Lebanon County Legal Journal

The official legal periodical for Lebanon County containing the decisions rendered in the 52nd Judicial District

Vol. 51 Lebanon, Pennsylvania, February 12, 2014 No. 20

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Published every Wednesday. Advertisements must be at Room 305, Municipal Building, 400 South Eighth Street, Lebanon PA, 17042 by 11 a.m. of preceding Monday.

Lebanon County Legal Journal, per bound volume.....$95.00
Advance Sheets, per year.....$97.75
Single copy, advance sheets.....$4.00

717-228-4411; www.lebanoncountylegaljournal.org

Owned and published by the Lebanon County Bar Association
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Stephanie Axarlis, Esq., Editor

DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF NANCY E. BOLTZ, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Roberta N. Lorenzetti, Executor
Marianna Kopp, Executor
c/o Colleen S. Gallo, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF FRANCIS L. HAULMAN, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Brenda L. Fulk, Executor
Sharon L. Brown, Executor
Vicki M. Dangle, Executor

Attorney:
Adrienne C. Snelling, Esq.
Sullivan, Sullivan & Snelling, P.C.
242 S. Eighth Street
Lebanon, PA 17042-6010

ESTATE OF ROBERT ORR, late of North Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Kelly Lynn Orr, Executrix
1238 Catharine Street
Philadelphia PA 19147

John D. Enck, Esquire
Spitler, Kilgore & Enck, PC
522 South Eighth Street
Lebanon PA 17042

ESTATE OF ELIZABETH G. SPANGLER, late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Eugene Gantz, Executor
170 Wagon Road
Millersburg PA 17061

Keith D. Wagner, Esquire
Attorney

SECOND PUBLICATION

ESTATE OF MARY E. DAVIS, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

David A. Darkes, Executor
808 Canal Road
Womelsdorf PA 19567

Thomas N. Cooper, Esquire
Steiner, Sandoe & Cooper, Attorneys

ESTATE OF OSCAR DEAMER, JR., late of Richland Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Timothy Deamer, Executor
112 State Street
Shillington PA 19607

Or to his attorney:
Rebecca Batdorf Stone, Esquire
301 East Lancaster Avenue
Shillington PA 19607

ESTATE OF LAMAR C. HEINTZELMAN, late of Jackson Township, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administrator.

Richard L. Heintzelman, Administrator
535 W. Washington Ave.
Myerstown PA 17067

Thomas N. Cooper, Esquire
Steiner, Sandoe & Cooper, Attorneys

ESTATE OF MARY E. KEEFER, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Judith A. Wagner, Executrix
c/o Timothy D. Sheffey, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF PAUL H. KETTERING, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Fulton Bank, N.A., Co-Executor
Craig Kettering, Co-Executor

Henry & Beaver LLP
937 Willow Street
P.O. Box 1140
Lebanon PA 17042-1140

ESTATE OF DANIEL J. KREIDER, late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Lynn M. Miller, Executor
Timothy D. Kreider, Executor

Adrienne C. Snelling, Esquire
Sullivan, Sullivan and Snelling P.C.
242 South Eighth Street
Lebanon PA 17042

ESTATE OF BRETT P. LONG, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Sharon K. Yancey, Executor
c/o Patrick M. Reb, Esquire
547 South Tenth Street
Lebanon PA 17042

ESTATE OF JOAN L. NOLL, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Brenda J. Sattazahn, Executrix
c/o Timothy D. Sheffey, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF IRENE MAY SIEGRIST, late of North Lebanon Township, Lebanon County, PA, deceased. Letters of Administration, C.T.A. have been granted to the undersigned Administrator C.T.A.

Edward H. Krall, Administrator C.T.A.
1702 Quarry Rd.
Lebanon, PA 17046

Samuel G. Weiss, Jr., Esquire
Weiss, Weiss & Weiss

ESTATE OF DORIS M. ULRICH, late of North Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Susan M. Zehring, Co-Executor
Dean R. Ulrich, Co-Executor
c/o Brinser, Wagner & Zimmerman
466 Jonestown Road
Jonestown PA 17038

Caleb J. Zimmerman, Esquire, Attorney for the Estate

THIRD PUBLICATION

ESTATE OF CHARLOTTE M. BOWMAN, late of Palmyra Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor, and
LIVING TRUST ADMINISTRATION FOR CHARLOTTE M. BOWMAN, has been given to the undersigned Successor Death Trustee.

Rodney L. Bowman, Successor Death Trustee and Executor
c/o JSDC Law Offices
P.O. Box 650
Hershey PA 17033

Or to Gary L. James, Esquire
JSDC Law Offices
P.O. Box 650
Hershey PA 17033

ESTATE OF RICHARD E. BOWMAN, late of Palmyra Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor, and
LIVING TRUST ADMINISTRATION FOR RICHARD E. BOWMAN, has been given to the undersigned Successor Death Trustee.

Rodney L. Bowman, Successor Death Trustee and Executor
c/o JSDC Law Offices
P.O. Box 650
Hershey PA 17033

Or to Gary L. James, Esquire
JSDC Law Offices
P.O. Box 650
Hershey PA 17033

ESTATE OF BLANCHE J. BULLIAN, late of North Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Evelyn M. Smith, Executrix
c/o Charles W. Sheidy Law Offices
60L West Church Street
Denver PA 17517

ESTATE OF DOROTHY M. DAUB, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Michael Shillott, Executor
c/o Timothy D. Sheffey, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF MARTHA U. DAVISON, late of South Londonderry Township, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administratrix, c.t.a.

