

Parentage Cases



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THE FIVE THINGS THAT YOU AND YOUR LAWYER MUST KNOW
ABOUT MISSOURI CASES WITH UNMARRIED PARENTS

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Cases involving unmarried parents (commonly referred to as "paternity" cases) have some unique issues of which every lawyer should be aware (particularly because all attorneys seem to think that they can do family law because it is "so easy"). Despite this, in cases involving unmarried parents, there are some real pit falls for the unwary. Listed below are five things that anyone stepping into the world of unmarried parents and family must know.

I. FORM OF THE ACTION

First, the form of the action (how the case is presented to the Court) depends on two things: whether the possible or presumed father wants to be the father and whether he is on the birth certificate.

If the potential or presumed father is not on the birth certificate and does not want to be legally declared the father, he can run but he can not hide. If the Family Support Division ("FSD") requests a possible father to participate in genetic testing and the possible father declines, the Prosecutor can file a civil action to declare him to be the father of the child under the Uniform Parentage Act. A possible or presumed father is often called a "putative" father. If the putative father fails to participate, a default Judgment may be entered against him including a Judgment requiring him to pay child support. The Judge has the ability to issue what is called a "body attachment" which is an order to law enforcement to bring the putative father to a laboratory so that he may produce a genetic sample. There are, of course, challenges to a body attachment and the requirement of producing a genetic sample for testing as a condition for release, but those are beyond the scope of this article.

If the child was born out of wedlock (to unmarried parents) the putative father, the mother or even the child may file an action to determine parentage. A point of form: if the child was born to unmarried parents after August 28, 1997 as specified in the law and if the father's name is on the birth certificate, technically the form of the court action is not paternity but a lawsuit for custody and support. However, judges rarely make an issue out of such issues of form. One interesting point is that if a case is filed as a "paternity" case, the information relating to the case will not appear on Case.net and the file will not be available for public inspection. An action for custody and support will be both available on Case.net and potentially open to the public at the courthouse. If paternity is contested, the law provides that on the request of any party, the Court shall order the parties to participate in genetic testing, including producing the child, through a certified laboratory. If the Family Support Division brings the action, Family Support Division will pay for the testing. If one of the parents or the child brings the action, the Court may assess the cost of testing against either parent, either while the case is pending or at its conclusion.

If the genetic testing indicates that there is a probability that the putative father is the biological father of the child are greater than 98%, the law creates a rebuttable presumption that

he is in the natural father of the child. The only real challenge to such a test result would be through another genetic test. Unless the mother had sexual contact with the putative father's immediate male family members around the time of the conception, the chances of a successful challenge are negligible.

Another challenge may be based on noncompliance with the specific requirements in the law for the affidavit signed by the father acknowledging his paternity. The law requires that the affidavit acknowledging paternity be signed before a notary public before a father's name may be placed on the birth certificate.

Finally, another possible attack of the affidavit acknowledging paternity is that the signors did not receive the statutorily required information relating to the legal effect of execution of the affidavit prior to signing the document. This is of course a problem of proof.

2. WHERE THE CASE SHOULD FILED

Missouri has the power to act in the matter if the putative father is a resident of Missouri or if he had sexual intercourse within the boundaries of the State of Missouri. Generally, the case may be filed where the mother, the putative father or the child resides at the time the case has started.

3. THE PARTIES

The proper parties to an action to determine paternity or non-paternity are the mother, the father/putative father and the child.

If either parent has received public assistance relating to the child since his or her birth, the State of Missouri is a necessary party of the case.

4. THE PROPER ALIGNMENT OF THE PARTIES

If the mother is filing the action for custody and/or support, she and the child are the plaintiffs and the mother may act as the next friend for the child. If the mother is appointed to act as next friend for the child, it is not mandatory that there be a Guardian ad Litem. If the father is filing the action, the mother and the minor child must be defendants and a Guardian ad Litem is required by law. The failure to appoint a Guardian ad Litem for a minor defendant does not result in a void judgment, but it is reversible error on direct appeal. If there is a Guardian ad Litem, there is no need for a next friend. Even if the father is on the birth certificate, he cannot be appointed as the next friend for the child as there has been no judicial determination of his paternity.

Even though it is not proper to appoint a father as the next friend for the child if there has been no judicial determination of paternity, it is commonly done by judges as the appointment of a next friend requires the filing of a consent to act as such.

5. RELIEF AVAILABLE

In an action under the Uniform Parentage Act for a declaration of paternity or non-paternity, the court may determine parentage, and the court has discretion to award custody, child support, attorney's fees and costs (including the cost of genetic testing and expert fees). Support may be retroactive to date of notice to the paying party, i.e., the date of service if he is the Defendant or date of filing if he is the Plaintiff.

Despite the common references to "back support," child support for any time prior to the filing of the Petition is never available. Instead, the Court may award "necessaries" for a period of five years prior to the filing of the Petition. "Necessaries" are defined as the costs of birth and raising the child. Proof of these expenses may be made through documents and/or testimony. Most commonly, these expenses are primarily for health insurance, healthcare and daycare. Although it is wrong, it is common for judges to use the child support charts for the period in question.

There are no reported appellate cases in Missouri addressing recovery of prenatal expenses.

Cases involving unmarried parents can be complicated. If you follow these five simple rules, you will, at least, start out on the right path.