My Two Dads

SPEAKERS

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Questions to consider:

• Child’s perspective:
  • Who is my dad?  
  • Who should be my dad?

The Issue

• When should the biological (genetic) father be the legal father?  
• When should the non-biological (non-genetic) father be the legal father?

Ripped from the headlines

How DNA Testing is Changing our Business

[Image of newspaper headline]
“DNA Dilemma/Easy, Inexpensive Paternity Tests are Proving Increasingly Popular and Raising Tough Questions”
St. Paul Pioneer Press
October 29, 1998

“Dad Blood: If DNA tests prove that you’re not your children’s father, do you still owe child support?”
Reason
November 2002

“Push for Paternity Testing Often Leaves Children Suffering”
St. Paul Pioneer Press
September 23, 2002

“Paternity Suit Raises Doubts about DNA Tests”
Washington Post
August 21, 2005
“Who’s Your Daddy? Answer’s at the Drugstore”

msnbc.com
May 23, 2008

“Who’s Your Daddy? The Answer May Be at the Drugstore”

Scientific American
November 14, 2008

“Fathers to get £30 DNA paternity test over the counter”

Daily Mail (United Kingdom)
July 18, 2009

“‘Who Knew I was not the Father?’ How DNA Testing is Changing Fatherhood”

New York Times
November 22, 2009
“N.J. legislator proposes bill requiring genetic testing for all newborns, parents to verify paternity”
blog.nj.com
March 2012

Allegedly Stolen Sperm and Insemination
A Minnesota Psychic Experience
KDWB Radio - June 2012

“Unborn Genetic Test”
Fox News 26 Oregon
June 15, 2012

“Before Birth, Dad’s ID”
New York Times
June 19, 2012
“New Paternity Tests Work Early in Pregnancy”

Star Tribune
June 20, 2012

“California Jury Urges Death in Murders Over Paternity”

Star Tribune
August 10, 2012

“‘Who’s Your Daddy’ Truck Rolls Through NYC, Offers Answers with DNA Tests”

CBS New York
August 15, 2012

Objective

- Provoke challenging thoughts
- Re-examine beliefs
- Provide resources
Basics

“Let’s start at the very beginning. A very good place to start.”

Parent Child Relationship

• The parent and child relationship is defined by Minn. Stat. § 257.52 as:
  • “the legal relationship existing between a child and the child’s biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations.” (Emphasis added)

Parent Child Relationship

• Minn. Stat. § 257.54 provides that the parent and child relationship between a child and:
  “(b) the biological father may be established under sections 257.51 to 257.74 [the Parentage Act] or 257.75 [Recognition of Parentage]; or
  (c) the adoptive parent may be established by proof of adoption.” (Emphasis added)

Back to Basics

• Under Minnesota Statutes, a “parent” is:
  • a biological parent
  or
  • an adoptive parent
Presumptions of Paternity

• What are they?
• What if they conflict or there is more than one?
• Why are/were they needed?
• Minnesota Supreme Court Perspective.

What are they?

• Minn. Stat. § 257.55 – Presumptions of Paternity (Most common examples):
  • Marriage – He and child’s biological mother have been married and child is born during the marriage or born within 280 days of dissolution being final
  • Holding Out – While child is minor, he receives the child in his home and holds himself out as the father
  • Genetic Tests – Genetic Tests showing a 99% or higher probability create an evidentiary presumption

What if they conflict?

• Minn. Stat. § 257.55, subd. 2, further provides:
  • “If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.” (Emphasis added)

Why are they needed?

