

STATE OF MICHIGAN
COURT OF APPEALS

REBEKKA ROSE BROWN,
Plaintiff-Appellee,

UNPUBLISHED
June 17, 2021

v

HAROLD PAUL FLETCHER,
Defendant-Appellant.

No. 353214
Wayne Circuit Court
LC No. 19-102169-DM

Before: MURRAY, C.J., and FORT HOOD and RICK, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's order denying defendant's motion to revoke the acknowledgment of parentage under the Revocation of Paternity Act, MCL 722.1431 *et seq.* Through this motion defendant sought to revoke his acknowledgment of parentage of an 11-year-old child. We affirm.

I. FACTUAL BACKGROUND

This case arises from an acknowledgment of parentage signed by plaintiff and defendant on August 23, 2009, regarding a child born on that same date. Plaintiff and defendant were married on June 11, 2011, and separated on June 20, 2014. On February 26, 2019, plaintiff filed a verified complaint for divorce. During the divorce proceedings, defendant moved to revoke the acknowledgment of parentage. Defendant attached his own affidavit to the motion and attested to his belief that he was the child's biological father when he signed the acknowledgment of parentage. Defendant also stated that plaintiff had not allowed him to contact the child since May 2018.

On September 11, 2019, the day of the motion hearing, plaintiff filed a response to defendant's motion to revoke the acknowledgment of parentage. Plaintiff asserted that defendant knew he was not the child's biological father when he signed the acknowledgment of parentage because plaintiff was already six months pregnant when she met defendant. Plaintiff also asserted that defendant maintained a relationship with the child until plaintiff filed the verified complaint for divorce, at which point defendant ceased all contact with the child. In support of plaintiff's assertion that defendant knew he was not the child's biological father when he signed the

acknowledgment of parentage, plaintiff attached photographs of two e-mails she received from defendant on July 28, 2009. In the e-mails, defendant discussed the child's biological father and expressed displeasure with the biological father's hesitancy to sign the child's birth certificate.

At the motion hearing, an exchange¹ occurred between the circuit court and defendant, during which defendant initially maintained that he was certain that he was the child's biological father when he signed the acknowledgment of parentage. Shortly thereafter, defendant acknowledged that he had reason to doubt that he was the child's biological father when he signed the acknowledgment of parentage because of statements made by plaintiff and her sister before the child was born. Upon further inquiry from the circuit court, defendant denied authoring the July 28, 2009 e-mails attached to plaintiff's response to defendant's motion. Defendant also stated that he learned he was not the child's biological father sometime after the child's birth in 2009, but before plaintiff and defendant were married in 2011.

The parties and their attorneys also addressed whether revoking the acknowledgment of parentage would serve the child's best interests. Defendant opined that revoking the acknowledgment of parentage would not harm the child because he no longer had a close relationship with the child, and the child did not refer to him as her father. Similarly, defense counsel argued that revoking the acknowledgment of parentage would serve the child's best interests because the child was mature, defendant had not contacted the child in over a year, plaintiff had other romantic relationships such that the child looked to other men as father figures, and the child should not be forced to have a relationship with an individual whom she knows is not her biological father. In contrast, plaintiff opined that the child loved defendant and stated that defendant was the only father figure the child has ever known. Additionally, plaintiff's counsel argued that revoking the acknowledgment of parentage did not serve the child's best interests because defendant recently expressed interest in exercising parenting time with the child, thereby indicating that the child could have a relationship with defendant in the future. Defense counsel never requested an evidentiary hearing to address the child's best interests.

Ultimately, the circuit court held that defendant failed to establish that he signed the acknowledgment of parentage based upon the mistaken belief that he was the child's biological father. The circuit court reasoned that defendant's statements in this regard lacked credibility. Furthermore, the circuit court held that defendant failed to establish that revoking the acknowledgment of parentage would serve the child's best interests. The circuit court reasoned that revoking the acknowledgment of parentage would leave the child without financial support and would deprive the child of a relationship with defendant after defendant willingly accepted the responsibilities of a father for approximately 10 years despite having knowledge that he was not the child's biological father. After the hearing concluded, the circuit court entered an order denying defendant's motion to revoke the acknowledgment of parentage. This appeal followed.

II. ANALYSIS

¹ Plaintiff and defendant both made statements on the record but were never placed under oath.

