MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of A.D.S.,

Zach Shaw,

Appellant-Respondent,

v.

Cheyenne Sexton and Fallan Markwell,

Appellees-Respondents,

and

State of Indiana,

Appellee-Petitioner.

March 13, 2023

Court of Appeals Case No. 22A-JP-1577

Appeal from the Henry Circuit Court

The Honorable Kit C. Dean Crane, Judge

The Honorable Lynn Ellen Liggett, Commissioner

Trial Court Cause No. 33C02-1602-JP-11

Memorandum Decision by Judge Foley

Judges Robb and Mathias concur.

Foley, Judge.

[1] In this paternity matter, Zach Shaw ("Shaw"), the father of the minor child, appeals the trial court's denial of his motion for DNA testing, which was filed some six years after the paternity determination. Shaw claims the court's order is not supported by sufficient evidence and is contrary to both law and an agreement by the parties. We affirm.

Facts and Procedural History[1]

[2] On April 29, 2016, Shaw was adjudicated the father of A.D.S. On April 21, 2022, Shaw filed his Renewed Petition for Genetic Testing asserting that text messages from A.D.S.'s custodial grandparent ("Markwell") indicated that a genetic test revealed that Shaw was not A.D.S.'s father. On April 28, 2022, a hearing was held. During the hearing, Markwell testified that she obtained genetic material from Shaw's mother and father ("paternal grandparents"). The genetic material collected from A.D.S. and the paternal grandparents was sent to a laboratory to determine if they were his grandparents. No test results were provided to the court, but Markwell testified that the genetic testing results excluded the paternal grandparents as being related to A.D.S. Markwell did not object to Shaw's request for DNA testing. On June 2, 2022, the trial court

[1] Given that only Shaw filed a brief, we take the limited relevant facts and procedural history from the appellant's brief, appellant's appendix, hearing transcript, and the trial court's appealed order.

denied Shaw's request and entered its Order Denying Motion for DNA Testing. The trial court specifically found that "[t]he DNA testing was conducted for the sole purpose of determining paternity of the child" and "was not inadvertently stumbled upon through regular medical care." Appellant's App. p. 12. Shaw now appeals.[2]

Discussion and Decision

[3] We note that Markwell did not file an appellee's brief. "When an appellee fails to submit a brief, we apply a less stringent standard of review with respect to the showing necessary to establish reversible error." *In re Paternity of S.C.*, 966 N.E.2d 143, 148 (Ind. Ct. App. 2012), *aff'd on reh'g*, 970 N.E.2d 248 (Ind. Ct. App. 2012), *trans. denied*. "In such cases, we may reverse if the appellant establishes prima facie error, which is an error at first sight, on first appearance, or on the face of it." *Id.* "Moreover, we will not undertake the burden of developing legal arguments on the appellee's behalf." *Id.* The appellee's failure to file a brief does not relieve us of our obligation to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Vandenburgh v. Vandenburgh*, 916 N.E.2d 723, 725 (Ind. Ct. App. 2009).

[2] We conclude that the June 2 order "dispose[d] of all claims as to all parties[,]" thus making it a final judgment. *See* Ind. Appellate Rule 2(H)(1); *see also Ramsey v. Moore*, 959 N.E.2d 246, 251 (Ind. 2012) ("To fall under Appellate Rule 2(H)(1), an order must dispose of all issues as to all parties, ending the particular case and leaving nothing for future determination").

[4] Shaw claims that the trial court abused its discretion when it denied his request for DNA testing. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (quoting *In re L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)).

[5] Shaw specifically maintains that the trial court's reliance upon *Fairrow v. Fairrow*, 559 N.E.2d 597 (Ind. Ct. App. 1990) is misplaced. In *Fairrow*, the divorced father of a child consulted a medical geneticist after the child developed symptoms of sickle cell anemia. Genetic testing was conducted and revealed that the father was not the biological father of the child. The Supreme Court reversed the trial court's order denying father relief from the paternity judgment under Trial Rule 60(B)(8). The court held he was entitled to relief "[i]n light of the unusual way in which he stumbled upon medical evidence demonstrating that he was not" the child's father. *Id.* at 599. The court continued, "[a]lthough we grant [appellant] relief, we stress that the gene testing results which gave rise to the prima facia case for relief in this situation became available independently of court action." *Id.* at 600. Finally, the court recognized the policy implications of its decision and noted:

> In granting relief to a party who learned of his non-parenthood through the court of ordinary medical care, we do not intend to create a new tactical nuclear weapon for divorce combatants . . . . [W]e strongly discourage relitigation of support issues through T.R. 60(B)(8) motions in the absence of highly unusual evidence akin to the evidence presented in this case.

Id.

[6] Shaw asserts that he is "the type of innocent bystander that *Fairrow* was initially designed to protect and provide remedy for" because "the evidence establishing non-paternity was not actively sought by the putative father, but was discovered almost inadvertently in a manner that was unrelated to child support proceedings." Appellant's Br. p. 9. Shaw further contends that his DNA test request was "to determine if [he] was the father of [A.D.S.] in a moral sense, as opposed to a legal sense[,]" which he claims makes *Fairrow* inapplicable because *Fairrow* "controls attempts by an adjudicated father of a child to set aside prior orders establishing paternity for purposes of stopping a child support order." Appellant's Br. p. 7. Finally, Shaw claims that because A.D.S.'s mother filed no objection to the DNA testing and the fact that the State and Markwell agreed to allow the test to proceed, "the trial court had no basis upon which to deny the agreement of the parties." *Id.* at 8.

[7] We disagree. Although Shaw was not involved in Markwell's DNA test, the sole purpose of the test was to challenge Shaw's paternity of A.D.S. When Markwell got the DNA results back, she texted Shaw's mother that "[Shaw] isn't the father. . . [s]o he can be happy now." Father's Exhibit B. When Shaw received the news, he responded, stating "[i]f [A.D.S.] isn't mine then why isn't the child support being taken off me[?]" Father's Exhibit D. Shaw further told Markwell to "do the right thing and go to court to find the father and stop screwing me over." *Id.* Despite the fact that Shaw may not have initiated the DNA testing, we cannot conclude that the non-paternity "was discovered

almost inadvertently in a manner that was unrelated to child support proceedings." *Tirey*, 806 N.E.2d at 363 n.2.

[8] Moreover, Markwell's DNA test results fall well short of the "clear medical proof" relied upon in *Fairrow v. Fairrow*, 559 N.E.2d at 600. The reliability of the DNA test obtained by Markwell is not known. No test results were admitted into evidence. The sole source of the test results is Markwell's testimony, which simply concluded that the paternal grandparents were excluded by their DNA. These facts fall well outside of the limited exception set forth in *Fairrow.* Finally, the court is not bound by the "agreement" between Markwell and Shaw in order to permit genetic testing, and Shaw provides no authority for his position that the trial court should be bound by such an "agreement."

[9] The trial court correctly applied *Fairrow* and did not abuse its discretion when it denied Shaw's motion for DNA testing.

[10] Affirmed.

Robb, J., and Mathias, J., concur.