UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0613

September Term, 2015

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S.E.K., II

v.

K.R.K.

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Meredith,
Graeff,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: June 14, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Of the three children born during the marriage of appellant, S.K., and appellee, K.K., S.K. is the biological father of two, but not of the third, "K". In this appeal we are asked to consider S.K.'s obligation to provide financial support for "K".[1]

On July 21, 2014, S.K. filed a complaint for absolute divorce, seeking custody only of his two biological children. At a trial solely on the issues of custody and child support, the court ruled that S.K. was equitably estopped from denying his duty to support "K".[2]

On appeal, S.K. presents two questions,[3] which we recast:

> Did the trial court err in ruling that he was equitably estopped from denying financial support to "K"?

We shall affirm the judgment of the circuit court.

## BACKGROUND

The parties were married on October 2, 1997. Two children were born, "S" in 1998 and "A" in 2001. In 2006, the couple separated for approximately four months. During the separation, K.K. had an affair with a co-worker, D. As a result, in April 2007, she gave birth

[1] For reasons of privacy, we shall refer to the parties by their initials.

[2] Custody issues are not before us in this appeal.

[3] In his brief, appellant asks:

1. Does [S.K.] have a duty to pay child support with respect to ["K"], a child who was born unto his wife during the marriage but not sired by him?
2. Is [S.K.] equitable [*sic*] estopped from denying a duty to financially support ["K"]?

to "K",whose biological father, she acknowledged, is D., and not her husband. DNA testing in July 2007, conclusively excluded S.K. as "K"'s biological father.[4]

The parties reconciled and remained together, even after K.K. disclosed her affair to her husband. S.K. testified, "I told her that if she wished to keep our family together and to allow me to, I guess, raise ["K"] with my two children, to keep the family together, it was made clear that she was to stay away from [D.]." K.K. testified that they sought guidance from their church's elders and that, at one point, S.K. offered to allow D. to see "K" if he paid child support for her. Ultimately, however, their agreement called for K.K. to have no contact with D., and for S.K. to raise "K" as his own child. The "no contact" agreement as to D. included not seeking child support from him as the biological parent.[5] The parties abided by their agreement until the divorce proceedings began.

None of the three children knows that S.K. is not "K"'s biological father. The parties both testified that they intend to tell the three children at some point, but, as of the time of trial, had not yet done so. Only a very few others in the community are aware that S.K. is not "K"'s biological father: S.K.'s immediate family, K.K.'s mother, and the church elders

[4] The court observed in its ruling that "[S.K.]'s lack of biological paternity is not disputed," noting, however, that "[S.K.] is listed on the birth certificate as ["K"]'s father."

[5]D., although not a member of the church, also approached the elders to discuss his relationship with "K", because K.K. ceased communicating with him at S.K.'s behest. He requested that the parties provide him periodically with photographs of "K", which they did, although in the few years leading up to the divorce proceedings, S.K. began to protest the practice. D. had some contact with "K" in her infancy, and provided no financial support to K.K., save a $20 payment for diapers.

whom they consulted. K.K. testified that, even though she and S.K. were divorcing and she was free to seek child support from D., she had no plans to do so, to avoid disclosure of this fact to "K".

Following trial, the court ordered that S.K. continue to pay child support for "K", based on its finding that the child's best interest outweighed S.K.'s "long delayed challenge to paternity." S.K. moved for reconsideration of the March 23, 2015, order, arguing that K.K. did not establish a duty on his part to support "K". The court denied the motion, ruling that S.K. had a duty to support, which he could not deny, based on "the equitable principles of laches and estoppel."

This appeal followed.

## DISCUSSION

### Standard of Review

Maryland Rule 8-131(c) provides that we review a case tried without a jury on both the law and the evidence, and that we will not set aside the judgment of the trial court on the evidence unless it is clearly erroneous.

### Paternity

There exists a rebuttable presumption that a child born during a marriage is the biological child of both spouses. Md. Code Ann., Est. & Trusts § 1-206; Family Law § 5-1027(c)(1). Here, the court considered evidence of DNA paternity testing as an effective rebuttal of the presumption of S.K.'s paternity of "K". S.K. contends that, because he

successfully rebutted the presumption, and because he is not her natural parent, he has no duty of support. He argues further that K.K. cannot equitably estop him from denying a duty of support, because she has failed to demonstrate a financial detriment arising from her reliance on his conduct in holding "K" out as his own daughter.

