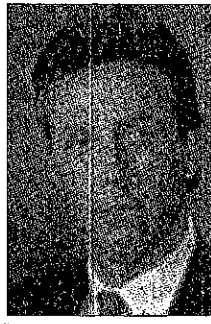


Equitable Estoppel Applied by Court to Preclude Biological Father's Parental Rights

It is black letter law in this state that the doctrine of equitable estoppel may be invoked to preclude a person who has held himself out and acted as a child's parent from challenging an Order of Filiation.¹ Thus, a best interests standard is applicable, and where a child has justifiably relied upon the actions or representations of a man that he is his or her father, with the result being that the child will be harmed by the man's denial of paternity, the man may be estopped from asserting that denial.² Equitable estoppel has been codified in The Family Court Act as well.³

Thus, equitable estoppel is typically invoked in a scenario in which a person who has acted and held himself out as a child's parent for a substantial period of time, ultimately learns that he is not actually the child's biological parent, and now wishes to no longer legally act as the child's father. However, what happens in the reverse situation, where a man who has not acted as the father to a child suddenly learns that he truly is the child's biological father, and now wishes to be legally recognized as such? Should equity step in and intervene so as to strip the person who has previously acted as the child's father from his legal rights as the father, and instead, substitute the newly found biological father as the child's legal parent?

This is precisely what transpired recently in *Matter of R.B. v A.H.*, a case in the Nassau County Family Court, decided by Hon. Julianne S. Eisman.⁴ In *Matter of R.B.*, a case which the Court called "monumental and life changing," the Court was faced with having to make the determination of which man would be recognized as the legal father of an "adorable little girl."⁵



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The first individual seeking to establish that he should be recognized as the child's legal father was referred to as "RB" by the Court. RB had initially signed an Acknowledgment of Paternity after the mother told him that he was the baby's father. In addition, the child knew RB as her father, and RB had lived with the child for a majority of her life. RB had acted as the child's father for the majority of her life.⁶ The Court did not mention the age of the child in its decision.⁷

The second individual seeking to establish that he was the child's biological father was referred to by the Court as MB, and was truly the biological father as determined by a private DNA test taken by him and the child's mother. As with RB, the biological mother also told MB that he was the child's father.⁸ However, unlike RB, who had known the child for her entire life and who had acted as her father for a majority of her life, MB did not meet the child until she was four years old and did not live with the child other than a few extended visits.⁹

The Court noted that it "usually has litigants who run from paternity and the obligations stemming therefrom."¹⁰ In this instance, the Court stated that "there can only be one father," and it would have no choice but to attempt to "rectify a highly emotional situation caused by a young woman's poor judgment, in which she "in essence, defrauded two then young boys into believing each was the father of her child and, as well, their respective families, maintaining such fraud for over two years."¹¹ In reaching its ultimate conclusion that the doctrine of equitable estoppel should be utilized to preclude MB, the biological parent, from being legally recognized as the child's natural father, the Court held that "an infant issue may only have two parents, not three, albeit they may be of the same sex."¹² The

Court quickly rejected the notion of terminating the mother's parental rights despite her short comings and poor judgment.¹³

Judge Eisman additionally determined that "Biological" in this instance does not necessarily equal "father." "In other words, the Doctrine of Equitable Estoppel certainly must be considered based on the facts presented herein."¹⁴

In applying the doctrine of equitable estoppel to preclude the child's true biological father, MB from being recognized as the child's legal parent, the Court considered the following facts:

- RB was present at the hospital on the day of the child's birth, and everyday thereafter until discharged;

- RB financially supported the child since birth and he lived with the child since she was approximately six months old;

- RB was actively engaged in the child's schooling, enrolling her in pre-school and public school, and established a loving father-daughter relationship with the child over the first six years of her life;

- RB holds the child out to be his daughter and the child refers to him as her REAL daddy. ("I only have one real daddy she advised the Court", *infra*.)

- RB has reared and co-parented the child since her birth together with the assistance of extended family. Efforts by RB to raise the child have been exemplified and distinguished by his selfless, self-sacrificing drive to be a provider and good father for the child. After RB dropped out of Community College to pursue employment to pay for formula and diapers, he had his grandmother helping with child care responsibilities as well as his own mother, Mrs. T.

- Currently, RB works as a janitor for two school districts. He sent the child to private pre-school and dance school. He sends the child to school with lunch each day and provides extra, including snacks for her friends. He hosts birthday parties, play dates and is very involved in the child's life.

