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EVANS v. WILSON:

A Man Seeking to Establish Paternity of a Child Born During the Marriage of the Mother to Another Man must Show that Genetic Testing Is in the Child's Best Interest

By: Julia J. Messick

The Court of Appeals of Maryland held that in order to establish paternity of a child born during the marriage of the mother to another man, a man must show that genetic testing is in the child's best interest. *Evans v. Wilson*, 382 Md. 614, 856 A.2d 679 (2004). In so holding, the court concluded that the determination of whether paternity testing of a child born during a valid marriage should be granted is governed by provisions under the Estates and Trusts Article, not under the Family Law Article. *Evans*, 382 Md. at 628, 856 A.2d at 688.

On October 7, 2000, Trina Wilson ("Wilson") married Askahie Harris ("Harris"). During that marriage, Wilson had an affair with Brett Evans ("Evans"). On January 19, 2002, Wilson gave birth to a daughter, Kendi. Although both Harris and Evans were not present on the day of Kendi's birth, Wilson invited Evans's parents to visit her at the hospital. While at the hospital, Wilson prepared a birth announcement indicating that Evans was Kendi's father, but the announcements were never sent.

Once home from the hospital, Wilson continued to communicate with Evans, though she claimed she knew that he was not Kendi's father. Specifically, Wilson sent Evans a letter wishing him "Happy Parenting," and on another occasion, sent Evans a birthday card from Kendi, which read, "Happy Birthday Daddy." Despite these communications, at the time of this action, Evans had not seen Kendi since she was six weeks old. In contrast, Harris brought Wilson and Kendi home from the hospital, lived with Kendi, and supported her. Several months after her birth, Harris completed an Affidavit of Parentage wherein he was named Kendi's father.

On December 2, 2002, Evans filed a Complaint for Order of Visitation in the Circuit Court for Baltimore City. In his answer, Wilson asserted that Evans was not Kendi's father. On June 23, 2003, Evans filed a complaint seeking a determination of paternity. The circuit court denied Evans's request and Evans appealed to the court of special appeals. Prior to any proceedings in that court, however, the Court of Appeals of Maryland issued a *writ of certiorari* to decide whether Evans was entitled to the paternity testing he sought.

In analyzing this matter, the court of appeals addressed whether MD. CODE ANN., EST. & TRUSTS §§ 1-206, 1-208, or MD. CODE ANN. FAM. LAW §§ 5-1001–5-1048 should apply in paternity proceedings where the child at issue is born during a valid marriage. *Evans*, 382 Md. at 626-28, 856 A.2d at 686-88. Relying on *Turner v. Whisted*, 327 Md. 106, 113, 607 A.2d 935, 938 (1992), the court found that because Kendi was born during a valid marriage, the Estates and Trusts Article applied. *Evans*, 382 Md. at 628, 856 A.2d at 688.

In deciding that the Family Law Article was not applicable, the court reasoned that there is a presumption that a child born during a valid marriage is the product of that marriage. *Evans*, 382 Md. at 627-28, 856 A.2d at 687. The court explained that, in order to overcome this presumption, a man claiming to be the father of such a child must prove that granting paternity testing is in the "child's best interest." *Id.* at 628, 856 A.2d at 688.

In further reliance on *Turner*, the court cited factors to be considered in making a determination of the child's best interest. *Evans*, 382 Md. at 628, 856 A.2d at 688 (citing *Turner*, 327 Md. at 116-17, 607 A.2d at 940). Some factors the court of appeals found significant were (1) the stability of the child's home, (2) whether there is an intact family unit, and (3) the relationship between the child and the man presumed to be the father. *Evans*, 382 Md. at 628-29, 856 A.2d at 688.

Moreover, the court of appeals rejected Evans's argument that recent amendments to the Family Law Article granting putative fathers an absolute right to demand genetic testing served to expand his right to establish paternity of Kendi. *Evans*, 382 Md. at 629, 856 A.2d at 688. The court determined that a "putative father" is "'the alleged biological father of a child born out of wedlock.'" *Evans*, 382 Md. at 633, 856 A.2d at 690-91 (quoting Black's Law Dictionary, 623

(7th ed. 1999)). The court explained that because Kendi was born to a married mother, she was not born out of wedlock, so Evans could not be a putative father. *Evans*, 382 Md. at 629, 856 A.2d at 688.

The court, relying on *Stubbs v. Colandrea*, 154 Md. App. 673 at 689, 841 A.2d 361 at 370 (2004), distinguished that a putative father trying to exclude himself from child support responsibilities is entitled to genetic testing without proving that testing is in the best interest of the child, whereas a father trying to establish paternity is not guaranteed the same result. *Evans*, 382 Md. at 635, 856 A.2d at 692.

Relying on the United States Supreme Court case, *Michael H. v. Gerald D.*, 491 U.S. 110 (1991), the court of appeals also rejected Evans's claim that his due process rights had been violated, holding that Evans did not have a constitutional right to a relationship with Kendi because she was born during Wilson's marriage to Harris. *Evans*, 382 Md. at 641, 856 A.2d at 695. The court concluded that if the Family Law Article was expanded to include persons outside of marriage, the result could be devastating to the intact family unit. *Id.* at 636, 856 A.2d at 692. Additionally, the court reasoned that because § 5-1029 of the Family Law Article states that the court will have no discretion in whether or not to allow genetic testing, anyone claiming paternity could threaten the family unit. *Id.* at 632, 856 A.2d at 690-91.

Evans v. Wilson is critical to Maryland family law because it establishes the importance of an intact family unit. While the court protects the stability of a child's family life, it may also deny a child the presence of a man who may be her biological parent. The rights of putative fathers who want to take responsibility for their children are now clearly limited. In order to prove that genetic testing is in the best interest of a child born during a marriage, putative fathers will have to show more than a mere suspicion of paternity. In this case, the court of appeals has taken a strong stance to ensure a stable home environment for children.