• The presumptions:
  • are more social and political than legal
  • were created during the infancy of blood analysis and before DNA analysis
  • were an attempt to determine who should be the legal father when we could not determine who was the biological father
Minnesota Supreme Court Perspective

• Benson v. LaBatte, 288 N.W.2d 684, 686 (Minn. 1979)
  • “We again express our belief, however, that blood-test procedures provide the most accurate and efficient means of determining paternity, and we recommend that in the interests of justice the county attorneys of the state encourage their use in proceedings of this nature.” [Emphasis added]

Minnesota Supreme Court Perspective

• County of Ramsey v. S.M.F., 298 N.W.2d 40 (Minn. 1980)
  • County brought a paternity action, which was dismissed for failure to answer interrogatories
  • The decision was reversed and Court took opportunity to note how the new paternity legislation should be applied

Minnesota Supreme Court Perspective

“We can imagine no situation in which it would not be in the interest of a paternity plaintiff, whether it be the county, the mother or the child, to have blood tests taken. When such reliable evidence is available, it is no longer sensible to rely solely on customary, less reliable evidentiary techniques. We therefore believe that in every paternity case, the party bringing the action should request the court to order blood tests as early as possible in the litigation.” (Emphasis added)

Minnesota Supreme Court Perspective

• Kremlin v. Graham, 318 N.W.2d 853 (Minn. 1982)
  • Minn. Stat. § 257.62 challenged as improper use of police power, violation of due process, and violation of right to privacy.
  • The court upheld the constitutionality of compulsory blood or genetic testing in paternity actions when requested by a party or the court.
Summary so far

• The paternity statute directs a determination of the biological father as the legal father
• The adoption statute directs a determination of non-biological father as the legal father
• However, because life is messy, the Minnesota Legislature and Courts must attempt to resolve the messy life situations

Who’s the Dad?

• Itasca County
  • Identical twins had sexual intercourse with mom during period of conception
  • Jury Trial completed
  • Prior to jury verdict, former boyfriend twin agreed to be the legal father

Who’s the Dad?

• Becker County
  • Identical twins had sexual intercourse with mom during period of conception
  • As a settlement, boyfriend twin agreed to be the legal father

Who’s the Dad?

• Dakota County
  • Identical triplets, but only 2 had sexual intercourse with mom during period of conception
  • Immediately before jury trial, GAL and Court told the more stable of the 2 ALFs that things were looking his way, so he agreed to be the legal father
**Issues**

- Child’s Rights
- Man’s Rights
- Biological Father’s Rights
- Mother’s Rights
- Government’s Interests

**Child’s Rights**

“[E]stablishment of the parent-child relationship is the most fundamental right a child possesses to be equated in importance with personal liberty and the most basic constitutional rights.”

*Johnson v. Hunter*, 447 N.W.2d 871 (Minn. 1989)

**Man’s Rights**

“The joinder of all presumptive fathers mandated by *Minn. Stat.* § 257. 60 protects this [right for a presumptive father to bring a paternity action], and other, rights.”

*County of Dakota and Victoria Louise Reily, a/k/a Darnell v. Edward Lee Blackwell*, 809 N.W.2d 226, 229 (Minn. App. 2011)

**Man’s Rights**

“Thus, no one presumption necessarily trumps another. While there are notable historic policy considerations emphasizing the importance of blood relationships, ‘the determination of paternity is no longer solely an issue of biological fact’.”

*In Re the Custody of D.T.R.*, 2012 WL 1915085 (Minn. App.), citing

*In Re the Welfare of C.M.G.*, 516 N.W.2d 555, 560 (Minn. App. 1994)
Biological Father’s Rights

“Thus, when choosing between two conflicting presumptions of paternity, in addition to considering the best interests of the child, district courts must weigh ‘historic policy considerations on the importance of protecting the marriage relationship and the importance of blood relationships’.”


Mother’s Rights

“[A biological mother has a] direct interest in determining the primary question as to who is father of the child. The determination of [paternity] is a prerequisite to the order for support.”

State v. E.A.H., 75 N.W.2d 195, 199 (Minn. 1956)

Back to Basics Again

- Under Minnesota Statutes, a “parent” is:
  - a biological parent
  or
  - an adoptive parent
- But, after the fact, life is messy and the ultimate outcome of a case often turns on the facts

Government Interests

“The public authority is a real party in interest in any IV-D case where there has been an assignment of support. In all other IV-D cases, the public authority has a pecuniary interest, as well as an interest in the welfare of the children involved in those cases.”

