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Verdict

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[Joanna L. Grossman](#)

When Your Daddy Is Not Really Your Daddy: A Man Successfully Sues His Ex-Wife for Paternity Fraud Damages



What recourse, if any, should a man have when he is deceived into believing that he is the father of another man's child? What if he marries the child's mother? What if, when he divorces the child's mother, he is ordered to pay child support? What if all this is discovered by the man only when the child is a teenager, and the revelation causes the child to break off ties with the man he had always called dad?

These were the facts before the Tennessee Supreme Court in a recent case, *Hodge v. Craig* (<http://statecasefiles.justia.com/documents/tennessee/workers-compensation/m2009-00930-sc-r11-cv.pdf?ts=1349191133>), in which the court was asked to sort out the potential remedies for an intentional misrepresentation about paternity. In a question of first impression, the court unanimously recognized a cause of action for intentional misrepresentation of paternity, and upheld the trial court's award of \$25,000 in damages to compensate for the wrongful payment of child support and medical insurance following the couple's divorce. With this ruling, Tennessee joins a handful of states that allow a man who is in this situation to seek some sort of civil damages against the woman who deceived him.

Tina Hodge and Chadwick Craig: High School Sweethearts "On a Break"

When this young Tennessee couple, Tina Hodge and Chadwick Craig, first dated, Tina was fifteen and already had a one-year-old daughter. They dated throughout the rest of high school, but broke up temporarily in October 1991. During their few weeks apart, Tina had sex with another boy, Joey Hay. She became pregnant with Joey's child, but told Joey that she was not pregnant. She and Chadwick reconciled, shortly after which she told him she was pregnant.

Chadwick asked Tina whether she was sure the child was his. She said yes, and told him falsely that she hadn't been with anyone else during the "break." Based on these assurances, Chadwick proposed marriage, and the couple went to the altar in December of that year. Baby Kyle was born in June 1992, and Chadwick adopted Tina's daughter.

In 1999, Chadwick underwent a vasectomy because he and Tina decided that they did not want any more

children. The following year, he took a long-distance trucking job in order to support the family more comfortably. But, in this instance, absence did not make the heart grow fonder. Shortly after Chadwick hit the road, Tina told him she was having an affair with a married man. Chadwick and Tina then divorced, and Chadwick was ordered to pay \$250 per month in child support and to provide medical insurance for both children—Kyle and Tina’s daughter.

Both Tina and Chadwick went on to marry other people. Chadwick and his wife moved out of state, but he made regular trips to visit the children and made all child support payments on schedule. Tina had primary custody of the children for several years, but when Kyle, as a teenager, asked to live with his father, Chadwick moved back to Tennessee. Upon the request of both parties, the court modified the custody order and ordered Tina to pay child support to Chadwick.

When Kyle was 14 or 15, Chadwick began to suspect he was not Kyle’s biological father. It is unclear what triggered this epiphany—but the court cited comments by others in the community, an offhand remark by Kyle himself, and Chadwick’s growing awareness that he and Kyle did not physically resemble each other at all. Like so many men in this situation, Chadwick surreptitiously swabbed Kyle’s cheek for a DNA sample and sent it off to a lab. The results confirmed his suspicions—he was not, in fact, Kyle’s father.

What does one do in Chadwick’s situation – finding out after 15 years that the biological basis of his parenthood of Kyle, and the impetus for a marriage that ultimately failed, were both lies – and intentional ones at that? Chadwick shared the test results with Tina and cooperated with her request to repeat the test. After the test results were the same, Tina said that she wanted to be the one to tell Kyle. It’s not clear exactly what unfolded then, but Kyle moved back in with Tina, and basically cut off ties with Chadwick.

Is the Harm That Tina’s Lie Caused to Chadwick Compensable? The Growing Literature on Paternity Misrepresentation Suggests an Answer

There is no question whether Chadwick was harmed by Tina’s lie; he surely was. He married and raised two children under false pretenses, and then paid to support them after the divorce. He and his second wife had also desired to have children, but they could not because of the vasectomy he had had while married to Tina, due to their both having decided that two children was enough. And while a biological tie is not essential to the formation of a healthy and rewarding parent-child relationship—children brought into families through adoption, surrogacy, and other means are as well-loved and well-nurtured as those born into them—the revelation of Chadwick’s non-paternity has, at least for now, destroyed the father-child relationship that Chadwick nurtured for so many years. And Chadwick may have suffered broader harms that are hard to quantify—the harm of marrying someone in haste when he might have waited and found a more suitable mate; the harm of not having his own biological children because he thought he already had one; and so on.

