



## **Paternity**

2/7/2020

In **In Re the Support of J.O.**, 141 N.E.3d 1246 (Ind. Ct. App. 2020), the Court of Appeals reverses and remands the trial court's order granting Father's motion to dismiss the pending action for child support, finding that a paternity affidavit should stand unless it was executed in very narrow circumstances, which do not apply in the case at hand.

The child was born in April 2017. Father suspected the child was not his and requested a DNA test at the hospital, before signing the paternity affidavit. Father was advised that the hospital would not give a DNA test, and Father subsequently signed the affidavit without reading it. In May 2017, Father acquired a home DNA test from a pharmacy and the results indicated he was not the biological father of the child. In April 2018, Father submitted samples to a laboratory for a DNA test, and again the results indicated he was not the biological father of the child. On both occasions, Mother denied the test results and reiterated that Father was the biological father of the child.

In November 2018, the prosecutor filed a petition to establish child support for Father at Mother's request, and in January 2019, Father moved to dismiss on the grounds that he was not the biological father of the child. A court-ordered genetic test in March 2019 confirmed that Father is not the biological father of the child. Upon obtaining these results, the trial court granted Father's motion to dismiss, relying on the "mistake of material fact" in that Mother seemed to genuinely believe that Father was the father of her child.

**The trial court erred in granting Father's motion to dismiss and remove himself from the birth certificate; Father executed the paternity affidavit, and with none of the exceedingly rare legal exceptions applying, Father remained the child's legal father with all the attendant rights and responsibilities. Id. at 1251.** Paternity affidavits may be revoked within 60 days of signing, but "[a] properly executed paternity affidavit may not be rescinded more than sixty days after the execution unless (1) a court determines that fraud, duress, or material mistake of fact existed in the execution of the affidavit; and (2) a genetic test indicates that the man is excluded as the father of the child." I.C. § 16-37-2-2.1. The Court noted that this language is contained within the paternity affidavit itself, putting signees on notice.

Here, Father's testimony indicates while he didn't read the paternity affidavit, he was aware that he was possibly not the father at the time of the child's birth, and on multiple occasions thereafter. Id. at 1250. The Court relied on In re Paternity of B.M., 93 N.E.3d 1132 (Ind. Ct. App. 2018), finding that there cannot be a "mistake of material fact" with such knowledge and notice. Id. The Court explained circumstances that might constitute fraud, duress, or mistake of fact, supporting a dismissal of paternity, which are usually supported by accidental discovery of paternity (or lack

thereof) outside of a court action. Id. Here, Father’s multiple requests for and purchases of DNA testing undermine his arguments of extenuating circumstances and mistake. Id.

Finally, the Court takes issue with the fact that Father took no steps to disestablish paternity until a child support action was commenced. Id. at 1250-51. The Court notes that “where setting aside paternity would leave a child fatherless, then the child would be a ‘filius nullius,’ meaning a ‘son of nobody.’ *In re Paternity of E.M.L.G.*, 863 N.E.2d 867, 870 (Ind. Ct. App. 2007). Id. The paternity statute was ‘created to avoid such an outcome, which could carry with it countless ‘detrimental emotional and financial effect[s].’ Id. (quoting *Johnson Controls, Inc. v. Forrester*, 704 N.E.2d 1082, 1085 (Ind. Ct. App. 1999)).”