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## He says he's the biological father, but law says matrimony trumps DNA

Sunday, March 20, 2005

By John Agar

**The Grand Rapids Press**

TRAVERSE CITY -- After his girlfriend became pregnant, Bill Numerick Jr. looked forward to being a father.

He said he accompanied her to doctor appointments and took a parenting class.

But early in her pregnancy, she ended their relationship and married someone else. Heather Smith, now 22, had a boy, Caleb, on May 6, 2003. Numerick sent a teddy bear to the hospital.

Nearly two years later, he has not seen the boy he considers his son. By law, Numerick, 26, is not the father.

He filed what amounts to a reverse paternity lawsuit, asking that the child's mother be forced to acknowledge him as a father, allow visitation and accept child support.

But Numerick has no right to question paternity, a judge ruled, because the baby was not born out of wedlock. The state Court of Appeals recently upheld the trial-court decision.

State paternity law -- sometimes called the Bastardy Statute, or Lord Mansfield's Rule, its British common-law origin -- maintains that a child born into a marriage is a product of that marriage. The idea is, supporters of the law say, a child is best born to a married mother and father. Such a presumption helps protect the sanctity of marriage, they say.

However, with the advent of DNA testing and changing social mores, advocates for fathers say changes are needed -- for the child's welfare and for the biological father's rights.

"That a woman can still control, essentially, who becomes the father of the child by simply marrying somebody else isn't fair," said Numerick's attorney, Craig Elhart.

Smith's attorney, Steven Fox, said paternity law was clear, for good reason. If paternity tests were allowed in such cases, it could harm the child and family and the child's relationship with a legal father, he said.

Fox noted that regardless of the legal argument, he and his client do not concede that Numerick is the biological father.

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"His argument is, 'I ought to have some rights to the child. To what extent do we allow someone who claims to be a father to intrude upon a family, a mother and father and child, a single family unit?'

"The mother and father are married; they have a child born to them. He's trying to insert himself into that family unit."

Numerick's hopes rest with the state Supreme Court. It is an uphill battle. He cannot understand the reason he has no legal standing.

Even the Grand Traverse County judge who ruled against him said the decision "doesn't seem logically fair," but it was legally sound.

### **He is not alone in court fight**

This kind of legal battle is familiar locally. Numerick is taking on a fight lost by a Rockford man. In that case, DNA tests showed the man was the biological father of a girl born during an extramarital relationship.

He was part of her life for two years when the woman, who reconciled with her husband, wanted to end the man's relationship with the girl. The man filed a complaint for a custodial relationship in Kent County Circuit Court, but the claim was denied. The appeals court in 2003 overruled that decision.

Appeals Judge Bill Schuette wrote in that case: "Quite possibly, the equal protection considerations that are embedded in the facts of this case may permanently open the door to similarly situated plaintiffs."

That door soon closed.

In a one-page order, the state Supreme Court reversed that decision: "Plaintiff did not have standing under the Child Custody Act ... and would not have standing under the Paternity Act ... to seek custody of and visitation rights with a child whose mother was married at the time of the child's conception and birth."

Numerick's attorney sees a slice of hope before the Supreme Court because his client filed for a paternity test before Smith was married, and before she gave birth.

Meanwhile, Numerick acted on the appeals court's recommendation to seek legislative changes and wrote several lawmakers about amending paternity laws.

State Sen. Raymond Basham, D-Taylor, said he intended to introduce legislation that could help men such as Numerick.

"I just think judges should have more discretion," Basham said.

### **Such cases prompt questions**

Others are concerned about consequences, intended or not, of changing the law.

"Obviously, the state has an interest in the best interests of the child, so it may be worth doing some review," said state Rep. William VanRegenmorter, R-Georgetown Township.

"But it really is hard to answer that because the facts are so unique. You want to be careful. Issues of paternity, issues of custody and visitation and support are all subject to lots and lots of legislative (review) every year. But this is different, quite unique."

Some think the law has failed to keep up with technology, said Kristine Mullendore, a professor of legal studies at Grand Valley State University and a former assistant Kent County prosecutor.

She said the debate should center on what is best for the child, but disagreements occur there, too.

"There are a lot of questions that come out of this. What makes someone the father? Is it protecting the child, or promoting biology? What is a father in our day and age?"

Social norms have changed -- government statistics show about a third of births in the United States in 2003 were to unwed mothers -- but Mullendore asked: "Does that mean laws have got to change?"

Charles Regan, of Grand Rapids, who has a Web site -- [www.singlefather.org](http://www.singlefather.org) -- that advocates for fathers' rights, has noticed a "shift toward more fairness" for fathers in recent years.

But, he added: "I think parents who conceive ought to both be involved in the child's life. ... It's an uneven playing field."

Although changes to the law would not help Numerick's case, he said his fight might help someone else.

"As far as even going to court, it's not really about me, it's about him," Numerick said of the boy. "(Caleb) has a right (to know his biological father). It's not like I've done anything wrong. I'm just in love with him."

### **He wants boy to know he cares**

Smith did not want to comment. "I feel it's very personal, and I don't care to talk about it," she said.

Numerick, a Web designer in Traverse City, thinks he would be an "awesome" father. He created a Web site --

[www.loveofmylife.org](http://www.loveofmylife.org) -- devoted to his case.

If he does not get to see the boy, he thinks the Web site later will show his feelings toward the child, Numerick said.

"I know she, in her eyes, is doing what she thinks is right," he said of the boy's mother.

He said he dated the former Heather Krull, of Traverse City, about two years before they broke up. They resumed their relationship a few months later, when she became pregnant in summer 2002, he said.

Numerick said she later broke up with him, and "I said, 'OK, I better find out what my rights are.'"

On Feb. 21, 2003, he asked Grand Traverse County Family Court to determine paternity. A month later, Krull married Derek Smith. She then asked the judge to dismiss Numerick's claim.

In a May 16, 2003, hearing, Judge David Stowe reluctantly determined Numerick had no legal standing to challenge paternity but suggested legislative review and "further direction from the Court of Appeals."

Numerick's former attorney, John Ferguson Jr., argued his client did not want to split up the marriage but wanted to assert his rights as a father.

"By virtue of the fact that Ms. Smith, if you will, ran off and got married ... there are no circumstances in this factual scenario that would give him his due process rights under this statute," Ferguson said, according to court transcripts.

The Court of Appeals upheld Stowe's decision in an opinion signed by Justices Richard Bandstra, Michael Smolenski and Henry Saad.

Fox, Smith's attorney, disputes claims that paternity laws are antiquated. He said laws were "carefully crafted" to protect children and families.

"This is a statute that has been amended recently by the Legislature. It's not a case where you've got a 100-year-old statute that says no swearing by the river," he said.

"I think the Supreme Court of the state of Michigan, in its prior opinions, hit the legislative intent dead on.

"In similar claims to Mr. Numerick's -- claims they ought to have the ability to have a hearing on whether they are the biological father -- the Supreme Court said, 'We ... want to preserve the family unit.'"

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