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# Recent Developments: *Kamp v. Department of Human Services*: A Presumed Parent, Who Asserts a Paternity Defense for the First Time in a Post - Divorce Proceeding, Must Demonstrate That Paternity Testing Is in the Best Interest of the Child

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## RECENT DEVELOPMENT

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### ***KAMP v. DEPARTMENT OF HUMAN SERVICES: A PRESUMED PARENT, WHO ASSERTS A PATERNITY DEFENSE FOR THE FIRST TIME IN A POST-DIVORCE PROCEEDING, MUST DEMONSTRATE THAT PATERNITY TESTING IS IN THE BEST INTEREST OF THE CHILD.***

**By: Brittany King**

The Court of Appeals of Maryland held that the best interest of the child analysis is required when a presumed parent seeks to renounce paternity, even if the child knows that the parent is not her biological father. *Kamp v. Dep't of Human Servs.*, 410 Md. 645, 980 A.2d 448 (2009). Additionally, a presumed parent may be estopped from asserting a paternity claim after previously and continuously acknowledging the child as his own. *Id.* at 678, 980 A.2d 468.

Ms. Duckworth (“Duckworth”) and Mr. Kamp (“Kamp”) were married from September, 1983 until April, 1999. During the marriage, Duckworth conceived three children with Kamp. In June, 1987, Kamp had a vasectomy, preventing Kamp from fathering any more children. While Kamp was away on business in early 1992, Duckworth had an affair with Mr. James Stanton (“Stanton”), resulting in the birth of Julie Kamp (“Julie”) on December 10, 1992. Nevertheless, prior to Julie’s birth, Duckworth and Kamp agreed to raise her as a child of the marriage.

Kamp continued to acknowledge Julie as his child following the couple’s separation and subsequent divorce. A Voluntary Separation Agreement executed on December 15, 1998, identified Julie as one of four children born of the marriage. Further, Julie lived with Kamp for about a year in 2001. During this time, when Julie was eight years old, she discovered that Stanton, and not Kamp, was her biological father.

Kamp continuously acknowledged Julie as his child, even after she discovered that Kamp was not her biological father. In February of 2002, Kamp counter-petitioned for custody, visitation, and child support for the minor children of the marriage, including Julie. Kamp further acknowledged his financial responsibilities for Julie, and his

other minor child, in February of 2003, in a Memorandum of Understanding.

Duckworth moved to modify child support on July 28, 2005. Kamp's answer to the motion to modify child support was the first time that he asserted the paternity defense and his first request for DNA testing. In granting Kamp's request, the Circuit Court for Garrett County focused exclusively on the fact that Julie knew Kamp was not her biological father and that Julie's parents had since divorced. Despite the presiding Master's recommendations, the court sustained Kamp's exceptions and ordered DNA testing. Upon confirming that Julie was not Kamp's biological child, the trial court granted Kamp's requests to terminate his child support and declare all arrearages uncollectible.

The Court of Special Appeals of Maryland reversed and remanded the case to the circuit court, finding that the trial court abused its discretion by granting Kamp's request for DNA testing. The court reasoned that the trial court failed to consider whether the testing was in Julie's best interest. In particular, the trial court failed to evaluate the emotional harm to the child. The Court of Appeals of Maryland granted certiorari to determine when a paternity test is appropriate if the child in question was born into the marriage and the presumed parent does not challenge paternity until post-divorce proceedings.

The Court of Appeals of Maryland began its analysis by reviewing the provisions of the Estates and Trusts and Family Law Articles that govern paternity disputes. *Kamp*, 410 Md. at 655-59, 980 A.2d at 454-57. The court recognized that, under both section 1-206(a) of the Estates and Trusts Article and section 5-1027(c)(1) of the Family Law Article, a presumption of paternity exists when a child is born within a marriage. *Id.* at 655-56, 980 A.2d at 454 (citing MD. CODE ANN., EST. & TRUSTS § 1-206(a); MD. CODE ANN., FAM. LAW § 5-1027(c)(1)). To rebut this presumption, a party may request blood or genetic testing. *Id.* at 658-59, 980 A.2d at 456 (citing MD. CODE ANN., FAM. LAW §§ 5-1027, 5-1029, 5-1038(a)(2)(i)(2)). The court has interpreted section 5-1029 of the Family Law Article to require the trial court to order DNA testing upon a party's request. *Id.* at 657, 980 A.2d at 455 (citing *Langston v. Riffe*, 359 Md. 396, 429, 754 A.2d 389, 407 (2000); MD. CODE ANN., FAM. LAW § 5-1029). The Estates and Trusts Article, however, affords the trial court the discretion to deny a request for DNA testing if it is against the best interest of the child. *Id.* at 656-57, 980 A.2d at 455 (citing MD. CODE ANN., EST. & TRUSTS § 1-206).

