

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ADB,		: NO. 14 – 21,700
	Plaintiff	:
vs.		:
		: DOMESTIC RELATIONS SECTION
AMK	,	:
	Defendant	: Motion for Reconsideration

OPINION AND ORDER

Before the court is Defendant’s Motion for Reconsideration, filed February 2, 2015, in which the court is asked to reconsider its Order of January 21, 2015, which granted Plaintiff’s request for genetic testing. Argument was heard March 26, 2015.

The child at issue is ARK, born July 15, 2014. At the time of ARK’s birth, Plaintiff was residing with Defendant, although they were not married. Plaintiff signed an acknowledgment of paternity on July 17, 2014. The parties continued to reside together as a family until October 2014, when they separated. Because Defendant received public assistance, she was required to file for support for ARK in October 2014. Plaintiff then filed a motion seeking an order for genetic testing because he believes that he is not the Father of the child. The court granted the motion after an analysis of the best interests of the child, pursuant to the Courts’ decisions in KEM vs. PCS, 38 A.3d 798, 810 (Pa. 2012), and RKJ vs. SPK, 77 A.3d 33, 38 (Pa. Super. 2013), wherein the Courts have applied the doctrine of paternity by estoppel “only where it can be shown, on a developed record, that it is in the best interests of the involved child.” In the instant motion for reconsideration, Defendant argues that these cases are not applicable and the

court is bound by 23 Pa.C.S. Section 5103(g)(2), which provides that “[a]fter the expiration of [the] 60 days, an acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, which must be established by the challenger through clear and convincing evidence.”¹

The directive of Section 5103(g)(2) is a form of paternity by estoppel. *See JC v. JS*, 826 A.2d 1 (Pa. Super. 2003) (Estoppel in paternity actions is merely the legal determination that because of a person's conduct that person, regardless of his true biological status, will not be permitted to deny parentage). The statute bases the estoppel provided for therein on the conduct of signing an acknowledgment of paternity. In *KEM vs. PCS*, *supra* at 810, after a thorough examination of paternity by estoppel’s “continuing application as a common law principle”, the Court held that “paternity by estoppel continues to pertain in Pennsylvania, but it will apply only where it can be shown, on a developed record, that it is in the best interests of the involved child.”

In *RKJ vs. SPK*, *supra*, SPK had signed an acknowledgment of paternity but that fact was only one of many considered in analyzing the best interest of the child:

In addressing A.Q.K.'s best interests, the trial court found that S.P.K. had signed the Acknowledgment of Paternity at A.Q.K.'s birth, knowing that he was not the biological father. Trial Court Opinion, 1/17/13, at 17. Also, S.P.K. had undertaken the responsibility of raising A.Q.K. Id. In addition, the trial court observed that the alleged biological father in this case has never seen A.Q.K. and has never been involved in his life. Id. Further, A.Q.K. calls S.P.K. "dad" because that is what he was told by both R.K.J. and S.P.K. Id. The trial court found that A.Q.K. had bonded with S.P.K. for almost six years, while R.K.J. and S.P.K. lived together, and A.Q.K. still

¹ Defendant does not assert that the court’s best interest analysis was flawed.

identifies S.P.K. as his father. *Id.* at 18. The trial court further explained that it had reviewed the testimony of the hearings of August 27, 2010, and December 13, 2012, and concluded that it is in A.Q.K.'s best interest to find that S.P.K. is his legal father for support purposes, under the doctrine of paternity by estoppel. *Id.*

We conclude that the evidence of record supports the trial court's application of the doctrine of paternity by estoppel. In finding that paternity by estoppel should be applied, the trial court observed that the purported biological father has never been involved in A.Q.K.'s life. In contrast, S.P.K. held himself out as A.Q.K.'s father for almost six years, lived with A.Q.K. and his mother in his home, told A.Q.K. that he was his father, and provided all financial support for A.Q.K. Further, the evidence before the trial court addressed the factors set forth in *K.E.M.* as relevant to the child's best interests. In addition, the record shows that the trial court did not apply the doctrine of paternity by estoppel by rote, but considered the individual circumstances of this case, as required by *K.E.M.*

Id. at 40. The Court could have simply referred to Section 5103(g)(2) and denied SPK's motion for paternity testing on that basis. Instead, the best interests of the child were considered, and the motion was denied on the basis that such interests did not lie in allowing SPK to renounce his previously assumed role as father. This court must follow the directives of both of these cases, and therefore enters the following:

ORDER

AND NOW, this day of January 2015, for the foregoing reasons, Defendant's Motion for Reconsideration is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DRO
W. Jeffrey Yates, Esq.
Bradley Hillman, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson