

1 A pre-trial ~~conference~~ was held on October 23, 1997, in which the Court, as stated in its
2 order filed October 31, 1997, found Defendant to be the natural father of the minor child absent
3 any further evidence to the contrary.¹ In the same order, the Court ordered the parties to submit a
4 memorandum of law in support of their respective positions on "the [e]ffect of Defendant's
5 affirmative defense[s] that the Plaintiffs pregnancy was a result of an act or acts of artificial
6 insemination and performed by the Plaintiff without the knowledge or consent, express or
7 implied of the Defendant and practiced by the deceit of the Plaintiff will have on the Plaintiffs
8 claims for support, retroactive support, medical expenses, and attorneys fees as requested in her
9 complaint." *Ord.* at 2.

10 11. ISSUES PRESENTED

- 11 A. Whether Defendant can raise the affirmative defenses of **fraud** and deceit to bar Plaintiffs
12 recovery on behalf of the minor child in a UPA action.
- 13 B. Whether Defendant is precluded **from** raising the **affirmative** defenses of **fraud** and deceit
14 relative to the relief Plaintiff seeks for herself in a UPA action.

15 III. ANALYSIS

16 The issues presented in this case are one of **first** impression. Neither of the parties have
17 cited to nor is the Court aware of any **CNMI** cases regarding the **affirmative** defenses of **fraud**
18 and deceit in the context of a UPA case. However, the Court is aided in its decision by adopting
19 the approach followed in other jurisdictions with identical or similar statutes to the **UPA**.

20 A. The Rights of the Minor Child

21 This case was filed pursuant to the UPA, 8 CMC § 1700 et seq. The parent and child
22 relationship extends equally to every child and every parent, regardless of the marital status of the
23 parents. 8 CMC § 1702. The phrase "parent and child relationship" means "the legal
24 relationship existing between a child and his natural or adoptive parents incident to which the
25 law confers or imposes rights, **privileges**, duties and obligations. It includes the mother and child

27 ¹ This finding was supported by DNA testing which **confirmed** Defendant to be the
28 natural father with a 99.97% probability.

1 relationship and the father and child relationship." 8 CMC § 1701. **Thus**, it can be inferred that
2 the intent under UPA is to identify the parents of a minor child and to ensure that parents shall
3 provide care and support in the best interest of their children, regardless of the parents' marital
4 status.

5 Plaintiff is the natural mother of the minor child, C. S. Defendant is the natural father of
6 C.S. Therefore, this case properly falls within the ambit of the UPA.

7 Plaintiff argues that **Defendant's affirmative** defenses of **fraud** and deceit is not available
8 in a paternity action. In **Plaintiff's** Pre-Trial Memorandum, Plaintiff cited to several cases **from**
9 **other** jurisdictions for the proposition that a party's misrepresentation or fraud, in this case
10 Plaintiff, is not a bar to a claim or recovery under acts similar to the UPA. The Court finds the
11 case, Murphy v. Myers, 560 N.W.2d 752 (Minn.App.1997), **helpful** in that one of the issues the
12 **Minnesota court** had to resolve was also one of first impression on whether the defendant should
13 **be** allowed to raise the defenses of fraud and deceit in a paternity case.

14 In Murphy, the plaintiff and the defendant lived together. Defendant admitted that he and
15 the plaintiff had sexual relations, but claimed that he only agreed to such a relationship after the
16 **plaintiff** claimed to have undergone sterilization surgery and showed the defendant scars on her
17 **abdomen** that she said were the result of a **tubal** ligation. **Id.** at 753. Plaintiff became pregnant
18 **and** bore a child. She subsequently initiated a paternity and child support action against the
19 **defendant** pursuant to Minnesota's Parentage Act, which is similar to our UPA. **Id.**

20 The Murphy court noted that the purpose of a paternity action is not to punish the father,
21 but rather

22 to impose a duty on the father to support the child, to ensure [that]
23 the mother does not bear the **full** responsibility for the child, and to
24 protect the public by preventing the child from becoming a public
charge.

