Medical and legal aspects of the action in denial of paternity

IOANA NICOLAE
Faculty of Law and Sociology
Transilvania University of Brasov
B-dul Eroilor Nr.29, Brasov
ROMANIA
ioanan1977@yahoo.com

Abstract: - He denied paternity of a child means to overthrow the legal presumption of paternity established by law on children in wedlock.
Under the provisions of art. 53 paragraph 1 C. fam. mother's husband is presumed father of the child or his wife conceived during the marriage. Legal presumption of paternity is intended to exempt a child from the burden of proving directly that conception. But the legal presumption of paternity, no matter how strong it is, however, does not have absolute power.

Key-Words: - medical, legal aspects, paternity.

1 Introduction
The evidential presumption of paternity is based on perfect consistency that exists in most cases, the presumed parentage and real facts. But this presumption is not intended to sanction states which would be contrary to truth. It may happen cases in which contradict, blatantly and without doubt the premises on which the legal presumption of paternity (ie the presumption that spouses have normal relations and that during it, she had no relations Extra). In such circumstances, if the presumption of paternity would continue to apply it would turn into fiction.
In other should, in certain circumstances the application of the presumption of paternity, despite the rigorous, might turn against the purpose of which is intended to realize.
So the means by which can be rebutted the presumption of paternity is an action that is in reality a civil action in state appeal, which aims to reduce the challenge to paternal affiliation. Law called a denial of paternity, is restricted to the mother's husband, father alleged child. If the action would belong to other people it should be called action contesting paternity.

2 Problem Formulation
To avoid such situations the law allows overthrow the presumption of paternity, but, in view of major interests were the basis for its regulation laws, hinder the efficacy of rebuttal and not allow this to be done than just via legal action, in exceptional and specific conditions determined by law.

The circumstances which may result in failure as the mother's husband is the father of the child are different. These may be:
- Physical inability to procreate;
- Impossibility of cohabitation due to a custodial detentions, a disappearance, a mission abroad, an illness, an accident;
- Moral impossibility of cohabitation, because of serious conflicts between spouses during the child's legal outlook.
The fact that the spouses live apart in fact is not sufficient to conclude that the mother's husband is the father of the child, but rather an indication that, supplemented with other evidence, may result in denial of admission of paternity action.
Separation in fact joined with other împrejuări may lead to rejection of the action. So in fact the mere fact of separation of spouses is unlikely to lead to the conclusion that the mother's husband is the father of the child born during marriage, it has been proven that intimate relations continued even during the separation in fact the two spouses.
Same way that the mother had extramarital relations during concepŃiunii child with another man, is not sufficient to allow the action is necessary to use scientific evidence to learn the truth. Also decided to recognize the wife that her husband is the father of the child born during marriage is, by itself, nonproducer of legal effect, provided they could not objectively have intimate links with the defendant during the conception.
On the other hand said that the birth mother's husband at service of civil status is not an impediment to the exercise in denial of paternity.
action when it is impossible for the applicant to be father of the child.
The reasons invoked for tăgăduirii paternity tests conducted in earnest must be seen to not allow actions that do not correspond to reality and thus harm the interests of the child and family. Denial of paternity may be made only by action. Action on denial of paternity may bring only one father. Action is a purely personal and no one but no one can sue the mother's husband or mother or other children of the same marriage, spouses or relatives, let alone creditors could not rely on only a pecuniary interest.

Even the prosecutor can not bring such an action under the provisions of art. C. 45 pr. Civ. Only the father can consider the appropriateness of such an action intentării. Therefore Art. 45 para. 2 C. Fam. has "the denial of paternity proceedings can start only the husband". The heirs can not sue the denial of paternity.

Action shall be brought against the child. In most cases this is minor, for which he will be the mother participating in the dual process as:
- On his own.
- The legal representative in 14 years.

Action against intodusă not be conceived but unborn child because, first conceived the child may have rights, not obligations, and second time the action is brought is normally calculated from the date of knowledge by the birth mother's husband child which shows that the action is introduce after childbirth. Also, no action may be filed if the baby is born dead, because he has the status of subject of law and therefore there is a relationship that can be denied parentage.

Action on denial of paternity is judged in contradiction with the mother to be cited, the most able to defend the interests of the child and help the court to establish the truth.

Failure to mother's husband or father to child is a simple fact, which makes nepaternitatea in principle, can be proven with any evidence.

The lack of legal provisions, which shows where the action may allow denial of paternity and evidence that may be used, is that the applicant may invoke any circumstances use any objective evidence permissible by law, by to establish clearly that the father of the child born during marriage.

Among the explanations that have been made in connection with proving paternity in the action for denial of paternity of the most significant are:
- Proof of the impossibility of cohabitation can not be inferred from the mere separation of spouses in fact, during legal conception, but it is necessary to undoubtedly prove that they met at all during this time.
- That his wife had sexual relations during the legal concept and with men, there is ample for denial of admission of paternity, because what interested the proper settlement of the dispute, is to establish a basis of clear evidence that the applicant spouse is not father of the child during the marriage result and not to establish who is his father.
- To the extent that it establishes clearly that the applicant is not the father of the child, the action for denial of paternity must be admitted regardless of the fact that there were sexual relations between spouses during conception.
- Action for denial of paternity can be established only through the mother's testimony during the legal concept that has had sex with her husband, because such recognition could be the result of an agreement between spouses.
- Action should be considered as permissible, even if plaintiff's husband was one who said childbirth civil service status.
- Finally, the action for denial of paternity must be accepted as obvious as the mother's husband or father to the child if it is of a different race than that of his mother and her husband.

3 Problem Solution

Remarkable progress in biology and medicine have achieved especially in our century, in the hereditary characteristics from parents to children, promising future settlement of determining with certainty of paternity.

Current medical and biological knowledge can not provide solid data not only on nepaternităŃii, data on paternity are approximate. Therefore medical legal expert in paternity matters is qualified in terms of probation, by the way of expertise or nepaternitate as evidence or as evidence of paternity likely.

a) anthropological expertise covers hereditary transmission of anatomical characters that physionomy of the face, nose and ear features, congenital malformations.
b) refers to transmission expertise dactyloscopic papillary drawings.
c) serological surveys concerns the transmission of blood groups and blood group indicates whether or not the child could be inherited from his presumed father if the child born in wedlock or the alleged father if the child out of wedlock.

The serological methods, which can prove with certainty be excluded from paternity case in which
expertise is absolute probative force and can not be removed only by a sample, while the establishment of paternity, such expertise has probative force only relative.

d) Examination of reproductive capacity. This expertise is absolute proof of paternity exclusion when the medical notes, certainly the state of impotence or sterility.

4 Conclusions
So a colaborare the courts before which such actions with medical institutions, is able to determine with certainty if the paternity of the child corresponds to reality. INTERS not deprived of any computerized monitoring cases in this area, mentioning the evidence given and the relevant medical institutions in specific tests of this type of litigation.

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