

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D36230  
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Submitted - September 18, 2012

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

2011-10257  
2011-10650

DECISION & ORDER

In the Matter of Jonathan H. Merritt, Sr., appellant, v  
Bethann Allen, respondent.  
(Proceeding No. 1)

In the Matter of Jonathan H. Merritt, Sr., appellant, v  
Bethann Allen, respondent.  
(Proceeding No. 2)

(Docket Nos. U-2809-08/11H, U-2809-08/11G)

Michael G. Paul, New City, N.Y., for appellant.

Michael N. Kelsey, Salt Point, N.Y., for respondent.

James Meier, Poughkeepsie, N.Y., attorney for the child.

In a paternity proceeding pursuant to Family Court Act article 5, and a related child support proceeding pursuant to Family Court Act article 4, the petitioner appeals from (1) an order of the Family Court, Dutchess County (Forman, J.), dated October 7, 2011, which granted the mother's motion to dismiss his petition to set aside an acknowledgment of paternity dated December 22, 2000, direct a paternity test, and discontinue his payment of child support, and (2) an order of the same court dated October 25, 2011, which dismissed his petition to modify a prior order of child support dated January 25, 2008, vacated an order of the same court dated February 7, 2011, directing that the petitioner's child support payments be held in escrow, and released those funds to the mother.

ORDERED that the orders are affirmed, without costs or disbursements.

October 24, 2012

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MATTER OF MERRITT v ALLEN

Pursuant to Family Court Act §§ 418(a) and 532(a), no paternity test shall be ordered upon a written finding by the court that it is not in the best interests of the child on the basis of, inter alia, equitable estoppel. The paramount concern in applying equitable estoppel in paternity cases is the best interests of the child (*see Matter of Shondel J. v Mark D.*, 7 NY3d 320, 326; *Matter of Seth P. v Margaret D.*, 90 AD3d 1053, 1054). Here, contrary to the petitioner's contention, the best interests of the child support the Family Court's determination to invoke the doctrine of equitable estoppel in granting the mother's motion to dismiss his petition to set aside an acknowledgment of paternity dated December 22, 2000, direct a paternity test, and discontinue his payment of child support. Since August 2006, upon the petitioner's consent, he has been paying support for the child. The petitioner has sought and been granted visitation with the child, and the child understands the petitioner to be his father (*see Matter of Shondel J. v Mark D.*, 7 NY3d at 328).

The petitioner's remaining contention is without merit.

Accordingly, the Family Court properly granted the mother's motion to dismiss the petition to set aside the acknowledgment of paternity, direct a paternity test, and discontinue the payment of child support, and properly dismissed the petition to modify a prior order of child support dated January 25, 2008, vacated an order of the same court dated February 7, 2011, and directed that the petitioner's child support payments held in escrow be released to the mother.

RIVERA, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court