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ANALYSIS

## Establishing and disestablishing paternity in the context of domestic violence

Daniel Pollack and Toby Kleinman | June 8, 2023



A married man is legally presumed to be the biological father of his wife's offspring. But there are times that a legal parent objects to paternity or a mother questions the paternity of her partner or asserts the husband is not the biological father. There are times when unmarried partners are uncertain about paternity, a single or divorced mother wants or needs to seek child support, or a man seeks

parenting time with a child he believes he fathered. It is under these circumstances that paternity of the child may need to be legally established. Where there is domestic violence there are numerous special issues to be considered.

When a child is born out of wedlock, there are ways to establish paternity. In many states, if there is agreement regarding paternity, both parties can formally acknowledge this. If either party is unwilling to sign such an acknowledgement document, a process can be commenced to legally establish who the father is.

Establishing paternity is the process of legally identifying the biological father of a child. This may occur in order to determine custody, child support, or visitation, as well as determining the child's eligibility for social security benefits, health and life insurance, and disputes concerning inheritance. Disestablishing paternity is the flip side. A man may say, "Really, that's not my kid!" Or, the mother will assert that the child is really not the offspring of the man asserting paternity.

Two major rationales for disestablishment are the presentation of DNA evidence and the voluntary agreement/consent of the parties. In New York, for instance, a court, pursuant to CPLR Section 3121, may order blood testing where the parenthood of a child is questioned. The statute reads, in part: "After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent, employee or person in the custody or under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a physical, mental or blood examination by a designated physician, or to produce for such examination his agent, employee or the person in his

custody or under his legal control.” In many states, the basis for this assertion may include a material factual mistake, fraud, or duress.

The timeline to disestablish paternity will depend on state law and the unique circumstances of each case. In terms of venue, regardless of where the child was actually born, paternity can often be established by filing in the county where the child or mother or the putative father is living.

Establishing or disestablishing paternity can be a complex, time-consuming task once court involvement is commenced. In the context of a marriage or civil union where there is a history of domestic abuse, establishment and disestablishment of paternity may be a critical safety issue. A typical case might be where a father wants to have a relationship with his child but where there has been prior domestic violence and the mother seeks protection from future violence for herself or the child. There are times violent partners seek court intervention. In each of these circumstances a swift procedure to show the actual parentage may be able to provide important protections and keep major custody litigation from recurring. As domestic violence can be about power and control this legal issue can be determinative.

Prof. W. Gibb Dyer, in an article titled, “All children deserve the privilege of a strong, two-parent household” asserts that: “Research shows that children who grow up in two-parent homes, on average, have the following benefits over children who are raised by single parents: they are more secure financially; do better in school and are less likely to drop out; are less prone to experience anxiety and depression; are less likely to take drugs or become addicted to alcohol; are less likely to experience

sexual abuse and domestic violence; are less likely to commit crimes and be in the juvenile justice system; and are less likely to engage in risky sexual behavior thus avoiding sexually transmitted diseases and unwanted pregnancies.” (Sources for these statistics can be found in Dyer’s book, “The Family Edge”).

The accuracy of Dyer’s assertions may be different where there is a history of domestic abuse. For instance, children who are victims of domestic abuse are known to suffer harm from abuse even where it is indirect, and therefore, if the named father is not the actual biological father there may be important reasons for the mother to question paternity. In such cases, disestablishing paternity may end litigation abuse by an abusive father and ensure that a myriad of legal challenges down the road can be avoided. For this reason, moving swiftly to disestablish paternity may be in the best interest not only of the child, but of the adults as well. The importance of speedy justice in domestic violence cases should not be underestimated, especially if it means a better, long-term outcome for the child.

Survivors of domestic abuse face significant emotional, physical, and financial consequences. Establishing or disestablishing paternity rights of the putative father is an important decision that can make those burdens easier to bear. Domestic violence cases involving paternity are especially complex and require an attempt to anticipate and avoid litigation for the victim and children. They also require knowledgeable and experienced attorneys in this particular area of law.

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