Donna J. Zima, Administratrix, c.t.a.
208 Lawn Road
Palmyra PA 17078

Or to
Joseph M. Farrell, Esquire
201/203 South Railroad Street
P.O. Box 113
Palmyra PA 17078
Attorney for the estate

ESTATE OF RICHARD S. KEENE a/k/a Richard Sargent Keene, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Carol M. Zandieh, Executrix
c/o Spencer Law Firm LLC
901 Rohrerstown Road
Lancaster PA 17601

Patti S. Spencer, Esquire
Attorney

ESTATE OF DANIEL J. KREIDER, late of the North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Lynn M. Miller, Executor
Timothy D. Kreider, Executor

Attorney:
Adrienne C. Snelling, Esq.
Sullivan, Sullivan & Snelling, P.C.
242 S. Eighth Street
Lebanon, PA 17042-6010

ESTATE OF KATHRYN K. MATTHEWS, late of Myerstown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Nancy L. Pavloski, Executor
Kay A. O'Neill, Executor
c/o Timothy D. Sheffey, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF THERESA W. SHREEVES, late of West Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Marilyn Bretz, Executor
Shirley Etter, Executor
c/o Young and Young
44 South Main Street
P.O. Box 126
Manheim PA 17545

ESTATE OF ELVA E. SUCHANEK, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Richard K. Suchanek, Executor
545 Rexmont Road
Lebanon PA 17042

John D. Enck, Esquire
Spitler, Kilgore & Enck PC
522 South Eighth Street
Lebanon PA 17042

COMPLAINT IN MORTGAGE FORECLOSURE

Lebanon County Court of Common Pleas No. 2013-02183

Wells Fargo Bank, N.A., Plaintiff
v.
Edith Wentzel, Known Surviving Heir of Dennis W. Ulrich, Deceased Mortgagor and Real Owner, Fred Ulrich, Known Surviving Heir of Dennis W. Ulrich, Deceased Mortgagor and Real Owner, Mark Ulrich, Known Surviving Heir of Dennis W. Ulrich, Deceased Mortgagor and Real Owner, Paul Ulrich, Known Surviving Heir of Dennis W. Ulrich, Deceased Mortgagor and Real Owner and Unknown Surviving Heirs of Dennis Ulrich, Deceased Mortgagor and Real Owner,
Defendants

Premises subject to foreclosure: **650 East Kercher Avenue, Lebanon, Pennsylvania 17046-9268**

NOTICE: If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

You should take this notice to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Lebanon County Lawyer Referral Service
Mid Penn Legal Services
513 Chestnut Street
Lebanon, Pennsylvania 17042
(717) 274-2834

Lebanon County Court of Common Pleas No. 2013-02169

Fulton Bank, N.A., Plaintiff
vs.
Ken Thorton, in his capacity as Executor of the estate of Bruce A. Barshinger, 851 Kimmerlings Road, Lebanon PA 17046-2108; Michael Wright, in his capacity as heir of Robert Barshinger, a/k/a Robert L. Barshinger, Sr., deceased, 755 Centerville Road, Lancaster PA 17601; Chester A. Hornberger, in his capacity as heir of Robert Barshinger a/k/a Robert L. Barshinger, Sr., deceased, 29 Maple Street, Apt. 3, Lebanon PA 17046; Unknown heirs, successors, assigns, and all persons, firms or associations claiming right, title or interest from or under Bruce A. Barshinger, deceased, 1720 Chestnut Street, Lebanon PA 17042-4446, Defendants

To: Unknown heirs, successors, assigns, and all persons, firms or associations claiming right, title or interest from or under Bruce A. Barshinger, deceased.

You are hereby notified that on October 31, 2013, Plaintiff, Fulton Bank, N.A., filed a Mortgage Foreclosure Complaint endorsed with a notice to defend, against you in the Court of Common Pleas of Lebanon County, Pennsylvania, docketed to No. 2013-02169. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at **1720 Chestnut Street, Lebanon PA 17042-4446**, whereupon your property would be sold by the Sheriff of Lebanon County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a judgment will be entered against you.

NOTICE: If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

You should take this notice to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Lebanon County Lawyer Referral Service
Mid Penn Legal Services
513 Chestnut Street
Lebanon, Pennsylvania 17042
(717) 274-2834

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on January 16, 2014, with the Commonwealth of Pennsylvania. The name of the corporation is **Barnett Trucking, Inc.** The corporation has been incorporated under the provision of the Business Corporation Law of 1988, as amended.

Anthony J. Nestico, Esquire
1135 East Chocolate Ave.
Hershey PA 17033
Attorney for Barnett Trucking, Inc.

PEREZ vs. PEREZ No. 1999-5-0540
PACSES No.: 181101366

Domestic Relations – Legitimacy of Child – Blood Tests – Presumption of Legitimacy – Paternity by Estoppel – Best Interests of Child – Petition to Open Paternity.

1. If there is one over-arching axiom that governs any family law dispute, it is that children should not needlessly suffer.

2. For most of Pennsylvania's existence, the status of illegitimacy subjected a child so labeled to significant legal and social discrimination. In part because of this, a strong presumption arose that a child born to a married woman was also the child of the woman's husband.

3. Traditionally, this presumption of legitimacy could only be rebutted by proof that a husband was incapable of procreation or had no access to his wife during the period of conception.

4. In 1971, Pennsylvania's General Assembly eliminated the legal distinction between legitimate and illegitimate children by declaring that all children shall be legitimate irrespective of the marital status of their parents.

5. In 1976, Pennsylvania statutorily recognized the viability of genetic blood tests as a means to determine paternity. Stripped of superfluity, Pennsylvania's blood tests to determine paternity law declared blood tests to be a relevant fact with respect to any determination of paternity.

6. A Court may order blood tests to determine paternity only when the presumption of paternity has been overcome by proof of facts establishing non-access or impotency. However, under certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as the father of the child.

7. Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own or supporting the child), that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.

8. The question of estoppel does not arise unless or until the presumption of paternity has been rebutted or is inapplicable. When there is no longer an intact family or a marriage to preserve, the presumption of paternity is not applicable.

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9. Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as a parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life is not in fact his father.

10. The determination of paternity by estoppel should be better informed according to the actual best interests of the child, rather than by rote pronouncements grounded merely on the longevity of abstractly portrayed (and perhaps largely ostensible) parental relationships.

11. Paternity by estoppel is an equitable doctrine that must be evaluated based upon the case-specific fact pattern before the Court. It has always been grounded upon the best interest of children and now must be predicated upon what is best for the child.

