Season 8 Episode 7 Establishing Fatherhood: Rights, Responsibilities and Filiation

[00:00:00] Welcome to your Wellness Reset with Kelly Engelman. Let's talk about something vital to our health that's often overlooked, and that's proper hydration. Did you know that water makes up about 60% of our total body weight and plays a crucial role in virtually every bodily function? Staying well-hydrated is essential for maintaining energy levels, supporting digestion, regulating body temperature.

And when we don't get enough water, we can experience fatigue, headaches, and even difficulty with concentrating. It's no surprise our body systems begin to slow down when they aren't getting enough hydration. So how can we ensure that we stay properly hydrated? A good rule of thumb is to aim for at least eight eight-ounce glasses of water each day, commonly referred to as the eight by eight rule.

However, this can vary based on factors like age, activity level, and climate. Listen to your body. That's crucial. Your thirst [00:01:00] is your natural signal that we need more fluids. To make hydration easier, carry a reusable water bottle with you throughout the day. You can also infuse water with fruits, vegetables like lemons, berries, and cucumbers for a refreshing twist.

Remember that foods like cucumbers, oranges, and watermelon also contribute to your daily hydration needs. Here's a quick tip. Start your day with a glass of water. This sets the tone for proper hydration and can kickstart your metabolism. In summary, don't underestimate the power of hydration. Drinking enough water can enhance your well-being, boost your energy levels, and support overall health.

Stay hydrated and feel the difference. For more information, visit us online at enhancewellness.com or give us a call, 601-364-1132.

Welcome back to the Robertson and Easterling podcast. Today [00:02:00] we're talking about paternity and filiation, a legal issue that affects far more families than most people realize, and one that quietly shapes a child's financial security, legal protections, and future. Here's the reality. Nearly four out of every ten children in the United States are now born outside of marriage.

In Mississippi, that number is even higher. More than half of all births occur to unmarried parents. That means tens of thousands of children every year whose legal relationship with their father is not automatic, not guaranteed, and not always protected. That's where filiation comes in. Filiation is the legal process by which paternity is established and a father's rights and obligations are defined.

Custody, visitation, child support, inheritance, and decision-making authority. Until that legal relationship is established, biology alone doesn't carry the weight people think it does. In this episode, we're going to explain what filiation actually is, how [00:03:00] paternity is determined under Mississippi law, why timing matters, and what happens when these issues are ignored or mishandled.

This isn't academic. These cases impact real children, real parents, and real futures. If you're an unmarried parent, a father unsure of his legal rights, or a mother seeking clarity and stability for your child, this conversation matters. Let's hear a few pre-recorded words from our sponsors and then we'll get right into it

Hey everyone, allow me to introduce you to a new podcast segment called Counsel and Capital with local attorney and investment advisor, Ethan Kelly. Ethan is the founder of Providence Capital, where he and his wife, Stephanie, focus on helping clients provide for their futures. Ethan, so happy to have you on the show.

Thanks for having me, Craig. It's great to be here. Let's start with the basics. Tell us a little bit about your firm and what you do. Sure. We are independent investment advisors who help individuals and families build long-term [00:04:00] financial confidence through personalized planning and disciplined investing.

We focus on creating strategies that fit each client's goals, risk tolerance, and time horizon. That sounds refreshingly practical. What kind of clients do you typically work with? We primarily work with professionals and business owners who need guidance as they navigate transition. It could be retirement, the sale of a business, or a divorce.

Many come to us because they've outgrown the DIY approach and want a trusted partner to guide them through market changes and life transitions in a confident, clear way. And what sets you guys apart from other investment advisors? Our biggest difference is transparency and education. We spend a lot of time helping clients understand the why behind markets and current events.

We also operate under a fiduciary standard, which means we are required to act in the client's best interest. And because we're independent, we're not required to sell some institution's financial products. We are not the typical suit-and-tie, sell-you-annuities firm. That's great to hear. Where can listeners learn more and get in touch?

You can visit our [00:05:00] website at providencecm.com or email me directly at ethan@providencecm.com. We offer a complimentary consultation for anyone who wants to start exploring their financial goals with a bit more clarity and confidence. That's fantastic, Ethan. Thanks for joining us. And listeners, stay tuned for more editions of Counsel and Capital in future episodes where Ethan will go into more details about providing for your financial future.

Okay, everybody. Welcome back. Today, as you heard in the introduction, we're talking about paternity establishment. Matt more and more children are born in the United States, and specifically in Mississippi out of wedlock. And there are legal remedies for these families to establish both the access to the child, and then, of course, financial responsibility.

