Presumption of Paternity

by Amy L. Owen

The scene plays out on television, whether on a reality show or a popular drama – a question arises about a child's paternity, so those involved take a simple blood or saliva test to settle the matter. Hundreds of companies offer paternity testing, some of which can be done from the comfort of one's own home. With the advances in DNA testing, one might think that any questions surrounding paternity of a child are easy to answer from a legal standpoint, and do not require much, if any, court intervention.

However, in Pennsylvania, the results of that paternity test may not matter at all – if they are even admissible in court. Under Pennsylvania law, a child born to a married woman is legally presumed to be the child of the woman’s husband, regardless of the child’s biological parentage. This principle is known as the “presumption of paternity,” and is one of the strongest presumptions in the law. This presumption has existed since the mid-19th century. If a mother, husband, and child comprise of an intact family, Pennsylvania courts will not disturb it. Further, if the husband holds himself out to be the father of the child, he can be legally barred from denying his parentage in the future.

There are very few instances when the presumption of paternity does not apply. If the husband and wife were not an “intact family” at the time a third party challenges paternity, then the presumption does not apply. If the presumption applies, the only way to overcome it is by establishing that the husband was physically incapable of impregnating the mother, or that the husband and mother were not physically together at the time of conception.

Paternity cases are defined by their unique sets of facts, and the advances in the law have not kept pace with those in DNA technology. Pennsylvania courts rely upon 150 year old presumptions in an age when it is possible to purchase a paternity test online. If you have a case involving a question of paternity, you should have an advocate by your side who can effectively present the facts to the court hearing the case. The family law attorneys at Johnson, Duffie, Stewart & Weidner have experience counseling clients in paternity cases from the trial through the appellate level.