12. It is at least possible for more than one man to have parental rights with respect to a child.

13. The Court concluded that uncertainty as to child's biological paternity is less harmful to child than the certainty and the turmoil that would occur if genetic testing were to confirm Plaintiff as child's biological father.

14. Noting that in every important respect Defendant has been child's father for at least the past three years, and that jeopardizing the only relationship the child has ever known would be devastating for the child, the Court found that it was in the child's best interest for the status quo to continue. Consequently, it did not order that genetic testing be conducted.

Petition to Open Paternity. C.P. of Lebanon County, Civil Action-Law, No. 1999-5-0540.

John J. Ferry, Jr., Esquire, for Plaintiff

Iris Perez, Pro Se

Elizabeth Judd, Esquire, for Defendant Matthew Nievez

PEREZ vs. PEREZ No. 1999-5-0540
PACSES No.: 181101366

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA
DOMESTIC RELATIONS SECTION NO. 1999-5-0540
PACSES NO.: 181101366

OSCAR PEREZ
v.
IRIS PEREZ and MATTHEW NIEVEZ

ORDER OF COURT

AND NOW, to wit, this 10th day of January, 2014, in accordance with the attached Opinion, the Petition to Open Paternity for the purpose of obtaining genetic testing filed by Plaintiff Oscar Perez is DENIED. From a legal perspective, Matthew Nievez shall continue to be considered the legal father of the minor boy, E.P.

BY THE COURT:

_____J.

BRADFORD H. CHARLES

APPEARANCES:

John J. Ferry, Jr., Esquire	**For Oscar Perez**
Iris Perez	***Pro Se***
Elizabeth Judd, Esquire	**For Matthew Nievez**
PUBLIC DEFENDER'S OFFICE	

PEREZ vs. PEREZ No. 1999-5-0540
PACSES No.: 181101366

OPINION BY CHARLES, J., January 10, 2014

This dispute is between two good, well-meaning men who both have been victimized by a scheming and self-centered woman. This woman simultaneously convinced each man that he was the father of her son. She received money in child support from both men while downplaying and/or concealing the existence of each from the other. When the mother was placed in jail on unrelated charges, the two potential fathers confronted one another. Now, one wants a blood test to determine who is in fact the child's biological father.

The law governing paternity has not keep pace with the technology that can now be used to definitively determine who is and is not a father. Moreover, "rarely have we encountered a more confusing body of case law than that surrounding paternity in Pennsylvania." ***Putt v. Putt***, 2009-5-0827 (Charles, J., June 24, 2010). Still, if there is one over-arching axiom that governs any family law dispute, it is that children should not needlessly suffer. In this case, the interests of a thirteen year old boy trump all of the highly technical and esoteric legal arguments that have been thrown at us by the parties. Ultimately, our decision today will be designed to minimize future harm to a young boy who has already suffered unnecessarily as a result of his mother's scheming conduct. For reasons that we will articulate in more detail below, we will deny the request of Oscar Perez for genetic blood tests.

I. FACTS

E.P. was born on March 13, 2000 to Iris Perez (hereafter "MOTHER"). (Exh. 1). At the time of E.P.'s birth, MOTHER was not married. However, she was residing with Matthew Nievez (hereafter "MATTHEW"). MATTHEW's name was listed as father on E.P.'s birth certificate. Moreover, MATTHEW paid birthing expenses of roughly $3,000.00 for MOTHER and E.P.

Oscar Perez (hereafter "OSCAR") is the biological father of three of MOTHER's other children. When E.P. was born, OSCAR was residing in New York City. Both OSCAR and MOTHER acknowledged that the two had sexual relations at or about the time when E.P. was conceived. Although OSCAR knew that MOTHER resided with MATTHEW and although he had doubts about E.P.'s paternity, OSCAR was nevertheless convinced by MOTHER that he was E.P.'s father.

For years, both OSCAR and MATTHEW enjoyed a father-son relationship with E.P. Sadly, MOTHER at times permitted E.P. to call both men "Dad." Moreover, MOTHER

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received money from both men for E.P.'s support. MATTHEW paid formal child support through the Lebanon County Domestic Relations Office starting in 2002. OSCAR did not pay formal child support. However, OSCAR was repeatedly told by MOTHER: "If you want to see your son, you must give me money." Because of this, OSCAR repeatedly sent money to MOTHER. He described the amounts as "whatever she would ask for." OSCAR's monetary payments to MOTHER were corroborated by OSCAR's oldest son, Oscar Perez, Jr.

In or about 2010, MOTHER was incarcerated. Upon her incarceration, E.P. began living exclusively with MATTHEW. For at least the past three years, E.P. has resided with MATTHEW in Lebanon. He has attended the Lebanon School District, where he has thrived. A recent report card marked as Exhibit 8 revealed that E.P. achieved excellent grades. E.P.'s Principal wrote a letter to this Court that included the following:

> Since Mr. Nievez has had custody of his children, including [E.P.], we have seen a big improvement in their attendance, grades and behavior. [E.P.] has made a lot of progress academically, behaviorally and [E.P.] has also been a member of the LMS football team for two straight years. Mr. Nievez has never missed any meetings, here at L.M.S., that dealt with [E.P.] and his LMS needs. Mr. Nievez has been very easy to communicate with and has always had [E.P.]'s best interest in mind when making decisions for him academically and behaviorally.

When E.P. began living with MATTHEW, regular contact between OSCAR and E.P. ended. OSCAR began to become concerned about E.P.'s welfare. He therefore traveled to Lebanon to locate E.P. It was at this time that OSCAR learned that E.P. was living with MATTHEW.

In May of 2011, OSCAR filed a Complaint for Custody in this Court. After the Complaint was initially denied, OSCAR filed a Request to Establish Paternity. Following some legal maneuvering, OSCAR eventually filed a counseled Petition to Open Paternity Determination on May 7, 2013. After meeting with counsel, we scheduled a hearing regarding the Petition to Open Paternity. After several continuances, the hearing was conducted on November 19, 2013. In addition to the information chronicled above, both sides presented a multitude of pictures at the hearing. These pictures depicted E.P. engaging in typical father-son activities with both OSCAR and MATTHEW. At the hearing, OSCAR asked us to compel genetic testing to determine who is and is not E.P.'s actual father. MATTHEW opposed this request.

