LOCATION AND PATERNITY DETERMINATION: THE INTERSECTION OF IV-D AND CHILD WELFARE

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The IV-D agency (Child Support Enforcement Agency)

1. The IV-D agency is authorized and defined by 42 U.S.C. § 666.
2. The federal regulations governing the IV-D agency are 45 CFR §300-310.

The federal regulations mandate that each State have "a single and separate organizational unit to administer the IV-D plan. Such unit is referred to as the IV-D agency". See 45 CFR § 302.12(a)

In NC, the Department of Health and Human Services has been designated as the State IV-D agency. The Child Support Enforcement Section is "located" within the Division of Social Services. The NC statutes dealing with IV-D can be found at NCGS § 110-128 through NCGS § 142.2 and, for intergovernmental cases, Chapter 52C.

As of July 1, 2010, all counties in NC are responsible for the administration of the IV-D programs in their respective counties. The child support enforcement program . . . "shall be administered, or the administration provided for, by the board of commissioners" of the counties. See NCGS § 110-141

The State IV-D agency remains responsible for overseeing the operation of the IV-D program in the State and for aspects of the program that the county IV-D agencies do not administer.

The federal regulations state "[i]f the [State] IV-D agency delegates any of the functions of the IV-D program to any other State or local agency . . . the [State] IV-D agency shall have responsibility for securing compliance with the requirements of the State plan by such agency or officials". See 45 CFR § 302.12(a)(3)

Counties administer their IV-D programs different ways.

1. Through the County Department of Social Services.
2. Through a Private Company.
3. Through a Separate County Agency (the "County" Child Support Enforcement Agency).

There are also IV-D programs administered through Tribal IV-D agencies. See 45 CFR § 309.01 through 310.40

Each State IV-D agency is required to submit a "State plan" which is "a comprehensive statement describing the nature and scope of its program and giving assurance that it will be

administered in conformity with the specific requirements". See 45 CFR § 301.10 for the complete quote

The State plan must be in operation throughout the state. "If administered by a political subdivision of the State, the plan will be mandatory on such political subdivision". The [State] IV-D agency is charged with oversight of all political subdivisions, agencies and any other entities administering the plan and must provide assurance to the federal authorities that "the plan is continuously in operation". See 45 CFR § 302.10

The Primary Purposes of the IV-D agency

1. Locate absent parents.
2. Establish paternity of children under the age of 18 years who are born out of wedlock.
3. Establish child support orders for children who have not yet reached their 18th birthday.
4. Modify child support orders at the request of the custodial or non-custodial parent when the facts of the case so warrant.
5. Collect and distribute child support.
6. Collect and distribute spousal support under certain circumstances.

I. LOCATING ABSENT PARENTS

The IV-D agency uses the following sources to search for absent parents

1. NC Vital Records
2. State Parent Locator Service
3. Federal Parent Locator Service
4. Federal Case Registry
5. National Directory of New Hires
6. State Verification and Exchange System (information on Social Security Benefits)
7. Department of Corrections
8. Division of Motor Vehicles
9. Interstate Data Exchange Consortium (financial institution data matching)
10. Division of Employment Security
11. Food Stamps Information System (NC)

Cases may be referred for locate services to the IV-D agency by DSS or by a judge or a designated agent of the court. The State Parent Locator Service and the Federal Parent Locator Service may be used to attempt to locate a parent or putative father to facilitate adoptions, to promote a family unit by placing the child with either parent or a relative or in preparation of an action to terminate parental rights.

DSS and the juvenile court should also consider inquiring as to any and all existing civil court actions in all counties in NC to determine if there are any paternity orders, affidavits of parentage and/or child support orders already filed with the clerks' offices in all NC counties.

DSS and the juvenile court should also consider contacting the NC Department of Vital Records to ascertain if there are any affidavits of parentage relevant to the case and to obtain the most up

to date version of the birth certificate. Birth certificates are sometimes amended after the child is born, so it is important to make sure the birth certificate is the one vital records has indexed as the latest version.

Federal Regulations Relevant to Locating Absent Parents for the IV-D Agency: 45 CFR § 302.15, 45 CFR § 302.35, 45 CFR § 302.36, 45 CFR § 303.3, 45 CFR § 303.7, 45 CFR § 303.15, 45 CFR § 303.69 and 45 CFR § 303.70.

State Statues Relevant to Locating Absent Parents for the IV-D Agency: NCGS § 110-139 and NCGS § 110-139.1.

II. ESTABLISHMENT OF PATERNITY

The IV-D agency seeks to establish paternity when specific facts exist

1. Child born out of wedlock.
2. Child has not reached his/her 18th birthday.
3. Paternity has not already been adjudicated/ordered.
4. There is not a presumption creating a "legal" father.

