

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

17 September 2010

STATUS: Immediate

YM v LB (465/09) [2010] ZASCA 106 (17 September 2010)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today upheld an appeal against an order of the North Gauteng High Court (Pretoria) that a woman (YM) and her child (Y) undergo DNA testing to determine whether LB was the father of the child. LB had applied for an order compelling the tests. If paternity was proved he wanted a further order that he be afforded full parenting rights.

The high court held that it had the inherent jurisdiction to order scientific tests to determine paternity, and expressed the view that it was always in the best interests of a child to know the identity of his or her biological father.

The SCA found that the order was not warranted on the facts. Although there were minor disputes between YM and LB as to their various interactions before and after conception, and after the birth of the child, LB had not actually disputed paternity. There was thus no need for scientific tests. The court said that there might well be cases where paternity is genuinely in dispute and thus where DNA or other testing should be ordered. In such cases the infringement of the child's privacy and bodily integrity might be reasonable and justifiable. This was not such a case. The SCA also said that it was not necessarily always in the best interests of a child to know the truth: each case had to be determined having regard to the particular child's circumstances.

The order that the mother be tested had been completely unjustified: testing her would not lead to a conclusion as to paternity.