MOTHER appeared at the November 19 hearing. She acknowledged that she was

seeing E.P. on weekends. Displaying what we could best describe as an abrasive and aggressive demeanor, MOTHER was forced to admit much of the information that we chronicled above. In addition, we learned that MOTHER has attempted to obtain government benefits on behalf of E.P. even though she is not the custodian of E.P. To say that this Court did not have a positive impression of MOTHER would be an understatement.

Following the November 19 hearing, both OSCAR and MATTHEW filed legal briefs in support of their respective positions. We now issue this Opinion to determine whether genetic testing should be ordered to determine the identity of E.P.'s biological father.

II. PRACTICAL IMPLICATIONS

OSCAR's primary argument is that it is in E.P.'s best interest to know the identity of his father and technological means exist to determine paternity beyond any doubt whatsoever.

There is some visceral appeal to the simplicity of OSCAR's argument. After all, E.P. can have only one biological father and genetic testing can determine beyond any doubt who that father is. Balanced against OSCAR's argument are multiple other concerns that are more complicated but no less compelling.

Genetic blood testing is an invasive process that has the potential to wreak havoc on existing families. Using an extreme example, suppose that a fifteen year old has grown up knowing one man and one woman as mom and dad. Should another man be permitted to force the fifteen year old and his parents to undergo blood testing simply because he claims to have had sexual relations with the child's mother at or near the time of conception? If a law were to respond to such a situation by permitting blood tests, and if the blood test verified the intervening man's paternity, the effect upon the fifteen year old would be devastating. Even if the paternity test ended up supporting the status of the child's known dad, the process itself would be emotionally traumatic and would of necessity require difficult intra-family discussions with respect to whether the child's mother did or did not have intimate relations with someone else.

The facts of this case present an admittedly less extreme factual pattern than the one outlined above. Nevertheless, it is impossible to evaluate this case without at least asking "what happens if…?". In particular, what happens if we authorize blood tests and they exclude MATTHEW as E.P.'s father? Would that necessitate relocation by E.P. from Lebanon to New York City? Would that prevent E.P. from continuing to enjoy any relationship with MATTHEW? On the other hand, if we were to prevent blood tests from being conducted,

would that effectively preclude OSCAR from enjoying any sort of relationship with E.P.? All of the above provides a practical overlay to the legal positions proffered by the parties.

III. LEGAL PRINCIPLES

MATTHEW relies upon the doctrines of "paternity by estoppel" and "presumption of paternity." These two concepts are related, but they are governed by separate principles and built upon separate public policy foundations. Because neither doctrine can be examined in a vacuum, and because Pennsylvania paternity law is somewhat convoluted, we will undertake a discussion of the history of Pennsylvania paternity law.

For most of Pennsylvania's existence, the status of illegitimacy "subjected a child so labeled to significant legal and social discrimination". ***John M. v. Paula T.***, 571 A.2d 1380 (Pa. 1990) at fn. 2. In part because of this, a strong presumption arose that a child born to a married woman was also the child of the woman's husband. ***Commonwealth v. ex rel Leider v. Leider***, 254 A.2d 306 (Pa. 1969). Traditionally, this presumption of legitimacy could only be rebutted by proof that a husband was incapable of procreation or had no access to his wife during the period of conception. ***Burston v. Dodson***, 390 A.2d 216 (Pa. Super. 1978).

In 1971, Pennsylvania's General Assembly eliminated the legal distinction between legitimate and illegitimate children by declaring: "All children shall be legitimate irrespective of the marital status of their parents…" P.L. 175, Act of June 17, 1971, now found at 20 Pa.C.S.A. § 2107.[1]

As with other areas of the law, the evolution of Pennsylvania paternity law was impacted heavily by a new technology – genetic testing of the blood to determine paternity. In 1976, Pennsylvania statutorily recognized the viability of genetic blood tests as a means to determine paternity.[2] Stripped of superfluity, Pennsylvania's "blood tests to determine

1 The 1971 Act is no longer found in Purden's Pennsylvania Statutes. Its exact language has been modernized and superseded by several amendments. The language quoted in the body of this opinion was taken from a footnote prepared by the Pennsylvania Supreme Court in the case of ***John M. v. Paula T.***, supra, in which the Pennsylvania Supreme Court chronicled some of the history that led to creation of Pennsylvania's presumption that a child born into an intact marriage was the natural child of both spouses.

2 This law was originally included within the Judiciary Code at 42 Pa.C.S.A. § 6137. When Domestic Relations statutes were codified into the Domestic Relations Code, it was shifted and is now found at 23 Pa.C.S.A. § 5104.

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paternity" law declared blood tests to be "a relevant fact" with respect to any determination of paternity. Pennsylvania's Superior Court recognized and applied this law. Prior to 1990, the Superior Court generally permitted alleged fathers – even husbands – to compel blood tests to prove or disprove paternity. See, e.g. ***Nixon v. Nixon***, 511 A.2d 847 (1986).

In somewhat of a surprise decision, Pennsylvania's Supreme Court stepped into the paternity arena in 1990 to impose limits upon the unfettered ability to request blood testing. In ***John M. v. Paula T.***, supra, Pennsylvania's Supreme Court was confronted with a situation where a person outside of a marital relationship sought to demand blood testing to prove that the child of another man's wife was in fact his. The Supreme Court refused to permit this intrusion into the marital relationship and stated:

> A woman and a man who have married and have lived together as husband and wife, giving birth to and raising four children, have an obvious interest in protecting their family from unwanted intrusions of outsiders (even ones who have had serious relationships with the mother, father, or children). The Commonwealth recognizes and seeks to protect this basic and foundational unit of society, the family, by the presumption that a child born to a woman while she is married is a child of the marriage.

Id. at 1385.

