

THE OFFICE OF COURT IMPROVEMENT'S FACT SHEET: PATERNITY IN DEPENDENCY CASES

November, 2008

GENERAL INFORMATION:

“For a court to perform its duties in a dependency proceeding, it must, if possible, determine the identity of the minor child's father.” B.B. v. P.J.M., 933 So.2d 57, 60 (Fla. 1st DCA 2006). The Florida Legislature also makes several references to the necessity of having both parents involved in the dependency process, such as §39.013, Florida Statutes, which requires both parents to be advised of their right to counsel at each stage of the dependency proceeding, and §39.502, Florida Statutes, which requires all parents to be notified of every proceeding or hearing involving the child. DCF is also required to obtain the names of all parents and prospective parents when they take custody of a child. §39.401(4), Florida Statutes. When a dependency petition is filed and the identity of a parent is unknown, the court is required to make its own inquiry to discover the parent's identity. §39.503, Florida Statutes. If DCF discovers the identity of a parent, but his or her whereabouts are unknown, DCF is required to conduct a diligent search to determine the parent's location. §39.503(5), Florida Statutes. Finally, when determining permanency, the dependency court must determine whether or not reunification with either parent is inappropriate. §39.621(1), Florida Statutes. Therefore, the identity of a child's father is essential in a dependency proceeding.

Legal Father:

Although not defined in the Florida Statutes, the term “legal father” is recognized in case law as the man whom enjoys all the rights, privileges, duties, and obligations of fatherhood for a specific child. Department of HRS v. Privette, 617 So. 2d 305, 307 (Fla. 1993). According to §63.062(1)(b), Florida Statutes, the legal father is the parent of the child if:

1. the child was conceived or born while the father was married to the mother. In re S.M.A.L., 902 So.2d 328, (Fla. 2d DCA 2005). (The “legal father” was married to the mother at the time of the child’s birth, and another man was labeled the child’s putative biological father.); Department of Health & Rehabilitative Services v. Privette, 617 So.2d 305 (Fla.1993), (The court recognized that children have a presumption of legitimacy if they are born during a marriage which is based on the public policy of protecting the welfare of the child.),
2. the father has legally adopted the child,

3. the father's identity has been determined by court proceedings. (Whenever a court makes a factual determination as to the identity of a minor child's father and the determination is material in the proceeding before the court, that proceeding qualifies as a court proceeding. B.B. v. P.J.M., 933 So.2d 57 (Fla. 1st DCA 2006).),
4. the father has signed an affidavit of paternity, or
5. the father is the unmarried biological father who has acknowledged in writing that he is the father of the child and has complied with the other requirements set forth in §63.062(2), Florida Statutes. *See also* §§742.11, 382.013(2)(a), Florida Statutes.

Pursuant to §§39.01(49) and (51), Florida Statutes, the legal father is a party to the case in a dependency proceeding. Section 39.502(1), Florida Statutes, requires that all parents must be given notice of all proceedings and hearings involving the child unless parental rights have been terminated. Section 63.062(1)(b), Florida Statutes, requires the legal father to consent before an adoption can occur. *See also* In re S.M.A.L., 902 So.2d 328, (Fla. 2d DCA 2005).

Putative Father:

Case law recognizes the putative father, or prospective father, as a man who is thought to be the father of the child. When a putative father is named in a dependency case, he is entitled to notice of hearings, but is not recognized as the father of the child or as a party in the dependency action unless he files a sworn affidavit of parenthood without objection by the mother, or successfully pursues paternity under a chapter 742 proceeding. The putative father is entitled to receive notice of hearings as a participant in a dependency case pending the results of the paternity action. §39.503(8), Florida Statutes.

A putative father does not have standing to establish paternity of a child if the child was born into an intact marriage and the married woman and her husband object to the paternity action. Tijerino v. Estrella, 843 So.2d 984 (Fla. 3^d DCA 2003). *See also* Bellomo v. Gagliano, 815 So.2d 721 (Fla. 5th DCA 2002), (A man had no right to seek to establish paternity of child born into an intact marriage when both mother and husband objected, even though the man claimed that he had regularly visited the child for 12 months and had tried to contribute financially to the child's care.)

Biological Father:

A "biological" father is the man whose sperm fertilized the mother's egg, usually through an act of sexual intercourse. §742.12(4), Florida Statutes. In some case law, the terms unmarried biological father and putative father are used interchangeably. In chapter 63 adoption proceedings, the Florida Legislature addressed unmarried biological fathers by stating: "An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during the pregnancy and after the child's birth. The state has a compelling interest in

requiring an unmarried biological father to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity rights in accordance with the requirements of this chapter.” §63.022(1)(e), Florida Statutes. The legislature also addresses this issue in §63.053(2), Florida Statutes which states: “The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this chapter outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.” Accordingly, the Legislature prescribed the actions that an unmarried biological father must take to establish his right to notice of and consent to an adoption in §§ 63.054, 63.062(2), Florida Statutes.

If a man discovers that he is not the biological father of a child and wishes to disestablish paternity or terminate a child support obligation, he can follow a procedure found in §742.18, Florida Statutes, to achieve this goal.

