

PATERNITY AND CHILD SUPPORT – BEWARE!

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In a recent case a child was born after separation, the alleged father was not on the birth certificate and he disputed paternity. The mother applied for child support and was refused. Four years later the mother applied for DNA testing. What happened with Child Support?

Child support

The underlying principle of the Child Support Agency ('CSA') is that parents have the primary duty to maintain their child, which includes financial support for their children.

To be eligible for a child support assessment, you only need to meet two requirements:

1. Residency rules; and
2. You, and the other parent must be the legal parents of the child.

The CSA is clear that only a 'parent' may be a liable parent under the Child Support Assessment Act. Difficulty can arise though where there is uncertainty or disagreement about who the child's father is.

Paternity may be presumed by the CSA if:

1. the child was born during the marriage.
2. the person's name is entered in a register of births or parentage information as a parent of the child.
3. you're named in adoption papers as a parent.
4. you're a parent under the Family Law Act 1975 – this covers artificial conception and surrogacy.

If there is a dispute about paternity, then either party may apply to the Family Court for a 'declaration' as to paternity. The CSA will only accept a declaration from the court as to paternity, not just the DNA testing report.

In circumstances where paternity is in dispute the court will almost always order DNA test. In the event that the person refuses to participate in the DNA process, the court will deem that person to be a parent as long as it is just in the circumstances.

In this recent Family Court appeal case, the court determined the issue of paternity and child support. The DNA test had occurred and the alleged father was found to be the father, so the central issue to the case was not the paternity of the father but whether the child support assessment could be "backdated" to the child's birth.

The Facts:

In August 2012 Ms N fell pregnant. In September 2012 she informed Mr C of the pregnancy. In October 2012 Mr C terminated the relationship.

Not long after the child was born in April 2013, Ms N filed an application for assessment of child support with the CSA. At this time, Mr C advised the CSA that he was not the father of the child. It is important to note that Mr C was not named on the birth certificate. The CSA refused Ms N's application as the CSA was not satisfied that Mr C was the father.

Four years later, Ms N filed a court application (September 2017) seeking a declaration of paternity and an order that child support be payable from the child's birth.

At the trial (in October 2017) Mr C agreed to a paternity test. The test confirmed that Mr C was the father. Mr C did not dispute that he was liable to pay child support but disputed there should be any backdating of the liability.

Trial court decision:

The trial court made the declaration as sought by Ms N but declined to make the order that the child support be payable from the child's birth as the trial judge considered it to be the CSA's decision as to from when Mr C paid child support.

Appeal court decision:

The appeal court changed this decision saying that if the **only** reason that the CSA refused the original assessment application was due to the paternity issue, then the **declaration** (of paternity) operated retrospectively to render the father liable to pay child support from the date of the original CSA application. That meant the payment should cover the (4) year period.