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## **Ky. cases pose question: What defines a father?** Lawsuits test extent of rights

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For 11 years, Gary Denzik paid child support for the girl he loved and thought was his daughter. Then his ex-wife sent him a DNA test showing he wasn't the father after all.

"It killed me," said Denzik of Bowling Green. "It was like hearing your child had died in a car accident."

Denzik got a court order stopping his payments and sued his ex-wife for fraud. A jury later found she knew all along he wasn't the father - that he was a so-called duped dad - and awarded him \$54,770 in damages, the amount he paid in child support the past five years.

The Kentucky Supreme Court narrowly upheld that verdict last June but left unanswered vexing questions about what makes a father a father: Is it the man who contributed only the sperm? Or the one who changed a child's diapers, taught her how to ride a bike and took her to soccer practice?

Courts around the country are struggling with those questions, including in two emotional cases from Jefferson County.

In one, Ren Hinshaw, 58, is fighting to retain joint custody of a child he helped raise and loves as his own, even after finding out the boy is not his biological child. "He is my son, and I am his dad," Hinshaw said in an e-mail to the newspaper.

The child's mother says Hinshaw should have no right to custody.

In another case, a biological father, James G. Rhoades Jr., 36, of Tallahassee, Fla, is battling to play a part in the life of a baby he fathered with a married woman from Louisville. The woman and her husband want to keep him out of the infant's life to preserve the sanctity of their family.

"I know this involves a family," Rhoades said, "but he is my family too."

### **The 'blood thing'**

For centuries the definition of a father was simple: He was the man married to the mother. But with more than one-third of children now born out of marriage - and the advent of inexpensive DNA testing - the rules aren't so simple.

"DNA has changed everything," said Denzik's lawyer, Kelly Thompson, who has since been elected to the state Court of Appeals.

At least seven states - but not Kentucky - have enacted laws allowing men to challenge paternity whenever deception is discovered, no matter the child's age, so that they no longer have to pay child support.

The push for such laws is spearheaded by Carnell Smith of Decatur, Ga., who founded U.S. Citizens Against Paternity Fraud in 2001, after he was forced to make payments for a child who wasn't his.

He urges every divorced father who is paying child support to get a DNA test.

"If the DNA doesn't fit, you must acquit," is the rallying cry of the group, which lobbied successfully for a paternity fraud law in Georgia and claims members in 30 states.

The implications of the debate are enormous.

As many as 1 million of the 27.9 million fathers in the United States are caring for children who aren't theirs, according to a 2005 study published in *Journal of Epidemiology and Community Health* and other data.

But advocates for children say it can be devastating when a man renounces his ties with a child who has thought of him as father.

"Children aren't into the 'blood' thing," Louisville social worker Linda Block-Coalter testified in the Hinshaw case. "Children are into who keeps them safe and who's there."

### **A duped dad**

Denzik, a millwright at Bowling Green's Corvette plant, said he loved his daughter and visited her sporadically through the years as she moved from state to state with her mother.

Then, in 2000, she turned 13 and her mother, Candy Blazar, told Denzik that the girl was the product of an extramarital affair with a former boyfriend.

He said he decided to sue in part because she wouldn't let him see the girl anymore. He also said he wanted to "draw a line in the sand - to say a woman can't do this."

Blazar claimed in court that she never deceived Denzik; she said she didn't realize her daughter wasn't his until she saw a photo of the ex-boyfriend's other daughter, who was the same age, and was struck by the resemblance.

But a jury in Warren Circuit Court concluded she knew from the start.

She had been having sex with the ex-boyfriend more than with Denzik at the time the child was conceived, according to court records. And when Denzik got a call at about that time from someone accusing her of having an affair, she insisted it was just a prank.

The state Supreme Court, voting 4-3, affirmed the verdict over the vociferous objection of Chief Justice Joseph Lambert, who warned the ruling would unleash an "open season" on paternity and destroy relationships between parents and children.

Though Denzik had paid child support for a child ultimately found not to be his, Lambert said, he received "the intangible value of 13 years of fatherhood of a child to whom he appears to have been devoted."

Denzik hasn't collected the \$54,770 judgment and says he expects he never will because Blazar has moved to Missouri; she didn't return several calls seeking comment.

He said he hasn't seen the girl he thought of as his daughter, now nearly 20, in more than two years and that his legal victory was hollow.

"Everybody lost," he said.