Minn. Stat. § 518A.49(b)

“The public [authority]... is joined as a party in each case in which rights are assigned..., and in each case in which the public [authority] is providing services pursuant to an application for child support services.”

Minn. Stat. § 257.60
Paternity or Not!

- Establishing Paternity
- Disestablishing Paternity
  - Vacating the Paternity Adjudication
  - Action to Declare the Nonexistence of the father-child relationship
  - Vacating the Recognition of Parentage

Life is Messy!

- Non-Biological Father
  - Wants to be father
  - Does not want to be father
  - Wants to pay child support
  - Does not want to pay child support

Life is Messy!

- Biological Father
  - Wants to be father
  - Does not want to be father
  - Wants to pay child support
  - Does not want to pay child support

Life is Messy!

- Mother
  - Wants non-biological father to be father
  - Wants biological father to be father
  - Wants child support
  - Does not want child support
**Life is Messy!**

- Child
  - May be too young to voice a preference
  - May not want to voice a preference
  - Wants non-biological father to be father
  - Wants biological father to be father

**Trends - Minnesota Law**

- What is in the best interest of the child?
- Who wants to be Legal Father?
- If no one wants to be Legal Father, likely Biological Father will be Legal Father!

**Balance of Presumptions**

  - Mom had sexual relations with Thomas while married to Nyman
  - During dissolution 4 years after child’s birth, paternity was questioned but parenting time ordered
  - County serves paternity complaints on both
  - Neither wants to be dad – both point to how the other should be dad
  - Biological father, Thomas, found to be the legal father

**Balance of Presumptions**

- *St. Louis County v. DEA and J.S.C.*, 2007 WL 1816471
  - Child born less than 280 days after divorce
  - Ex-husband wants to be the father
  - Ex-husband held himself out to be the father for all (9 years) of the child’s life
  - Non-biological father does not want to be the father and actively evaded his responsibility
  - Ex-husband, non-biological father, determined to be the legal father
  - Best interests outweigh biology; unpublished case that distinguishes Thomas but on different facts
Balance of Presumptions

  - Mom has sexual intercourse with ALF while engaged to second ALF
  - Child born after marriage; bio ALF finds out 4 years later and petitions for custody and “disestablishment” of married ALF
  - Married ALF petitions for divorce
  - Competing presumptions
  - Non Bio ALF is Legal Dad

Back to Basics Once More

- Under Minnesota Statutes, a “parent” is:
  - a biological parent
  - or
  - an adoptive parent
- But, after the fact, life is messy and the ultimate outcome of a case often turns on the facts

Best Interest of Child

  - Court of Appeals upheld the denial of request for genetic tests on grounds that the adjudicated father failed to demonstrate that it was in the child’s best interests

A few words about the ROP

- Recognition of Parentage is a voluntary acknowledgment of paternity, required by the Federal Government
  - A good thing for some people, a not so good thing for others.
  - Signed outside of the court
  - Offered at the hospital in the height of emotion, maybe around family members
  - Inconsistent instructions depending on where you sign it
  - Parties used to circumvent the requirements of adoption law, and sometimes:
    - Both know ROP dad is not the biological father
    - Mom knows ROP dad, ROP dad doesn’t know
    - Both mom and ROP dad are unsure
Then consider...

- Disestablishment of paternity
  - Vacating the Adjudication
  - Action to Declare the Nonexistence of the father-child relationship (a/k/a disestablishment in other states)
  - Vacating the Recognition of Parentage

Disestablishment of Paternity

- When considering genetic tests after paternity is established, consider:
  - Length of time before raising the issue?
  - Practical ability to raise the issue earlier?
  - Whether the mother lied and the father did not know that he was not the biological father?
  - Whether there is another known possible father?
  - Credibility of the parties?