On appeal, defendant argues that reversal is required because the acknowledgment of parentage was based on a mistake of fact or a misrepresentation, revoking the acknowledgment of parentage served the child's best interests, the circuit court should have held an evidentiary hearing to resolve factual disputes regarding the child's best interests, and the circuit court misinterpreted the Revocation of Paternity Act. We disagree with defendant's assertions.²

A. STANDARDS OF REVIEW

In a case concerning the Revocation of Paternity Act, this Court reviews the lower court's factual findings, if any, for clear error. *Jones v Jones*, 320 Mich App 248, 253; 905 NW2d 475 (2017). A court has committed clear error when this Court is "definitely and firmly convinced that it made a mistake." *Id.* (quotation marks and citation omitted). "The proper interpretation and application of a statute is a question of law, which this Court reviews de novo." *Rogers v Wcisel*, 312 Mich App 79, 86; 877 NW2d 169 (2015) (citation omitted).

This Court reviews unpreserved claims of error in civil cases for plain error affecting a litigant's substantial rights. *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Plain error affects a litigant's substantial rights if the party is prejudiced by the error, meaning that the error affected the outcome of the lower court proceedings. *Duray Dev, LLC*, 288 Mich App at 150.

B. THE REVOCATION OF PATERNITY ACT

"The Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, confers the status of natural and legal father upon a man who executes an affidavit of parentage." *Helton v Beaman*, 304 Mich App 97, 105; 850 NW2d 515 (2014), *aff'd* 497 Mich 1001 (2015). "A man who executes an acknowledgment of parentage is known for legal purposes as the 'acknowledged father.'" *Id.* at 106, citing MCL 722.1433(1). Under the Revocation of Paternity Act, a child's acknowledged father may file an action to revoke an acknowledgment of parentage. MCL 722.1437(1). The Revocation of Paternity Act provides, in pertinent part:

(4) An action for revocation under this section shall be supported by an affidavit signed by the person filing the action that states facts that constitute 1 of the following:

(a) Mistake of fact.

(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.

² Plaintiff did not file a brief on appeal. Defendant did, but there is no citation to the record in the statement of facts as required by MCR 7.212(C)(6), and many of the case citations are incomplete.

- (c) Fraud.
- (d) Misrepresentation or misconduct.
- (e) Duress in signing the acknowledgment. [MCL 722.1437(4).]

If the court finds that the affidavit is sufficient, the court must order DNA identification profiling as set forth in MCL 722.1443(5). MCL 722.1437(5). “The person filing the action has the burden of proving, by clear and convincing evidence, that the acknowledged father is not the father of the child.” *Id.*

A court may refuse to enter an order revoking an acknowledgment of parentage if the court finds evidence that the order would not be in the best interests of the child. MCL 722.1443(4). The court shall state its reasons for refusing to enter an order on the record, and the court may consider the following factors:

- (a) Whether the presumed father is estopped from denying parentage because of his conduct.
- (b) The length of time the presumed father was on notice that he might not be the child’s father.
- (c) The facts surrounding the presumed father’s discovery that he might not be the child’s father.
- (d) The nature of the relationship between the child and the presumed or alleged father.
- (e) The age of the child.
- (f) The harm that may result to the child.
- (g) Other factors that may affect the equities arising from the disruption of the father-child relationship.
- (h) Any other factor that the court determines appropriate to consider. [MCL 722.1443(4).]

C. MISTAKE OF FACT

Defendant argues that the circuit court erred by denying his motion to revoke the acknowledgment of parentage because defendant set forth sufficient facts to demonstrate that the acknowledgment of parentage was based on a mistake of fact.

“A mistake of fact is a belief that a certain fact exists when in truth and in fact it does not exist.” *Rogers*, 312 Mich App at 96 (quotation marks and citation omitted). Evidence that a party acted in part on an erroneous belief is sufficient to establish a mistake of fact under MCL 722.1437(4). *Id.* Thus, even if a party had doubt about whether he was a child’s biological father

when signing an acknowledgment of parentage, the party may still establish a mistake of fact under MCL 722.1437(4). *Id.*

