

PATERNITY

2023 BCBA Raising the Bar

April 14, 2023

Presentation & Materials by:
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This Paternity Presentation

Will

NOT

discuss:

Modification

Relocation

Disestablishment of paternity

Child support

4 WAYS OF ESTABLISHMENT OF PATERNITY

1. Adjudicatory Hearing

2. Voluntary acknowledgment

3. DOR

4. Court Order

1. Adjudicatory hearing

Establishment of paternity may arise within an adjudicatory hearing brought under various statutes governing either:

- Inheritance
- Dependency
- Workers' compensation

2. Voluntary acknowledgment - §742.10, Fl. Stat

Paternity may also be established by agreement. Both parents may agree and sign an affidavit of voluntary acknowledgement of paternity under oath in the presence of a notary or under oath in the presence of two witnesses.

- ❑ A **rebuttable presumption of paternity** is established and a 60 day revocation period is triggered. During the 60 day revocation period, either the mother or the alleged father may rescind the acknowledgement of paternity.
- ❑ After the 60 day period, a signed voluntary acknowledgement of paternity constitutes an **establishment of paternity** and may only be challenged in court on the basis of fraud, duress, or material mistake of fact.
- ❑ **Or** paternity may be established by both parents executing an affidavit of paternity or a stipulation of paternity and filing it with the clerk of court. If both parents sign the affidavit or stipulation of paternity and file it with the clerk of court, paternity is **deemed to be established at the time the affidavit is filed.**

3. DOR

§409.256, Fl. Stat. DOR has statutory authority to commence a paternity proceeding and an administrative proceeding to establish child support when:

- Paternity has not already been established
- No one is named the father on the child's birth certificate
- The mother was unmarried at the time of the child's conception and birth; or
- The DOR is providing services under Title IV-D

§409.2564, Fl. Stat. A request for timesharing may **NOT** be filed in a DOR action for paternity.

4. Court Order

§742.011, F.S. permits a woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child, to bring proceedings in court to determine the paternity of the child when paternity has not been established by law or otherwise.

§742.031, F.S. requires the court to conduct a hearing on the complaint and establish paternity if the court finds the alleged father is the father of the child.

§742.031(1), F.S. upon a determination of paternity, the court **must** decide on the ability of the parents to support the child. The court is NOT required to decide on a parenting plan or time-sharing schedule.

JURISDICTION

- SUBJECT MATTER
- PERSONAL
- LONG-ARM STATUTE

SUBJECT MATTER JURISDICTION

Is custody at issue?

If **YES**, then subject matter jurisdiction requirements of UCCJEA apply and UCCJEA home state requirement must be satisfied.

- If **NO**, and the paternity action requests child support and other monetary relief, then the requirements of UCCJEA do **NOT** apply.
- Appellate standard of review of whether subject matter jurisdiction is present is *de novo*.

PERSONAL JURISDICTION

- ❑ A paternity action requires personal jurisdiction over the putative father. *Campo v. Tafur*, 704 So. 2d 730 (Fla. 4th DCA 1998)(citing *J.E.S. v. B.J.F.*, 240 So.2d 520 (Fla. 4th DCA 1970))
- ❑ The classic way of exercising jurisdiction over a person within the court's territorial jurisdiction is by service of process upon him **personally within that territory.** *T. J. K. v. N. B.*, 237 So. 2d 592 (Fla. 4th DCA 1970)

PERSONAL JURISDICTION

- ❑ **Fl. Stat. §48.031** Service of process within the state of Florida.
- ❑ **Fl. Stat. §48.194** Service of process on party in another state.
- ❑ **Fl. Stat. §49.011(15):** No service by publication *except* to determine paternity, as to:
 - (a) The legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father; OR
 - (b) The legal mother when there is no legal father.

LONG-ARM JURISDICTION

- ❑ “In determining whether long-arm jurisdiction is appropriate in a given case, two inquiries must be made. First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient “minimum contacts” are demonstrated to satisfy due process requirements.”

Venetian Salami Co. v. Parthenais, 554 So.2d 499, 502 (Fla. 1989)
(quoting *Unger v. Publisher Entry Serv., Inc.*, 513 So.2d 674, 675
(Fla. 5th DCA 1987), rev. denied, 502 So.2d 586 (Fla. 1988).

