



Iowa General Assembly

2012 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

COMMON LAW ACTION FOR FRAUD BASED ON MISREPRESENTATION OF PATERNITY

Filed by the Iowa Supreme Court

June 1, 2012

Dier v. Peters

No. 11-1581

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20120601/11-1581.pdf

Factual Background. O.D. was born to Cassandra Jo Peters. Peters told Joseph O. Dier that he was the child's biological father. Based upon this representation, Dier voluntarily provided monetary support for the child and Peters. Dier filed a petition for custody of the child and upon receiving the report of the child custody evaluator, Peters requested a paternity test. The test excluded Dier as the biological father and Dier requested a second paternity test which confirmed the initial test results. Dier filed a petition seeking reimbursement from Peters for monies expended for Peters, the child, and for the custody litigation on the basis of "paternity fraud." Peters filed a motion to dismiss the petition on the grounds that the petition failed to state a claim upon which relief can be granted because the State of Iowa does not recognize an action for "paternity fraud" and the legislature has not created any such action by statute. Dier filed a resistance to the motion arguing that Peters had engaged in fraudulent activity. The district court granted Peters' motion to dismiss, concluding that the current status of the law demands that the case be dismissed. Dier appealed.

Issue on Appeal. Whether Iowa law allows a putative father to bring a paternity fraud action against a biological mother to obtain reimbursement of payments that were voluntarily made.

Analysis.

Paternity Fraud. The Court defined "paternity fraud" (also known as "misrepresentation of biological fatherhood" or "misrepresentation of paternity") as occurring when a mother makes a representation to a man that the child is genetically his own even though she is aware that he is not, or may not be, the father of the child. Some courts in other jurisdictions have disallowed paternity fraud claims based on considerations of public policy and child welfare. Those allowing the claims have determined that paternity fraud is not dissimilar from any other tort claim that is actionable as long as the elements of the tort are present. In allowing the claims, these courts have either rejected the public policy concerns or determined that discouraging paternity fraud and compensating the putative father outweigh any potential harm to the child. While courts in other jurisdictions have generally reviewed paternity fraud claims relating to court-ordered child support, the Court distinguished the present case as one in which the appellant sought reimbursement of payments made voluntarily, without a court order.

Case of First Impression—Relevant Precedent. The Court noted that recognizing a cause of action for paternity fraud was a case of first impression for the Court, although the Court had previously come close to addressing the issue. In *Brooks v. Brooks*, 680 N.W.2d 379 (Iowa Ct. App. 2004), the court of appeals found persuasive the arguments from a Nebraska Supreme Court decision (*Day v. Heller*, 653 N.W.2d 475 (Neb. 2002)) precluding a cause of action for paternity fraud based on public policy and child welfare. The court of appeals, however, declined to determine whether this cause of action should be recognized in Iowa, concluding that it is up to the legislature or the supreme court to establish new causes of action.

While Iowa does not have a statute specifically addressing paternity fraud or the reimbursement of voluntary payments made by a putative father, Iowa does have a statute addressing the relief provided an established father regarding court-ordered support payments following a disestablishment of paternity action (2011 Iowa Code, section 600B.41A).

The Court reviewed the line of cases involving the Code section and concluded that the current version of the statute

limits courts to providing relief in disestablishment cases only for future and pending unpaid support due prior to the date the order determining disestablishment of paternity is filed, but not for support already paid. The conclusions in these cases rested on a long line of cases holding that courts do not have the authority under common law to reduce court-ordered support retroactively, and are thereby limited to the authorization provided in statute. This rule, the Court noted, supports the policy of protecting the stability and integrity of court judgments. The Court distinguished the present case from this line of cases, however, because Dier had provided monetary support voluntarily, not based upon a court-ordered child support decree. Additionally, in the present case, the appellant was not seeking relief under the statutory provision regarding disestablishment of paternity, but as a common law action for fraud.

Application of Common Law of Frauds. The Court next reviewed the traditional elements of common law fraud that must be proven by a preponderance of clear, satisfactory, and convincing proof: 1. The defendant making a representation to the plaintiff; 2. The representation was false; 3. The representation was material; 4. The defendant knew the representation was false; 5. The defendant intended to deceive the plaintiff; 6. The plaintiff acted in justifiable reliance on the truth of the representation; 7. The representation was a proximate cause of the plaintiff's damages; and 8. The amount of damages.

