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Family Law

- Uncontested Divorce
- Contested Divorce
- Legal Separation
- Parentage
- Parental Responsibility
- Orders of Protection
- Pre-nuptial and Post-nuptial Agreements
- Adoption
- Child Representation
- Post-Decree

How to Establish a Parentage Case

750 ILCS 46/ (Illinois Parentage Act of 2015)

What's Old?
Illinois Parentage Act of 1984

- Did not take into account cultural and family-dynamic changes in last 30 years
- Not gender neutral
- Extended unequal rights to mothers and fathers; children born outside of "legal" relationship

Timeline of Law Change

- June 1, 2011: Illinois Supreme Court establishes civil unions that allow for same-sex and opposite-sex couples to be recognized by Illinois
- June 26, 2013: United States Supreme Court ruled that the Constitution allows for same-sex couples to marry
- June 27, 2015: United States Supreme Court rules in favor of same-sex marriage nationwide, ruling that states cannot ban same-sex marriage
- January 1, 2016: Illinois Parentage Act of 2015 goes into effect

What's New?
Illinois Parentage Act of 2015



New public policy (750 ILCS 46/102)

- Recognizes the right of every child to the physical, mental emotional, and financial support of his or her parent.

- The parent-child relationship extends equally to every child and to his or her parent or to each of his or her parents, regardless of the legal relationship of the parents, and regardless of whether the parent is a minor

New definitions (750 ILCS 46/103)

- Removes designation of “Mother” or “Father” in favor of “Parent”
- Terms are now gender neutral
  - Note: It’s not a “paternity” case, it’s a “parentage” case!
- Takes into consideration same-sex marriages, civil unions
- Fulfills requirements of Illinois Constitution

New automatic establishment of parent-child relationship (750 ILCS 46/201)

- Now no need for adjudication if parent signed Voluntary Acknowledgment of Paternity ("VAP")
  - Document that can be signed at time of birth (or any time after the child is born) to establish parentage outside of Court
  - Details information about parents and child, to be signed by both parents in front of witness
  - Minors under 18 who are parents may sign without the consent of their parents
  - Beware: If a VAP is signed, it waives the right to a DNA test
    - After VAP has been signed for 60 days, this is permanent, except in cases of fraud, duress, or mistake of material fact

New presumption of parentage (750 ILCS 46/204)

- Notice that it's now called "parentage," not "paternity"
- Changes presumption of parentage—provides that a parent- child relationships extends equally to every child and his or her parents, regardless of legal relationship or age
- Now a presumption of parentage in civil unions or similar legal relationships, not just marriages

New establishment of parentage (750 ILCS 46/204): "Presumption"

- Changes establishment of parentage—4 rebuttable presumptions of parentage:
  - If child born while person and mother are married, in a civil union, or similar relationship
  - If the child was born during or within 300 days of termination of said relationship
  - If the child was born during or within 300 days of termination of invalid marriage, civil union, or similar relationship, but parties attempted to comply with the law for the same
  - If the person enters into said relationship with mother after the birth, and that person is listed on birth certificate
    - If child born to mother while parties in this type of relationship, parentage is assumed, only to be rebutted by "clear and convincing evidence"

Proceedings to declare non-existence of parent-child relationship (750 ILCS 46/205)

- Can be brought by the child, birth mother, or person presumed to be parent under the Act via verified complaint
  - After a presumption of parentage is rebutted under Section 204, parentage by another can be established
- Can be barred if brought later than 2 years after Petitioner knew or should have known of underlying facts; shall not extend beyond 18 years of age
  - 2 year time limit does NOT bar asserting a defense in an action to declare existence of parent-child relationship
  - Does not include time periods where mother refuses to submit to DNA test
- Can be brought after an adjudication of parentage if a negative DNA test is had, can vacate all orders re: parental responsibility, parenting time, and support

New stances on DNA testing (750 ILCS 46/610)

- Courts are now allowed to deny motions for DNA testing IF:
  - Conduct of presumed parent estops that person from denying parentage,
  - It would be inequitable to deny the parent-child relationship, AND
  - It is in the child's best interests to deny genetic testing (considers length of time, age, nature of relationship, affect on the equities, etc.)
    - Old law: could file a suit challenging parentage up to the child's 20th birthday
    - New law: suit can only be brought 2 years after parent learned, or should have learned, about relevant facts leading to proposed challenge of paternity

New factors considered with DNA testing (750 ILCS 46/610)

- Length of time between birth and time presumed parent learns her or she is not the biological parent
- Length of time presumed parent has parented child
- Child's age
- Type of relationship between the presumed parent compared to the alleged parent
- Any harm that may result in rebutting presumption of parentage with DNA testing
    - (among others!)

Some things don't change: child support (750 ILCS 46/501)

- Temporary Orders for child support
- Can be put in place if someone is:
- Presumed to be a parent to the child (marriage, civil union, etc. at time of birth)
- Petitioning to have parentage adjudicated
- Identified as parent through DNA testing
- Declining to submit to DNA testing
- Shown by clear and convincing evidence to be child's father
- Mother of the child
- Anyone else determined to be child's parent

  - *Uses child support guidelines of 505 and 505.2 of IMDMA

Some things don't change: removal (750 ILCS 46/502)

- While the guidelines for removal have changed (750 ILCS 5/609.2), rules for removal still apply to parents:
  - A parent can be enjoined from temporarily removing child from the State during the case
  - If a parent is looking to enjoin the other from removal, or if a parent already removed the child from the State, Court considers:
    - Extent of other parent's previous involvement with child
    - Likelihood parentage will be established
    - Impact on the financial, physical, and emotional health of party being enjoined

Some things don't change: child representation (750 ILCS 46/613)

- A minor child is a permissible party to a case
- Can be represented by a guardian ad litem ("GAL"), child's representative, or attorney for the child
  - What about in camera interviews?
  - What about child testimony?

What about the IMDMA?

- The Parentage Act applies to unmarried parties, but changes to many of the same ideas apply to married parties, as well
  - Both types of cases still must provide for care, parental responsibility, control, and parenting time of minor children
  - Both types of cases contain awards of child support (Sections 505 and 505.2)
  - Both types of cases have are governed by the same removal provisions
    - Basically, the Parentage Act refers back to the IMDMA!

In both marriage and non-marriage cases . . .

- “Parenting time” = visitation
- “Parental responsibility” = custody
- “Parenting Plans” = “Joint Parenting Agreements”
- In Cook County, parents in both types of cases must complete parenting classes before a Judgment is made
- In contested cases, in Cook County, parents in both types of cases must also complete mediation and may have a Child Rep/Guardian ad Litem appointed

I'm a family law attorney . . . Now what?

- Great—now go file a Parentage case! Here's how to get started:
  - Petition for Establishment of Parentage
    - Jurisdiction
    - Parties
    - Minor Child
    - VAP
  - Summons
    - Needed gain service
      - Appearance or default?

Various Motions in Parentage Cases

- Motion for Allocation of Parental Responsibility
- Motion for Parenting Time
- Motion for Child Support
- Motion for Contribution to Expenses
- Motion for Appointment of GAL/Child Representative
- Motion for Return of Minor Child
- Petition for Order of Protection
- Petition for Relocation
  - Among others!

Determining an Outcome in a Parentage Case

- Can be done by agreement of the parties
- Can be with the help of mediation
- Can be done with the help of a GAL/Child Representative
- Can be done by default
- Can be done by a trial





Questions?

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Thank You

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