No. 24120 - William L., III v. Cindy E.L.

Workman, Chief Justice, concurring:

I concur to reiterate the importance of our decision in Michael K.T. v. Tina L.T., 182 W. Va. 399, 387 S.E.2d 866 (1989), as applied to William L. v. Cindy E.L. and to point out the shortcomings of the dissenting opinion to William L.

To adopt the reasoning of the dissenter to William L. is to view the law solely in shades of black and white and to neglect what is necessarily in the best interests of the child involved. To succinctly state the dissenter's position, if conclusive blood tests exclude a putative father as the natural father of the child, as was the case in William L., then such evidence should be admissible to disprove paternity, despite the impact on the child involved and no matter how long the individual has held himself out to be the father of the child.

The dissenting opinion places much weight on the father's testimony (despite the fact that we have no record of testimony!), wherein the putative father apparently testified that he never spoke about the child's paternity or mentioned blood tests until after the divorce. It is evident from the family law master's order, however, that the testimony was disputed.[1] Both the family law master and the circuit court, who had the parties before them, chose to believe the Appellee and now the dissenter wants us to reject the factual findings of the family law master and circuit court without even having a record!

As we stated in Michael K.T., "absent evidence of fraudulent conduct which prevented the putative father from questioning paternity, this Court will not sanction the disputation of paternity through blood test evidence if there has been more than a relatively brief passage of time." 182 W. Va. at 405, 387 S.E.2d at 872. Unfortunately, this Court's

[1]The mother testified that at the time of the child's birth, she asked the putative father, her husband, to have blood tests and he refused. Further, she stated that blood tests were discussed with her spouse two year later, and again, he refused. Most importantly, during this time, the family law master found that the putative father "acted as a normal

review is limited to the record before us. It is very difficult under our standard of review[2] to usurp the findings of the fact of the factfinder, but certainly we cannot disturb findings of fact when we do not even have a factual record.

I write separately also to re-emphasize that the concepts behind Michael K.T. are based on sound public policy. Further, the law favors "the innocent child over the putative father in certain circumstances." Id. What the majority placed emphasis on in reaching its decision is that the lower court obviously determined that the more time that elapsed that the putative father may very well have known that he was not the natural parent (yet raised no dispute as to paternity), the greater the deterioration of the child's opportunity for finding, knowing and loving his natural father. Id. (quoting Commonwealth ex rel. Gonzalez v. Andreas, 369 A.2d 416, 419 (1969).

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father towards James L." Majority opinion at 3 (emphasis added).

[2]See Syl Pts. 1 and 3, Stephen L. H. v. Sherry L. H., 195 W. Va. 384, 465 S.E.2d 841 (1995).

Based on the foregoing, I respectfully concur with the majority opinion.