Within its plurality opinion, the Supreme Court referenced the concept of "paternity by estoppel", which was derived from a Pennsylvania statute that reads:

> For purposes of dissent by, from or through a person born out of wedlock, he shall be considered the child of his father when the identity of the father has been determined in any of the following ways…
>
> If during the lifetime of the child, the father openly holds out the child to be his and receives the child into his home, or openly holds the child out to be his and provides support for the child which shall be determined by clear and convincing evidence.

20 Pa.C.S.A. § 2107[3]. The Supreme Court stated:

> The classic example of this principle [paternity by estoppel] is where a man who has lived with a woman and her children for a number of years and has

3 By its terms, 20 Pa.C.S.A. § 2107 applies only to children "born out of wedlock". However, the concept established in this statute has been applied regardless of the marital status of the parties. See, e.g. ***Jones v. Trojak***, 634 A.2d 201 (Pa. 1993).

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> held himself to the world as the father of said children, may be estopped from seeking Court-ordered blood tests in a belated attempt to deny paternity.

Id. at 1386. The Court also stated that "where the principle [of paternity by estoppel] is operative, blood tests may well be irrelevant, for the law will not permit a person in those situations to challenge the status which he or she has previously accepted". ***Id***. at 1386.

At or near the same time that the Supreme Court decided ***John M.***, the Superior Court weighed in on the paternity issue by deciding ***Scott v. Mershan***, 576 A.2d 67 (Pa. Super. 1990). In ***Scott***, a child's mother sought to impose paternity upon a man who was not her husband. Because the mother had not alleged impotence or non-access on the part of her husband, the Court applied the presumption of paternity and held that the woman's husband should be considered the father of her child. Blood tests were therefore denied.

Following ***John M.*** and ***Scott***, a different panel of the Superior Court decided the case of ***Faust v. Faggart***, 594 A.2d 660 (Pa.Super. 1991). In ***Faust***, a mother brought an action for support against her husband to whom she was married at the time of the child's birth. The Trial Court refused the husband's request for genetic testing and the husband appealed. The Superior Court distinguished both ***John M.*** and ***Scott*** and said: "Both ***John M.*** and ***Scott*** involved an attempt to disrupt an intact family by obtaining blood tests to prove that the presumed father of the child in question was not really the father, but rather a third party outside the marriage was the true father." ***Id.*** at 665. In ***Faust***, the Court concluded: "Here, there is no intact family to protect…therefore, the concerns expressed by the Supreme Court in ***John M.*** and by a panel of this Court in ***Scott*** regarding the interest of the Commonwealth in preventing the disruption of a marriage and an intact family are inapposite to our analysis of the rights of the parties to this case." ***Id.*** at 665. Accordingly, the Court held that the Trial Judge "erred in refusing to order the blood test requested by appellant". ***Id.*** at 665.

Another panel of the Superior Court limited ***Faust*** in ***McCue v. McCue***, 604 A.2d 738 (Pa.Super. 1992). In ***McCue***, the Court stated that the appellant's reliance upon ***Faust*** "would improperly expand the law and apply the law in a manner different from that which has gone before". ***Id.*** at 740. Contrary to the Court's decision in ***Faust***, the Court in ***McCue*** stated:

> From our analysis of the relevant case law, it is clear that the blood test itself may not be used to rebut paternity in the first instance as has been stated in [***Faust*** and ***Nixon***]. Following rebuttal of the presumption the child is a child of the marriage by clear and convincing evidence, the blood test becomes relevant to

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> determine parentage and as increasingly is the case, to establish the probability that a party is or is not the parent of the child. The necessity to follow the common law requirement of proving non-access or impotence has not been eliminated by enactment of the blood test act.

In 1993, Pennsylvania's Supreme Court again addressed the paternity issue, this time in the context of a husband who sought to use blood tests to overcome the presumption that he was the father of his wife's child. In ***Jones v. Trojak***, 634 A.2d 201 (Pa. 1993), the Court emphasized the doctrine of paternity by estoppel and stated:

> A Court may order blood tests to determine paternity only when the presumption of paternity has been overcome. This Court has held that the presumption can be overcome by proof of facts establishing non-access or impotency. However, under certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as the father of the child. These estoppel cases indicate that where the principle is operative, blood tests may well be irrelevant, for the law will not permit a person in these situations to challenge the status which he or she has previously accepted. However, the doctrine of estoppel will not apply when evidence establishes that the father failed to accept the child as his own by holding it out and/or supporting the child. Only when the doctrine of estoppel does not apply will the mother be permitted to proceed with a paternity claim against a putative father with the aid of a blood test.

Id. at 206 (citations omitted).

Four years later, the Supreme Court again confronted paternity in the case of ***Brinkley v. King***, 701 A.2d 176 (Pa. 1997). While ***Brinkley*** was a plurality decision, a majority of the Supreme Court agreed that the presumption of paternity only applies when its purpose – the protection of intact families – "would be advanced by its application, and in other cases, it does not apply". ***Id.*** at 181.

In ***Strauser v. Stahr***, 726 A.2d 1052 (Pa. 1999), a clear majority of the Supreme Court followed up on the plurality decision in ***Brinkley***. The Court in ***Strauser*** discussed the interplay between the "presumption of paternity" and "paternity by estoppel". The Court described the issue of estoppel as follows:

> Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own or supporting the child), that person, regardless of his true biological status, will not be permitted to deny

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> parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.

Id. at 1056, quoting ***Brinkley*** at footnote 5. However, in ***Strauser***, the Court declared that the question of estoppel "does not arise unless or until the presumption of paternity has been rebutted or is inapplicable". ***Id.*** at 1056.[4]

In ***Fish v. Behers***, 741 A.2d 721 (Pa. 1999), the Supreme Court of Pennsylvania was even more clear in its declaration that the presumption of paternity is inapplicable in a case where the family unit is already broken. The Court stated:

> We must first determine if the presumption of paternity applies to the instant case. The policy underlying the presumption of paternity is the preservation of marriages. The presumption only applies in cases where that policy would be advanced by the application; otherwise it does not apply. In this case, there is no longer an intact family or a marriage to preserve…accordingly, the presumption of paternity is not applicable.