Disestablishment of Paternity

- Cases must be examined individually.
- Facts make a big difference.
Disestablishment of Paternity

- Vacating the Adjudication
  - Motion to Vacate Paternity Adjudication under Rule 60 of the Minnesota Rules of Civil Procedure
  - Fraud and Newly Discovered Evidence

Disestablishment of Paternity

- Vacating the Adjudication
  - Turner stated in the paternity affidavit and in court that Suggs is the only possible father
  - Suggs makes an in-court waiver of GTs, an in-court waiver of counsel, and an in-court admission that he is the biological father of the child
  - Paternity later questioned by Suggs, but he continued to parent the child with Turner
  - Genetic testing (motherless testing arranged privately by Suggs) excluded Suggs as the biological father

Disestablishment of Paternity

- Court held that genetic tests can be used to seek relief from a paternity adjudication on basis of newly discovered evidence and fraud under Rule 60
  - Newly Discovered Evidence – Genetic Tests
  - Fraud – Mom’s Statement that Suggs was the Father
  - Also, a child’s best interests *are not* part of the analysis used to determine whether to grant relief under Rule 60.02

Disestablishment of Paternity

- The Minnesota Court of Appeals vacated the adjudication of Suggs
  - Despite the in-court waivers and admissions
  - Without adding the child as a party or appointing a GAL
  - The “best interests” of the child is *not* a factor in Rule 60 Cases
**Disestablishment of Paternity**

- Action to declare the nonexistence of the father-child relationship
- *Minn. Stat.* § 257.57, subd. 1(b) provides that the action must be brought
  - Within 2 years of the person bringing the action believing the father is not the father
  - If child born within 280 days of dissolution
    - If the father did not know about the child, up to 1 year after the child reaches the age of majority, or
    - Within 1 year of reasonably knowing or when should have known he was not the father

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**Disestablishment of Paternity**

- Action to declare the nonexistence of the father-child relationship
- *Minn. Stat.* § 257.60:
  - The child must be made a party
  - A GAL must be appointed
  - Best interests of the child

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**Disestablishment of Paternity**

- Vacating the Recognition of Parentage
- Language of Recognition of Parentage
  - “I acknowledge that we are the biological parents of the child named in this ROP.”
  - “I understand that either of us can choose to have genetic testing done before we sign the ROP.”
    (Emphasis added)

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**Disestablishment of Paternity**

- Vacating the Recognition of Parentage
- *Minn. Stat.* § 257.75, subd. 4, provides:
  - If genetic tests establish that the man who executed the recognition is not the father the court shall vacate the recognition
    - No discretion
    - No GAL
    - No best interests
Disestablishment of Paternity

- Vacating the Recognition of Parentage
- Time limits to bringing action to vacate
  - Mother or Father – Within 6 months after receipt of genetic test results
  - Child – Within 6 months after receipt of genetic test results or 1 year after reaching majority
  - Public Authority - There does not appear to be a time limit for the Public Authority to bring a motion to vacate

Disestablishment of Paternity

- Effects of disestablishment of paternity
  - What about the ongoing child support order?
  - What about the past support paid?
  - What about the arrears (past support) not paid?

Disestablishment of Paternity

- Effects of disestablishment of paternity
  - Genetic tests showed Button was not the biological father
  - The court disestablished paternity and relieved Button of ongoing and past support

Disestablishment of Paternity

- Effects of disestablishment of paternity
  - Genetic tests showed Hall was not the biological father
  - The court disestablished paternity and relieved Hall of ongoing and past support, and specifically ordered no refund for the amounts of child support already paid
**Disestablishment of Paternity**

- Effects of disestablishment of paternity
  - Repayment of Child Support
    - *Ramsey County and Milligan v. Fulford*, District Court File No. PF1-00-05924 (Jan. 15, 2004)
    - Genetic tests showed Fulford was not the biological father
    - The court disestablished paternity and relieved Fulford of current and past support
    - Plaintiff Milligan ordered to repay monies paid to her by Defendant Fulford