The Court applied the necessary elements to the facts of the case and found that, with the exception of the element of damages, which would not typically provide for recovery of the costs and attorney fees resulting from the custody litigation, the petition was sufficient to set forth a traditional fraud claim. The Court noted that Dier's cause of action did not present a new cause of action or theory of recovery, but "fit comfortably within the traditional boundaries of fraud law." While the fact pattern may be atypical, the Court had previously allowed actions for common law fraud with atypical fact patterns. The Court stated "the common law is presumed to be in force in this state unless it is revised or repealed by statute or constitution."

Public Policy Considerations. The Court also considered Peters' claim that recognition of a cause of action for paternity fraud would be contrary to the public policy of the state. Peters' argument relied on the Day case from Nebraska as had the Iowa court of appeals in its previous decision in Brooks. While the Court agreed that the concerns expressed in Day were legitimate, when applied to the present case, the Court was not ultimately persuaded that allowing the cause of action to proceed would be contrary to public policy. The Court stated that in Day the father sought recovery of eight years of court-ordered support paid for a child that had been born during his marriage to the mother. The child in Day was 15 years old at the time of the proceedings, not 3 as the child in the present case, so advancing the cause of action was unlikely to impose additional stress on the Iowa child. Even though proceeding might result in fewer resources for Peters and the child, the Court found that it had never afforded parents a general defense against tort liability on the ground that they need the money to raise their children.

The Court also considered the public policy of ruling against allowing the cause of action to proceed. The courts recognize fraud as a cause of action to deter lying. If paternity fraud claims are allowed to proceed, situations like the present case could be avoided. In considering public policy with reference to litigation between family members in particular, the Court noted previous cases in which it had abolished interspousal immunity and parent-child immunity, finding unpersuasive the argument that this would be a threat to domestic tranquility. In the present case, the Court also found the concern about family harmony unpersuasive, especially because Dier, who thought he was part of the family, was now removed from it. Finally, the Court noted that there is a public policy to be upheld in providing a remedy for fraud by not protecting people allegedly engaging in fraud and by not using children to avoid the consequences of alleged deceptions. Based on this reasoning, the Court concluded that allowing the paternity fraud claim to advance was not contrary to public policy.

Law or Policy Expressed by the General Assembly. The Court again considered the application of Iowa Code section 600B.41A in determining whether allowing the paternity fraud claim to go forward would contravene law or policy expressed by the general assembly. The Court noted that the Code section relieves an established father from payment of future and accrued but unpaid support obligations, but by implication does not allow recovery of support that has already been paid.

While Peters did not dispute that the statute referred only to court-ordered support, she thought it incongruous to permit recoveries of voluntary support payments when the legislature had disallowed recoveries of court-ordered support payments.

The Court disagreed, stating that prior cases regarding recovery of court-ordered support were predicated on upholding the policy of protecting the stability and integrity of court judgments. In a proceeding for support, the putative father has the right to seek a paternity test, and if he does not, the decree has a measure of finality. Because the present case does not involve the finality of a decree or judgment, proceeding with the cause of action for paternity fraud does not contravene the principle of protecting the stability and integrity of court judgments.

Conclusion. The Court held that the claim for paternity fraud should not have been dismissed, is supported by common law standards for fraud, and is not contrary to public policy or the statutory policy of the state. The Court emphasized the limits of the holding, that Dier could pursue recovery of moneys provided to Peters or spent for the benefit of the child, but

could not recover attorney fees and costs incurred in the prior custody litigation. The Court also cautioned that proving fraud is difficult. The Court reversed the judgment of the district court granting Peters' motion to dismiss and remanded for further proceedings.

Concurrence. Chief Justice Cady concurred specially, stating that the Court in this case continued its broader policy of recognizing a remedy for fraud. The role of the Court is to determine whether the plaintiff has established a cause of action according to the rules of notice pleading, not to decide whether it is prudent social policy to limit a common law cause of action for fraud because of the difficulty or complexity of the issues. When complex parent-child relationships are involved, the legislature is the proper authority to balance the competing policy interests and specify any exception to common law fraud based on public policy. Claims for fraud have been applied to many types of relationships of trust and confidence and proving fraud is a difficult task. Proving paternity fraud likely will be more difficult because it involves biological, emotional, and motivational complexities, and information disclosed may prove embarrassing to the parties. While the process must be trusted to strike the appropriate balance between the competing interests involved in disclosing such sensitive information, "the process may be one made better by its infrequent use."

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