Because with all aspects of parenting, there is a, a, a burden. There's the [00:06:00] responsibility associated with it to support the child to care for the child. And then, of course, the benefit that is that, that wonderful parent-child relationship that, that people get to experience. And, there's also a lot of shifting cultural dynamics, in our society today.

It used to be pretty uncommon that you would see children, born outside of wedlock, and now there is a shift, right, wrong, or indifferent, towards people that are arranging their lives differently. Yeah, without marriage. And the idea of marriage, of course, it- it's a legal status, right?

It is a s- state and church-sanctioned contract between two people, and it changes their status, right? Their legal status is not single. It is, it's married. And in this pat- what we're talking about in today's episode are parents who have children together without the legal status of marriage.

I think traditionally speaking, most [00:07:00] people and I would have considered myself a part of this way of thinking, really until, inside of the, the last 10 years. You assumed that if there was a paternity action or you'll hear a word today called filiation, affiliation action, that it was a circumstance where one party or the other, whether it be mom or whether it be dad is trying to create some sort of legal recognition that the biological, who the biological father is

because there is some sort of dispute, meaning that the, the parties were not together.

Typically or traditionally, I think that most people, especially in Mississippi, thought if the parents are together, then they get married And inside of certainly the last decade, that has, started to change- Sure ... where you have people that are just choosing to continue to be in a relationship, and they have children together.

But they don't go through, as you mentioned, the formal status [00:08:00] or government recognition of being married. And so it's changing the landscape of how we deal with filiation and paternity in our office. Yeah, and they're, and it's different, th- there are some people who choose not to get married and are in long-term relationships and have one or more children together, and then you have, the one-night stands, people who aren't in relationship or in, or who are in relatively short-term relationships, and all of a sudden, the woman turns up pregnant.

And then th- that's what we're talking about today are those circumstances, whether planned or unplanned, that there is a pregnancy between two people that aren't married and what happens then. Sure. I, in the 17 years that I've been practicing I would say that the, the first 10 of those 17, I might have dealt with one filiation case per year on average, maybe two however, [00:09:00] in the last, five to seven years, that has increased significantly.

And touching on what we were saying a second ago most of the cases that I'm dealing with now are not with infants where the parents are in some sort of struggling relationship. They usually are from long-standing relationships where the parties had, had opted to not get married. And in those circumstances, there has typically been a very real misunderstanding by both mom and dad as to what the, everyone's legal rights were in the situation.

Someone comes into our office and they're like no, we've never gotten married, but he's the father. He's on the birth certificate. Child has dad's last name. Doesn't he have to pay XYZ?" And as we're about to talk about, that's not necessarily the case. Yeah, it all really starts with the determination of parenthood.

And, years [00:10:00] ago, that was very difficult to prove that someone was a child's father without the benefit of widely available DNA testing. And, they would actually have trials to determine whether or not a father or a man was the father of w- the child that was at issue.

But in modern times DNA tests are so widely available and inexpensive there's just, there's no need to go through that type of a legal process to determine whether or not a father is a biological parent. So let me take a step back. So the strongest presumption in all of the law is that a child born during a marriage is the biological child of the father, okay?

And that's a rebuttable presumption because of DNA testing, as we just talked about. So if a child is born [00:11:00] outside of a wedlock, they don't have the benefit of that presumption, and there has to be a legal process to establish those rights, duties, and responsibilities. What we're talking about is called a paternity action.

And so a, a man Can establish paternity through an acknowledgement a written statement signed that says, "I am the father of this child and I am willing to take responsibility for this child." So that acknowledgement of parent acknowledgement can be the same as if you have to have a lawsuit and there is a judicial determination of paternity.

And so when married ... So for example, I'm, my wife and I are married. We've got still have one minor child, and because we are married, by definition we have the legal and physical custody of that child. [00:12:00] But when a child is born outside of a marriage, that's not the case, is it, Matt? So your talking about your minor child, your responsibilities and your rights to that minor child were vested the moment that she was born unless you were to go through a process of proving that you were not, in fact, her biological father.

The fact that you and Rachel were married means that the law makes an automatic presumption that you're the father and you have those rights and those responsibilities at the moment of birth. Having not been married, if you're not married, you do not have any type of legal rights to a child and nor do you have the responsibilities that would be c- that would come along with it as far as support and things like that.

In order to have those rights recognized, you have to go through that the process that you were just mentioning. You can do the voluntary acknowledgement or you can go through the process of having it judicially determined in the [00:13:00] event that there's a dispute. Yeah. And these days, usually if you have two people who want to get to the bottom of the truth and to find out whether or not that biological connection exists, there, there's no real barrier.

