



Scott T. Taylor

Family Lawyer & Mediator

Double Exposure

Category: Child Support

During their engagement she became pregnant and eventually gave birth to twins. From the outset and for the next ten years she told him that he was the biological “father” of their children. He believed her. That is, until DNA testing conducted last, year proved conclusively that he wasn’t the children’s biological father.

The parties separated in 1997 and the mother currently resides with the children in a common law relationship with a brother of the real biological father of the children. It is not clear whether the biological father is even aware of the children’s existence. The mother has also apparently not told the children the truth about their actual parentage.

The thorny legal question, recently decided by the Supreme Court of Nova Scotia, involved determining what, if any, liability for child support was owed by the misled “father”, in view of the 10 year deception on the part of his former spouse. It has been long established in law that a person found to be in “loco parentis” to a child, simply meaning, “standing in the place of a parent to a child”, can be found to be responsible for the payment of child support.

In determining whether a person “stands in the place of a parent to a child” a court typically looks at a variety of factors including such factors as whether the person “acts” and accepts the child as his own, and whether the person accepts financial responsibility for the child, such as contributing to food and support. In this case the deceived dad argued that he should not be responsible to pay child support because he did not “stand in the place of a parent” to the twins because any intention to do so was only based on false information supplied by his spouse.

The Supreme Court however, disagreed with this argument, and determined that the misled father had in fact thought and acted as the children’s biological father. As a consequence, the Court ruled that he did indeed “stand in the place of a parent to the children” for the purposes of establishing his liability to pay child support.

The Court, however, also decided that the misled father should not be solely responsible to pay child support since both the biological father and current common law spouse were also responsible for the payment of child support, although not joined in the action. As a consequence, the Court ordered the deceived dad to pay one third of what he would ordinarily pay pursuant to the Federal Child Support Guidelines.

Clearly, when determining whether or not a father “stands in the place of a parent to a child” and incurs financial liability this decision suggests that a court will place less emphasis on a father’s “intention” and more emphasis on the nature and kind of the actual relationship with the children. Leaving deception on the part of a parent aside, I would argue that this judgement promotes the best interest of the children. After all, why should any child be made to suffer as a result of the misdeeds and poor judgement of either parent? 