25 **Id.** at 754, **citing** Jevning v. Cichos, 499 N.W.2d 515, 517 (Minn.App.1993). A child's interests
26 in a paternity action are distinct and separate from **those** of both its mother and father. **Id.** at 754.

27 The interest of the child in obtaining support from its parents "weighs against recognition of
28 [Defendant's] proposed defenses to the extent that his desire to avoid being adjudicated [the

1 minor child's] father **might stem from** a desire to avoid child support obligations." Murphy v.
2 Mvers, 560 N.W.2d at 755.

3 By way of raising the defenses of **fraud** and deceit, Defendant in this case seeks to
4 introduce evidence which has no relevance to the **determination** of paternity. Section 1712 of
5 the UPA sets forth the evidence that may be included relating to paternity as follows:

- 6 (a) evidence of **sexual** intercourse between the mother and alleged father at
7 any possible time of conception;
- 8 (b) an expert's opinion concerning the statistical **probability** of the alleged
9 father's paternity based upon **the** duration of **the** mother's pregnancy;
- 10 (c) genetic and blood test results **including** the Human Leukocyte Antigen
11 tests, are admissible as evidence and shall be weighted in accordance with
12 evidence, if available, of the statistical probability of the alleged father's
13 paternity;
- 14 (d) medical or anthropological evidence relating to the alleged father's
15 **paternity** of the child based on tests performed **by** experts. If a man has
16 **been** identified as the **possible** father of the **child**, the court may, and upon
17 request of a party shall, require the child, the mother, and the man to
18 submit to appropriate tests; and
- 19 (e) all other evidence relevant to the issue of paternity of the child.

20 8 CMC § 1712. The Court does not construe the phrase "all other evidence" under 8 CMC §
21 1712(e) to include evidence of fraud and deceit by a parent of the **minor** child. This is the same
22 view taken by the Murphy court. Murphy v. Mvers, 560 N.W.2d at 755.

23 In summary, the Murphy court observed that other states that have considered the issue
24 have unanimously barred the use of **fraud** and misrepresentation as defenses to paternity or child
25 support obligations. The court, in following the decisions in other jurisdictions, stated that the
26 "legislature and courts of Minnesota have stated a consistent policy in determining paternity and
27 collecting child support and have accordingly restricted the issues in paternity proceedings." Id.
28 at 756. See Erwin L.D. v. Myla Jean L., 847 S.W.2d 45, 47-48 (1998); Faske v. Bonanno, 357
N.W.2d 860, 861 (1984); L. Pamela P. v. Frank, 449 N.E.2d 713, 715-716 (1983); Hughes v.
Hutt, 455 A.2d 623, 625 (1983).

Defendant is aware of the law in many jurisdictions disallowing the use of fraud and
deceit as defenses in a paternity action. Indeed, in his Pre-Trial Memorandum, Defendant agrees

1 that the child is not **responsible** for the Plaintiffs acts and is not subject to the defenses. *Mem.* at
2 2.

3 The Court finds the conclusion of the Murphy court persuasive, taking into **account** the
4 best interest of the minor child at bar and the provision of 8 CMC § 1726, which requires that
5 UPA shall be applied and construed to effectuate its general purpose to make uniform the law
6 among the states enacting it. The best interests of the child including the right to support is
7 paramount, and this purpose is **frustrated** by allowing a party to raise the defenses of **fraud** and
8 deceit against the child. *See also Clay v. Clay*, 397 N.W.2d 571,579 (Minn.App.1986), *review*
9 *denied* (Minn. Feb. 17, 1987). Accordingly, it is hereby ORDERED as a matter of law that
10 Defendant is denied **from** raising the **affirmative** defenses of fraud and deceit as to the minor
11 child and the relief sought therefor in this case.