We're talking about a couple hundred dollar, a couple hundred dollar test. But without that- judicial determination, then there are no rights duties, or

responsibilities. And so let me paint the picture for- Well and you don't even have to do the test. There are pe- there are people that are in relationships where they just are both as certain as they can be that this child, belongs to, biologically to this mother and this father.

They can just do an acknowledgement. Exactly. You don't have to go to the expense of doing the DNA test. But if in the event there is any sort of dispute- Sure ... or someone's unwilling for whatever reason to execute that acknowledgement of paternity then they're available and they're inexpensive.

So [00:14:00] what... it's not uncommon. People are in maybe no, no relationship at all or i- or in a short-term relationship, and then all of a sudden the woman discovers that she's pregnant. And this is a lot of times where we get the calls but not always. And that is that, that planning stage.

And sometimes the difficulty of these parenting relationships is that there's not the same history that there is between married folks, usually. Usually, these are shorter-term relationships. Sometimes they're stable and they're working, and sometimes they're not. It j- it really just depends on the situation.

And it's not uncommon for people who get pregnant to decide I do wanna b- have a commitment of marriage to this person." And they do go ahead and get married. And it, of course, if a child is born before that marriage occurs, then there still needs to be an acknowledgement of paternity and/or a paternity case so that now husband is recognized [00:15:00] as the, the father of that child.

But the... So step one is the establishment of that legal relationship of being the father. Correct. And that, again, can happen in one of two ways: through a voluntary acknowledgement or through a court order in any type of disputed circumstance. And I think the important thing for someone who's hearing my voice to understand is that once that happens, either there is that judicial determination or there is the acknowledgement that is executed.

At that point in time, the father and the mother stand on equal footing with regard to both legal custody and physical custody of that minor child. And that's very important because, it depends on the particular parent that we're talking about. Sometimes a, a mother might have had a one-night stand or sh- very short-term relationship with [00:16:00] someone, and maybe they're not in that relationship anymore, and quite frankly, they don't think that person would be a fantastic influence on their unborn child.

And The truth of the matter is, at the time of conception and even at the time of birth, that doesn't mean that person, that man has any kind of rights with regard to that child. That's the whole point. They have to be established through a acknowledgement or through some type of legal action and a court order making that legal status determination.

And just so everyone out there knows when we say acknowledgement, that requires the signature of both the mother and the father in the presence of a notary public. And when we say acknowledgement, it's, yeah, it's a, it's an acknowledgement. I am acknowledging this is my child. I'm acknowledging that I'm willing to take responsibility for that, this child, not only physical responsibility, but financial responsibility for this child.

The birth certificate alone is not enough. And that's another [00:17:00] question that we get all the time about what do you put on the birth certificate? And I've dealt with that question this very week. And so what the law says is if there is a judicial determination, then the, the father's last name shall be the child's last name, unless there's a showing that would not be in the child's best interest.

For example maybe paternity is established when a child is 10 and they've been known by the mother's maiden name for all of those years, and this child doesn't know the father at all. A court could find that it's not in the child's best interest to have that father's last name but that would be the exception.

Generally speaking, if a man is determined to be the father of a child, either through an acknowledgement or through a paternity action, then the child will have that man's last name. And that's a big deal for a lot of parents, especially in these types of situations where there's not that [00:18:00] long-standing relationship.

Yeah. Craig, can in your opinion, do you think that an unwed mother or an unwed father Could file some sort of filiation action or any type of request for relief with regard to a child that has yet to be born? Yeah Matt, that's a great question, and I've seen that happen. I've had that issue come up in my practice before, and my advice to the father in this particular case was to wait.

They do have pregnancy tests that are performed in utero, but my very basic understanding is that there is some slight risk to the unborn child, and there's never been a situation where I advised anyone to actually start affiliation or paternity action before a child was born. Quite frankly, because an establishment of paternity can't happen until there is availability of a DNA test.

And like I said, while you could do a DNA test in utero, there [00:19:00] is... a- any risk to the unborn child is too much in that type of situation. And I know there's stress and anxiety associated with pregnancy specifically of, a child outside of wedlock. But I think universally lawyers and judges agree that it's best to wait until a child is actually born for to make that determination.

And once a child is born, it's just a simple little s- little cotton swab like you'd be tested for the flu or COVID or something like that for the child and the, the father to create the DNA test material to determine within, I think it's 99.9% chance of parenthood in most cases. You know- I guess anytime I've been posed with that question, I think the most important thing is there going to be a dispute as to who the dad is? Because sometimes when this circumstance comes about, maybe there is not a dispute as to who the [00:20:00] father is, but somewhere along during the course of a the pregnancy, the parties have had a falling out, and now dad usually is worried that he's not going to have any type of access or be able to be there for the birth of the child see the child immediately after the child is born.