But the opinion already has been cited in reversing a contempt citation - and potential six-month jail sentence - against a Barren County man who refused to pay child support after DNA testing showed he wasn't the father.

Denzik's lawyer sent Denzik a copy of the Barren County order, along with a note that said, "I just wanted you to know the good you accomplished."

### **A 'psychological father'**

Hinshaw was in the delivery room when the boy he thought was his son was born in 1999.

He cut the umbilical cord and later changed the boy's diapers, taught him to talk and volunteered at his

school, according to court records.

Hinshaw, a technology consultant at the University of Louisville's Kornhauser Health Sciences Library, described the boy in court records as the most important thing in his life.

But when the child's mother, Jacqueline, divorced Hinshaw in 2003, she disclosed he wasn't the biological father and asked Jefferson Family Court to deny him custody.

Judge Virginia Whittinghill ordered a counselor to meet with the child. She concluded he had bonded with Hinshaw and that it would be "very devastating to him if he was not in his life." She described Hinshaw as the boy's "psychological father."

Whittinghill not only granted Hinshaw's motion for joint custody, she also made his home the boy's primary residence and ordered his ex-wife to pay him \$25,000 in attorney's fees.

The Court of Appeals last September affirmed the decision, saying the case wasn't about paternity but "the custody rights between a husband and wife as they relate to a child born and raised within the confines of the marriage."

Hinshaw's ex-wife, who has since remarried, is now asking the state Supreme Court to hear the case. She and her lawyer, Peter Ostermiller, declined comment, but in court papers they say that DNA should rule, even if the decision is not in the child's best interests.

They also contend that Hinshaw had no standing to seek custody, just as the state Supreme Court held last year when it denied such rights to a lesbian partner who was not a child's legal parent.

After two years as the boy's primary parent, Hinshaw said in court papers that his bond with the child has grown even stronger and that it would "take a chunk" out of his heart if the child was taken away.

"This is a bond that no person should put asunder," he said.

### **The marriage presumption**

Rhoades said he was a graduate student when he met a married Louisville woman online and then in person in Florida, where she was living with her husband, a Navy officer stationed in Pensacola.

After the woman, Julia Ricketts, gave birth to a son in June 2006, a DNA test showed that Rhoades was the father, according to court papers filed later by Rhoades and his lawyer.

For three months, Ricketts allowed Rhoades to visit the infant at least a dozen times in Louisville, and Rhoades provided diapers, formula and clothing for the child, he and his lawyer, John Helmers, say in pleadings.

The visits were kept secret from Ricketts' husband Jonathan, Helmers said.

In August last year, after the relationship between Rhoades and Ricketts ended and she refused to let him see the baby anymore, Rhoades went to court and demanded custody, records show.

The Rickettses asked Family Court Judge Joseph O'Reilly to dismiss the case.

In court papers, the couple's lawyers, who include Jonathan Ricketts' father, Charles E. Ricketts Jr., said Rhoades had no right to file the case because one of the oldest and strongest presumptions under the law is that a child born to married parents is presumed to be their child.

"The principle that biology is not necessarily supreme ... has a long and cherished history," they argued. The marital presumption, as it's called, is designed to foster stability within families.

In an interview, Julia Ricketts said she and her husband cut off communications with Rhoades in part so they could try to repair their marriage. She also said they were worried that they would lose the baby entirely because Rhoades had petitioned for "sole custody." Rhoades said he did that on advice of Helmers, "to start at the top."

The Kentucky courts have never ruled on whether someone in Rhoades' position has the right to challenge the fatherhood of a child born to married parents.

Other states, though, have ruled the married couple's rights are supreme. And the U.S. Supreme Court held in 1989 that a biological father outside of a marriage has no constitutional right to try to prove paternity of a child born to married parents.

But the courts also have held in a range of cases that fathers not married to the mother have a constitutionally protected interest in their children.

And ruling against the Rickettses, the Kentucky Court of Appeals last month refused to order O'Reilly to dismiss Rhoades' case, although the court didn't rule on the merits of the underlying issue.

That sent the controversy back to Jefferson County, where an attempt to mediate it failed, Rhoades said. A custody hearing is set for May 24.

Julia Ricketts said she still hopes the case can be settled "as carefully and lovingly as we can for all the parties."

Rhoades, who lives in Tallahassee, where he is a librarian at Florida State University, said he was allowed to see the baby for 15 minutes earlier this month, but that the visit was painfully short.

"I love and miss him terribly," Rhoades said. "He is the love of my life."

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