Whether the law should provide a remedy for paternity misrepresentation is a difficult question and one that arises in different contexts. It arose, for example, in a New York case in which a husband claimed that he should get a disproportionate share of the couple’s marital property because his wife had lied about the paternity of her son. Finding that her behavior did not “shock the conscience,” the standard required under New York law for considering fault in the distribution of marital property, the court refused to take the paternity misrepresentation into account in dividing the marital property. (I have written at greater length about this case [here](http://writ.news.findlaw.com/grossman/20090331.html) (<http://writ.news.findlaw.com/grossman/20090331.html>).

The most common context for airing paternity misrepresentation claims, however, is in suits to disestablish paternity. The motivation for most of these suits, moreover, is to terminate or prevent imposition of a child-support obligation. Although many of the arguments that the men in these cases make are sympathetic, courts, by and large, have been reluctant to allow men to disestablish paternity even when the scientific evidence that the child is not their own is indisputable.

A variety of countervailing considerations tend to offset, in courts’ eyes, the concern about harm caused to the deceived men by the paternity lies. The primary concern with allowing men to disestablish paternity is the potential harm to the child, who likely has no other father or father figure ready to step in. That child loses not

only the love and nurturing of a father figure, but also his financial support. The putative father may also suffer from the disruption of the parent-child relationship, even if he is the one who seeks to prove non-paternity.

A secondary concern arises, too, regarding the damage to adult relationships when paternity disestablishment is legally possible. If we allow scientific evidence to disestablish paternity at any time, will that invite suspicion, the use of private investigators, and surreptitious cheek swabs, into lots of relationships? After all, studies suggest that as many as 5 percent of children born to married women are not fathered by their husbands. Will we unnecessarily destroy families by equating biology with parenthood, and thus inviting the dissection and breakdown of even more marriages?

The Modern Trend: Offering Only a Limited Opportunity to Disestablish Paternity of Marital Children

The trend, reflected in both statutes and case law, is to give a legal father some opportunity to disestablish paternity given modern technology's greater ability to provide definitive proof of parentage than was possible in the past. When concerns about paternity are not aired and substantiated within the legally-set time constraints, however, modern law still hews to the traditional interests in presuming marital fidelity, protecting the relationship (both emotional and financial) between the parents and the children they have treated as their own, and honoring the finality of judgments, such as those of divorce courts who impose a child-support order based on the finding that the children at issue were children "of the marriage."

Many states follow some version of the Uniform Parentage Act (UPA), which is a uniform law proposed to states for them to adopt into law. Under the original version of the UPA, which was passed in 1973, a father could seek to disestablish paternity within five years of the child's birth. But the revised version of the UPA, promulgated in 2000, amended in 2002, and adopted so far by only a handful of states, takes a slightly different approach: It expressly takes account of the newly-acquired ability to accurately prove and disprove paternity, but it also tries vigorously to protect the best interests of the child.

The revised Act continues to apply the traditional marital presumption of paternity (children born to a married woman are presumed to be fathered by her husband), but it also permits that presumption to be rebutted in two ways: (1) through a voluntary agreement among the wife, her husband, and the biological father regarding paternity, which becomes binding after a short period of time; or (2) through a lawsuit to disestablish paternity, as long as the suit is filed within two years of the child's birth or, if the suit is filed later, with proof that there was no opportunity for conception because the husband did not cohabit or have sexual relations with the child's mother at the appropriate time, and that he did not hold out the child as his own. And to avoid surreptitious paternity testing by one parent, against the wishes of the other, the Act also makes inadmissible in court the results from any DNA test, unless it was either court-ordered, or obtained with the consent of all relevant parties. Finally, under the UPA, if paternity has already been adjudicated, either in an independent proceeding or as part of a divorce decree, the true biological father can seek to disestablish that paternity only by court order, and only if the petition to vacate the finding of paternity is brought within two years of the adjudication.

The UPA's approach may seem harsh in some cases. But it has the advantage of encouraging parties to raise parentage questions early on, before deep ties have been created between adult and child, and during appropriate legal proceedings when they can best be resolved.

Intentional Misrepresentation of Paternity: Another Approach?