And like you said, y- there are no rights to visitation or access until your paternity has been established. I think that there probably are ways in the event that two people are acknowledging that this child that is, on the verge of being born that one person is the biological father, and a court may be able to take some steps there.

But without that acknowledgement, if they're not on the same page I think that you have to wait till after the child is born. Yeah, I agree with that co- completely, Matt. And we-- and the, the people come from different mindsets. Sometimes you have a mom Who really doesn't want this guy to have anything to do with her or this child ever.

And w- and we have those [00:21:00] circumstances, and quite frankly, my advice to her would be there's nothing to do if paternity is not sta- established, there's no acknowledgement, he doesn't file anything, then he doesn't have any legal status. But on, and other times we'll have a mom who has a different idea.

No, I'm not doing this alone. I need financial support. I need help hands-on caring for this child. Sure. And I want this father to step up and have responsibility to pay child support, to provide money for the, the birth and to provide health related expenses for the child, and to possibly have a relationship with the child.

And you have dads who are the same way. You have dads who don't want anything in the world to do with this woman or this child or this situation, and- Or denies that they're the father ... denies they're the father when there's no good reason to deny they're the father. Or you have a totally opposite situation, which I've dealt with many men in the past, where, [00:22:00] no, this is my child, this is part of my family.

I, not only am I willing to step up and take responsibility for this child, I want to take responsibility for this child. I want to be an active part of this child's life. I want to be this child's father. And, it, we, different people have different ideas for different reasons about this.

And quite frankly, where you're coming from, really from a strategic standpoint, matters on what we're gonna do. If you fall into the category of that mom who, you had a one-night stand or a short-term relationship with somebody that you chose to not continue that relationship with, and you find yourself pregnant you then have the option of whether or not you want to inform him about the circumstances that you're in, whether or not you wanna invite him into that process or force him into that process.

It's, it really depends on what you want on where we start. Because again, without an acknowledgement or a judicial determination of [00:23:00] parenthood, then there are no rights, duties, and responsibilities for this, what we call the putative father. So if there are no responsibilities or legal obligations on behalf of a biological father until their legal parentage has been determined- Is there any way that mom can be reimbursed for some of the expenses that she incurs during the course of the pregnancy?

Yeah, absolutely they can, and that's right out of the statute, Matt, that actually not only can a mom be reimbursed for some of those expenses associated with a pregnancy also courts can go back a full year to collect back child support for, from a putative father when paternity is established at some point in the future.

And again, it just really depends on whether we're representing a mom or a dad. It really depends on, what it is that they want, whether it is th- [00:24:00] whether they want the other if a mom, whether they want the dad involved in the life of the child and from the dad's standpoint, whether or not he's going to force the issue what level of participation he's going to have.

Because again, every- everybody comes at these circumstances with different mindsets. So if you're somebody that brings this action let's say when the child is 10 years old you mentioned 10 years old earlier. I- if I'm hearing you

correctly, what you're saying is the most back child support that you might be entitled to would be a one-year look back window.

That's right. One year of back child support. And, these, these paternity filiation actions happen for lots of reasons. Sometimes because not only... we think of parenthood as it relates to small children, and when we talk about legal and physical custody Matt, of course, physical custody is who the child lives with [00:25:00] most of the time, legal custody being the decision-making that happens.

But also there are es- there are rights of inheritance that are related to parenthood as well. And so sometimes we see these, these types of actions happen for even older children or even adult children on occasion. It just depends on what the circumstances are. Maybe, maybe a person was in a may- maybe a father who was not really involved in the life of their child was in a car wreck, and there were some personal injury proceeds, and there are modalities and mechanisms to establish paternity in those- Right

Un- somewhat unusual situations. But I guess the point I'm trying to make is that there are, reasons for paternity actions are access to a child. They could be to receive support. They could be to receive, of course, hands-on help. [00:26:00] And then of course for Inheritance purposes.

All of those are excellent reasons that a person might consider a paternity action. Absolutely.

There's an old question people ask when something feels impossible. How do you eat an elephant? The answer is simple. One bite at a time. Divorce often feels like an elephant dropped into your life overnight. Even if you saw it coming, the weight can feel overwhelming. Questions pile up, fear follows close behind.

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Each day focuses on one small action designed to reduce chaos and increase clarity. Some days are practical, some are reflective. All are meant to help you stay steady while you find your footing. Written by the Mississippi Family Law

Attorneys of Robertson and Easterling, this guide blends legal insight with emotional awareness and real-world practicality.