**Minnesota Legislature and Court Perspectives**

- The Paternity Statute seeks the Biological Father as the Legal Father
- The Adoption Statute seeks the Non-Biological Father as the Legal Father
- Life is Messy
- Courts do not like Messy

**Ramsey County Genetic Testing Policy**

- In all paternity cases petitioned to Court, Ramsey County will request genetic tests
  - Every good policy has exceptions, and there are exceptions made
  - It is pure folk lore that Ramsey County does not allow ROPs to be signed

**Ramsey County Genetic Testing Policy Process**

- Parties are offered ROPs in the hospital
- If parties come into the office, they are offered ROPs
  - Only exception is that if the parties identify to our staff that they have reason to believe that the ALF is not the father or might not be the father
Ramsey County Genetic Testing Policy Process

• If the mother and ALF do not sign a ROP and Ramsey County petitions the court for a paternity adjudication, several opportunities are provided to voluntarily do the genetic tests:
  • First voluntarily, sometimes before service of the pleadings, sometimes after depending on how cooperative they are before the petition (serve and swab too)
  • Second, by motion
  • Third, by OSC if motion resulted in a genetic test order
    • But, while being served with OSC, offered a genetic test

Ramsey County Genetic Testing Policy

• Policy adopted in 2003
• Since 2004, the average exclusion rate per year is 18.71
• This is lower than the national average

Ramsey County Genetic Testing Policy Process

• If no genetic tests, OSC hearing is held
  • Show up, court decides
  • No show, court issues a writ
  • Picked up on writ, offered a voluntary genetic test:
    • If done, released
    • If not done, writ hearing

Genetic Testing Exclusion Rate

• According to the AABB 2010 Annual Report, there was a 24.87% exclusion rate in paternity genetic testing
  • The median exclusion rate was 21.53% with a range of 8.52% to 30.73%
  • The average was 20.44% with a standard deviation of 6.62
Genetic Testing Exclusion Rate

- In an article stating that the new “push” for genetic testing to determine paternity is harmful to children, the columnist stated: “So far, there’s little evidence of a ‘growing epidemic’ of paternity fraud... Studies by the American Association of Blood Banks show that while more tests are now being performed, the percentage who discover that the child isn’t theirs has remained steady, at between 25 percent and 30 percent – meaning that around two-thirds spend several hundred dollars for nothing.” — Jane Eisner, Syndicated Columnist, St. Paul Pioneer Press, September 23, 2002

Genetic Testing Exclusion Rate

- Whether there is an epidemic of paternity fraud is beside the point
- More than 1 out of 5 men nationally who are alleged and are tested end up not being the biological father
- These are not good results

Reasons Not to Test

- Let the family decide
- Family relationship
- After the adjudication:
  - Finality of judgments
  - Waived genetic testing – no two bites at apple
  - Unless you are willing to vacate the ROP or adjudication, testing is risky

Not to Test Cases Other Jurisdictions

“[The] policy in favor of paternity judgments means that a prior adjudication should not be subject to the relitigation in the basis of truly compelling circumstances.”

Ex Parte State ex re. J.Z., 668 So.2d 566, 569 (Ala. 1995)
Not to Test Cases Other Jurisdictions

A parent’s “belated and self-serving concern over a child’s biological origins” will not justify subjecting a child to a procedure designed to strip away his legal right to support.

*Godin v. Godin, 725 A.2d 904, 910 (Vt. 1998)*

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Not to Test Cases Other Jurisdictions

The attempt to disestablish paternity “is potentially devastating to a child who has considered the man to be [his] father.”

*In re Paternity of Cheryl, 746 N.E.2d 488, 495-96 (Mass. 2001)*

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Reasons to Test

- Scientific Truth - All uncertainty is removed from the beginning
- Genetic Testing is readily available, inexpensive and very accurate
- Child’s right to know valuable genetic information
- Cleans unclean hands (whether the hands are unclean intentionally or not)
- Children should not be lied to or kept in the dark about something as important as parentage

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To Test Cases Other jurisdictions

“[T]he original reasons for the conclusive presumption of paternity are out of place in a world in which blood tests can prove virtually beyond a shadow of a doubt who sired a particular child.”

