

Hawkins v. Hawkins

PATTY R. HAWKINS, Plaintiff,  
v. JERALD J. HAWKINS, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
DRS1996-386

*Blood Test to Determine Paternity; Partial Physical Custody*

1. When a court is asked to determine whether blood tests should be ordered in a case involving the question of paternity, the following two-part analysis is employed: First, one considers whether the presumption of paternity applies to a particular case. If it does, one then considers whether the presumption has been rebutted. Second, if the presumption has been rebutted or is inapplicable, one then questions whether estoppel applies.
2. The presumption of paternity applies in any case where the policies which underlie the presumption would be advanced by its application, and in other cases, it does not apply. The underlying policy is to preserve the marriage and family unit.
3. Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child), that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.
4. The doctrine of equitable estoppel is meant to address not only the potential harm a child could suffer, but also the responsibilities of the parents as established through their actions.
5. A father who, knowing he is not a child's biological father, has affirmatively asserted his parental rights by way of filing for custody of a child and who has been granted such rights by way of an Order of Court, cannot then deny paternity when it comes to financially supporting the child.

Appearances:

Eric J. Weisbrod, Esq., *Counsel for Plaintiff*

Shawn D. Meyers, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., April 7, 2004

Factual Background

1. Patty R. Hawkins (hereinafter "Mother") and Jerald J. Hawkins (hereinafter "Father") were married on July 27, 1989, separated in May of 1995, and divorced on July 1, 1998.
2. On November 1, 1991, Mother gave birth to C.X.H. at the Chambersburg Hospital, Franklin County, Pennsylvania.
3. Following the birth of the child, Mother, although placing Father's name on the child's birth certificate, advised Father that although the child was conceived and born during the marriage, the biological father

was a man named Cataldo Cipriotti.

4. After leaving the hospital, Mother took the child to the home of Cataldo Cipriotti and advised him that he was the father of the child.
5. Father did not have contact with the child until February 1992, approximately three (3) months after the child's birth.
6. Father, although not the natural father of the child, filed a petition for custody and following conciliation the parties reached an agreement in which Father was granted partial custody pursuant to an Order of Court entered July 28, 1998.
7. In the custody agreement, which Father signed on July 17, 1998, he admitted he was the father of the child.
8. Father has provided financial support to the child since the child's birth through July 28, 1998, and continues with regular contact to this date.
9. Mother, during the period of separation and following the issuance of the divorce decree, did not file for child support from Father on behalf of the child, as she maintained the position that Father was not the natural father of the child.
10. Following the divorce of the parties, Mother advised Father that she told the child that Father is not his natural father and the child's natural father is Cataldo Cipriotti.
11. Mother, although having had full-time employment with Falling Spring Nursing Home and Rehabilitation Center, is no longer working full-time and is now receiving benefits from the Pennsylvania Department of Welfare (hereinafter "DPW") for the aforementioned child, and three additional children born after the parties' marriage, while she studies to obtain her practical nursing license.
12. DPW regulations require Mother to seek child support from the fathers of all her minor children in order to receive a grant to pursue her education.
13. Mother, in order to preserve her DPW benefits, filed a petition for child support seeking financial support from Father on August 7, 2003.
14. Mother testified that, with Father's approval, to this day, the child refers to Father as "Dad."

#### Procedural Background

1. On or about October 6, 2003, Father filed a Petition to Stay Order of Child Support and Wage Attachment pursuant to Pa.R.Civ.P. 1910.10 et seq. and Issuance of Rule to Show Cause for Determination of Paternity pursuant to 23 Pa.C.S.A. Section 5104.
2. On October 6, 2003, an Order of Court was entered granting Father's request for a Stay and requiring Mother to file an Answer to said Petition.
3. On November 14, 2003, an Answer was filed, without the input of Mother as she could not be contacted by Counsel. New Matter was set forth in the Answer.
4. On December 4, 2003, an Answer was filed, which contained Mother's input.
5. On February 2, 2004, Father filed his Answer to Mother's New Matter.
6. On March 15, 2004, a hearing was held on Father's request for paternity testing. The parties stipulated to a number of facts and minimal testimony was taken.