It does not push you toward divorce or assume reconciliation is impossible. It helps you slow down enough to see what is actually happening. You do not need to eat the whole elephant today. You only need to take the next bite. Download The First 30 Days free at robertson.ms.

All right, guys, we're back. We're here talking about filiation, paternity, which means the establishment of legal rights, duties, and responsibilities, and status for unwed people. And this is a gr- [00:28:00] growing area of the law in Mississippi, and Matt and I have been talking about some of the, some, just some of the nuances of that so far.

So Matt what's your best advice? A a man walks into your office, he and his girlfriend have had a falling out. They've got a four-month-old baby girl. What options does he have? In, in that fact pattern, the, the thing that I think a an unmarried putative father ought to do is first go ahead and file a complaint for filiation and other relief The statute actually says, although I don't feel like this is followed that often, but the, the way the statute wr- is written is the the plaintiff or the defendant shall pay the attorney fees of the plaintiff.

So if you're following the absolute letter of the statute, which typically you would assume that a court's going to, that would [00:29:00] mean that whoever filed the action, their attorney fees are supposed to get, paid for. I can't say that I see that happen very often, but I'd rather be the plaintiff than the defendant in that circumstance.

Yeah, let me break that down for our listeners just a little bit further. So there, there's a ... our law is created through what's called common law, meaning cases interpreting cases, meaning our Supreme, the Supreme Court interpreting cases that develop from specific fact patterns. We make our law that way.

We also make our law through the legislature creates statutes, and that's what Matt's referring to, is there's the paternity statute talks about the defendant. And the, the presumption in this statute is the defendant would be the father could be responsible for the attorney fees of the plaintiff, which is the mother.

But that's not always the case. As we've talked about in this fact pattern, there are situations where a dad would want to establish his rights, duties, [00:30:00] and responsibilities and access to a child, and the advice that we like to give at

our office is, if that's what you wanna do, you wanna file first because the, of the statute that talks about payment of attorney fees.

Again, I don't think that's the reason that the statute was drafted that way. I think the idea, the public policy behind the statute, is that we don't want unwed mothers to have roadblocks to establishment of paternity. And of course the Department of Human Services, as it relates to some, some welfare ideas, has the right to establish paternity and child support as well.

For example, if a mom is seeking public assistance, then then ... And she has children, then the state has a vested right to have that mother receive child support. In other words, so that a biological father has the responsibility to support a child, and the state of Mississippi does not. So y- just for [00:31:00] clarity, my advice to go ahead and file is not so that you're the one that gets your attorney fees paid if you're the, the dad in that circumstance.

Yes, it's something that you're probably gonna request in the complaint. The main purpose would be To ensure that you're not necessarily on the hook for mom's attorney fees in the event that she was the one that filed first. Exactly. And then my advice from there it would depend on, okay how aligned or how, how well are you getting along with the mother?

And even if they're absolutely at odds, is there any dispute over whether or not this, hypothetical putative father sitting in my office, is there any dispute over whether or not he's the dad? If there is no dispute, to me, the next step is we reach out to mom and we provide her with an acknowledgement of paternity like what we've discussed earlier.

My [00:32:00] office would draft that. We would get dad to sign it in the presence of a notary. We would provide it, to mom and ask that she execute that as well. In the event that she did The case would then shift into either litigation or negotiation about the, legal and physical custody, visitation, child support, all those different things.

Yeah, let me clarify or maybe expand on some of what Matt said. So once paternity is established, mom and dad have equal rights, duties, and responsibilities with regard to a child until such time as those are carved out by court order. There are plenty of people who probably can hear my voice right now who have-- who are raising a child maybe they've acknowledged paternity, maybe they haven't.

But this has just never been, it's never been an issue in their life. And so quite frankly, in those situations, maybe there's nothing to do. But we're [00:33:00] talking about the clearly these situations where there's been a relational breakdown and there has to be action taken to make sure that these parenting relationships stay in, stay intact.

And once, once there is that establishment of paternity through an acknowledgement or through a, a paternity test through affiliation action at that point, mom and dad are on equal footings. And then we get into, I don't wanna say it's like a divorce case because it's not. A divorce in Mississippi has three major components.

One being the divorce itself, two being division of assets and liabilities and whether or not spousal support should be awarded, and the third being all things concerning a child's care, support and then the parents' access to that child. So really when we're doing these paternity or affiliation actions, it really boils down to that component of the [00:34:00] case.

