

PATERNITY PROBLEMS

Jane (Jane) and John Smith (Smith) married in Greensboro, North Carolina on June 22, 1997. They had been dating for a few years prior to their marriage. John Smith, Jr. (Junior) was born on April 15, 1997. Smith has always held Junior out to the public and world as his own child. Smith is the only man that Junior has known as his father. Their relationship is a strong father/child relationship. Jane, however, had been dating another man at the same time that she was dating Smith. The other man was James Brown (Brown). Jane had intercourse with both men at the probable time of Junior's conception.

During the Smiths' marriage Jane had a number of affairs. John Smith was not immediately aware of any of Jane's sexual encounters with other men. One of these affairs may have resulted in the birth of a girl, Amanda Smith (Amanda), on September 27, 1999. A year or so following Amanda's birth Smith became aware of his wife's affairs. Naturally, this knowledge led to tension within the marriage and, finally, to the separation of the parties. Jane and Smith separated on November 10, 2000. The Guilford County District Court divorced the parties on December 3, 2001. The December 3, 2001 order addressed only the issue of divorce; neither party raised the issues of paternity, child support, or custody.

Jane came to your child support office on December 4, 2001 seeking assistance in getting child support for her two children. Smith failed to respond to the child support office's telephone calls or letters asking that he arrange an appointment to speak with the agent.

During Jane's interview with the child support agent she stated that she had a sexual relationship with Brown during the probable time of conception for Junior. She also confirmed that she was having intercourse with Smith at the same time. Jane told the agent conducting the interview that at the probable time of conception for Amanda she was having an affair with another man and having intercourse with her husband. She either could not or would not give the name of the man with whom she was having the affair. Jane adamantly insists that Amanda is her husband's daughter.

The child support agent is successful in contacting Brown who willing comes to the child support office for an interview. Brown admits that he had a sexual relationship with Jane prior to her marriage, but states that once she was married he had nothing to do with her. Upon being told that he could have genetic testing done, he requested that he, Jane, and each of her children be tested immediately. The genetic tests are accomplished within a week. The tests results of the genetic tests conclusively show that Brown is not the biological father of Amanda. However, the genetic tests do not exclude Brown as the biological father of Junior and, furthermore, the test results demonstrate the probability of parentage that Brown is Junior's father is 99.96%.

As the child support office's attorney, how do you now proceed?

Is this a simple legal/biological case? Do you have an issue with legitimation by subsequent marriage? How does that complicate matters?

Remember that the custodial parent wants child support as quickly as she can begin to receive it. Smith has asked for a jury trial. Is there anything that you can do, if you want, to expedite the hearing of the jury trial? If there is not, or you do not want to, can you get temporary child support for Junior and Amanda? How would you do that and who should have to pay for it?

Assume that you have filed a complaint naming Smith and Brown as co-defendants arguing alternatively that either one may be Junior's father. The complaint is properly filed and served on Smith. Smith, still angry at his ex-wife because of her unfaithfulness, disputes that he is the biological father of either child. On behalf of the child support office you file a motion asking that genetic testing be done on Smith, Jane, and each of the minor children. Will you be successful? Why or why not?

Assume that the trial court grants your motion for genetic testing for Smith, Jane, and the minor children. The test results exclude Smith as the biological father of Junior. However, the genetic tests do not exclude Smith as the biological father of Amanda and, furthermore, the test results demonstrate the probability of parentage that Smith is Amanda's father is 99.99%. Brown is now willing to sign a voluntary support agreement requiring that he support Junior in an amount consistent with the North Carolina child support guidelines. What action do you now take?

You have been unsuccessful in negotiating a settlement of this case, particularly in light of the paternity test excluding Smith as the biological father of Junior. In Smith's answer he specifically requested a jury trial. One of your primary witnesses will be a qualified immunologist from the testing laboratory. What issues concern you? Are you concerned whether Smith's attorney objects to the procedures or results of the genetic tests? If so, why? If he objects, how must you respond? Are there any potential problems even if opposing counsel does not object to the procedures or results of the genetic tests?

While Jane is testifying you intend to have photographs of the children shown to the jury panel so that they can see that Amanda looks like Smith and has similar features. However, upon further reflection you want to allow the jury to see both children in person rather than by way of photograph. You mention this to opposing counsel who immediately states that he would object to submitting the children through this kind of procedure. What are the pros and cons of proceeding with a viewing? If you decide to press ahead and opposing counsel objects, who should prevail before the court?

Finally, you have been successful in presenting evidence which tends to show that Brown is the biological father of Junior. You have also been successful in presenting your evidence that Smith has not been excluded as the biological father of Amanda. Does the fact that the probability of parentage is high in both cases assist you in your case? How? Do these genetic tests results allow you to argue for a special jury instruction? What instruction would you ask for during your conference with opposing counsel and the trial judge?