#### Discussion

The issue before the Court is whether to order a blood test to establish paternity when Father has been exercising partial custody of the child since 1998 pursuant to an Order of Court, continues a relationship with the child, and Mother is only now asking for support.

The Pennsylvania Supreme Court has set forth a twofold analysis to employ when a court is asked to determine whether blood tests should be ordered in a case involving the question of paternity. *Brinkley v. King*, 701 A.2d 176 ( Pa. 1997). "[F]irst one considers whether the presumption of paternity applies to a particular case. If it does, one then considers whether the presumption has been rebutted. Second, if the presumption has been rebutted or is inapplicable, one then questions whether estoppel applies." *Id.* at

While the court in Brinkley states that the presumption of paternity still exists as to an intact family, the court reevaluates the presumption of paternity when the family is no longer intact. *Id.* at 180-181. The court held that "the presumption of paternity applies in any case where the policies which underlie the presumption ... would be advanced by its application, and in other cases, it does not apply." *Id.* at 181. The underlying policy is to preserve the marriage and family unit. *Id.* at 180.

In the present case, although the child was conceived and born during the marriage, the presumption is not applicable as there is not presently an intact family. The parties divorced on July 1, 1998.

Because the Court has determined that the presumption does not apply, it now focuses on whether estoppel applies.

Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child) that the person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father. As the Superior Court has observed, the doctrine of estoppel in paternity actions is aimed at "achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding the paternity of the child." *Id.* n.4.

Father urges the Court to examine the purpose behind the doctrine of equitable estoppel and quotes the following:

Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as the parent of the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life is not in fact his father. *Id.* at 180.

Father claims that the public policy behind equitable estoppel is not applicable in the present situation, as the child already knows that Father is not his biological father. Furthermore, Father claims there was no testimony from Mother to indicate that the child would suffer any harm from such a determination. Therefore, Father claims he should not be estopped from denying paternity and the request for blood tests should be granted. However, this Court does not believe the doctrine of equitable estoppel deals only with the potential harm a child could suffer. Rather, the doctrine of equitable estoppel is also meant to address the responsibilities of the parents as established through their actions.

Father asked the Court to make legal his custody rights regarding the child by filing a Complaint for Custody and a Stipulation and Agreement, which became an Order of Court in July 1998. He did this despite knowing that he was not the child's biological father. Mother told him at the time of the child's birth that he was not the biological father and she named the biological father. Knowing all of this, Father still had his name placed on the child's birth certificate, and has provided financial support for the child since his birth until at least July 28, 1998. Father has also allowed, and continues to allow, the child to refer to him as "Dad." Furthermore, Mother has knowingly allowed all of the above to take place. Therefore, both parties are estopped from denying Father's paternity.

As stated by Mother, Father is "asking this Court to grant him what almost any parent would consider to be Nirvana – the benefits of establishing a bond with a child; helping him grow up to be an adult, sharing in those experiences that will shape his personality and that a father and son will recall for the rest of their lives; but never having to endure the financial responsibility of providing for the child." (Mother's Brief.) Father cannot be allowed to receive all the benefits of parenthood without also living up to the responsibilities of parenthood.

#### Conclusion

If a presumption of paternity applies or if a parent is estopped from denying paternity, no blood tests will be ordered. *Brinkley, supra*. The legal analysis in this case is twofold. First, the Court has considered whether the presumption of paternity applied. The Court determined that the presumption did not apply, as there is no longer an intact family to protect. Second, the Court considered whether estoppel applied. The Court determined that estoppel did apply so as to prevent Father from denying paternity of C.X.H.

#### ORDER OF COURT

And now this 7th day of April, 2004, it is hereby ordered and decreed that:

1. Defendant's request for blood testing in regards to C.X.H. is denied.

2. The October 3, 2003, Order of Court establishing child support for C.X.H. is affirmed