

Paternity, Estoppel and Fraud

With More Children Being Born Out of Wedlock, Courts Face Increasingly Complex Family Situations

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hat is the law of paternity in Pennsylvania? Traditionally, the courts have

long held that there is a presumption of paternity if a child was born to a married couple. The husband was presumed to be the father and DNA tests that suggested otherwise were irrelevant.

Recent law, however, has eroded the presumption of paternity. Many believe it inequitable to hold a man responsible for the support of a child when it is clear to all that the child is not his biological child. The courts recently all but abolished the presumption's legitimacy by holding that it now only applies if there is an intact family at the time the presumption is raised, which essentially eliminates the presumption of paternity. The presumption is not raised when the family is intact as an action for child support can lie only when the parents are separated.

If a child is born out of wedlock, there is no presumption of paternity. One might then conclude that if there is no presumption of paternity, the next step in any paternity determination would be to conduct DNA tests. There is an equitable doctrine, however, that can be applied before DNA tests are compelled by the court. Paternity by estoppel is the doctrine that a man can be held liable for the support of a minor child even though DNA tests may exclude him as

the biological father. The basis for this doctrine is that if the man held the child out as his own and the child believes that he is the father, it would be unfair to the child to be then told that the man he believed to be his father, is, in fact, not his father.

The doctrine of paternity by estoppel 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,

be secure in knowing who their parents are. If a certain person has acted as the parent and bonded with 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." *Brinkley v. King*, 549 Pa. 241, 701 A.2d 176,180 (1997). Examples of a putative father holding a child out as his own, include holding out the child as his own to relative and friends, paying child support for the benefit of the child without challenging paternity and seeking to enforce custody rights through courts.

Paternity by estoppel is often applied before DNA tests are taken and makes such testing irrelevant. It can also be applied after DNA tests are conducted.

What if the man was deceived by the woman into believing that he was the father? Does paternity by estoppel still apply? There is an exception to the application of the

doctrine of paternity by estoppel: if the mother fraudulently induced a man into believing that he was the biological father, the man may avoid the doctrine of paternity by estoppel.

"However, when an individual acknowledges paternity only as a result of fraud and outside the context of an intact family, the application of the estoppel does not serve the underlying policy interests."

The traditional test for fraud is



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 ... The doctrine is aimed at achieving fairness as between the parents by holding both mother and father to their prior conduct regarding the paternity of the child." Further, "estoppel is based on the public policy that children should

“When an individual acknowledges paternity only as a result of fraud and outside the context of an intact family, the application of the estoppel does not serve the underlying policy interests.”

1) a misrepresentation; 2) a fraudulent utterance; 3) an intention by the maker that the recipient will thereby be induced to act; 4) justifiable reliance by the recipient upon the misrepresentation; and 5) damage to the recipient as a proximate result.

Courts have held that the mother is the only person who knows if there could be more than one father of the child as she “holds all of the cards.” If she withholds this information or lies about it, she has committed a fraud on the putative father. Such fraud can be a basis to escape the doctrine of paternity by estoppel. Other jurisdictions have taken more aggressive actions to abrogate the estoppel doctrine. Florida has enacted a statute that creates a cause of action for disestablishment of paternity. Such an action can be filed if the man becomes aware of newly discovered evidence that proves that he is not the child’s father. See Florida statute 742.18, which was made effective in 2006.

As more and more children are being born out of wedlock, the courts are more frequently caused to rule on complicated family situations regarding paternity. The law in this area has undergone significant changes in the recent past and is likely to continue to change in the near future. ■

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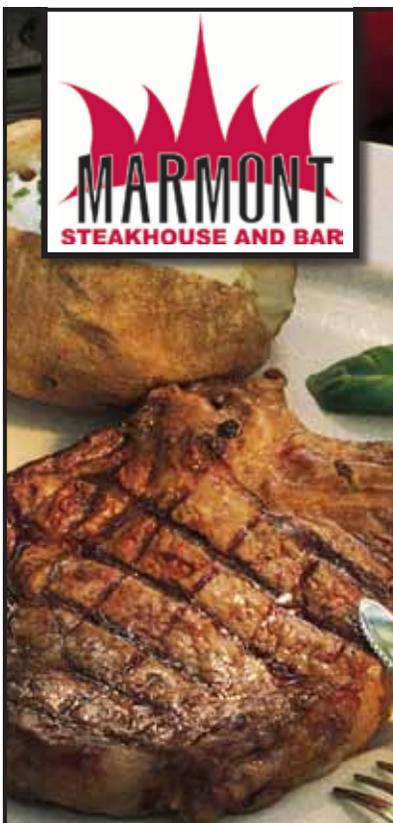
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