Paternity and a duty to support a child financially are separate statuses that, because they so often overlap, are at times confused as the same. However, paternity can be irrelevant in cases involving denial of a duty to pay child support. *Markov v. Markov*, 360 Md. 296, 307 (2000). Mere rebuttal of the presumption of paternity does not erase the duty of support where a parent has held the child out as his own. S.K. represented to "K", and the community, that he was her father, and raised her as his child for seven years. The duty of support arose from this conduct, and its denial requires more than a showing of non-paternity.

There are three elements of equitable estoppel as it relates to the putative, but non-biological, father of a child born during a marriage: (1) voluntary conduct or representation on the part of the putative father; (2) reasonable reliance by the mother on the putative father's conduct; and (3) a financial detriment incurred by the child as a result of this reliance. *Knill v. Knill*, 306 Md. 527, 534-35, 537 (1986); *see also Kamp v. Dep't of Human Servs.*, 410 Md. 645, n.18 (2009).

In *Knill*, the putative father raised the child as a member of the family, provided financial support for him even after the separation, and only confirmed to the child that he

was not his biological father when the child was 12 years old. *Id.* at 529-30. It was the mother who, after an argument, revealed to the child that he was not the biological son of the putative father. *Id*. at 529. Moreover, in contrast to the facts before us, Knill never prevented or discouraged his wife from seeking financial assistance from the biological father. *Id.* at 530, 537-38. Because the Court of Appeals explicitly ruled that the detriment to be shown in the third prong of the estoppel analysis is a financial, not emotional, one, Knill was not estopped from denying his duty of financial support. *Id*. at 538. Finally, the mother had not shown that she was unable, post-separation, to seek financial support from the biological father. *Id*. at 537-38.

The putative father in *Markov* was likewise not estopped from denying his financial duty to the child. 360 Md. at 311. Markov had long suspected that he was not the biological father of his wife's twin girls, but held them out as his own and supported them financially, even during several brief separations over the years following the wife's admission of an affair. *Id.* at 309. In contrast with *Knill*, though, Markov insisted that his wife not tell the girls about their biological father, and that his wife not contact the biological father. *Id.* at 309-10. However, he ended his relationship with the twins during the divorce proceedings.[6] *Id.* at 310.

[6] It is unclear whether the twins were aware that the putative father ended his relationship with them only because he was not their biological father, but it is clear that he discontinued all contact with and support of them. 360 Md. at 310.

Despite Markov's prior insistence that the mother not contact the biological father, failing to attempt to do so after the final separation, and after he ended his relationship with the twins, resulted in her inability "to prove sufficiently that her reliance on [the putative father's] prior conduct and verbal representations has resulted in a current or future financial loss, that is, a reasonable opportunity to procure support from the person other than herself who is primarily responsible for the support of her children." *Id.* at 312.

The question posed in *Kamp v. Department of Human Services* differs from those examined in *Knill* and *Markov*, as *Kamp* focused on the issue of paternity. 410 Md. 645, 647 n.1 (2009). The putative father in *Kamp* had petitioned the court for an order for DNA testing. Prior to ordering testing that would rebut the putative father's presumption of paternity, the Court of Appeals required the trial court to determine as a threshold issue whether there was good cause shown that the testing was in the best interests of the child. *Id.* at 678.

The best interests of the child are determined by considering, among other factors, "the stability of the child's current home environment, whether there is an ongoing family unit, and the child's physical, mental, and emotional needs." *Id.* at 661 (quoting *Turner v. Whisted*, 327 Md. 106, 116 (1992)). Especially where a couple held the child out as their own, using blood testing to prove that there is no biological connection between the putative father and the child requires first a showing that it will not, for instance, disrupt the family

unit or delegitimize the child solely for the benefit of one of the parents. *Id.* at 664 (quoting *Monroe v. Monroe*, 329 Md. 758, 771 (1993)).

