

[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

MADAME JUSTICE NEWMAN

DECIDED: DECEMBER 3, 1999

I join Justice Nigro's Dissenting Opinion. I write separately only to emphasize my view that the presumption of paternity is rebuttable and does not prohibit the court from ordering Mr. Behers to submit to paternity tests.¹ Equally, the doctrine of estoppel should not bar these tests.

¹ As we set forth in Brinkley, the presumption does not attach because the marriage is not intact, and there is no marriage to preserve. Brinkley v. King, 549 Pa. 241, 250, 701 A.2d 176, 180 (1997).