

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LINDA L. WILLIAMS FOR
SOPHIA MOYLE,
Petitioner

vs.

ALBERT L. WILLIAMS,
Respondent

: NO. 95-20,946
:
:
: DOMESTIC RELATIONS SECTION
:
:
: SUMMARY JUDGMENT

OPINION AND ORDER

This matter was initiated by a complaint filed through the Domestic Relations Section on June 21, 1995, seeking support for the minor child, Michael Moyle, born March 29, 1994. Respondent denied paternity and the matter was listed for trial. At the time of trial, however, Petitioner withdrew the complaint and by Order of March 10, 1997, Petitioner's Motion to Withdraw was granted and the complaint was dismissed. Petitioner then filed a Petition to Reopen on September 28, 1998, and the matter was again praeciped to the trial list. Respondent moved for a continuance based on pending criminal charges directly relating to the paternity action. By Order dated December 17, 1998, the paternity action was continued until final disposition of the related criminal charges. It appears that the criminal charges were disposed of by a guilty plea entered by Respondent on April 15, 1999, to NO. 98-12,092. Petitioner thereafter filed, on May 7, 1999, the motion before the Court, a Motion for Summary Judgment, seeking a judgment

of paternity. Argument on the motion was heard June 22, 1999.¹

Pa. R.C.P. Rule 1035.2 provides, in relevant part:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) Whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

Rule 1035.3 provides, in relevant part:

(a) The adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty (30) days after service of the motion identifying

(1) One or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or ...

(d) Summary judgment may be entered against a party who does not respond.

In support of her Motion for Summary Judgment, Petitioner relies on the record established in the criminal matter. Specifically, that at trial, Petitioner testified to having sexual intercourse with Respondent and that Respondent was the father of the child. Further, introduced into evidence at the trial was a report from the Baltimore RH Typing

¹The argument was scheduled before the Honorable Dudley N. Anderson. After argument, upon reviewing the file, Judge Anderson discovered that he had previously been involved in the matter, as the former Solicitor for the Domestic Relations Office. It therefore became necessary for Judge Anderson to recuse himself from this matter, but inasmuch as the argument consisted solely of a reiteration of matters contained in the motion, the motion was forwarded to the undersigned for disposition, without the rescheduling of argument.

Laboratory which showed the relative probability of paternity to be 99.49%. Finally, Respondent thereafter pled guilty to involuntary deviate sexual intercourse, statutory sexual assault, aggravated indecent assault, simple assault, corruption of minors and endangering the welfare of a child.

Respondent has filed no response to the Motion for Summary Judgment. It appears therefore, considering the facts cited in support of the motion, that there is no genuine issue of material fact as to any necessary element of the paternity action and Petitioner is indeed entitled to summary judgment.

ORDER

AND NOW, this ____ day of July, 1999, for the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby granted. Respondent is hereby adjudicated to be the father of Michael B. Moyle, born March 29, 1994.

By the Court,

Kenneth D. Brown, Judge

cc: James Casale, Esq.
Kyle Rude, Esq.
Domestic Relations Section
Gary Weber, Esq.
Hon. Dudley N. Anderson