Legal father

When a man is referred to as a "legal" father he is usually

1. One whose name is on the child's birth certificate. See J.K.C. and J.D.K., 721 SE2d 264, 2012 NC App LEXIS 67 (2012).
2. One who was married to the mother at the time the child was born. See Wright v. Wright, 281 NC 159, 172, 188 SE2d 317, 325 (1972).
3. One who married the mother subsequent to the birth of the child. NCGS § 49-12.
4. One who has signed an AOP consistent with the NCGS § 110-132.

Presumption

The above facts create a rebuttable presumption that the man is the father of the child.

"The most important consideration in the creation of presumptions is probability. Most presumptions have come into existence primarily because the judges have believed that proof of fact B renders the inference of the existence of fact A so probable that it is sensible and timesaving to assume the truth of fact A until the adversary disproves it." Kenneth S. Broun et al., 2 McCormick on Evidence § 343, at 500-01 (6th ed.2006)

Legal father has constitutional rights

"The relationship between parent and child is constitutionally protected". Troxel v. Granville, 530 US 57, 120 S. Ct. 2054 (2000)

When there is a legal father, should paternity ever be at issue?

For a IV-D matter, "[a] contested case is any action in which the issue of paternity may be raised under State law and one party denies paternity." See 45 CFR § 303.5(d)(2)

In a situation where a legal father denies paternity, but the mother does not, the IV-D agency would not consider paternity to be at issue. The IV-D agency would not file a complaint asking

that paternity be adjudicated. The IV-D agency would file a complaint asking for child support from the legal father. It would be up to the legal father to raise the defense of non-paternity and to challenge the presumption that he is the legal father.

In all cases where there is a legal father, before another man can be declared and/or regarded as the legal father of the child, a party with standing must rebut the presumption that the "legal" father is the father and the court must enter an order finding that the "legal" father is not the father of the child.

Affidavits of parentage pursuant to NCGS § 110-132. Do they make men fathers for child support purposes only?

Often attorneys and/or judges in Juvenile Court interpret the affidavit of parentage (NCGS § 110-132) as creating a legal father only for the purpose of a child support order. The language in the statute is most assuredly to blame for this as it states, in part, "the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity ***for the purpose of establishing a child support obligation***". (emphasis added)

NCGS § 49-15 states, in part "[u]pon and after the establishment of paternity of an illegitimate child pursuant to G.S. 49-14, the rights, duties, and obligations of the mother and the father so established, with regard to support and custody of the child, shall be the same, and may be determined and enforced in the same manner, as if the child were the legitimate child of such father and mother". The Court of Appeals found that the language in NCGS § 110-132 "does not imply that voluntary support agreements are strictly limited such that they may have no legal implications other than that of child support". In the matter of: The Estate of Frank Stephen Potts, 186 NC App 460, 651 SE2d 297 (2007)

If a valid affidavit of parentage exists, the man who signed it has admitted to paternity. The child is no longer illegitimate and paternity is not at issue. See J.K.C. and J.D.K., 721 SE2d 264, 2012 NC App LEXIS 67 (2012) (Child is presumed to be legitimate when father's name is on birth certificate just as when a child born to a marriage is presumed to be legitimate. Father had signed an affidavit of parentage which had caused his name to be placed on the birth certificate.) See NCGS § 130A-101, NCGS § 130A-118 and NCGS § 130A-119.

"Illegitimate children's fathers, including plaintiff, now benefit from the provisions of NCGS 110-132(a), providing another method for formal acknowledgment of paternity, and other statutory provisions establishing legal ties between illegitimate children and their fathers, even though they may not have pursued legitimation procedures". The court also held that the effect of this acknowledgment of paternity of was that the child was able to inherit from the father and the father was able to inherit from the child. In addition, the father's consent was need for adoption. Rosero v. Blake, 357 NC 193, 581 SE2d 41 (2003).

Genetic Testing

Genetic tests results should not be entered into evidence or considered by the court (IV-D court or juvenile court) unless they were either court ordered pursuant to NCGS § 8-50.1(b1) or the

proper foundation testimony and the entire chain of custody is presented. See Rockingham County Dep't of Social Serv. ex rel. Shaffer v. Shaffer, 126 NC App 197, 484 SE2d 415 (1997) and Columbus County v. Davis, 163 NC App 64, 592 SE2d 225 (2004).

