion for a DNA test within 60 days of the filing of the paternity affidavit. If the sixty day time period has expired, the Court explained, the paternity affidavit cannot be rescinded unless there was fraud, duress, or a material mistake of fact, or, the individual who filed the paternity affidavit ordered a genetic test that excludes him as the biological father. *Id.* at 1040. Although none of these circumstances were present, Indiana case law provides that paternity can be indirectly disestablished by establishing paternity in another man. *Id.* (internal citations omitted).

**Even though the joint petition to establish paternity was barred by the doctrine of res judicata, Biological Father could amend his petition and potentially file by himself to establish paternity.** *Id.* at 1043. The Court then looked to whether the paternity affidavit jointly filed by Mother and Biological Father was in compliance with IC 31-14-14-1. *Id.* at 1042. The trial court opined that Mother was a party to prior paternity case with Legal Father, which resulted in a final order, and as such, Mother could not collaterally attack the paternity order by joining a new paternity case with Biological Father. *Id.* The Court agreed with this assessment. *Id.* The principle behind res judicata is to prevent parties from relitigating the same case. *Id.* at 1043. Since Mother was a party to the paternity affidavit and to the first paternity action, Mother was a party in privity and was prevented from relitigating the matter. *Id.* Prior case law provides that once a mother has signed a paternity affidavit, she cannot use paternity statutes to deprive a father of his legal rights. *Id.*

**A biological father must file to establish paternity within two years of the child's birth unless there is a statutory exception.** IC 31-14-5-3 establishes the rules for the time of filing for a paternity action. The paternity action must be filed no later than two years after the child's birth. Some of the listed exceptions include the furnishing of child support tolling the statute of limitations, the mother and father filing jointly and waiving the limitations, a father's written acknowledgement of paternity and the subsequent filing of the petition by certain persons, a mother's written acknowledgment of paternity and the father's subsequent filing, incompetency, and service issues.

**A child may file to establish paternity, or a next friend may do so on their behalf.** IC 31-14-4-1(5) provides for a child or someone on their behalf to file to establish paternity. A competent person under the age of eighteen may file to establish paternity; an incompetent person may file through their guardian, guardian ad litem, or next friend. A child may file any time before they reach the age of twenty, or within two years of becoming competent. Next friend is defined in Indiana case law as parents, guardians, guardians ad litem, and prosecutors; this has included a putative father as a permissible person. (internal citations omitted). The Court noted that this ability for fathers who are time barred from filing to be able to file as next friend appeared to be an inconsistency, and noted prior case law discussing this seeming inconsistency.

**A Guardian ad litem may file to establish paternity, and is charged with protecting the child's best interests while doing so.** IC 31-14-5-2(a) permits a guardian ad litem to file a paternity action on behalf of a child; both a next friend and a guardian ad litem are required to act in the child's best interests. Indiana case law provides that when there is a conflict between

an ability to establish paternity, and a child's best interests in doing so, a court must determine if it is in the child's best interests to even establish paternity. (internal citations omitted). If a paternity action is filed by a next friend or a guardian ad lite, and establishing paternity is shown to be not in a child's best interests, then the trial court must dismiss the paternity action, since the next friend or the guardian ad litem would be prevented by their duties from pursuing the action.