

APPELLATE COURT OF INDIANA, DIVISION NO. 2

A----. B----. v. C----. D----.

277 N.E.2d 599 (Ind. App. 1971) · Decided December 29, 1971

SUMMARY

The Indiana appellate court considers whether a biological father may obtain a declaratory judgment establishing his paternity of a child born during the mother's prior marriage. The court holds that Indiana's Probate Code permits inheritance rights based on established paternity but does not confer legitimate status because it lacks language declaring the child legitimate. The court further concludes that the plaintiff has a sufficient present interest to establish standing, while addressing public policy, the presumption of legitimacy, and procedural concerns regarding the child's interests.

CASE DETAILS

COURT	Appellate Court of Indiana, Division No. 2
WRITING FOR THE COURT	White; Hoffman, C.J.; White, J.; Sharp, J.; Staton, J.
JURISDICTION	Indiana
DECIDED	December 29, 1971
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff brought a declaratory judgment action seeking a declaration that he was the biological and legitimate father of a child born to his present wife during her prior marriage. The trial court granted summary judgment for defendant, concluding that plaintiff lacked statutory authority, standing, or jurisdiction and that the action violated public policy. Both parties had moved for summary judgment.
STANDARD OF REVIEW	Summary judgment is improper where a genuine issue of material fact exists, doubts must be resolved against the moving party, and issues involving credibility or the weight of evidence should not be resolved on summary judgment. The appellate court also reviewed statutory interpretation and questions concerning standing, joinder, estoppel, and declaratory-judgment procedure.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	A----. B----., Plaintiff-Appellant v. C----. D----., Defendant-Appellee

TOPICS

family law procedure

paternity

statutory interpretation

probate procedure

summary judgment

PRACTICE AREAS

family law

probate

civil procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether Indiana Probate Code section 207 authorized a court to change the child's status from illegitimate to legitimate when the putative father married the child's mother and acknowledged the child.
2. Whether the putative biological father had a present interest and standing to seek a judicial declaration of paternity.
3. Whether the child and mother were necessary parties to a declaratory judgment action concerning the child's paternity and status.
4. Whether the prior divorce decree estopped plaintiff from disputing the defendant's paternity.
5. Whether summary judgment was proper when the parties presented conflicting evidence concerning intercourse, impotency, and blood-grouping test results.
6. Whether paternity or nonpaternity should be established on summary judgment when the determination could affect a child's presumed legitimacy.

HOLDINGS

1. Indiana Probate Code section 207 is a succession statute, not a statute of legitimation. It permits an illegitimate child to be treated as legitimate for specified inheritance, homestead, and family-allowance purposes, but it does not change the child's general legal status to legitimate.
2. A putative father has a substantial present interest sufficient to confer standing to maintain an action seeking a judicial determination of paternity, because Probate Code section 207 makes legally established paternity relevant to potential inheritance rights.
3. The child and mother were required to be joined in the declaratory judgment action. A paternity determination could not bind the child's interests or terminate the controversy without the child's participation and appropriate representation.
4. The prior divorce decree did not estop plaintiff from litigating paternity. Plaintiff was not a party to the divorce action, and the decree's statement that the child was born as issue of the marriage did not adjudicate the child's status in a manner binding on the child or plaintiff.
5. Summary judgment was improper because the affidavits and record presented disputed factual issues concerning intercourse, impotency, the interpretation of blood-grouping results, and the accuracy and conclusiveness of the testing.
6. The record did not establish a public-policy bar to plaintiff's attempt to seek a paternity determination, but the child's legitimacy-related interests required direct participation and protection before any adjudication could be made.

KEY QUOTATIONS

“We conclude that under the law of Indiana as it presently exists, and has existed since January 1, 1954, well prior to the conception and birth of the child in question, there is no substantive legal basis on which any court could declare that the child in question is the legitimate child of the plaintiff.” (608)

“We see no reason for holding that illegitimate paternity is not a "legal relation[ship] ... affected by a statute" (i.e., Probate Code § 207) for the purpose of making an illegitimate father or child an interested party under section 2 of the Declaratory Judgment Act.” (612)

“That presumption can be overcome and the relationship can be judicially established only in an action to which the child is a party.” (617)

“We are also inclined to the view that just as there are public policy considerations which prevent the granting of divorces on summary judgment there is a similar consideration which prevents establishing paternity or nonpaternity on summary judgment, especially when the judgment would have the effect of rendering a previously legitimate child illegitimate.” (619)

FACTUAL BACKGROUND

The defendant was married to the plaintiff's present wife when she conceived and gave birth to a son. She later divorced defendant, married plaintiff, and received custody of the child in the divorce decree. Plaintiff alleged that he was the child's biological father and sought a declaration of paternity and legitimacy, relying on blood-grouping evidence and affidavits concerning intercourse and defendant's alleged impotency during the conception period.

PROCEDURAL HISTORY

The action was initially filed in the Pulaski Circuit Court and venue was changed to Starke County. The trial court transferred the matter to the juvenile docket and entered summary judgment for defendant. The appellate court reversed, directed the trial court to overrule both summary-judgment motions, join the child and mother as parties, provide appropriate representation for the child's interests, and proceed to a final disposition consistent with the opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Overrule both motions for summary judgment; enter appropriate orders joining the child and mother as parties; provide proper representation for the child's interests; and proceed to a final disposition consistent with the opinion.

CASES CITED

- Pursley v. Hisch, 119 Ind. App. 232, 85 N.E.2d 270 (1949)

- Wilson v. Bass, 70 Ind. App. 116, 118 N.E. 379 (1918)
- Thacker v. Butler, 134 Ind. App. 376, 184 N.E.2d 894 (1962)
- Wozniczka v. McKean, 144 Ind. App. 471, 247 N.E.2d 215 (1969)
- Buchanan v. Buchanan, 267 N.E.2d 155 (Ind. 1971)
- Mayhew v. Deister, 244 N.E.2d 448 (Ind. App. 1969)
- Houghton v. Houghton, 179 Neb. 275, 137 N.W.2d 861 (1965)
- Serway v. Galentine, 75 Cal. App. 2d 86, 170 P.2d 32 (1946)
- Lund's Estate, 26 Cal. 2d 472, 159 P.2d 643 (1945)
- Pfeifer v. Wright, 41 F.2d 464 (10th Cir. 1930)
- Taylor v. State ex rel. Ogle, 168 Ind. 294, 80 N.E. 849 (1907)
- Kos v. State ex rel. Metzler, 218 Ind. 115, 31 N.E.2d 50 (1941)
- Rea v. Rea, 124 F. Supp. 922 (D.D.C. 1954)