

Can I force wife to prove child is ours to avoid child support?

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Dear Ask the Attorney:

Last week's Tattoo Nightmare t.v. show where a guy got a coverup of his "son's" name cause he found out it wasn't his son got me thinking. My wife and I are separating, moving towards that divorce phase that is gonna be nasty. She says she wants everything including the house, alimony and child support. The problem is I am not sure that my 5 year old is actually my daughter. Can I make her take a DNA test to prove that the kid is mine?

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Our guest blogger today is Thomas J. Snyder, Esq. Mr. Snyder is a partner in the Matrimonial Department of Einhorn Barbarito who just successfully argued a case in which the DNA of a child was in question with regard to Child Support payments. He concentrates his practice solely in matrimonial and family law.

Dear E.S.:

The law as it relates to the issue you raise has recently been clarified by the New Jersey Supreme Court. However, before you act on this issue, you should seriously consider how pursuing such a course of action may impact the child and your family.

Whether or not the facts of your case permit you to challenge the paternity of your daughter is an answer which will ultimately have to be decided by a judge.

Under New Jersey law, as a general matter, a child born during a marriage is presumed to be the child of the married couple. The presumption may be rebutted by clear and convincing evidence. A genetic test demonstrating non-paternity would meet the clear and convincing evidence standard.

In order to obtain the genetic testing necessary to overcome the presumption that your daughter is not your biological child, you will have to show the court that there is a reasonable possibility that paternity is in dispute. Was your Wife engaging in sexual relationships with another person at or about the time your daughter was conceived? Has your Wife said or done things which lead you to conclude that the child might not be yours? What was the nature of your relationship with your Wife at the time your daughter was conceived?

You are going to have to establish, for the court, the factual basis, that there is a reasonable possibility that your daughter is not your biological child. If you do that, the court is required to order the genetic testing, unless, the court has good cause to deny your request for the testing.

The burden to establish this good cause rests upon your Wife. There are a multitude of factors the court will consider in determining whether or not good cause exists to deny your request for the genetic testing. Some of the factors a court will consider are, harm to the children such as emotional injury; the need to protect the child's physical, mental and emotional needs; social stigma to the child should it be determined that the child is not your daughter; the circumstances under which you came to suspect that the child wasn't yours; the period of time between when you first suspected that the child might not be yours and when you ultimately decided to take action on the issue. These are just a few of the facts a court may consider relative to assessing whether good cause exists to deny you the right to obtain the court ordered DNA testing required to prove your case.

If you can establish there is a reasonable probability that the child is not yours and your Wife fails to establish good cause as to why genetic testing should not occur, a court will permit you to proceed with your claim. Once the testing has taken place, and if it is determined through the DNA testing that the child is not yours, there will be significant legal consequences relative to your relationship with your child. In fact, she will no longer be your child. You may no longer have a financial obligation to provide her with support and maintenance. Her rights of inheritance with respect to your estate may be

impacted. You will no longer have a legal right to visit with her, have a relationship with her, or have input into decisions relating to her health and welfare.

Further, if you are successful with respect to your challenge to paternity and can ultimately establish who, in fact, is the child's biological father, you may be able to recoup, from the biological father, some or all of the money you spent for the support and maintenance of the child during the period of time you were presumed to be her father.

While the legal analysis set forth above is relatively straight forward, the emotional consequences of a case such as this are significant and, obviously, long lasting. Before you proceed with a case of this nature, I strongly suggest you speak to an attorney as well as a mental healthcare professional so that you are fully aware of the potential financial and emotional implications of your proposed course of action.

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.