- ❑ “[R]elating to paternity actions, the central jurisdictional fact that **must be alleged** is that the defendant engaged **“in the act of sexual intercourse within this state with respect to which a child may have been conceived.”**

Hollowell v. Tamburro, 991 So.2d 1022, 1025 (Fla. 4th DCA 2008).

- ❑ **Fl. Stat. § 48.193(1)(a)(8)**: Requirement that the act of sexual intercourse occurred within the state of Florida with respect to which a child may have been conceived.

VENUE

- **FL Stat. § 742.021(1)**: The proceedings must be in the circuit court of the county where the plaintiff resides or the county where the defendant resides.

THE PETITION

Paternity Facts to Allege: Fl. Stat. § 742.021: The complaint **shall** assert sufficient facts charging the paternity of the child.

1. Was paternity previously established as a matter of law?

OR

Parties engaged in sexual intercourse with each other in the month of X of X year in X city and state.

2. The intercourse resulted in the party conceiving and giving birth to the minor child X.

THE PETITION

3. The mother was not married at the time of the conception and/or birth of the child.
 - If the mother was married at the time, the name and address of her husband at the time of conception and/or birth is X.
4. Should the child retain their present name?

OR

- Should the child's name be changed to X?
- The name change is in the best interest of the child because of X.

THE PETITION

5. Petitioner/Respondent is the natural father of the child.
6. Attach a proposed Parenting Plan.
7. Seek child support under §61.30, FL. Stat.?
 - ❑ From the date the parents did not reside together with the child not to exceed 24 months before the date of filing.

OR

- ❑ From the date of filing.

THE PETITION

8. Seek life insurance to secure the child support obligation?
9. Seek hospital and medical expenses incidental to the birth?
10. Seek attorney's fees and costs?

PARENTING PLAN:

(4 minimum requirements)

- **Fl. Stat. §61.13(2)(b):** A parenting plan approved by the court **must, at a minimum:**
 1. Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child;
 2. Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;

PARENTING PLAN:

(4 minimum requirements)

3. Designate who will be responsible for:

- (a) Any and all forms of health care. If the court orders shared parental responsibility over health care decisions. The parenting plan **must** provide that either parent may consent to mental health treatment for the child.
- (b) School-related matters, including the address to be used for school-boundary determination and registration.
- (c) Other activities.

4. Describe in adequate detail the methods and technologies that the parents will use to communicate with the child.

STANDING and RELOCATION

White v. Lee-Yuk, 354 So.3d 563 (Fla. 3d DCA 2022)

Facts: Appellate court affirmed trial court's denial of mother's petition for temporary relocation in a tri-custodial parenting arrangement

Question: Did the *putative father* have standing to oppose the proposed temporary relocation?

Answer: Yes

Basis: The relocation statute allows an “**objecting party**” to file an answer objecting to the proposed relocation. The statute also requires that the objecting party allege the amount of participation or involvement they currently have or has had in the life of the child.

The relocation statute “**expands standing beyond two legally recognized parents.**” Every person entitled to access to or time-sharing with the child is endowed with standing.

STANDING and PICK UP ORDERS

Williams v. Primerano, 973 So.2d 645 (Fla. 4th DCA 2008)

Court may **not** issue a pickup order to a putative father. Putative father lacks standing.

Nelson v. Mirra, 335 So.3d 236 (Fla. 5th DCA 2022)

Father's paternity status did **not** afford him custody rights when a court order had not yet established them.

PARENTING COURSE:

❑ FL Stat. §61.21(4):

(a) All parties to a dissolution of marriage proceeding with minor children or a paternity action that involves issues of parental responsibility shall complete the Parent Education and Family Stabilization Course before the entry by the court of a final judgment.

If the parties have children who have identified special needs or emotional concerns, the parties must select a Parent Education and Family Stabilization Course that is tailored to education relating to children who have special needs or emotional concerns.

(b) The court may excuse a party from attending the parenting course, or from completing the course within the required time, for good cause.

