

ARGUMENT

A. Respondent Fails to Meet the Statutory Requirements.

Proceedings to disestablish paternity are subject to the statutes under Title 10 Section 7700 *et seq.* The present case presents two married individuals with three minor children, all born during the marriage. Petitioner is the legally presumed father of the minor children. 10 O.S. § 7700-204(A)(1). To disestablish the paternity of a presumed father, the action must be brought within two years of the child's birth. 10 O.S. § 7700-607(A). The only exception to this two-year bar for challenging presumed fatherhood, is if the court *first* determines that: "1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and 2. The presumed father never openly held out the child as his own." 10 O.S. § 7700-607(B). This exception establishes a two-part test upon the party moving to disprove paternity. Failure to demonstrate either part of that test is fatal to the moving party's case. Bates v. Copeland, 2015 OK CIV APP 30, 347 P.3d 318, 320 (Okla.Civ.App. Div.1 2015).

The present case is illustrative of the legislature's intent in creating the requirements, if not an exact example of the conduct the legislature sought to bar. These parties were married prior to the birth of all of the minor children. The parties did not separate until nearly two years after the youngest child was born. During the past five years both parties held the children out as children of the marriage – presenting them to the community that these were the children of the parties. Only after the filing of the *Petition* did Respondent seek to disprove that parent-child relationship, a relationship that has existed between two and five years, respectively. Further, after moving the court to

disprove that relationship, Respondent has agreed to continue visitation between the minor children and their father, Petitioner. Thus, even after challenging paternity, Respondent is continuing the conduct that demonstrates a familial relationship between Petitioner and the minor children.

These facts have created in the hearts and minds of Petitioner and the minor children a relationship, which the law and the world recognize as more important than any biological connection. "The presumption [of paternity] is a matter of public policy intended for the benefit and protection of children 'born during the marriage.'" Clark v. Edens, 2011 OK 28, 254 P.3d 672, 676 (Okla. 2011). While the presumption can act as a sword to a woeful father's wallet, it is simultaneously a shield of the "intangible fibers that connect parent and child." Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2895, 2990 (1983). The minor children of the present case have developed a genuine and legitimate relationship with Petitioner; one that is protected by the test laid out in the statutes of Oklahoma. The facts listed above fit squarely in within the Oklahoma statutes, providing a final determination that Petitioner is the father of these minor children. This determination is a public policy pursued to protect the minor children and the family unit. "Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would be destructive of family integrity and privacy." Michael H. v. Gerald D., 491 U.S. 110, 109 S.Ct. 2333, 2340 (1989).

Ultimately, the parties were legally married at the time of the births of all the minor children and that fact alone requires action by the moving party before the minor children are two years old. The Court of Civil Appeals wrangled with this issue in Friend

v. Tesoro. In Friend, the Court noted that there was a relationship between the child and the presumed father; that the presumed father had held himself out as the father for over two years; and the child knew the presumed father as father and the biological father as a cousin. The Court held, "Challenges against a presumed father must be brought within two years of the child's birth...it appears [Friend] is the presumed father...which presumption cannot be rebutted." Friend v. Tesoro, 2007 OK CIV APP 78, 167 P.3d 978, 979-80 (Okla.Civ.App. Div.1 2007). Respondent has failed to bring the proper action within the proper time, and because of that, she is not entitled to disestablish Petitioner as the father of the minor children under section 7700-607.

B. Respondent is Statutorily Estopped from Challenging Paternity.

As an alternative, should this Court find that Respondent has met her burden under Title 10 section 7700-607, Title 10 section 7700-608 estops Respondent from disproving paternity. Okla. Stat. Tit. 10 Section 7700-608 provides, "the court shall deny a motion seeking an order for genetic testing...if the court determines that: 1. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage." 10 O.S. § 7700-608(A)(1). As noted above, the parties' conduct during the past five years has demonstrated a desire to establish in the minds of the public and, more importantly, the children that Petitioner is the father. "[T]he law will not permit a person in these situations to challenge the status which he or she has previously accepted." K.E.M. v. P.C.S., 38 A.3d 798, 801 (Pa. 2012). Both parties, and for the purposes of this *Motion*, specifically the Respondent, are estopped from challenging paternity based on the past five years of conduct.

“Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a 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.” Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex.App.-San Antonio 2006). Petitioner has established himself as the father of these children; thus, it does not matter what a genetic test would show. He is and has been their father, and until Respondent’s recent decision to challenge that fact, they have been secure in that belief. The principle of estoppel, codified in section 7700-608, demands that Respondent’s challenge be denied.

C. Respondent is Equitably Estopped from Challenging Paternity.

As a final alternative, the Court should find that Respondent is equitably estopped from challenging Petitioner’s paternity. Equitable estoppel applies to situations in which a party with knowledge misleads another party without knowledge intending that the party without knowledge act on that misrepresentation, and the party without knowledge does act on that misrepresentation. Hausman v. Hausman, 199 S.W.3d 38, 43 (Tex.App.-San Antonio 2006). The present case is similar to another Oklahoma case, Clark v. Edens, in which the Supreme Court of Oklahoma applied the principle of equitable estoppel. In explaining its application, the Court noted,

“Ms. Edens did not present the test to a court or administrative tribunal to establish paternal obligations on the part of the natural father. Instead, she acted as if the genetic test did not exist and allowed Mr. Clark to continue in a parental role...Ms. Edens allowed Mr. Clark visitation and accepted support from him...Under the facts of this case the equitable principle of estoppel

should be applied to prevent Ms. Edens from asserting the genetic test at this time as a ground from rebutting the presumption of paternity.” Clark v. Edens, 2011 OK 28, 254 P.3d 672, 677 (Okla. 2011); See also Stevens v. Griggs, 2013 OK CIV APP 104 (Okla.Civ.App. Div.4 2013).

As in Clark, Respondent should be equitably estopped, for the exact same reasons, from challenging paternity at this point in the children’s lives. Fairness, equity, and the facts all weigh against allowing Respondent to disprove the paternity of Petitioner.

CONCLUSION

“[T]he Court has found that the relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection.” Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2895, 2991 (1983). Petitioner’s conduct toward the minor children warrants the protection of this Court. Respondent has failed to meet the requirements of Title 10 section 7700-607 for challenging a presumed father’s paternity. Additionally, Respondent is and should be estopped, either statutorily or equitably from making her challenge to his paternity. Petitioner requests this Court deny Respondent’s challenge; order Respondent not to genetically test the minor children; order that neither party is to allow any person other than Petitioner to claim to be the father of the minor children; award Petitioner his attorney fees for defense of this challenge; and award him all such other relief the Court deems equitable and just.

AUTHORITIES CITED AND RELIED UPON

10 O.S. § 7700-204;

10 O.S. § 7700-607;

10 O.S. § 7700-608;

Clark v. Edens, 2011 OK 28, 254 P.3d 672 (Okla. 2011);

Friend v. Tesoro, 2007 OK CIV APP 78, 167 P.3d 978 (Okla.Civ.App. Div.1 2007);

Bates v. Copeland, 2015 OK CIV APP 30, 347 P.3d 318 (Okla.Civ.App. Div.1 2015);

Stevens v. Griggs, 2013 OK CIV APP 104 (Okla.Civ.App. Div.4 2013);

Foster v. McDowell, 2015 OK CIV APP 20, 344 P.3d 1102 (Okla.Civ.App. Div.1 2015);

Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2895 (1983);

Michael H. v. Gerald D., 491 U.S. 110, 109 S.Ct. 2333 (1989);

K.E.M. v. P.C.S., 38 A.3d 798 (Pa. 2012);

Hausman v. Hausman, 199 S.W.3d 38 (Tex.App.-San Antonio 2006);

J.P.M. v. T.D.M., 932 So.2d 760 (Miss. 2006);

Establishing the Best Answer to Paternity Disestablishment, 37 Ohio N.U. L. Rev. 145
(2011); and

“Mama’s Baby, Papa’s Maybe”: Disestablishment of Paternity, 48 Akron L. Rev. 263
(2015).