

[J-185-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

RUTH FISH,	:	No. 27 W.D. Appeal Dkt. 1998
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court, entered February 6, 1997 at No.
	:	957PGH95, reversing the Order of the
v.	:	Court of Common Pleas of Allegheny
	:	County, Family Division, entered May 9,
	:	1995 at No. FD-94-04408.
ROBERT BEHERS, JR.,	:	
	:	690 A.2d 1171 (Pa. Super. 1997)
Appellee	:	
	:	SUBMITTED: September 22, 1998
	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: DECEMBER 3, 1999

Since I disagree with the majority's conclusion that Appellant Ruth Fish (Mother) is estopped from asserting that Appellee Robert Behers is her son Z.F.'s father, I respectfully dissent. Instead, I believe the trial court properly ordered Mr. Behers to submit to blood tests for purposes of determining Z.F.'s paternity.

As I explained in my concurring and dissenting opinion in Brinkley v. King, 549 Pa. 241, 701 A.2d 176 (1997), I believe that strictly applying the doctrine of paternity by estoppel, as the majority does here, leads to illogical and inequitable results. The majority concludes that Mother is estopped from challenging her former husband's paternity and pursuing a paternity and child support action against Mr. Behers essentially because 1) Mother continually assured her former husband, David Fish, that he was Z.F.'s father; 2) Mother named Mr. Fish as the father on Z.F.'s birth certificate; 3) Z.F. bears Mr. Fish's last

name; 4) Z.F. was listed as a dependent on Mother and Mr. Fish's tax returns; 5) Z.F. was otherwise treated as a child of the marriage between Mother and Mr. Fish while it was intact and 6) Z.F. continues to believe that Mr. Fish is his father. Most of these circumstances occurred, however, during a time in which Mr. Fish was being led to believe, falsely, that he was Z.F.'s father. When Mother ultimately revealed the truth of Z.F.'s paternity to Mr. Fish, Mr. Fish obtained blood tests, which confirmed that he was not Z.F.'s father.

By invoking the estoppel doctrine, the majority allows itself to completely disregard these blood test results and find that Mother is estopped from claiming that Mr. Fish is not the father of a child who can not, according to the blood test results, be his. At the same time, by applying the estoppel doctrine, the majority effectively prohibits compelling Mr. Behers to submit to blood tests, as the trial court ordered, despite the fact that all indications from the record suggest that Mr. Behers is Z.F.'s father and was aware of Mother's misrepresentations to Mr. Fish about Z.F.'s paternity. This situation is a perfect example of why I believe that our courts should abandon the strict application of the estoppel doctrine and grant trial courts the discretion to order paternity blood tests and then consider such evidence along with other factors relevant to the best interests of the child involved.¹ Such an approach would not only prevent biological fathers from using the estoppel doctrine as a vehicle for insulating themselves from parental responsibilities but would also, as I stated in Brinkley:

¹ The majority finds that Mr. Fish continues to treat all three of his children equally (Mother and Mr. Fish had two children together before Z.F. was born) and concludes that forcing Z.F. into a relationship with Mr. Behers, when the only father he has known is Mr. Fish, would not be in Z.F.'s best interests. I note that the trial court explicitly found that Mr. Fish, since learning that Z.F. is not his child and leaving the marriage, has "had little contact with [Z.F.] and does not support him financially or emotionally." Trial Court Opinion at 3. Moreover, the trial court specifically found that estoppel would not be in Z.F.'s best interests, as Mother testified that she plans to tell Z.F. the truth of his paternity on the advice of a psychologist that it is in the best interests of Z.F. to do so.

work to eliminate situations where a man is deceived into believing he is the father and is then made to bear legal responsibility, by reason of estoppel, for a child that is not his.

Brinkley, 549 Pa. at 254, 701 A.2d at 182.

Since this is the exact effect of the result reached by the majority in this case, I must respectfully dissent.