In his affidavit, defendant attested to his unequivocal belief that he was the child's biological father when he signed the acknowledgment of parentage. However, defendant contradicted this statement during the motion hearing, where defendant conceded that he had reason to doubt that he was the child's biological father when he signed the acknowledgment of parentage. When considered in isolation, defendant's statements indicate that defendant acted at least in part on the erroneous belief that he was the child's biological father when he signed the acknowledgment of parentage. Yet, defendant's statements were not presented in isolation. In support of plaintiff's response to defendant's motion, plaintiff relied upon e-mails³ she received from defendant approximately one month before the child's birth. In the e-mails, defendant discussed the child's biological father and expressed displeasure with the biological father's hesitancy to sign the child's birth certificate. These e-mails indicate that defendant knew he was not the child's biological father when he signed the acknowledgment of parentage. Accordingly, we are not left with a definite and firm conviction that the circuit court made a mistake when it found that defendant failed to demonstrate that the acknowledgment of parentage was based on a mistake of fact.

D. MISREPRESENTATION

For the first time in these proceedings, defendant further argues that, if this Court determines that defendant knew he was not the child's biological father when he signed the acknowledgment of parentage, then the acknowledgment of parentage was based on a misrepresentation such that revocation was appropriate under MCL 722.1437(4). Generally, for an issue to be preserved for appellate review, it must be raised in or decided by the lower court. *Glasker-Davis v Auvenshine*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 345238); slip op at 3. Because defendant did not raise this issue in the circuit court and it was not decided by the circuit court, this issue is unpreserved for appellate review.

The Acknowledgment of Parentage Act does not require individuals to attest to a signatory's status as the child's biological father when signing an acknowledgment of parentage. *In re Moiles*, 495 Mich 944, 944-945; 843 NW2d 220 (2014). Thus, the fact that defendant may have known that he was not the child's biological father when he signed the acknowledgment of parentage was insufficient to establish a misrepresentation warranting revocation under MCL

³ Defendant asserts in his appellate brief that defense counsel objected to the admission of the e-mails as being excluded under MRE 801. However, defense counsel did not raise an objection to the admission of the e-mails on the basis of hearsay. Instead, defense counsel argued that the e-mails had not been authenticated such that the circuit court should have declined to give significant weight to the evidence. Even if defense counsel had raised an objection on the basis of hearsay, the evidence would have been admissible under MRE 801(d)(2) as the admission of a party-opponent.

722.1437(4). Therefore, defendant has forfeited this issue by failing to demonstrate plain error affecting his substantial rights.

E. BEST INTERESTS

The circuit court did not err when it declined to enter an order revoking the acknowledgment of parentage after finding evidence that doing so was contrary to the child's best interests under MCL 722.1443(4).

The circuit court considered the best-interest factors set forth in MCL 722.1443(4) on the record, and found that revoking the acknowledgment of parentage was contrary to the child's best interests because defendant willingly accepted the responsibilities of a father for approximately 10 years despite having knowledge that he was not the child's biological father, the child regarded defendant as her father such that the child would be harmed if she were deprived of a paternal relationship with defendant, and the child would be left without financial support. The circuit court's findings are supported by the record.

The record reflects that defendant was on notice that he might not have been the child's biological father for a significant period of time before filing a motion to revoke the acknowledgment of parentage. Indeed, plaintiff produced e-mails that she received from defendant approximately one month before the child's birth in which defendant discussed the child's biological father and expressed displeasure with the biological father's hesitancy to sign the child's birth certificate. These e-mails indicate that defendant knew he was not the child's biological father when he signed the acknowledgment of parentage. Furthermore, defendant stated on the record that he was told he was not the child's biological father sometime before the parties' marriage in 2011. Thus, defendant maintained a paternal relationship with the child despite having notice that he was not the child's father since at least 2011.

Additionally, the record reflects that the child regarded defendant as her father such that the child would be harmed if she were deprived of a paternal relationship with defendant after approximately 10 years. In defendant's affidavit, defendant asserted that plaintiff had not allowed defendant to contact the child since May 2018, and the child no longer viewed defendant as her father. Plaintiff contested this assertion and stated on the record that defendant was the only father figure the child has ever known. Plaintiff opined that the child loved defendant. Thus, notwithstanding any recent lack of contact between defendant and the child, the record reflects that the child regarded defendant as her father and loved defendant such that the child would be harmed if she were deprived of a paternal relationship with defendant after approximately 10 years.

