

RENDERED: SEPTEMBER 30, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002541-ME

ANTHONY LEE HILLS

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 04-J-00515

PATRICIA L. RICHEY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE AND SCHRODER, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

DYCHE, JUDGE: Anthony Hills appeals from an order of the Warren Family Court which dismissed this, his third petition/attempt to be declared the father of a child born to appellee, Patricia Richey, during her marriage to another man. Finding no error or abuse of discretion by the trial court, we affirm.

¹ Senior Status Judge Paul W. Rosenblum sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

The first action was filed by the Warren County Attorney's office in January 2004, seeking a finding of paternity on Hills's behalf. That petition was dismissed on motion of the County Attorney's office "who declined to further proceed in the matter."

Shortly thereafter, Hills filed a second petition and was granted a hearing, at which he testified that he had had sexual relations with appellee in December 1988 or January 1999, resulting in the birth of the child approximately nine months later. Richey testified that the birth date of the child was October 13, 1998; from that testimony, the court found it to be impossible that Hills was the child's father, and dismissed the petition.

Undeterred, Hills filed yet another petition, this time claiming sex with Ms. Richey in December 1997, and birth of the child nine months later. He claimed his earlier testimony was a mistake. Ms. Richey has consistently denied sexual contact with him. That petition was dismissed, and this appeal followed.

KRS 406.011 provides a presumption of legitimacy for a child born during lawful wedlock, or within ten months thereafter, as this child unquestionably was. The burden to overcome that presumption is extremely high.

The presumption of paternity and legitimacy, however, is one of the strongest known in the law. As with any legal presumption, it is rebuttable by factual evidence. In order to bastardize a child though, the evidence must be of a higher degree than that required to convict a person of even a minor criminal offense.

Bartlett v. Com. ex rel. Calloway, 705 S.W.2d 470, 473 (Ky. 1986) (Wintersheimer, J., dissenting) (citations omitted). We have no such factual evidence herein. Mr. Hills's inconsistent testimony is weak and unpersuasive, at best. The trial court afforded him little credibility, as do we. The order of the Warren Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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