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State Must Pay Attorney Fees in Case of Mistaken Paternity

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Guillermo D. Lopez vehemently denied being a deadbeat dad.

When the Florida Department of Revenue contacted Lopez in August 2011 to collect overdue child-support payments, he insisted he'd never even met the mother.

Unswayed, the Revenue Department advised him to lawyer up.

On Valentine's Day 2012, officers served a petition to establish paternity and award child support but served the papers on Lopez's wife.

It turns out Lopez had been telling the truth all along. It was a case of mistaken identity.

"Lopez's middle initial is D," according to a footnote in a Third District Court of Appeal ruling issued



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Miami attorney Lisa Baird said, "Guillermo Lopez is a common name. They just picked the first name."

Wednesday. "DOR was seeking to establish paternity against Guillermo J. Lopez."

Miami attorney Lisa Baird represented Guillermo D. Lopez in the litigation that lasted more than three years and went all the way to the appellate court. She said an agency representative chose her client from a phone book.

"Guillermo Lopez is a common name," she told the Daily Business Review. "They just picked the first name."

Assistant Attorney General William H. Branch represented the state agency. The office did not respond to requests for comment by deadline.

At first, the Revenue Department claimed it had a confidential affidavit from the mother naming Lopez as

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IDENTITY

the father, but it cited privacy concerns in refusing to release the document for an in camera review.

"When pressed, however, DOR's substitute counsel stipulated that DOR did not possess such an affidavit," Judges Edwin Scales III, Linda Ann Wells and Thomas Logue wrote in a unanimous decision reversing a finding by mediator Philip Cook in Miami-Dade Circuit Court.

Wells concurred separately.

In March 2012, Baird filed motions for scientific paternity testing, dismissal and attorney fees. Two months later, the trial court referred the case to a general

magistrate.

THE REAL FATHER

Meanwhile, Guillermo J. Lopez, the intended party, stepped in and acknowledged he was the father. Looking to establish paternity and take responsibility, he filed a petition against the mother in June 2012.

But nearly two months later, the Revenue Department was still looking to distinguish between the two Guillemos.

The following October, the agency filed a motion to quash service against Guillermo D. Lopez and withdrew its motion for a physical examina-

tion.

Guillermo D. Lopez and Baird appeared at the courthouse for the hearing Oct. 29, only to learn of a cancellation after an order quashing service mooted the issue.

But that order did not wipe out Lopez's motion for attorney fees, so he headed to the general magistrate in December.

In March 2013, the general magistrate ruled in his favor, finding he was entitled to \$4,257 in fees.

"The report and recommendations specifically found that DOR had failed to conduct due diligence prior to serving Lopez with DOR's petition and further found that DOR had



Scales

not acted in good faith in continuing to prosecute its paternity action against Lopez," Scales wrote.

Lopez moved to recoup additional fees for the December hearing, but the Revenue Department successfully challenged the finding.

After a non-evidentiary hearing in January 2014, the trial court sided with the agency, granting an exception and precluding Lopez from recovering fees and costs.

The appellate court disagreed "because the factual record before the trial court is devoid of any material facts necessary to warrant DOR's underlying paternity claim against Lopez."

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