Two years after the divorce, but four years prior to Kamp's request for DNA testing, the child learned that she was not his biological daughter, although she continued to consider him her father. *Id.* at 651-52, 654. In affirming this Court's finding of error in the decision to order testing, the Court of Appeals recognized that DNA testing had already been performed, and that the child already knew of her paternity, but concluded that the results "shall not be considered until doing so is determined to be in the child's best interests." *Id.* at 672.

This best interests threshold issue is implicit in *Knill* and *Markov*. The Court engaged in the estoppel analysis in those cases because the children had different physical, mental, and emotional needs than did the child in *Kamp* prior to the DNA testing being ordered.

In *Knill*, the mother had informed the child of his paternity, a fact that her other two children had known, after a family argument, two years prior to filing for the divorce. *Knill*, 306 Md. at 529-30. The child, aged 14 at the time of the divorce proceedings, had the time and maturity to process the fact of his paternity prior to the putative father denying a support obligation. Further, the family unit was not disrupted by this denial, because the rest of the family had known that Knill was not the child's biological father.

Similarly, in *Markov*, the putative father had ended his relationship with the twins during the divorce proceedings. *Markov*, 360 Md. at 310. Thus, the denial of a financial obligation would not have had an adverse effect on the family unit or the home environment.

The relationships between the putative fathers and the children in *Knill* and *Markov* were already irreversibly severed when the putative fathers were given leave to deny their financial obligations. Those decisions revealed nothing new to the children regarding the fact of paternity. In contrast, the child in *Kamp* still considered the putative father to be her father, and sustaining that relationship served her mental and emotional needs by maintaining a family unit.

It is this knowledge – or lack of knowledge – of paternity on the part of the child that distinguishes S.K.'s argument from the ruling of the trial court. Granting him relief from a support obligation would have had the same effect as ordering the DNA testing in *Kamp*: informing "K" that he is not her biological father. Moreover, excusing him from the support obligation would likely destruct the family unit, as it relates to "K". Instead, the trial court properly considered the same factors relevant in *Kamp* prior to performing the estoppel analysis:

> Here, there has been no showing how it would be in ["K"]'s best interest, physically, emotionally, or financially, for [S.K.] to stop supporting her. There is no attachment between ["K"] and [D.]. There is no evidence that [D.] would step up if [S.K.] is excused from child support or that he has an income that would be available to support ["K"]. There is no suggestion he would be

> a good influence upon ["K"]'s well-being if he was suddenly introduced into her life.

R. 89-90. The trial court's observation that there was "no evidence that D. would step up if [S.K.] is excused from child support or that he has an income that would be available to support ["K"]" is not, as S.K. asserts, a shifting of the burden to him under the estoppel analysis. Rather, it is, in context, an illustration of the fact that D. has no relationship whatsoever with "K", in contrast to his own long relationship with her, which was described at trial as "close" and "loving."

In its order, the court also referred to the parties' agreement that S.K. would reunite with the family if K.K. discontinued contact with D. The court emphasized that this agreement is distinct from *Knill*, in that Knill never prohibited his wife from seeking support from the biological father.

This distinction, though, is precisely what removes the instant case from S.K.'s narrow view of *Knill*. He argues that *Knill* requires the court to allow him to deny his financial obligation because K.K. must first seek support from D. He contends that she has failed to prove a financial detriment, because D. is accessible and, because now that the marriage has ended, she is free to contact him. However, under *Kamp*, even though S.K. has shown that he is not "K"'s biological father, and that the biological father is potentially available for financial support, we do not consider these facts – as we would not consider the results of DNA testing – unless it is in the best interests of "K" to do so.

S.K., as a condition of reconciliation, prohibited his wife from telling any of the children about "K"'s paternity. He cultivated a relationship with "K", and was a father to all three children together, in exchange for eliminating D. from their lives. The parties' agreement is similar to that in *Markov*, where the putative father explicitly forbade the mother from telling the twins about their biological father. However, as we have noted, by the time of the court's decision in *Markov*, the putative father had ended his relationship with the twins. Here, in contrast, "K" and the other children are unaware that S.K. is not her biological father. He cannot now terminate his responsibility merely because it presently benefits him. He actively assumed the responsibility of "K"'s best interests, and it is clear that "K"'s best interests are served by estopping S.K. from denying his financial obligation to her.

**JUDGMENT AFFIRMED;**
**COSTS ASSESSED TO APPELLANT.**