Presumptions regarding genetic test results

NCGS § 8-50.1(b1) details the presumptions afforded to the percentages of genetic test results. Test results, standing alone, are not conclusive to determine paternity in the context of a paternity proceeding. See In re L.D.B, 168 NC App 206, 617 SE2d 288 (2005) for an excellent discussion on this point. In that case the trial court viewed the genetic test results prior to a court hearing, without said evidence being properly introduced into evidence. The genetic test results showed a zero percentage that the man could be the father of the child. The court, based on the test results and prior to a hearing ruled the man had no standing. The court excluded him as the father of the child and terminated parental rights on an unknown father. The genetic test results were never admitted into evidence. Both the man and the mother insisted that the genetic test results were wrong and that the man was the father of the child. The man argued that his due process rights were violated and that the court erred by not allowing him to have a hearing where the court could consider evidence that could have rebutted the presumption regarding the test results. The court of appeals reversed the trial court's termination of parental rights and held that "a fact-finder's observation does not constitute evidence and cannot provide the basis for any finding of fact." The court also found that "[a] rebuttable presumption is not an irrebuttable conclusion of law. . . It serves as a prima facie case, but if challenged by rebutting evidence, the presumption cannot be weighed against the evidence. Supporting evidence must be introduced, without giving any evidential weight to the presumption itself."

Federal Statutes and Regulations Relevant to Establishment of Paternity By the IV-D Program

Relating to the IV-D program - 45 CFR § 301.1, 45 CFR § 302.31, 45 CFR § 302.36, 45 CFR § 302.70, 45 CFR § 303.5, 45 CFR § 303.10, 45 CFR § 303.11 and 45 CFR § 303.5.

Relating to the Servicemembers' Civil Relief Act - 50 USC App 511, 50 USC App 512, 50 USC App 521, 50 USC App 522, and 50 USC App 525.

NC Regulations Relevant to Establishment of Paternity By the IV-D Program

NCGS § 1A-1, Rule 55(b)(2), NCGS § 6-20, NCGS § 8-50.1, NCGS § 49-1 through 49-17, NCGS § 50-13.4, NCGS § 50-13.13, NCGS § 52C-3-312, NCGS § 110-129.1, NCGS § 110-129.2, NCGS § 110-130, NCGS § 110-132, NCGS § 110-132.2, NCGS § 130A-101, NCGS § 130A-118 and NCGS § 130A-119.

Relevant Caselaw

Tucker v. Frinzi, 344 NC 411, 474 SE2d 127 (1996) (State not in privity with the county)

J.K.C. and J.D.K., 721 SE2d 264, 2012 NC App LEXIS 67 (2012) (Child is presumed to be legitimate when father's name is on birth certificate just as when a child born to a marriage is presumed to be legitimate.)

Troxel v. Granville, 530 US 57, 120 S Ct 2054 (2000) (The relationship between parent and child is constitutionally protected.)

In the Matter of: The Estate of Frank Stephen Potts, 186 NC App 460, 651 SE2d 297 (2007) (NCGS § 110-132, affidavits of parentage, have the same force and effect as an order of support entered by the court. The language in the statute does not imply that the affidavits are strictly limited such that they may have no legal implications other than that of child support.)

Wright v. Wright, 281 NC 159, 188 SE2d 317 (1972) (a child born in wedlock is presumed to be legitimate.)

Rockingham County Dep't of Social Serv. ex rel. Shaffer v. Shaffer, 126 NC App 197, 484 SE2d 415 (1997) ("It was prejudicial error for the trial court to admit other man's blood test results where the chain of custody was not properly established".)

Columbus County v. Davis, 163 NC App 64, 592 SE2d 225 (2004) ("If a paternity blood test is not ordered by the trial court upon motion by a party, the standard in G.S. 8-50.1(b1) will not apply and the party seeking to admit the test must present independent evidence of the chain of custody".)

State v. Fowler, 277 NC 305, 177 SE2d 385 (1970) (Tests conclusive only in excluding putative father.)

Rosero v. Blake, 357 NC 193, 581 SE2d 41 (2003)(If father of child born out of wedlock signs a valid affidavit of parentage he has acknowledge paternity and is treated in custody proceedings as a parent, not a third party. Also, the effect of this acknowledgment of paternity is that the illegitimate child is able to inherit from the father and the father is able to inherit from the child. In addition, the father's consent is need for adoption.)

In re L.D.B, 168 NC App 206, 617 SE2d 288 (2005) (Genetic test results have to be properly admitted and are not conclusive.)

III. THE "INTERSECTION" OF IV-D AND CHILD WELFARE/JUVENILE COURT

The IV-D agency strives to locate absent parents and to establish paternity in appropriate cases. There are numerous federal regulations addressing these issues. The agency is monitored, audited and its performance measured in part, by the Federal Office of Child Support Enforcement on how many paternity establishments are completed. Therefore, the business of the IV-D agency is locating absent parents and establishing paternity.

DSS and the juvenile court often have a need for locating absent parents and determining paternity. The approach that IV-D takes to these issues is sometimes different than the one DSS/the juvenile court takes. There is some sharing of information between DSS and IV-D. DSS does use the locate services of IV-D to find absent parents. One area of concern is that the issue of paternity identification appears to be treated differently by IV-D and DSS/juvenile court.