To Test Cases
Other Jurisdictions

“[T]hat the biological mother, for whatever reason, has chosen to engage in sexual relations outside of marriage is proof itself that the integrity and solemnity of the family unit has been damaged at least to some degree. Resolution of these difficulties by the husband and wife does not, we feel, give license to the state to perpetuate the myth of ‘presumption of paternity’ so as to deprive the biological father of at least a chance to being able to exercise those rights, duties, privileges, and responsibilities that all civilized societies have recognized to be fundamentally ingrained in the concept of parenthood.”

_in the Interest of J.W.T., 872 S.W.2d 189, 197 (Tex. 1994)_

To Test Cases
Other Jurisdictions

“The legal determination of parentage is a hollow one where the accoutrements do not inure to a child’s benefit.”


“All things being equal in this regard, we conclude that the responsibility for fatherhood should lie with the biological father.”

_K.E.M., 38 A.3d at 810_

TV Mirroring Life

• “My Two Dads” (1987 – 1990)
  • Mother dies leaving child in custody of two fathers she had never met
  • Wild Artist Dad (Greg Evigan) and Successful Dad (Paul Reiser)

电视镜像的生活

• “My Two Dads”（1987–1990）
  • 母亲去世，留下由她从未见过的两个父亲共同抚养的孩子
  • 野生艺术家爸爸（Greg Evigan）和成功的爸爸（Paul Reiser）

TV Mirroring Life

• Judge orders joint custody to the two fathers based on the mother’s wishes, and frequently visits the “family” as their landlord and mentor to the daughter, Nicole.

电视镜像的生活

• 判定联合监护权，基于母亲的意愿，并且经常以房东和导师的身份探望“家庭”，并指导女儿Nicole。

• After the two dads have a fight, they do genetic tests against Nicole’s wishes, but she destroys the tests after showing them to the Judge; Judge knows, but does not reveal who the biological father is.

电视镜像的生活

• 在两位父亲发生争斗后，他们进行了基因测试，但Nicole在将其展示给法官后又破坏了这些测试；法官知道，但未揭示生物父亲是谁。
TV Mirroring Life

• “Days of Our Lives” – NBC
  • Like Sands through the Hour Glass, so are the Many Marriages of Samantha Brady-Reed-Walker-Roberts-DiMera-Hernandez

• Samantha’s Children:
  • Will – Lucas is the father
    – Wanted Austin to be the father, switched genetic tests at the hospital, Austin believed he was the father.
    – Austin found out.
  • Twins John and Aly – E.J is the father of John and Lucas is the father of Aly (Superfecundation)
    – Tried to deny she was pregnant at all, then tried to convince all that Lucas was the father of the twins, bribed someone to fake the genetic tests.
    – E.J. demanded genetic tests.
  • Sydney - E.J. is the father.

• Baby Daniel
  • Kevin is an attorney and draws up the Artificial Reproductive Technology papers.
  • Surrogate lives with them, but then gets back together with her “loser” boyfriend, lies and says she had a miscarriage and moves away.
  • Kevin and Scotty adopt an older daughter.
  • Much drama, but then the baby comes back into their lives.
  • Series cancelled.

TV Mirroring Life

• “Brothers and Sisters” - ABC
  • Same sex couple, Kevin and Scotty, ask a female friend, who just went through a bad breakup, to be a surrogate so they can have a baby.
    • Both fathers’ sperm is used so that they won’t know who the biological father is; donor egg.