Id. at 723.[5]

In 2007, Pennsylvania's Superior Court authored a particularly comprehensive opinion to summarize Pennsylvania law regarding paternity. In ***Vargo v. Schwartz***, 940 A.2d 459 (Pa.Super 2007), the Court stated:

> The presumption of paternity is un-rebuttable when, at the time the husband's paternity is challenged, mother, her husband, and the child comprise an intact family wherein the husband has assumed parental responsibilities for the child. Under other circumstances, the presumption may be overcome by clear and convincing evidence that either of the following circumstances was true at the time of conception: the presumptive father, i.e, the husband, was physically

4 In ***Strauser***, the Court also discussed the distinction between situations involving an intact family and a broken family. The Court stated that "the presumption [of paternity] can be rebutted only by proof either that the husband was physically incapable of fathering a child or that he did not have access to his wife during the period of conception". ***Id***. at 1054. However, the Court went onto state: "It has also been held that, in one particular situation, no amount of evidence can overcome the presumption: where the family (mother, child and husband/presumptive father) remains intact at the time that the husband's paternity is challenged, the presumption is irrebuttable." ***Id.*** at 1054.

5 In ***Fish***, the Court did apply the doctrine of paternity by estoppel.

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incapable of procreation because of impotency or sterility, or the presumptive father had no access to his wife, i.e., the spouses were physically separated and thus were unable to have had sexual relations. In Pennsylvania, impotency/sterility and non-access constitute the only ways to rebut the presumption of paternity. Notably, blood tests cannot be offered to rebut the presumption of paternity. A number of dissenting voices notwithstanding, it remains the law of this Commonwealth that 'a Court may order blood tests to determine paternity only when the presumption of paternity has been overcome' by proof of either impotency/sterility or non-access.

If the presumption of paternity is not applicable or has been rebutted, the Court must then consider whether the doctrine of estoppel is applicable to the case. Estoppel in paternity actions is a legal determination based on the conduct of the mother and/or the putative father with regard to the child, e.g., holding out the child to the community as the product of their marriage and/or supporting the child. If the evidence is sufficient, estoppel may bar either a putative father from denying paternity or a mother from succeeding in a claim of paternity against a third party. Estoppel rests on the principle that a person may not 'challenge his role as a parent once he has accepted it, even with contrary DNA and blood tests'.

The public policy behind the doctrine of estoppel has often been expressed as follows:

> Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as a parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life is not in fact his father.

As this statement of policy makes clear, the doctrine of paternity by estoppel is rooted in the best interest of the child.

Id. at 464 (citations omitted).

In 2012, our Commonwealth's highest court addressed the doctrine of paternity by estoppel in the case of ***K.E.M. v. P.C.S.***, 38 A.3d 798 (Pa. 2012). ***K.E.M.*** involved a child support claim filed by a mother against the alleged biological father of her child. The York County Court dismissed the Child Support Complaint based upon a determination that the

mother's husband should be deemed to be the child's father via the doctrine of paternity by estoppel.

The Pennsylvania Supreme Court accepted *allocator* in ***K.E.M.*** to specifically address the question of whether paternity by estoppel should continue to be applied in Pennsylvania. Like OSCAR in this case, the mother in ***K.E.M.*** asked the Pennsylvania Supreme Court to mandate consideration of genetic testing because "an inflexible rule perpetrating a non-factual portrayal of paternity will not always best serve the best interests of the child." (***Id.*** at 804, quoting appellant's brief).[6]

The Supreme Court concluded:

> [We] believe there remains a role for paternity by estoppel in the Pennsylvania common law, in the absence of definitive legislative involvement. We recognize the intransigent difficulties in this area of the law involving social, moral, and very personal interests…Nevertheless, on the topic, subject to modest qualification, we join the sentiment expressed in an opinion authored by the late, Honorable William F. Cercone, as follows:
>
> > Absent any overriding equities in favor of the putative father, such as fraud, the law cannot permit a party to renounce even an assumed duty of parentage when by doing so, the innocent child would be victimized. Relying upon the representation of the parental relationship, a child naturally and normally extends his love and affection to the putative parent. The representation of parentage inevitably obscures the identity and whereabouts of the natural father, so that the child will be denied the love, affection and support of the natural father. As time wears on, the fiction of parentage reduces the likelihood that the child will ever have the opportunity of knowing or receiving the love of his natural father. While the law cannot prohibit the putative father from informing the child of their true relationship, it can prohibit him from employing the sanctions of the law to avoid the obligations which their assumed relationship would otherwise impose.

Id. at 807-08 (quoting ***Commonwealth ex rel. Gonzalez v. Andreas,*** 312A.2d 416, 419 (Pa. Super. 1976)).

6 The mother argued: "In today's society, there is no assurance that past conduct as a parental figure to a child will continue into the future based upon a judicial finding that is known to be a fiction by the parties and eventually the child."

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Ultimately, the Pennsylvania Supreme Court subsumed the traditional paternity by estoppel analysis into one governed by the best interest of the child. The Court stated:

> [I]t is our considered view that the determination of paternity by estoppel should be better informed according to the actual best interests of the child, rather than by rote pronouncements grounded merely on the longevity of abstractly portrayed (and perhaps largely ostensible) parental relationships.

Id. at 808.[7]

Most recently, the Pennsylvania Superior Court authored an Opinion regarding paternity by estoppel in the case of ***T.E.B. v. C.A.B.***, 74 A.3d 170 (Pa.Super. 2013). ***T.E.B.*** involved a married couple who had three daughters. In 2006, the wife engaged in a sexual affair with a co-worker. She became pregnant. Because the husband had previously undergone a vasectomy, the wife believed that her co-worker was actually the father of her son. In fact, the co-worker actually accompanied wife to a doctor's appointment and informed wife that he desired to be a part of the child's life. When the wife terminated her affair with the co-worker, he immediately hired an attorney and requested DNA testing to determine paternity. After considerable legal maneuvering, a genetic test was eventually conducted and the co-worker was confirmed to be the father of the boy.