Lastly, the record reflects that the child would be deprived of financial support if the circuit court entered an order revoking the acknowledgment of parentage. An acknowledgment of parentage establishes paternity and may be used to seek child support. MCL 722.1004. On June 28, 2019, the Friend of the Court filed a proposed child support order as part of the ongoing divorce proceedings recommending that defendant pay \$738 per month in child support.⁴ Thus,

⁴ On February 28, 2020, the circuit court entered an order adopting the proposed child support order.

the child would be deprived of financial support if the circuit court entered an order revoking the acknowledgment of parentage, thereby causing harm to the child. For these reasons, the circuit court did not err when it declined to enter an order revoking the acknowledgment of parentage because doing so was contrary to the child's best interests.

F. EVIDENTIARY HEARING

We also reject defendant's argument that the circuit court erred by denying defendant's motion to revoke his acknowledgment of parentage without first holding an evidentiary hearing.

Again, for an issue to be preserved for appellate review, it generally must be raised in or decided by the lower court. *Glasker-Davis*, ___ Mich App at ___; slip op at 3. Defendant did not request an evidentiary hearing in the circuit court and raises an argument regarding the necessity of an evidentiary hearing for the first time on appeal. Obviously, then, during the trial court proceedings the circuit court did not address whether an evidentiary hearing was necessary, and this issue is unpreserved.

The Revocation of Paternity Act does not address whether courts are required to hold an evidentiary hearing before declining to revoke an acknowledgment of parentage based on the best interests of the child. MCL 722.1443(4). In support of his assertion that an evidentiary hearing was necessary, defendant relies upon this Court's opinion in *Parks v Parks*, 304 Mich App 232; 850 NW2d 595 (2014). In *Parks*, this Court considered whether the trial court erred by failing to conduct an evidentiary hearing to determine whether a child was born out of wedlock under MCL 722.1441(1)(a)(ii). *Id.* at 239. In doing so, this Court held that "a trial court may conduct such a hearing at its discretion when there are contested factual issues and a hearing would assist the trial court in making an informed decision on the issue." *Id.* at 239-240.

Defendant's reliance on *Parks* is unavailing. Notably, this Court's opinion in *Parks* addresses evidentiary hearings in the context of determining whether a child was born out of wedlock under MCL 722.1441(1)(a)(ii) rather than considering a child's best interests under MCL 722.1443(4). Even if we were to apply a similar analysis in the instant matter by analogy, *Parks* indicates that trial courts have discretion to conduct evidentiary hearings to resolve contested factual issues. *Parks*, 304 Mich App at 239-240. Because evidentiary hearings are not required, defendant has failed to show that the circuit court committed a clear and obvious error by denying defendant's motion to revoke his acknowledgment of parentage without first holding an evidentiary hearing. Furthermore, defendant has failed to indicate what evidence, if any, he would have presented at an evidentiary hearing regarding the child's best interests. Thus, defendant has failed to show that he was prejudiced by the circuit court's failure to hold an evidentiary hearing. Therefore, defendant has forfeited this issue by failing to demonstrate plain error affecting his substantial rights.

G. INTERPRETATION OF THE REVOCATION OF PATERNITY ACT

As his final argument, defendant argues that the circuit court erroneously concluded that consideration of the child's best interests was mandatory rather than discretionary, and the circuit court erred by placing the burden on defendant to prove that revoking the acknowledgment of parentage served the child's best interests.

Again, for an issue to be preserved for appellate review, it generally must be raised in or decided by the lower court. *Glasker-Davis*, ___ Mich App at ___; slip op at 3. Defendant did not challenge the circuit court's interpretation of the Revocation of Paternity Act in the circuit court, and thus the circuit court did not consider the merits of defendant's arguments. This issue is also unpreserved.

Assuming for the sake of argument that the circuit court made a clear and obvious error in its interpretation of the Revocation of Paternity Act, defendant has failed to establish that he was prejudiced by the error. Indeed, defendant failed to establish a mistake of fact or a misrepresentation warranting revocation under MCL 722.1437(4). Accordingly, the circuit court could have denied defendant's motion to revoke the acknowledgment of parentage without considering the child's best interests under MCL 722.1443(4). Therefore, defendant has forfeited this issue by failing to demonstrate plain error affecting his substantial rights.

Affirmed.

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Michelle M. Rick