12 B. **Fraud by the Minor Child's Mother**

13 Although Defendant agrees that the minor child is not responsible for the Plaintiffs acts
14 and is not subject to the defenses of **fraud** and deceit, he contends that Plaintiff is subject to such
15 defenses and appears to argue further that Plaintiff, by virtue of her alleged **fraud** and deceit, be
16 denied the relief she seeks for herself in the present paternity action. *Mem.* at 2. Defendant **is**
17 concerned "that plaintiff does not turn this event . . . into any sort of personal financial benefit"
18 by pointing out "that support is paid to benefit the child, not the custodial parent." *Id.*, *citing*
19 Jevning v. Cichos, 499 N.W.2d 515, 517 (Minn.App.1993). Defendant is fearful that Plaintiff
20 may seek reimbursement **from** Defendant for expenses incurred. *Mem.* at 2.

21 The Court considers Defendant's contention as an attempt to mitigate potential damages.
22 Damages is an essential element of **fraud**. Atalig v. M.I.C. Corporation, 3 CR 278 (N.M.I.Tr.Ct.
23 1987). Defendant's position seems to be that he should be allowed to raise the defenses of **fraud**
24 and deceit at least as against Plaintiff mother and, if so allowed and the defenses are granted,
25 requests the Court's consideration of Plaintiffs fraud and deceit when fashioning the appropriate
26 relief.

27 In support of his attempt, Defendant cites to the discretion conferred upon the Court by 8
28 CMC §§ 1715(c), (d) and (e) and § 1716 regarding judgments or orders on child support, custody

1 and guardianship, ~~visitation~~ privileges, the furnishing of a bond or other security, costs and
2 attorneys fees, the payment by the father of the reasonable expenses of the mother's pregnancy
3 and confinement or any other matter in the best interest of the child. The Court further notes that
4 pre-trial proceedings, including an evidentiary hearing, may be used to address issues such as
5 affirmative defenses. 8 CMC § 1710.

6 While, on the one hand, the underlying policy of UPA favors the determination of
7 paternity and collection of child support, the Court should not so restrict the issues in paternity
8 proceedings to preclude valid defenses of fraud and deceit. Even the Murphy court
9 acknowledged that Defendant's defense of fraud and misrepresentation "would at best be valid
10 against only one of three potential plaintiffs." Murphy v. Mvers, 560 N.W.2d at 756. The court
11 there was referring to the plaintiff mother, as the court held that the fraud defense did not apply
12 against the county or the minor child who was not a party, but had an interest in the proceedings.
13 *Id.* On the other hand, the Court is mindful of the overriding consideration regarding the best
14 interest of the child.

15 Likewise, in this case, Defendant's defenses would be valid against Plaintiff mother, if at
16 all. A hearing would be necessary to determine the validity of the defenses Defendant seeks to
17 raise against Plaintiff if Defendant is allowed to raise such defenses. To deny Defendant such an
18 opportunity might work a prejudice against him.

19 For the foregoing reasons, it is further ORDERED as a matter of law that Defendant be
20 allowed the opportunity to raise and demonstrate the validity of the affirmative defenses of fraud
21 and deceit only as against Plaintiff mother to the extent such defenses are not in contravention to
22 the best interest of the minor child. Specifically, the defenses would be relevant only to
23 safeguard the interest of the child on the issue of the payment and handling of child support and
24 other matters directly or indirectly affecting any benefits, rights or obligations adjudicated or
25 ordered pursuant to the UPA provisions. An evidentiary hearing shall be held at 9 a.m.,
26 December 15, 1997 to establish the validity of Defendant's affirmative defenses of fraud and

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deceit. Trial on the remaining issues of permanent child support and retroactive child support shall be heard on January 16, 1998 at 1:30 p.m.

SO ORDERED this 15th day of December, 1997.



VIRGINIA SABLAN ONERHEIM
Associate Judge