With the above fact pattern as a backdrop, a custody action ensued between the husband, wife and her co-worker. During this custody action, the husband raised the doctrine of paternity by estoppel and sought to bar the co-worker from having any involvement with the boy he fathered. Ultimately, the Trial Court admitted into evidence the results of the genetic DNA test that confirmed the co-worker's paternity and awarded custody rights to all three litigants. The husband appealed and relied upon the doctrine of paternity by estoppel.

The Superior Court acknowledged paternity by estoppel as an equitable doctrine. The Superior Court stated:

> The doctrine has most usually been applied either to (1) preclude a man who has held a child out as his own from avoiding further support of the child after his relationship with the mother had ended, or (2) preclude a woman who has

7 One thing that ***K.E.M.*** did conclusively affirm is that the doctrine of presumption of paternity applies only when an intact marriage is at stake. The Supreme Court stated: "As to the presumption of paternity, we note only that recent Pennsylvania decisions have relegated it to a substantially more limited role by narrowing its application to situations in which the underlying policies will be advanced (essentially, where there is an intact marriage to be protected)." ***Id.*** at 806.

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> held one man out as her child's father from seeking support from another man later on. In other words, 'those who mislead a child as to the identity of his or her natural father, cannot then turn around and disprove their own fiction to the detriment of the child.'
>
> Yet, estoppel can also serve to preclude a biological father from asserting his parental rights…Thus, if a biological father is not obstructed from pursuing his parental claim and he acquiesces in the fiction that someone else is his child's father, the doctrine of estoppel may be invoked to bar his later attempt to assert his rights.

Id. at 174-75 (citations omitted). In summarizing Pennsylvania law regarding the doctrine of paternity by estoppel, the Superior Court concluded:

> The doctrine of paternity by estoppel seeks to achieve fairness by holding parties to their past representations, and to allow children to be secure in their parental relationships. Although the continuing value of the doctrine in the modern era has been called into question, it continues to be viable in Pennsylvania jurisprudence, but only if its application would serve the best interest of the child.

Based upon the above principles, the Superior Court affirmed the decision of the Trial Judge. Emphasizing that neither the wife nor the co-worker "actively participated in the fiction that husband is the biological father of child," the Court declined the husband's effort to apply paternity by estoppel. In addition, the Superior Court affirmed the Trial Court's decision to essentially split custody between all three litigants. Despite noting that the child was "somewhat confused" about the co-worker's role in his life, the Court stated:

> Our review of the record reveals that the hearing officer was highly conscientious in discerning child's best interest, and recommended a custody arrangement that equitably balanced the competing interest of all persons involved. Therefore, we hold that the trial court did not err or abuse its discretion in adopting the recommendation of the hearing officer and entering the custody order [that afforded rights to husband, wife and co-worker].

Id. at 178.

While the above is admittedly confusing, we are nevertheless able to draw some general conclusions as to the current state of Pennsylvania paternity law. Those conclusions are:

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(1) The presumption of paternity doctrine applies only when the mother is married to a man who has undertaken the role of father.

(2) Paternity by estoppel is an equitable doctrine that must be evaluated based upon the case-specific fact pattern before the Court.

(3) The doctrine of paternity by estoppel has always been grounded upon the best interest of children. Since the Pennsylvania Supreme Court's recent decision in ***K.E.M***, application of paternity by estoppel must now be predicated upon what is best for the child.

(4) Based on the Superior Court's decision in ***T.E.B.***, it is at least possible for more than one man to have parental rights with respect to a child.

IV. ANALYSIS

We begin our analysis with the recognition that MOTHER is not married and there is no intact family to preserve. Accordingly, the presumption of paternity doctrine does not apply and cannot govern our decision in this case.

On the other hand, the doctrine of paternity by estoppel could be applicable under the facts of this case. Given the above law, a viable argument can be made that OSCAR should be estopped from obtaining genetic testing due to the lengthy nature and depth of MATTHEW's relationship with E.P. Given this, we will proceed to consider the relative positions of MATTHEW and OSCAR using paternity by estoppel as the prism through which the equities of this case must be evaluated.

As emphasized in ***K.E.M.***, the key component to any paternity by estoppel analysis is the question: "***WHAT IS THE BEST INTEREST OF THE CHILD?***" In this case, E.P. has enjoyed a relationship with both OSCAR and MATTHEW. However, E.P. has bonded with MATTHEW in a way that has transcended E.P.'s relationship with any other adult human being.

For the past four years, E.P. has lived with MATTHEW. With very little financial assistance from anyone else, MATTHEW has been responsible for housing E.P., feeding E.P., clothing E.P., transporting E.P. when needed and supporting E.P. in his activities. In his role as father, MATTHEW has excelled. E.P. achieves excellent grades in school and he has begun to enjoy involvement in the sports of football and basketball. Moreover, the Principal at E.P.'s school wrote a letter speaking in glowing terms about how much E.P.

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has improved in attendance, academic achievement and behavior since MATTHEW has obtained physical custody.

The type of bond that has developed between MATTHEW and E.P. is similar to the types of bonds that existed in other cases where our appellate courts have applied the doctrine of paternity by estoppel. See, e.g., ***Warfield v. Warfield***, *supra*, (The Court ruled in favor of a man who served as the child's father for seven years) and ***Zadori v. Zadori***, 661 A.2d 370 (Pa.Super. 1995) (The Court ruled in favor of a man who served as the child's father for three years). As stated in ***Vargo v. Schwartz,*** *supra*, there is "potentially damaging trauma that may come from [a child] being told that the father he has known all his life is not in fact his father." ***Id.*** at 464. We cannot and will not underestimate the potential trauma that E.P. would suffer were he to be suddenly uprooted and removed from the care that has so lovingly been provided to this point by MATTHEW.

With the above being said, we cannot ignore the fact that OSCAR has also developed a bond with E.P. For much of E.P.'s life, OSCAR cared for him in New York City on weekends when MOTHER transported E.P. and his siblings to New York City for visits. OSCAR presented numerous photographs taken of he and E.P. These photographs depict E.P. at various stages of his life and portray the relationship between OSCAR and E.P. in a favorable light.

