

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000472-MR

A.C.D.D.

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE DEBRA HEMBREE LAMBERT, JUDGE  
ACTION NO. 01-CI-00179

M.S.D.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, A.C.D.D. appeals the denial of her motion pursuant to CR 60.02 to set aside that portion of the Decree of Dissolution entered May 9, 2003, by the Lincoln Family Court that states A.C.D.D.'s minor child is the daughter of Appellee, M.S.D. M.S.D. did not file a brief in this action, but his position is well supported by the record and the rulings of the family court. We affirm the family court's determination.

A.C.D.D. and M.S.D. were married in March, 1991. Three minor children were born during the marriage. M.S.D.

filed for dissolution in 2001. In the petition he stated that he had custody of the minor children. He agreed to a settlement in which he would be the primary residential parent for the children. A.C.D.D. would have liberal visitation rights to the children. The parties agreed to share joint legal custody of the children. M.S.D. agreed to waive child support from A.C.D.D. A decree of dissolution was entered approving the settlement agreement created by the parties. That separation agreement dealt with custody, visitation and support of the minor children.

The decree of dissolution stating that M.S.D was the father of the children, all of whom were born during the marriage, was not appealed by either party. The decree of dissolution was final on May 7, 2003. Almost a year later, for reasons not stated in the record, the parties engaged in medical testing to establish paternity for the youngest child. That paternity test showed that M.S.D. was not the biological father of the youngest child.

After receiving the paternity test results, A.C.D.D. filed a motion pursuant to CR 60.02 to set aside the circuit court ruling holding that M.S.D. was the child's father. M.S.D. did not join in the motion, and did not consent to revocation of the paternity rights or duties found in the dissolution decree. A.C.D.D. asked the circuit court to rule that M.S.D. was not the

father of the child and that he had no rights with regard to the child. She stated in her affidavit in support of the motion that she has contacted the relatives of a man she claims was the biological father of the child. She discovered the man is deceased, having died in a car accident prior to the paternity testing. A.C.D.D. states that the decedent's relatives are willing to undergo testing to determine whether the decedent could have been the father of her child. A.C.D.D. claims that the court's refusal to set aside the paternity ruling deprives the child of social security benefits from a decedent who was potentially the biological father, and forces her to share parenting duties with M.S.D., who is not biologically related to the child.

Even if A.C.D.D. had the right to relitigate the paternity issue, which we believe she does not, a determination of paternity only goes to the issue of who must provide financial support for a child, and does not affect the rights, duties or obligations of the person who has supported and cared for the child as a parent. Bartlett v. Com. ex rel. Calloway, 705 S.W.2d 470, 472 (Ky. 1986). M.S.D. claimed the child as his own, and has had custody of the child and supported the child her whole life.

The circuit court ruled that A.C.D.D. could not claim "mistake, inadvertence, surprise or excusable neglect" with

respect to the paternity of the child at this point in the proceedings. The court found her request untimely and barred by law. The court held that both parties had sworn that the child was a child of the marriage and that M.S.D was her father as part of the dissolution proceedings. A.C.D.D. now claims that the parties had previously suspected that the child was not M.S.D.'s biological child. No support for this statement is found in the record prior to finality of the dissolution decree. The court found that M.S.D objected to A.C.D.D.'s request to alter the paternity ruling or the settlement agreement with regard to care and custody of the children, and ruled that "to deprive her [the child] of the only father she has ever known certainly would not be in her best interest." The circuit court is correct in holding that the primary rule in any custody action is the best interests of the child. Bickel v. Bickel, 442 S.W.2d 575, 577 (Ky. 1969). The trial court was correct in barring A.C.D.D.'s attempt to alter the terms of the dissolution decree.

Kentucky law has long held that where paternity has been stipulated in a divorce decree, the parties are precluded from litigating that issue at a later date. Moore v. Commonwealth, 954 S.W.2d 317, 318 (Ky. 1997). The doctrines of *res judicata* and collateral estoppel prevent A.C.D.D. from raising the issue of paternity at this late date. Id. As the

circuit court held, even if A.C.D.D.'s present assertion that she had always suspected that someone else was the biological father of the child is true, her failure to raise that issue before finality of the dissolution bars any further litigation on that issue. For the foregoing reasons, the Lincoln Circuit Court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Justin Genco  
Stanford, Kentucky

BRIEF FOR APPELLEE:

No brief filed for Appellee.