• “Brothers and Sisters” - ABC
  • Kevin is an attorney and draws up the Artificial Reproductive Technology papers.
  • Surrogate lives with them, but then gets back together with her “loser” boyfriend, lies and says she had a miscarriage and moves away.
  • Kevin and Scotty adopt an older daughter.
  • Much drama, but then the baby comes back into their lives.
  • Series cancelled.
Considerations in Paternity Adjudication

- Political and Social Policies
- Finality
- Accountability
- Fairness
- Interests of Children

Life is Messy and so are the Court Decisions

Messy MN Examples

- The Psychic Case
  - Married ALF
  - Stolen Sperm or Regretted Encounter?
  - Psychic Predictions – “Judge will laugh you know at this… I think you will win, in other words... and I believe he will have to pay child support, that’s what happens.”

- Jevning v. Cichos, 499 N.W.2d 515 (Minn. App. 1993)
  - NCP alleges statutory rape as basis to avoid paternity declaration
  - Court finds action against CP not child
  - NCP remains the legal father

Resources

- Center for Law and Social Policy – CLASP
  - June 10, 2005 – Paula Roberts Memo
    - Found at www.clasp.org
  - June 30, 2006 – Paula Roberts Memo
  - December 11, 2006 – Voluntary Paternity Acknowledgement: An Update of State Law
Resources

• Center for Law and Social Policy – CLASP
  • December 30, 2004 – Paternity Disestablishment in 2004: The year in Review
  • June 17, 2004 – Paula Roberts Memo
  • Truth and Consequences: Part I, II, and III
  • Found at www.clasp.org

Resources

• Law Reviews
  • When Daddy Doesn’t Want to be Daddy Anymore: An Argument Against Paternity Fraud Claims,
  • Little White Lies that Destroy Children’s Lives- Recreating Paternity Fraud Laws to Protect Children’s Interests,

Conclusion

“The law is clearly not of one mind when it comes to weighing the respective claims of blood, marriage, caregiving, and voluntary assumption of parental duty in defining the basis of parenthood.”


Conclusion

• The Paternity Statute seeks the Biological Father as the Legal Father
• The Adoption Statute seeks the Non-Biological Father as the Legal Father
• Life is Messy
Conclusion

• When life is messy, the courts must decide:
  • Who wants to be the Legal Father?
  • Who should be the Legal Father?
  • What is in the best interest of the child?
  • If no one wants to be the Legal Father, likely Biological Father will be the Legal Father!

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For their research help in this and similar seminars!

Sampling of Parentage Genetic Testing Case Law in Minnesota

<table>
<thead>
<tr>
<th>Year/Court</th>
<th>Case</th>
<th>Type of Action</th>
<th>Rule of Law</th>
<th>Motivating Facts</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012 Minn. App.</td>
<td>Z.T.R.</td>
<td>Paternity action between two presumptive fathers</td>
<td>• Weigher consideration of policy and logic when competing presumptions</td>
<td>• Non-bio dad wants to be dad</td>
<td>Non-bio dad wins—he is adjudicated the father</td>
</tr>
<tr>
<td>2012 Minn. App.</td>
<td>Thies v. Kramp</td>
<td>Motion to Set Aside Judgment and to Declare Non-Paternity</td>
<td>• A ROP may be vacated based on mom’s misrepresentations and fraud, with no exceptions, timelines, or doctrine of res judicata or mootness</td>
<td>• No bio-dad</td>
<td>GAL’s motion to dismiss fails—non-bio dad is entitled to seek vacation</td>
</tr>
<tr>
<td>2011 Minn. App.</td>
<td>Blackwell</td>
<td>Unlawfully joined a third party presumed father to suit</td>
<td>• All presumptive fathers and alleged biological father are required to be joined as parties to the paternity action</td>
<td>• Mom had child while married to bio dad</td>
<td>DC erred by denying bio dad standing to pension suit, which DC denied</td>
</tr>
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<td>Blackwell</td>
<td>Unlawfully joined a third party presumed father to suit</td>
<td>• All presumptive fathers and alleged biological father are required to be joined as parties to the paternity action</td>
<td>• Mom had child while married to bio dad</td>
<td>DC erred by denying bio dad standing to pension suit, which DC denied</td>
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<td>2009 Minn. App.</td>
<td>Under</td>
<td>Minors’ appeal to DC’s determination of paternity as an aggrieved party on grounds that the decision directly impacts his responsibility and rights as related to child support and custody</td>
<td>• Bio mother had standing to appeal determination of paternity as an aggrieved party on grounds that the determination of paternity directly impacts her responsibility and rights as related to child support and custody</td>
<td>• Bio mother brought petition seeking joint custody and parenting time</td>
<td>More has standing to appeal as an aggrieved party to DC’s determination of paternity</td>
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<td>2011 Minn. App.</td>
<td>Z.T.R.</td>
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Note: The information provided is a sample of case law and does not necessarily represent all cases in Minnesota. The details included in the table are intended to illustrate the types of issues and outcomes that can arise in parentage cases involving genetic testing. Actual case law should be consulted for comprehensive and up-to-date information.
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Applying best interest analysis when competing for BI analysis

