

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Glenda G. v. Mariano M.

62 A.D.3d 536, 880 N.Y.S.2d 18 (N.Y. App. Div. 2009) · Decided May 19, 2009

SUMMARY

The Appellate Division affirmed an order declaring the respondent to be the father of the subject child. The court held that the respondent was estopped from denying paternity because he had assumed a parental role and led the child to believe he was the father, and that his request for DNA testing nearly 13 years after the child’s birth was insufficient.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Tom, J.P.; Friedman, J.; Catterson, J.; Moskowitz, J.; Renwick, J.
JURISDICTION	New York
DECIDED	May 19, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from a Family Court order declaring him to be the father of the subject child.
PRECEDENTIAL VALUE	Published Appellate Division decision; precedential within the applicable New York court system.
PARTIES	Mariano M. v. Glenda G.

TOPICS

- paternity
- family law
- appellate procedure
- evidence

PRACTICE AREAS

- family law
- paternity
- appellate procedure
- evidence

QUESTIONS PRESENTED

- Whether respondent should be estopped from denying paternity because he assumed the role of a parent and led the child to believe he was the father.

2. Whether respondent's request for DNA testing nearly 13 years after the child's birth provided a sufficient basis for ordering genetic testing.
3. Whether Family Court's failure to reduce its decision to writing at the time required reversal.

HOLDINGS

1. Family Court properly estopped respondent from denying paternity because he assumed the role of a parent and led the child to believe that he was the child's father, and the child's best interests required estoppel.
2. Respondent's desire to resolve his doubts about biological paternity was not a sufficient basis for ordering DNA testing nearly 13 years after the child's birth.
3. Although Family Court should have reduced its decision to writing at the time as required by Family Court Act § 418(a), reversal was not required because respondent was present when the court made its fact-finding on the record and the court's reasoning was clear to him.

KEY QUOTATIONS

“Under these circumstances, where respondent assumed the role of a parent, albeit somewhat limited, and led the child to believe he was his father, the court properly concluded that the best interests of the child required that respondent be estopped from denying paternity” (536)

“Respondent’s reason for demanding a DNA test, to remove his doubts as to whether he was the father, is not a sufficient basis for ordering a DNA test, almost 13 years after the child’s birth” (536)

FACTUAL BACKGROUND

Respondent had a long-standing sexual relationship with petitioner, including during the period of conception. He acknowledged the child as knowing him as his father, maintained periodic contact, purchased clothing, and did not discourage the child's belief that he was the father. The child told Family Court that he knew respondent as his father and wanted a closer relationship, and there was no evidence that another person could be the father.

PROCEDURAL HISTORY

Family Court, Bronx County, entered an order on or about August 1, 2007, declaring respondent to be the child's father. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Sarah S. v. James T., 299 A.D.2d 785 (2002)
- Matter of Shondel J. v. Mark D., 7 N.Y.3d 320, 331-332 (2006)
- Matter of Tanesha H. v. Phillip C., 57 A.D.3d 403 (2008)

OPINION

PER CURIAM.

Order, Family Court, Bronx County (Alma Cordova, J.), entered on or about August 1, 2007, which declared respondent to be the father of the subject child, unanimously affirmed, without costs. The record demonstrates that respondent had a long-standing sexual relationship with petitioner, including during the time of conception. Respondent acknowledged that the child, who is now 14 years old, calls him “Dad” and that he spoke to the child about his future.

Respondent saw the child every few months and bought him clothing and he never attempted to dissuade the child from believing he was the father. Furthermore, the court interviewed the child, who informed the court that he knew respondent as his father and that he wished to have a closer relationship with him; there is no evidence or claim that any other person could be the father of the child.

Under these circumstances, where respondent assumed the role of a parent, albeit somewhat limited, and led the child to believe he was his father, the court properly concluded that the best interests of the child required that respondent be estopped from denying paternity (see *Matter of Sarah S. v James T.*, 299 AD2d 785 [2002]). Respondent’s reason for demanding a DNA test, to remove his doubts as to whether he was the father, is not a sufficient basis for ordering a DNA test, almost 13 years after the child’s birth (see *Matter of Shondel J. v Mark D.*, 7 NY3d 320, 331-332 [2006]).

While the court should have reduced its decision to writing at the time (Family Ct Act § 418 [a]), its *537 reasoning had to have been clear to respondent, who was present when the court made its fact-finding on the record (see *Matter of Tanesha H. v Phillip C.*, 57 AD3d 403 [2008]). Concur—Tom, J.P., Friedman, Catterson, Moskowitz and Renwick, JJ.