



## **Paternity Establishment**

12/11/2019

In **Matter of Paternity of M.A.M.**, 137 N.E.3d 1019 (Ind. Ct. App. 2019) *Riley, J. dissenting*, the Court held that the Prosecutor was entitled to bring an action to establish paternity in Alleged Father.

The child was born out of wedlock to Mother and Alleged Father in 2014, and lived with Mother. In 2018, Alleged Father applied for Title IV-D child support services, alleging he was the father of the child. The Prosecutor then filed a petition to establish paternity, naming Alleged Father as the Petitioner. After an initial hearing, DNS result indicated that Alleged Father was the biological father of the child. Mother then filed a motion to dismiss, both individually and as next friend of the child, asserting that Alleged Father was barred from filing the paternity suit under IC 31-14-5-3 (a man claiming to be a child's father must bring the suit within two years). The Prosecutor responded that the original petition was erroneously filed with Alleged Father as the petitioner, and that the petition should have been filed by the State of Indiana on behalf of the child. The Prosecutor accordingly filed an amended petition, indicating the Prosecutor as filing as next friend of the child. Mother moved to strike this amended petition, and after hearing argument, the trial court granted Mother's motion to strike and her other motions. The Prosecutor appealed.

**Pursuant to statute and federal law, prosecutors are allowed to file paternity actions. Id. at 1021.** Title IV-D of the federal Social Security Act requires states to provide various child-support services, including assistance in establishing paternity, in exchange for receiving certain federal funds. Id. IC 31-25-4-13.1 provides that the Child Support Bureau is required to contract with a prosecuting attorney or other person or entity in each judicial circuit "to undertake activities required to be performed under Title IV-D," including "establishment of paternity" and "establishment, enforcement, and modification of child support orders[.]" Id. Lastly, Indiana's paternity statutes provide that one of the people allowed to file a paternity action is a prosecutor operating under an agreement or contract with DCS. Id. at 1022. The Prosecutor asserted he was operating under one such agreement, and Mother did not dispute this. Id. Mother argued that this authority granted by IC 31-14-4-1(7)(B) was limited by IC 31-14-4-3, which provides that a prosecuting attorney operating under an agreement or contract described in IC 31-25-4-13.1, may file a paternity action if: (1) the mother; (2) the person with whom the child resides; or (3) the [Department of Child Services]; has executed an assignment of support rights under Title IV-D of the federal Social Security Act. Id. Mother asserted that this was the only circumstance under which a prosecutor could file to establish paternity, and since neither Mother nor DCS executed an assignment of rights, the prosecutor was not authorized to file the petition. Id. However, the Court noted that Title IV-D and Indiana's corresponding Title IV-D statutes clearly contemplate the filing of paternity actions beyond Mother's arguments, and cited several such provisions. Id. at 1022-23.

Alleged Father applied for services, just as contemplated by Indiana and federal law, and pursuant to those laws, the Prosecutor filed a petition to establish paternity. Id. at 1023. If Mother's argument was correct, the important aspects of the statutes would be stripped of meaning. Id. The Indiana Legislature has also established a clear policy in favor of establishing paternity for a child. Id.

**The Court concluded that the 2015 repeal of IC 31-14-4-2 not affect its reasoning and determination. Id. at 1024.** Mother argued that the 2015 repeal of IC 31-14-4-2 meant that a prosecutor should not be permitted to file a paternity action at the request of an alleged father; the statute had provided that a prosecutor was required to file a paternity action when asked to do so by an alleged father or others. Id. The Court again noted that this statute was not the only statute which referenced a prosecutor's ability to file to establish paternity, and consequently, its repeal did not affect a prosecutor's ability to do so. Id.

**The Court determined it was not incongruous for prosecutors to be able to file to establish paternity when alleged fathers may be time-barred from doing so. Id. at 1024.** The Court opined that "any incongruity is a direct result of the legislature's choice to exempt prosecutors from that limitation period...[t]he legislature is free to eliminate that exemption, but we are not." Id.

**Mother's constitutional rights regarding the child did not equate to a constitutional right to not have the paternity of the child established. Id. at 1024.** The Court opined that none of the cases Mother cited in support of her argument were in relationship to the involuntary termination of a parent-child relationship, and not applicable in this case. Id.