



Present Father vs Paternal Father:

No Contact for 5 Years. Now Wants Child Back. *Can he take her away from the only father she's known?*

QUESTION:

Dear Steve:

I have been married to my wife for almost 2 years. I have raised my step-daughter for about 3 ½ years. She is almost 7 years old. I finally had my name added to her birth certificate making me the father. The real father contacted us and says he wants a paternity test done. He has had no contact for just over 5 years. I want to know: Does he have any rights to my daughter for not having any contact for so long? Could I possibly lose my daughter?



Jonathan
(M) 24, Tampa
Married 2 Years. Stepdaughter 7.

Dear Jonathan:

The answer to your question is not simple. The courts have routinely found that being the parent is more than DNA. Clearly, biological parents have a leg up on non-biological parents, but all courts recognize the value of family unity, and routinely have to weigh a biological father's rights against a child's right to have the family the child has always known.

In your question, I assume that the potential biological father was not married to your wife. In the event that the child was conceived and born at the time your wife was married to the potential biological father, many states have a presumption that he is the father. This presumption excludes all other potential fathers. In essence, the legislature has determined that children born of a marriage are irrebuttably presumed to be the biological children of the parents.

Assuming that the child was not conceived and born at a time your wife was married, the court will be forced to weigh the child's right to have a stable family versus the biological father's right to raise his child. The courts have routinely held that biology is not the sole determining factor of parenthood. The issues that you present in your question clearly indicate that you are a concerned father for your child, and have taken on the burden of having your name added on to your child's birth certificate. This is an extraordinary step that most men would not take regardless of the amount of support they give to the child.

The court will look to the issues concerning who has held themselves out to be the father of the child, provided support for the child and been active in the child's life. It is clear that since the potential biological father has not had contact with the child for over five years that he has abandoned the child. Nevertheless, the court will have to balance the biological father's rights against the concept of family unity.

You should immediately meet with a Certified Family Law Specialist in your area to discuss your options, and the best way for you to proceed in this action. Some states, given your affirmative action in holding the child out as your own, and in light of the potential biological father's abandonment of the child, will not even allow a paternity test to be performed. Other states will require hearings to determine the necessity of paternity testing. Before you have any further contact with the potential biological father, I recommend that you meet with a Certified Family Law Specialist to develop a plan for addressing these issues.

Additionally, you may want to speak with a Certified Family Law Specialist regarding potential issues for retroactive child support. Many states allow for the imposition of retroactive child support where a parent has abandoned the child. Given the fact that the potential biological father has not had contact with the child for over five years, the child may qualify for retroactive child support. Certainly you will want to discuss these issues with the Family Law Specialist.

Lastly, it is my recommendation that you meet with a mental health professional to develop a plan between you and your wife for discussing this situation with the child. Given the child's age, almost 7 years old, it is critical that the matter be approached properly. The failure to consider your daughter's needs in this situation could be disastrous.

Your efforts in providing a family atmosphere for your daughter should be commended. I am certain that the relationship between you, your wife and your child has been enhanced by your strong feelings towards your family, and your willingness to step up to the plate and provide for your step-daughter. Regardless of the legal actions that may take place in the future, it is clear that your daughter will recognize you as the parent who has taken the initiative to provide a better life for her, and the rewards will be evident in your relationship with your step-daughter.

Steve Mindel
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Feinberg, Mindel & Klein LLP

NOTE: Custody and Marital Laws vary from State to State, and situations are unique to each person. Please use Couples Company legal advice only as a guide to questions you should be asking your own legal counsel if you are engaged in a similar situation.