The court interpreted two independent lines of cases, which encompass paternity proceedings under both the Estates and Trusts

and Family Law Articles. *Id.* at 659-65, 980 A.2d at 456-60. In doing so, the court determined that, under both articles, a party to a marriage seeking to disclaim paternity for the first time in a post-divorce proceeding must meet the threshold requirement that DNA testing is in the best interest of the child. *Kamp*, 410 Md. at 655, 980 A.2d at 460. Interests in protecting the family unit, and the relationships within it, prevent a party from rashly rebutting presumed paternity. *Id.* at 661, 980 A.2d at 457 (quoting *Turner v. Whisted*, 327 Md. 106, 116-17, 607 A.2d 935, 940 (1992)). Maryland case law requires greater scrutiny of the child's best interests prior to ordering paternity testing where the paternity of the child is established through more than one independent avenue. *Id.* at 665, 980 A.2d at 460. Therefore, the presumption of paternity is particularly strong where the relationship with the child is established through marriage, and the party continues to acknowledge the child even after the dissolution of the marriage. *Id.*

In keeping with Maryland's paternity case law, the Court of Appeals of Maryland clarified the degree of discretion a trial court enjoys for ordering DNA testing. *Id.* at 661, 665-72, 980 A.2d at 457-58, 460-64 (citing *Turner*, 327 Md. at 116-17, 607 A.2d at 940). When a party challenges the paternity of a child born within a marriage that has since dissolved, the court should broaden its evaluation beyond the slight interest in protecting a family unit that no longer exists and consider the child's relationship with the presumed parent from that marriage. *Id.* at 669, 980 A.2d at 462. Facts demonstrating that the challenging party continued to acknowledge the child as his own are particularly relevant to the analysis, even when both the challenging party and the child know that the party is not the child's biological father. *Kamp*, 410 Md. at 669-70, 980 A.2d at 463.

Next, the Court of Appeals of Maryland clarified the application of judicial estoppel in paternity cases of a presumed parent. *Id.* at 672-79, 980 A.2d at 464-68. Judicial estoppel prevents a party from misleading the court by seeking to rebut the presumption of paternity after previously acknowledging the child as his own. *Id.* at 673, 980 A.2d at 465. The same factors used to determine whether to order DNA testing are also applied to determine whether a party is judicially estopped from asserting the paternity defense. *Id.* at 678, 980 A.2d at 468. A longstanding parental relationship, where the presumed parent continuously acknowledged the child, invites the judicial estoppel defense. *Id.* A trial court, however, should not determine whether a party is judicially estopped from asserting a paternity claim until after deciding, as a preliminary matter, whether paternity testing is in the

child's best interest. *Id.* at 678, 980 A.2d at 468. Therefore, the court did not directly decide on the judicial estoppel issue and, instead, affirmed the lower appellate court's ruling in which it remanded the case for further proceedings to determine whether a paternity test was in the child's best interest. *Kamp*, 410 Md. at 678-79, 980 A.2d at 468.

In *Kamp*, the Court of Appeals of Maryland reinforced Maryland's presumption of legitimacy and paternity by explicitly rejecting the narrow application of the best interest of the child analysis in post-divorce paternity proceedings. In doing so, the court ensured that paternity proceedings cannot be used as a weapon to gain unfair advantages or evade financial responsibilities in divorce and post-divorce proceedings. Maryland practitioners should be aware that the defense of paternity, if asserted at all, must be introduced early in litigation. Furthermore, practitioners should advise clients that a paternity defense may not be successful for a party that is the presumed parent of a child or has continuously acknowledged a child as his own. Ultimately, *Kamp* strengthened the procedural safeguards of paternity proceedings, which are necessary to protect children already victimized by family break-ups and controversy.