Chadwick Craig did not file suit to disestablish paternity per se. It's possible that he made that choice because Kyle was nearing the age of majority by the time Chadwick discovered his nonpaternity, or maybe it was because he had already stopped paying child support as of 2005, when Kyle came to live with him. The claim he filed was, instead, a claim for intentional misrepresentation of paternity. Chadwick thus filed, in essence, a tort suit, like one might file against a grocery store that failed to clean up a spill that caused a fall or against a newspaper that published something false and defamatory. For what he claimed were lies about his paternity, Chadwick asked that Tina be ordered to pay him back every dollar of child support and medical insurance, and to compensate him for the emotional distress that he suffered as a result of her lie.

The trial court awarded him damages—\$100,000 for emotional distress, and about \$25,000 for his actual losses due to child support and insurance payments. But on appeal—an appeal that ultimately went to the state’s highest court—the question was raised whether misrepresentation of paternity is a cognizable cause of action. In other words, is this kind of claim something that can form the basis of a lawsuit and an award of money damages? Five states clearly allow such suits, and about an equal number expressly reject them. The question, then, for the Tennessee Supreme Court was whether it would allow this type of suit and, if so, with what limits?

The court ruled that a cause of action for intentional misrepresentation of paternity is cognizable, and that Chadwick Craig had proven all of its elements. (The court also, however, rejected the possibility of allowing damages for merely negligent (or careless) misrepresentation, reasoning that such misrepresentations are generally only actionable in a commercial or business context.) The cause of action basically requires proof of an intentional lie, reliance by the deceived party, and harm.

The court felt that Chadwick had been the victim of fraud—something for which state law typically provides a remedy. When Tina reassured him that no one else could be the father of her gestating child, she knew that wasn’t true. According to the court, Chadwick had no reason to know, at the time, that her statement was false, and every reason to trust her representation. The court also thought that the damage to Chadwick was clear, “not the least of which was his court-ordered obligation to pay child support and his payments for the child’s medical expenses and insurance premiums following his divorce.”

Although the court acknowledged that this was an unusual claim, it nevertheless concluded that a cause of action was warranted:

The laudable goals of preserving intact families, promoting healthy relationships between parents and their children, and shielding children from their parents’ vitriolic disagreements will not be advanced in this case by preventing Mr. Craig from pursuing his intentional misrepresentation claim against Ms. Hodge. The family unit here was already dissolved when Mr. Craig and Ms. Hodge divorced in 2001. The once healthy relationship between Mr. Craig and Kyle was extinguished in 2007. Providing stable financial support for Kyle is no longer a concern. . . .

Several statements in the opinion suggest limitations on the reach of the court’s reasoning—suggesting that the court might rule differently in a case in which the parties were never married, or in which a minor child was still subject to a support order. But for this case, the court approved the cause of action and the award of damages.

How much compensation does Chadwick deserve? Unfortunately for him, he failed to preserve the issue of emotional damages on appeal, so when an intermediate appellate court vacated that part of the award, it was gone forever. But he had properly preserved the core legal issues: (1) whether this type of misrepresentation is ever actionable; and (2) whether allowing him to recover damages would violate the state’s law barring retroactive modification of child-support orders.

Since the 1980s, the child-support system has been a complex hybrid of federal and state laws. The federal government, which normally relegates family law issues to the states, began mandating certain aspects of child-support law because it felt that states’ inconsistency in determining child-support awards and the under-enforcement of collections was putting an excessive burden on the welfare system (since women who did not collect child support were more likely to be dependent on some form of welfare). One particular federal rule provides that states cannot retroactively modify child-support awards as a means of dealing with arrearages. Tennessee, like other states, passed a law prohibiting retroactive modifications to conform with this federal requirement.

Tina Hodge argued before the Tennessee Supreme Court that if it were to allow Chadwick to collect damages that were equal to the amount he paid in child support, then this would, in effect, be a retroactive modification of the child-support award. The court rejected her argument, however, concluding that a damages award based on past payments did not violate this rule. At the time that the suit was filed, Chadwick no longer had an enforceable child-support obligation: Tina had started paying child support to Chadwick—and he had never missed a payment over the many years that had passed.

The court thus affirmed the award of \$25,244 to Chadwick. Whether Tina will be able to pay the judgment, though, remains to be seen. But this case raises important questions about the growing awareness of paternity misrepresentation, made possible by the near perfection of DNA testing. Along with other cases involving scientific evidence of paternity, it forces us to ask whether scientific proof of a genetic tie between father and child—or the lack of one—should always dictate whether that man has legal rights and obligations with respect to a child. This is an area of law in which there are no easy cases and no easy answers.



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