Methods for Determining Paternity: (Chapters 742, 382, Florida Statutes)

1. The parent has voluntarily signed a sworn paternity affidavit. §742.10(4), Florida Statutes. Other forms of voluntary acknowledgement are permitted under §742.10(1) Florida Statutes. Also, paternity may have been established judicially or voluntarily in another state. See §742.105, Florida Statutes.
2. The father is named on the child’s birth certificate. The father must have signed a paternity affidavit before his name was put on the birth certificate. §382.013(2)(c), Florida Statutes, P.C. v. Department of Children and Families, 805 So.2d 1072 (Fla 5th DCA 2002).
3. The putative father is found to be the biological father through genetic testing. §742.12, Florida Statutes.
4. Paternity is established by a court of competent jurisdiction under §382.015, Florida Statutes or determined through administrative proceedings under §409.256, Florida Statutes. The judge may access the JIS system to verify previous court orders.
5. If paternity has not been established, it is beneficial to have parent swear under oath that he is the parent of the child and adjudicate him/her as the parent, or order a DNA test for the father if he is contesting paternity. §742.10(4), 742.12(1), Florida Statutes. Payment for the DNA testing is governed by §§742.12(7), 742.18(7)(c), Florida Statutes.

WHAT CAN THE COURT DO?

If the putative father’s identity is known:

In dependency court, the court must inquire about the name and location of the father at the shelter hearing. §39.402(8)(b), Florida Statutes. If a putative father exists and paternity has not been established, the initial shelter order should:

1. Give the putative father and all other parties notice of the next hearing, at which paternity and child support will be addressed. §§409.256(4), 742.021, Florida Statutes.
2. If personal jurisdiction is established, order a DNA test to establish paternity, if needed. §742.12(1), Florida Statutes. Payment for the DNA testing is governed by §§742.12(7), 742.18(7)(c) Florida Statutes.

At the subsequent hearing, the court should:

1. Establish paternity, if not already done and adjudicate the putative father as the parent of the child. Once paternity is established, the birth record needs to be updated at the Office of Vital Statistics to appropriately record the establishment of paternity. The CLS attorney should complete the top portion of the Department of Health form DH673 using information from the birth record. Next, a certified copy of the paternity adjudication with the father's name should be provided to the Clerk of the Court who then submits the record to the Florida Department of Health's Office of Vital Statistics. **A separate paternity order should be used for this purpose to ensure dependency information is kept confidential.** The birth record is then updated with the father's name and the official record shows that paternity is no longer an issue. Fla. Supreme Ct. Approved Family Law Form 12.983(g) Final Judgment of Paternity can be used for this purpose.
2. If a party still disputes paternity, they may request a jury trial. B.J.Y. v. M.A., 617 So.2d 1061 (Fla. 1993).

NOTE: The 3rd DCA recently held that the trial court has no jurisdiction to determine a disputed issue of paternity in a dependency proceeding under Chapter 39 in N.D. v DCFS, 32 Fla L. Weekly D1737b (Fla. 3rd DCA 2007). However, several other districts have established paternity in dependency cases and disagree. See T.J. v. Department of Children and Families, 860 So.2d 517 (Fla. 4th DCA 2003), (Trial court erred in not applying clear and convincing standard to paternity evidence as required in §§742.031, 742.10(1), (Fla. Stat. 2006); In Interest of J.M., 499 So.2d 929 (Fla. 1st DCA 1986), (A circuit court has inherent and continuing jurisdiction to entertain matters pertaining to child custody and to enter any order appropriate to a child's welfare.); Department of Revenue v. Yambert, 883 So.2d 881 (Fla. 5th DCA 2004), (DOR was forced to establish paternity and child support obligation when dependency court had ordered DNA testing but failed to issue an order adjudicating paternity.); In re S.M., 874 So.2d 720 (Fla. 2nd DCA 2004), (Circuit court erred in

ordering E.K., an out-of-state resident with absolutely no connections to Florida, to submit to paternity testing before moving forward with the dependency action. The paternity action must occur in the state having personal jurisdiction over the parent.) Also, §39.521(1)(d)(7), Florida Statutes states: “The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child’s parents or guardian, and shall enforce the financial obligation as provided in chapter 61.”

If the putative father’s identity is not known:

Pursuant to §39.503, Florida Statutes, the court shall conduct the following inquiry if the identity or location of a putative father is unknown:

1. Was the mother married at the probable time of conception of the child or at the child’s birth?
2. Was the mother living with a male the probable time of conception?
3. Has the mother received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father?
4. Did the mother name any man as the father on the birth certificate or in connection with applying for or receiving public assistance?
5. Has any man acknowledged or claimed paternity in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides?

If the court cannot identify a putative father after conducting this inquiry, the court will be unable to provide notice and shall make findings stating this conclusion and may proceed further in the dependency case. §39.503(4), Florida Statutes. However, if a putative father is identified, then the court shall direct the petitioner to conduct a diligent search for that person before scheduling a disposition hearing, unless the court finds that the best interest of the child requires proceeding without notice to the person whose location is unknown. §39.504(5), Florida Statutes. The diligent search must include, at a minimum:

1. inquiries of all relatives of the parent or prospective parent made known to the petitioner,
2. inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent,
3. inquiries of other state and federal agencies likely to have information about the parent or prospective parent,

4. inquiries of appropriate utility and postal providers,
5. a thorough search of at least one electronic database specifically designed for locating persons, and
6. inquiries of appropriate law enforcement agencies. §39.503(6), Florida Statutes.

If the diligent search uncovers a putative father, §39.503(8), Florida Statutes and Florida Rule of Juvenile Procedure 8.225(b)(5)(C) require that notice of hearing be provided to that person and that the person be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court unless the other parent contests the determination of parenthood. If the known parent contests, the putative father shall not be recognized as a parent until proceedings under chapter 742 have been initiated and concluded. However, the putative father shall continue to receive notice of hearings as a participant pending results of the chapter 742 proceedings.