Whose legal custody is the child gonna be in? Whose physical custody is the child going to be in? What does the parenting plan, in other words, what does the visitation schedule look like? What does child support look like? How much is that going to be? What whose responsibility to carry health insurance?

Are there going to be requirements for those expenses that are not covered by by health insurance? What about daycare? And then all the other expenses- ... associated with having kids. But it's just important to further highlight what you said a second ago. You can't get to any of those determinations until there has been a legal determination that- a, a male is the biological father.

Yep. And while it's not right, it unfortunately does happen from time to time that you either have an unwed mother or an unwed father where there's no a- real dispute as to who the father is that is not going to agree to that type of acknowledgement [00:35:00] because they're just trying to kick the can down the road.

Because that means you'll have to have at least one hearing where probably two hearings, one where you you go up and the court orders that a DNA or paternity test be done. That can either happen voluntarily or involuntarily. Obviously, if you're in court it's probably involuntary.

And then, of course, they have to await the results, and then the court would make a determination that, okay Matt Easterling is the father of, the, the child at

issue. Then at that point, there would be another trial or hearing that would be set out in the future to de- to make the determination about all the things that you just said about access and and support.

At that point, you would also be temporary relief would be available to both sides at that point where now that, paternity has been established, the court could then decide, okay, on a temporary basis until we can sort this out permanently. This is where the [00:36:00] child's gonna live.

This is who's gonna have physical custody. We're gonna share joint legal custody. Dad's gonna pay child support. This is how much he's gonna pay, so on and so forth. And we're talking about, the court process litigation, but all of these things can worked out, can be worked out between parties.

That's what Matt was suggesting in the hypothetical that I mentioned before. Where you've got a father who wants to be part of a child's life, who acknowledges and accepts that he is the biological father of the child and is willing to participate in the child's life and to execute an acknowledgement of paternity.

And if that's the case everything can be negotiated outside of litigation, the court process between parties and parents, and we do that all the time. If, hey, everybody acknowledges that this man is the father of this child, and we want him to be a part of the [00:37:00] child's life, and we're going to establish some access for him and support and what his responsibilities are, and people negotiate those agreements all the time.

And quite frankly, those are the best agreements. What I have found to be more difficult about these paternity cases, in my experience, is maybe the lack of just history and familiarity that parents have with one another. It j- it's just harder because when you have a child with someone that you don't have that type of connection with, it's just harder to get on the same page from a co-parenting standpoint.

A h- 100%. And especially when you're talking about Circumstances with like a newborn baby. If let's say in that circumstance neither, neither parent had- it's their first time being a parent, and if they're not on the same page, which it's already a very emotional and confusing time, that's for people that are married and on the, their relationships are on the best of on the best terms.

It- [00:38:00] it's a ... Nobody knows what they're doing. We al- we always joke that kids don't come with instruction manuals. Maybe not. And it is the

complexity and the, the, the problems, challenges that you face in that circumstance are just compounded I don't know to what power, but by a lot. A lot. No doubt. When you have a mom and a dad who are not at all on the same page, and in fact are at odds, and usually that means there's a, a healthy amount of distrust that's between the two of them, and each person thinks that they are entitled to more than they, they maybe probably fairly ought to be.

But a newborn baby s- cannot function on a schedule like what we're used to seeing in a divorce setting, where you're talking about a, a, a five, six, seven-year-old kid I'm gonna go here for the weekend or whatever. You've got, you have breastfeeding, Considerations

considerations. There are certainly ... You're not going to see a [00:39:00] child being sent with one person or the other necessarily or usually with dad for extended periods of time in those earliest of days. Yeah, we talk about and if you can hear our voice and this situation is touching your life, then we certainly recommend that you check out our website because we've got lots of information on child custody specifically.

But the there's something called the Albright factors, and the Albright factors are the factors that a court uses to determine custody. And it's the tools for a best interest analysis. And it's also used in these paternity actions to determine to determine custody, both legal and physical custody.

And there is one of the Albright factors, something called the tender years doctrine. And the, the idea of the tender years doctrine is that little bitty kids should be in the custody of their mom. And the reason is because of breastfeeding and those types of concerns and the science around how attachment occurs first with the mom and then later with the dad.

And so I guess if you're ... A- and then from the flip side of that, if you're a man and you can hear [00:40:00] my voice, and I think just reiterating what Matt already said, it's, this idea of every other weekend, Friday to Sunday, 6:00 to 6:00 for a one-month-old infant is probably not going to happen. And the, the trouble is compounded by the fact that you've got parents who are not in great relationship with one another, and a father who Wants to establish a r- a relationship and be in the presence of his infant child, but yet there's not that comfort level between the parents.