Problems between IV-D and Juvenile Court in regard to Paternity Establishment

1. Multiple paternity determinations for same parties
2. TPRs on parents in IV-D cases without IV-D knowing

Possible Reasons for Problems

1. Confidentiality/policy rules of both IV-D and DSS restricts sharing of information
2. IV-D and DSS may have conflicting goals for cases
3. Different understanding/treatment of law

How the IV-D agency typically handles a "Legal/Putative" father situation

The court will determine whether the presumption that the "legal" father is the father has been rebutted and, if so, will enter an order that the "legal" father is not the father of the child. Because that issue has been adjudicated, IV-D can proceed against the putative father. The IV-D agency will then obtain a court order that the putative father is the father of the child if the facts so warrant.

How DSS may handle a "Legal/Putative father situation

DSS schedules the putative father for genetic testing. If the genetic testing results show a high percentage of probability that the man cannot be excluded as the father, the putative father is considered by DSS and the court to be the father. (Genetic test results do not conclude who the father is, but are rebuttable presumptions. See NCGS § 8-50.1(b1) for an explanation of the presumptions. Genetic test results can only conclusively exclude a man from being a father.) Many times there are not orders entered that the putative fathers are the fathers. Many times there are not orders entered that the legal fathers are not the fathers. Both men continue to be parties in the juvenile proceedings. Both are considered parents in the proceeding and entitled to all due process rights accorded to parents. Legal notices for TPRs and Adoptions will be served on both men and an "unknown father" be will served as well out of an abundance of caution.

Law on fathers who have not acknowledged or legitimized the children born out of wedlock

1. A putative father of a child born out of wedlock was not recognized under the law to have any parental rights in a custody context because he had not legitimated the child or acknowledged paternity. "The father of a child born out of wedlock will be treated as a third party unless he has either legitimated the child pursuant NCGS § 49-10, NCGS § 12, NCGS § 12.1 or had his paternity adjudicated under NCGS § 49-14". Smith v. Barbour, 154 NC App 402, 571 SE2d 872 (2002).

2. If the putative father of a child born to an unwed mother does not fulfill the requirements of NCGS § 7B-1111(a)(5) prior to the termination of parental rights being filed, his parental rights can be terminated and his consent is not required for the adoption proceedings. See A Child's Hope, LLC v. Doe and Any Possible Parent, 178 NC App 96, 630 SE2d 673 (2006); In the Matter of M.A.I.B.K., 184 NC App 218, 645 SE2d 881 (2007); In the Matter of S.C.R., 198 NC App 525, 679 SE2d 905 (2009); In Re: A.C.V., 203 NC App 473, 692 SE2d 158 (2010)

As stated above herein, the IV-D agency only determines paternity when paternity is at issue. When there is a legal father, paternity is not at issue, unless someone with standing raises that

issue within the context of a paternity suit.

NCGS § 7B-506(h)(1) states that the juvenile court shall, at each hearing determine the need for continued nonsecure custody

> [i]nquire as to the identity and location of any missing parent and as to whether paternity is at issue. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent, as well as efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts aimed at determining the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity.

NCGS § 7B-506(h)(1) does not give clear direction as to what it means by paternity being "at issue". A guideline to consider could be that if the child is illegitimate, paternity would be at issue. Conversely, if the child is legitimate, paternity is not at issue. Therefore, when a child has a legal father, paternity is not at issue. As stated herein, when there is a legal father, someone with standing who wants to rebut the presumption of the legal father would have to do so within the context of a paternity suit. It appears that the juvenile court has authority under NCGS § 7B-506(h)(1) to determine paternity and enter a paternity order. NCGS § 7B-506(h)(1) states, in part, "[t]he order may provide for specific efforts aimed at determining the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity". That authority would appear to include determining whether there were legally sufficient grounds to rebut the presumption that a legal father was the father of a child and then to enter an order that a putative was the father of the child upon the appropriate set of facts.

Communication with the IV-D agency early in the juvenile court case would be of benefit. As mentioned above herein, the IV-D agency would be able to search the Federal Parent Locator Service, New Hire Directory and other locate services for an absent parent.

Relevant Caselaw

Smith v. Barbour, 154 NC App 402, 571 SE2d 872 (2002).

A Child's Hope, LLC v. Doe and Any Possible Parent, 178 NC App 96, 630 SE2d 673 (2006)

In the Matter of M.A.I.B.K., 184 NC App 218, 645 SE2d 881 (2007)

In the Matter of S.C.R., 198 NC App 525, 679 SE2d 905 (2009)

In Re: A.C.V., 203 NC App 473, 692 SE2d 158 (2010)

See the NC Child Support Website- www.ncdhhs.gov/dss/cse and go to CSE Manual.
See the Federal Office of Child Support Enforcement (OCSE) - www.acf.hhs.gov and go to Child Support.