HOT TIP #1:

Written agreements granting visitation to nonparents are unenforceable in Florida

Same Sex Partner: *Stabler v. Spicer*, 47 FLW D2230 (Fla. 1st DCA 2022): “In *Wakeman v. Dixon*, 921 So. 2d 669 (Fla. 1st DCA 2006), this Court held that a same sex partner who was not the biological mother—but had been **a de facto parent who supported and participated in a child's upbringing pursuant to a written coparenting agreement—had no legally enforceable visitation rights with the child.** *Id.* at 671. The reason is found in the state constitution's privacy clause, which creates “the right to be let alone and free from governmental intrusion into [a] person's private life.” Art. I, § 23, Fla. Const. This provision has been recognized as protecting the constitutional right of parents to raise their child without state interference absent the most compelling of circumstances (such as child abuse). *Wakeman*, 921 So. 2d at 671. Nonparents are not within the ambit of this constitutional right; **written agreements granting visitation to nonparents are unenforceable in Florida.**”

HOT TIP #2:

Parenting Plans:

- ❑ Appellate court reversed and remanded for the trial court to approve and **attach to the final judgment a copy of a parenting plan.**

Picard v. Picard, 353 So.3d 685 (Fla. 2d DCA 2022)

“although the final judgment adopts the mother's parenting plan, *it incorporates that plan only by reference to its trial exhibit number* and also includes several modifications to that plan's provisions. Thus, as it stands, there is no single document the parties can look to that comprises the entire approved plan.”

HOT TIP #3

Statute of Limitations:

Paternity determinations are, like all other such determinations, subject to the general limitations period provided in §95.11(3)(b), Fl. Stat. *In re: the Estate of Smith*, 685 So.2d 1208 (Fla. 1996). The Florida Supreme Court held that because more than four years had passed since the putative daughter reached the age of majority, her paternity action in the probate court was time barred. *Rose v. Sonson*, 208 So.3d 136 (Fla.3d DCA 2016)(Third DCA affirmed the trial court's dismissal with prejudice of paternity petition by putative son because the statute of limitations passed).

§95.11(3)(b), Fl. Stat. imposes a four year statute of limitations time limit to run from the date the child reaches the age of majority on actions to determine paternity.

While most paternity actions brought under chapter 742, Fl. Stat. "are brought in order to obtain support, any determination of paternity made in such proceedings also determines paternity for purposes of intestate succession." *Smith*, 685 So.2d 1208.

HOT TIP #4

Utilize Florida Supreme Court approved forms.

Form 12.951

Forms 12.983 (a) to (g)

Form 12.902 (d)

Website: www.flcourts.gov

HOT TIP #5

RE: UCCJEA

- Use the Florida Supreme Court approved form 12.902(d).
- Amend or update your UCCJEA as needed
- Avoid reflecting “unknown” as the physical address

HOT TIP #6

§742.045, Fl. Stat.

- A party who is advancing or defending a final judgment of paternity is entitled to seek reasonable appellate fees under 742.045, Fl. Stat. if need and ability to pay is established.

HOT TIP #7

Include all necessary findings of fact in your Final Judgment

- ❑ Court must make a finding that time-sharing schedule is in **the child's best interest**.
Posso v. Sierra, 311 So. 3d 1021 (Fla. 5th DCA 2021)
- ❑ So long as the Final Judgment states that Court's determination is in **child's best interests**, Court is **NOT** required to make specific findings regarding all the best interest factors. *Duchesneau v. Duchesneau*, 692 So. 2d 205 (Fla. 5th DCA 1997)

HOT TIP #8:

CONSENT TO MENTAL HEALTH TREATMENT

Torres Rios v. Arias, 47 FLW D422 (Feb. 22, 2023 4th DCA)

☐ §61.13(2)(b)(3)(a), F.S. provides that:

"If the court orders shared parental responsibility over health care decisions, the parenting plan **must provide** that **either** parent may consent to mental health treatment for the child."

In *Arias*, the Fourth DCA reversed the final judgment because it failed to include this required provision.

2023 PENDING LEGISLATION

(Senate Bill 1146 / House Bill 775)

(Note: this proposed legislation is presently pending before the legislature)

What does the bill do?

- ❑ Amends **§742.011, F.S.**, to clarify that after the birth of a child a parent may request a determination of parental responsibility and child support and for the creation of a parenting plan and time-sharing schedule under Ch. 61, Fl. Stat.
- ❑ Amends **§742.10, F.S.**, to require that any action to establish paternity must include a determination of parental responsibility and a parenting plan.
- ❑ Amends **§744.301, F.S.**, to clarify that an unwed mother and a father who sign a voluntary acknowledgment of paternity or have established paternity through a court judgment are the natural guardians of the child. As such, they have the rights and responsibilities of parents associated with raising a child.

When would it become law? July 1, 2023



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