And of- obviously, a, a one-month-old human is a very delicate thing, and it gets complicated in these situations. You have what I would consider to be pretty

temporary schedules in that with the way that a, a one-month-old infant sleeps a lot- Sure ... or hopefully sleeps a lot.

And so there's no way to gu- oh this is my ... I'm supposed to have three hours or, two hours in the morning and two hours in the afternoon on Saturday and Sunday. The child might be asleep that entire time. It's a, it's just a, it's a, it's [00:41:00] an incredibly difficult set of circumstances for a court to step in and legislate when one parent's gonna see the child or the other.

I can't imagine how difficult that would be. But if there's anything that that we can say that I don't know, offers any reassurance to that is that is a pretty temporary period of time. Yeah, and look, guys if you can hear our voice, parenting is a lifetime assignment. It's a lifetime responsibility, and when we're dealing with these filiation actions for young children, there is this, I think there is this sense that this sense of urgency, and I'm not suggesting that there's not.

But judges aren't super interested in mom's rights or dad's rights nearly as much as they are protecting the best interest of a child. And I know that if I were a chancellor and I were in the position of making these types of decisions the number one goal is gonna be what's best for the health and safety and [00:42:00] wellbeing of this innocent child that two people made the conscious decision to bring into this world.

And so my first responsibility is to that child, and then I turn my attention to the father and the mother to determine, what their rights are and how to create equity for them. Regardless of if you're you're married or unmarried If you're standing before a judge in some sort of custody circumstance, the only truly innocent parties involved in the case are these children.

Yes. And that's the way that the court is going to look at it. There are things about being a parent that aren't fair , times that that's, that's not fair to me. It's not, but that's, it's not about you anymore. And that's how the court is going to look at it.

It doesn't mean that there shouldn't be an element of fairness, somewhere in it, but that's just not the primary concern of the court. It's not about [00:43:00] determining whose fault it was that the relationship ended or any other litany of things that, that people justifiably feel like ought to make a difference.

They just typically don't. Yeah, and Matt, I'm glad you brought that up because I've handled a bunch of these cases through the years, and a lot of times, and rightfully I'll sit with moms, young moms a- and, they're mad because this

putative father didn't participate when they, didn't go to any of the doctor's appointments, didn't, you know- Wasn't there when things were hard during the pregnancy.

And there's some animosity associated with that, that, I am... you were a willing participant in the process that created this pregnancy, but yet now I'm all on my own, and I'm, and I have moms all the time who express their frustration and their ideas about the lack of parental responsibility and, for these, these guys.

And, I would say first, I hear you. I, I can only [00:44:00] imagine how painful and complicated that is. But, a lot of times these guys have the simple excuse of I didn't know if I was the father or not." And it... sometimes we can call BS on that. Sometimes maybe that's a legitimate concern.

But I guess I would say to that mom who might be having those feelings that while that's certainly important it's really the activity of a man after he knows or at least should know that he is in fact the father of a child. And again, that's something that it's just a case-by-case determination, and we have all kinds of folks who...

and hear this, we have people who ha- have children together and they're never married, and there's never a legal problem. They, maybe there's an establishment of paternity, maybe there's not. But they're able to, they're able to figure it out.

Now, I don't advise that because I think that with structure and rules it's better for everyone, especially when it comes into, rights of inheritance. So even if [00:45:00] things are going magically well, you might consider an establishment of paternity for those things that will maybe happen later in your life.

But, it's not... Litigation's not the answer to everything, but in this particular case, when you don't have structure, that's what we're talking about, is seeking structure. Yeah. And, Craig, to go along with the animosity that you were just mentioning I think it's incredibly common that there's some very real fear that a lot of times those moms will be experiencing things that re- that's what I feel like has always been voiced to me.

And, you could be in a circumstance where, I hear all the time he's never had the baby alone. He's never done the..." How... I understand that. And I'm not invalidating those, those feelings. I understand where those fears come from. Everybody should be aware, though the, the court will ultimately look at it from a perspective of Well, he can't learn unless he un- unless he gets the [00:46:00] opportunity.

Exactly. And that is not the defense that you want to rely on. Oh the child shouldn't go here, shouldn't go there, 'cause he's ... he's never done it before. He's never done it until he has. And it's a very real fear. I understand where it comes from, and I've seen it in enough instances where I know it's not something that, that those individuals were making up.

It's just the only way that it's actually ever going to be, addressed or fixed is them getting the opportunity to do that, and then also the experience of, I guess watching your child go there for that to happen. Yeah, and that's tough, guys. At the end of the day the parents aren't in control.

