

Anna Nicole Dispute Shows System's Flaws

By Jeffery M. Leving and Glenn Sacks

Behind the Anna Nicole Smith circus lies an important truth about fathers' rights. The long line of opportunistic men who have lined up to be Smith's baby's dad since Smith's death has diverted attention from the case's key fact: photographer Larry Birkhead, Smith's ex-boyfriend, has a legitimate claim to paternity. He has been thwarted for several months by the same legal maneuvers which are often employed to separate fathers from their children.

Long before Smith died and her estate became an issue, Birkhead had filed for a DNA test to determine the paternity of Smith's baby. In December he told the Associated Press, "I am the father of Dannielynn and I think this is...a crime. I expect to be reunited with my daughter." Birkhead says he and Smith had picked out baby names, shopped for items for the baby, and had put their thumb prints in a baby book as the child's parents. Nevertheless, the baby has lived at the home of Smith and her attorney/boyfriend Howard K. Stern in the Bahamas since birth.

Rather than allow the DNA test, Smith and Stern apparently decided to use a common ploy in paternity cases—they stalled. If the DNA test is delayed long enough, by the time biological paternity is established the judge deciding custody will likely decide that Stern is the baby's "psychological parent."

Judges are understandably reluctant to remove infants from the care of the only parent or parents they've known, regardless of actual paternity. Stern is many things, but he isn't stupid. He knows that in child custody cases the baby is like the football in a football game—whoever has possession is in control.

This tactic is frequently employed in adoption cases. For example, in the highly-publicized Huddleston case in Albuquerque, New Mexico, Mark Huddleston's baby boy was adopted out when he was three days old, but Huddleston didn't know the baby existed until two months after his birth. A New Mexico court later found that the private adoption agency hadn't properly notified Huddleston, and had needed to get Huddleston's permission before giving his son away.

Nonetheless, the stall tactic worked--by the time the case was finally legally adjudicated, the boy had been with his adoptive parents for over a year, and the judge ruled it was in the child's best interests to remain with them.

Time is running out for Birkhead—Dannielynn is already over five months old, and once a baby reaches six months it is quite possible to get judges to rule in favor of the "psychological parent," rather than the biological one. After a year it becomes practically a slam dunk. If Stern is like most litigants in this situation, he probably already has a mental health professional or two on tap to testify in court as to his bond with the baby. He probably also has extensive video tapes documenting his interactions with the girl.

The way to combat these machinations is for family courts to order mandatory DNA testing of all babies within 30 days of a putative father's filing for paternity. When these orders are flouted, as they often are, judges must be willing to give their orders teeth by meting out punishments for contempt of court. Moreover, most fathers do not have the legal resources to fight long legal battles—courts must be proactive in resolving paternity claims quickly and correctly.

A father has the right to parent his own child. The Smith case demonstrates how easily mothers and their new partners are able to violate that right.

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