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UB Viewpoint - Defining legal fatherhood: Part II

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In an **earlier column**, I commented about recent developments in paternity law that left Maryland children unprotected. In *Langston v. Riffe* (2000) and *Walter v. Gunter* (2002) the Court of Appeals held that legal fathers seeking to disestablish paternity can 1) have genetic testing on demand (unless he knew he was not the biological father when consenting to paternity); 2) have paternity disestablished if genetic tests exclude him; and 3) have all back child support forgiven. The state's highest court made clear that consideration of the "best interests of the child" has no role in these decisions. While not alone in this approach, this reading of Maryland's paternity laws undermines child support enforcement, destabilizes families and, most importantly, harms children. Now comes the next installment in this branch of the law, the Court of Special Appeals (CSA) 2004 decision in *Stubbs v. Colandrea*. While offering greater protection for children of married parents, *Stubbs* reveals the deeply troubling inconsistencies in the current patchwork of paternity laws in Maryland. In *Stubbs*, the CSA looked at the availability of genetic testing in the context of a request by Kevin Stubbs to establish paternity of a child born while the mother was married to another man. Forced to decide this issue within the constraints of the sweeping and harsh "genetic testing on demand" Langston rule, the CSA struggled to avoid allowing the test because of the disruption to an intact family and harm to the child that would result. Under a strained reading of Maryland's statutory and case law, the CSA rejected Stubbs' request. The court reasoned that, where a request for genetic tests comes from an alleged biological father seeking to establish paternity of a child of married parents, it is to be evaluated under the Estates and Trusts Article under a "best interests" analysis. If, on the other hand, the request comes from a legal father seeking to disestablish paternity, the Paternity Act applies, triggering the Langston automatic testing rule. These cases leave Maryland's approach to paternity cases in disarray. The competing interests make resolution of these issues especially difficult. But the underlying public policy issues are too important for an ad hoc approach. What public policies are served by laws that protect children of married parents from the destabilizing events triggered by genetic testing yet allow such testing for children of unmarried mothers, particularly where testing often leaves these children fatherless? Help may be on its way. The Court of Appeals has recently granted certiorari in a case examining whether the best interests test applies when resolving requests for genetic testing. Maybe the court will take this opportunity to develop a more comprehensive and child-focused approach to these issues. Or perhaps a legislative solution is needed. The General Assembly should take a look at the Uniform Paternity Act of 2002. It includes a two-year statute of limitations for such requests across the board and makes clear that paternity actions must consider the best interests of the child. Such an approach would go a long way in addressing the concerns of all parties while keeping protection of children central to these decisions.

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