- The Court further noted that RB has provided the child with a stable schedule, educationally and extracurricularly. He has served as the primary caretaker for the child over the last six years. RB is kind, loving, caring and has a tremendous sense of loyalty towards the mother despite the history of this case. Even RB's mom, Mrs. T, finds a place in her

heart for the mother because she is the child's mom.¹⁵

The Court additionally considered the fact that when it "inquired as to recent special projects in school that week, [the child] happily described her Father's Day Card. The Court asked for which "daddy" was the card made? With her hands on her hips, the child exclaimed, "I only have one daddy, RB!!" She proceeded to describe the contents of the card and the picture she drew of her daddy in a tuxedo, she in a white dress, in Church, together. Out of the mouth of babes...."¹⁶

Conversely, with respect to the biological father, MB, the Court considered and determined the following:

- MB's relationship with the child did not begin to evolve until the child, at age four (4) was left alone with him, without her mother for the extended visit in January 2009;

- The relationship between MB and the child did not begin to mature until post legal proceedings.

- The Court also noted that while MB has taken the child shopping for clothing and toys during her visits to New Jersey, a significant portion of these purchases were post petition;

- The Court also considered the fact that during 2008, after MB and the mother stopped seeing one another, MB only saw the child twice when the mother brought her to visit briefly with him.

- The Court also determined that "MB's self-serving testimony, unsubstantiated by documentary proof, together with that of his grandmother, Mrs. B., and his father, VB, does not in and of itself negate the fact that he failed to legally establish paternity of [the child] once learning he might be her father or immediately after he obtained the results of a private genetic marker test.

- Moreover, the majority of MB's pictures introduced into evidence at trial depicted post order scenarios."¹⁷

Judge Eisman concluded by ruling that "the Doctrine of Equitable Estoppel must be applied in this case. Expanded "quality" time of approximately six weeks does not make a father. Due to the lapses of contact and the delay of legal action, the Court cannot in the face of the devotion RB has provided for [the child] since birth, eradicate, belittle or deface the parent-child bond established in this case. Clearly, RB is the father of [the child], legally as well as emotionally."¹⁸

"It is quite clear to this Court," Judge Eisman wrote in her decision, "that evidence established at trial, coupled with the in camera interview with the child, that is it in the best interests of [the child] to equitably estop MB from assert-

ing a claim of paternity.¹⁹ Thus, "MB shall be precluded from pursuing a genetic marker test recognized by this Court, and the Court shall not vacate the Acknowledgment of Paternity executed by the mother and RB."

The Court was highly critical of the biological mother in its decision, referring to her as having "poor judgment" and stating that "we cannot terminate the rights of the biological mother in spite of her short comings..."²⁰

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1. In the *Matter of Schondel v. Mark D.*, 7 N.Y.3d 320, 820 N.Y.S.2d 199 (Ct. App. 2006); In the *Matter of Stephen W. v. Christina X.*, 80 A.D.3d 1083, 916 N.Y.S.2d 260 (2nd Dept. 2011); In the *Matter of Devona Smythe v. Worley*, 72 A.D.3d

977, 899 N.Y.S.2d 365 (2nd Dept. 2010); In the *Matter of Jose F.R. v. Reina C.A.*, 46 A.D.3d 564, 846 N.Y.S.2d 630 (2nd Dept. 2007.)

2. In the *Matter of Schondel v. Mark D.*, 7 N.Y.3d 320, 820 N.Y.S.2d 199 (Ct. App. 2006.)

3. Family Court Act Sections 418 (a) and 532 (a.)

4. *Matter of R.B. v. A.H.*, N.Y.L.J., September 9, 2011 (Nassau Cty. Fam. Ct. 2011.)

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* (Citing In the *Matter of Schondel v. Mark D.*, 7 N.Y.3d 320, 820 N.Y.S.2d 199 (Ct. App. 2006.)

15. *Matter of R.B. v. A.H.*, N.Y.L.J., September 9, 2011 (Nassau Cty. Fam. Ct. 2011.)

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* (Citing *Matter of Antonio H. v. Angelic W.*, 51 A.D.3d 1022, 869 N.Y.S.2d, P 670; *Matter of Greg S. v. Keri C.*, 38 A.D.3d 905, 832 N.Y.S.2d 652; *Matter of John Robert P. v. Veto C.*, 23 A.D.3d 659, 804 N.Y.S.2d 802, *Matter of Ellis v. Griffin*, 308 A.D.2d 449, 764 N.Y.S.2d 120).

20. *Matter of R.B. v. A.H.*, N.Y.L.J., September 9, 2011 (Nassau Cty. Fam. Ct. 2011.)



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