If they can get along and they can figure it out and they can come to an agreement and they can be on the same page, then they can essentially do whatever they want to. But it's when parents can't get along and they can't get on the same page that that a judge gets involved. And Mom, if you're in that situation, even if that's justified, there is a high [00:47:00] level of surrender because, when you have a child in this type of situation and this relationship is being litigated and you're asking a stranger to make some of these decisions, then there's a level of surrender that happens because, quite frankly, a judge can and will order that dad have some sort of access if it can happen in a healthy way.

And as Matt has described, it's not uncommon for a dad specifically in these situations to not have any kind of pa- hands-on parenting experience. And as Matt pointed out, how's he, how is he gonna get any hands-on parenting experience until such time as he's been given that opportunity? And so that might color and influence kinda how you think about these ideas and whether or not you want to invite him into your life and into the situation so that you can monitor some of that.

Sure. Guys, everything is ... These situations are so varied and so different, and I certainly wouldn't want you to hear anything in this short podcast that Matt and I [00:48:00] have, that we're doing now to take without getting custom advice for you and your situation because they really are ... The situations are as different as the people who find themselves there.

Absolutely. And that's why, and of course, this goes for almost all cases, but certainly in a, an affiliation case where you're dealing with a, a young child- The two of you, when I say the two of you, the mom and the dad and their, the teams that are helping them, whether that be their own individual parents or what the lawyers that they've hired, you will be able to come up with a custom and

unique schedule which is best for your baby Much better than a court's gonna be able to, and with much, a much greater level of customization and detail.

So if it is at all possible for people to work that [00:49:00] out, you should definitely do that because you're really, neither one of you are gonna like what a court does. Because they just don't have the ability or the time, because of all of the different cases that are in front of them, to come in and make that type of surgical, customized schedule, especially for an infant, where the schedule's gonna look different in just a couple months.

There's no time in a, an individual's life where things are sh- changing more rapidly than in, the first two to three years of a person's existence. Yeah, no question. And guys, if you received a notice from the Department of Human Services or a state agency with regard to an action being brought against you, that does not automatically mean that you will be given visitation of a child.

It is certainly possible that a child support award would be sought from you without having any kind of access to the child. And so [00:50:00] that's something to consider. If you want to have a visitation schedule in place, you're gonna have to ask for it. And to ask for it, you might need a private attorney to help you with that.

And so th- these situations are very diverse, very varied, and if you've been listening to this podcast because this has touched your life in some way, I cannot stress enough how important it is to get some custom-tailored advice for your specific situation. And I, I believe that we mentioned this earlier, but I it's worth repeating.

In the event that you are in the you've structured your life such that you and your partner are together but you're not married, and you have children and because the two of you are on the same page, you haven't taken any type of affirmative steps. It's like, "Oh I know he's the father," and, "Yeah, I'm the father.

I'm..." Everybody agrees that you're mom and dad. There are very real reasons to go [00:51:00] ahead and do an acknowledgement of paternity, even when you're together. Because of the things that you mentioned earlier, Craig, th- without that, just because everybody knows it, what if something happened? Yeah, what if something happened to mom?

Say, say, say mom and child were in a car accident, and mom is incapacitated, and there are decisions that have to be made regarding the child's, health and

wellbeing. That father does not have any legally recognized rights at that moment. To make those decisions. You know- God forbid if somebody were to pass away what you would be dealing with in that tragedy would be compounded by the fact that there's not a real judicial determination.

You would have these extra steps that you'd be having to go through when that's just not necessary. Two people that are together, you should aut- you know, you don't wanna get married, that's your own, that's your choice, and there's no judgment in that. But if you're not going to get married, go ahead and do that acknowledgement [00:52:00] of paternity.

Yeah, I totally agree with that, Matt. It's, again it's almost like having a will. You don't need it till you need it. And so the, the same with regard to this establishment of paternity. You just don't need it until you need it. And guys, this has been a lot in a relatively short podcast.

As usual, there's tons of information available for free i- in the various episodes of this podcast and on our website at robertson.ms. But if anything that Matt and I have been talking about you want to find out more information, I highly encourage you to hop over to our website and submit a request to have an init- an initial consultation with one of the attorneys in our office so that we can talk more about this.

Yeah, Craig, I agree and th- this topic is so important. So whether you come in to have a meeting with us or whether it be Zoom or in person you need to talk to somebody. Reach out to a qualified professional and get advice that is unique [00:53:00] to your circumstances. Yeah, guys, that's all we have for this episode of the Robertson East Ling podcast.

As usual we'd love to hear from you, so subscribe on your favorite listening platform, and we'll see you here next time

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