DOP executed – creation presumption

MTM hearing and BTs requested

No mention of his dad

Background: Minnesota’s BI standard is this: a child with a father who has been held for custody or visitation and an alleged father who has not been held for custody or visitation but has demonstrated a substantial relationship with the child (Hamm v. Hamm 62 Minn. App. 476, 708 N.W.2d 225 (2005)).

When an adjudication has been vacated, it is necessary to determine the child’s best interests. This is accomplished by looking at the child’s needs and welfare. (Larson v. Larson 309 Minn. 365, 240 N.W.2d 521 (1976).

Child & Cty allowed to pursue paternity action against other ALFs

DOP analysis

We have stressed the reliability of BTs and the fact that blood tests are the only admissible evidence of paternity. The court is not bound by the results of the tests, but the results are admissible as evidence of the truth or falsity of the claimed parentage. (Platto v. CS 322 N.W.2d 742, 1982 Minn. App. 172944 8)

No competing presumptions – marriage

Judicial discretion

When the court issues the order, the court should consider the best interests of the child. The court should also consider the stability and existence of the relationship between the alleged father and the child. (Gray v. Gray 46 Minn. App. 26, 641 N.W.2d 24, 2002 Minn. App. 468126 9)

Putative father does not have standing to bring paternity action

Appellant Child’s mother brought a paternity action on behalf of their child, and the child was represented by a GAL. The court held that the child had standing to bring a paternity action and request the court to order blood tests taken. When a child is represented by a GAL, the child’s interests should be considered. (Platto v. CS 322 N.W.2d 742, 1982 Minn. App. 172944 8)

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<td>1979 Mn.</td>
<td>Wessels v. Swanson</td>
<td>Paternity action where NCP defaulted and then appealed default</td>
<td>Adj. of paternity must be based on most reliable kind of evidence available</td>
<td>NCP failed to make adequate showing to sustain relief from default judgment. Because blood-test is so valuable, NCP granted 90 days to provide test results or prove he is pursuing them.</td>
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<td>1979 Mn.</td>
<td>Ortloff</td>
<td>Paternity action where NCP contested question on cross-as to whether he had ever requested blood test</td>
<td>Questioning about blood test is permissible. Ruling based on “our belief that blood-test procedures provide the most reliable means for making the determination of paternity more accurate and efficient.” Court encouraged legislature to consider blood testing in the context of paternity actions.</td>
<td>The questioning about blood test was relevant and the court sustained the NCP’s objection to the question. Due to it was not prejudicial to NCP, NCP was not prejudicial.</td>
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<td>1956 Mn.</td>
<td>E.A.H.</td>
<td>Mother appeals County’s motion for new trial</td>
<td>A child whose mother has sufficient pecuniary interest in paternity action to appeal a DC that defendant is not biological father even if child support is not an issue in the paternity action.</td>
<td>Mother had standing to appeal. Court upheld DC denial of motion for new hearing.</td>
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