While we have no doubt that OSCAR loves E.P., we cannot equate the relationship between OSCAR and E.P. with the one E.P. enjoys with MATTHEW. To use an analogy, OSCAR's relationship with E.P. has been akin to the interaction that a student has with a substitute teacher. While the student can benefit from lessons taught by the substitute teacher, temporary educators cannot hope to replicate the interpersonal familiarity, continuity and day-to-day interaction that the regular teacher enjoys.

In addition to the above, we are not blind to the fact that OSCAR resides in the Borough of Bronx within New York City. Culturally, there is an ocean of difference between relatively rural Lebanon County and decidedly urban New York City. This is not to say that children cannot be successfully raised in an urban environment. However, we have little doubt that a transition by E.P. from Lebanon to New York City would not be seamless. Moreover, E.P. is thriving in his current environment. He is doing well in school. He has made friends in Lebanon. He is participating in positive activities. In short, we see little benefit to altering E.P.'s environmental status quo.

Ultimately, as we evaluate E.P.'s best interest, we find ourselves asking the question: What would be gained by ordering genetic testing? From the perspective of E.P.'s interest,

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our answer to this question must be – very little. MATTHEW has not needed genetic testing as a predicate to serving as E.P.'s father. For at least the past four years, MATTHEW has undertaken parental responsibilities admirably even knowing that some question exists with respect to E.P.'s biological parentage. For all practical purposes, E.P. considers MATTHEW to be his father and MATTHEW considers E.P. to be his son. No positive genetic testing is needed to cement or reinforce this relationship.

On the other hand, genetic testing identifying OSCAR as E.P.'s father would do nothing less than throw all aspects of E.P.'s life into turmoil. If MATTHEW is excluded as the biological father, an argument could be made that he would lack standing to play any ongoing role in E.P.'s life. At a minimum, any custody dispute between OSCAR, MOTHER and MATTHEW would be determined under the umbrella of the presumption favoring natural parents in any custody dispute against a third party non-parent. If genetic testing were to be conducted and confirmed OSCAR as the biological father, we have little doubt that OSCAR would seek to compel E.P.'s relocation to New York City. Given that MOTHER has already sought to use E.P. to obtain government benefits for herself, we also suspect that MOTHER would also throw her hat into the ring as a primary custody option. If in fact custody of E.P. were changed to someone other than MATTHEW, E.P.'s life would instantaneously be transformed in ways that we perceive are not in his best interest.

At this point, there is uncertainty as to whether OSCAR or MATTHEW is E.P.'s father. As E.P. grows older, we are confident that he will grow to learn about the nature of this uncertainty. However, we are also confident that as E.P. matures, he will come to recognize that being a father means far more than simply donating sperm at the time of conception. We are confident that in some ways E.P. will grow to appreciate MATTHEW's love and sacrifice for him even more than most children of intact families where biological paternity is never challenged.

In our opinion, uncertainty as to E.P.'s biological paternity is less harmful to E.P. than the certainty and turmoil that would occur if genetic testing were to confirm OSCAR as E.P.'s biological father. In our opinion, it would be nothing short of devastating for us to undertake any path that could jeopardize E.P.'s existing father-son relationship with MATTHEW. Therefore, we will not even start down the path that could minimize or possibly even imperil E.P.'s relationship with MATTHEW.

To be sure, the paternity of estoppel doctrine is typically applied when a putative father acts in a manner inconsistent with his own paternity. In this case OSCAR has never done that. For years, OSCAR portrayed himself as E.P.'s father and even paid "child

support" for his son. On the other hand, OSCAR has known since at least 2010 that MATTHEW was serving as E.P.'s parent. He waited until May of 2011 to file a Custody Complaint and then tarried until May 7, 2013 before filing the Petition to Open Paternity that is now before us. OSCAR may not have agreed to MATTHEW's paternity but he tacitly acquiesced to MATTHEW's role as a parent of E.P. Given the depth of the bond created between MATTHEW and E.P. during this time frame, OSCAR's acquiescence is, in our opinion, sufficient to trigger the doctrine of paternity by estoppel.

V. CONCLUSION

In every important respect, MATTHEW has been E.P.'s father for at least the past three plus years. For us to jeopardize the relationship between E.P. and the only father he has ever known would be nothing short of devastating. Because we find that it is E.P.'s best interest for the status quo to continue, we will not order that genetic testing be conducted.

We render our decision today with full recognition that our decision will in some ways be unfair to OSCAR. From everything presented at the November 19, 2013 hearing, we conclude that OSCAR is a good man. We also conclude that OSCAR has genuine love for E.P. However, as we stated at the outset of this Opinion, our goal is not to provide redress to OSCAR for the wrongful conduct of MOTHER. Our role is not to craft a solution designed to make everyone feel vindicated or happy. Our role is to minimize the harm to E.P. and effectuate what we believe is in his interest given the impossible situation created by MOTHER. In the humble opinion of this Jurist, the best way we can accomplish that goal would be to deny OSCAR's request for genetic testing.

We take solace in the fact that OSCAR will continue to enjoy some sort of relationship with E.P. OSCAR is the only acknowledged father of E.P.'s siblings. As such, there will be continuing contact between OSCAR and E.P.'s siblings. We hope that E.P. will be permitted at least some contact with OSCAR during OSCAR's visits with his other children.

With the above being said, let there be no mistake about the impact of our decision today. For all legal and practical purposes, Matthew Nievez is E.P.'s father. MATTHEW will enjoy all parental authority that flows from his legal role as father. He will have the right to make important decisions regarding the educational, spiritual and physical development of E.P. and he will retain the responsibility to financially support E.P. While OSCAR may indeed be permitted to play the role of an interested adult mentor, our decision today is intended to leave no doubt whatsoever that E.P.'s legal father will be MATTHEW.

An Order to effectuate the decision we have entered today's date will be entered simultaneous with this Opinion.