

# Paternity Presumptions in the Age of the Modern Family

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Establishing a parent-child relationship creates constitutional rights and moral, social, and financial obligations. For this reason, one of the most important legal presumptions in family law cases is the presumption of paternity. But as technology has advanced and family structures have changed, determining who is a child's legal father has become more complicated. Generally, paternity is established in one of three ways:

## 1) Marital Presumption

The oldest and most common presumption of paternity is the "marital presumption." The presumption assumes that a child born during a marriage is the biological child of the mother's husband. Family courts continue to rely on this presumption because it is an efficient means of determining paternity.

However, the law has not kept pace with changing family structures. For example, it is unclear if the marital presumption applies to same-sex couples. Without the presumption, the non-biological parent must formally adopt the couple's child to ensure that he/she receives the same parental rights as the biological parent.

## 2) Biological/Genetic Connections

Genetic testing makes it possible to know with almost scientific certainty the identity of a child's biological parents. With advances in technology, it is also easier than ever to take a genetic test in the comfort of your own home. While genetic testing might seem like the perfect solution to paternity determinations, the rise of assisted reproductive technology creates situations in which the biological parent is not necessarily the child's intended legal parent (e.g., surrogacy arrangements). In those cases, genetic testing is not helpful in determining who should parent the child.

## 3) Intent/Functional

The intent/functional approach to paternity focuses on the actions of the parent seeking to establish the parent-child relationship instead of marital or biological connections. Courts will consider whether the man held himself out as the child's father and intended to care for the child. Fathers can also voluntarily assume parental obligations by signing an acknowledgment of paternity.

## Rebutting the Presumption

Once paternity is presumed, a parent or a third party may seek to challenge the presumption of paternity. Depending on the state where the action is brought and the circumstances of the case, a party may be able to rebut the presumption of paternity by:

- Rescinding the voluntary acknowledgment of paternity within the required timeframe;
- Contesting paternity on the basis of fraud, duress, or material mistake of fact;
- Proving that the presumed father and mother of the child never cohabited or engaged in sexual intercourse during the probable time of conception;
- Establishing that the presumed father never openly held out the child as his own; or
- Submitting to a genetic test.

However, even if a party can successfully rebut paternity, the court is not required to allow it. The court will look at the length of time that has passed and consider whether or not disestablishing paternity is in the best interests of the child. Given the significant emotional and financial issues at stake, it is important to consult with an attorney prior to taking steps to acknowledge or rebut paternity.

Moss & Barnett's Family Law group is here to assist you with any paternity questions you may have.

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### Practice Areas

Family Law

