

Family Law Education Reform Project

Problem Three – Paternity and Custody

OVERVIEW

This case involves paternity and custody issues between Lyle and Mary Maxwell concerning Mary's six year old biological child Charlie. Charlie was born to Mary about eight months after she and Lyle were married.

EXPLANATION AND COMMENTS

This exercise may be used to assess students' performances on a practical paternity and child custody exercise. It may be distributed to students in the form of feedback, used to grade each student's performance, or both. Included are a number of questions and discussion topics to help give students a more complete experience.

ABOUT THE AUTHOR

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Nancy E. Dowd is Chesterfield Smith Professor of Law at the Fredric G. Levin College of Law at the University of Florida, and Co-Director of the Center for Children and Families at UF. The author of *In Defense of Single Parent Families* (1997) and *Redefining Fatherhood* (2001), and a reader on feminist legal theory, she has published extensively on non-traditional families, work/family issues, civil rights, and feminist theory.

Problem Three

This case involves paternity and custody issues between Lyle and Mary Maxwell concerning Mary's six year old biological child Charlie. Charlie was born to Mary about eight months after she and Lyle were married. They had been having sex for about a month when Mary told Lyle she was pregnant and Lyle agreed to marry her and legitimate the baby. Charlie knew at the time they were married that he might not be the biological father of Mary's child, but it didn't matter to him because he loved Mary and knew he could love the baby.

After they had been married five years, Mary began an affair with another man. Lyle and Mary separated after Lyle learned of the affair. When the relationship continued and there appeared to be no possibility of reconciliation, Lyle petitioned for a divorce, and primary custody of Charlie. He has been Charlie's primary caregiver during most of his life.

Mary filed a motion in family court to have Lyle's custody petition dismissed and submitted DNA tests showing Charlie was not biologically related to Lyle. Mary is expecting a child with the man she is living with and wants to create a family with him that would include Charlie as well as the child that she is expecting. Mary has no idea who Charlie's biological father is, although she can identify two other men that she had sex with during the time Charlie was conceived. She and the man she is living with intend to marry, and he submitted an affidavit that he wants to adopt Charlie.

You represent either Mary or Lyle. Assume that there is a choice of law issue in this case, under which the case will either be resolved under Florida law, or under Bliss law, which has adopted the 2002 Uniform Parentage Act. Be prepared to discuss the following questions:

How would this be resolved under Florida law?

How would this be resolved under Bliss law, which follows the 2002 Uniform Parentage Act?

If Mary should withdraw her petition or succeed in gaining primary custody, can Lyle, with knowledge that he is not Charlie's biological father, ask to be relieved of any obligation to pay child support?

**Team Assignments: east side of 355C/windows side (Prof. Dowd's left): Lyle
west side of 355C/courtyard side (Prof. Dowd's right): Mary**