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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of
R.A.K.R.:

J.L.J.,

Appellant-Petitioner,

In the Matter of the Paternity of
R.A.K.R.:

S.R.,

Appellee-Petitioner,

M.J.,

Respondent,

J.L.J.,

Appellant-Intervenor

July 20, 2021

Court of Appeals Case No.
21A-AD-187

Appeal from the
Sullivan Circuit Court

The Honorable
Robert E. Hunley II, Judge

Trial Court Cause Nos.
77C01-2011-AD-14
77C01-1906-JP-8

Tavitas, Judge.

Case Summary

- [1] In this consolidated adoption and paternity case, J.L.J. (“Stepfather”) appeals the trial court’s dismissal of his petition to adopt R.A.K.R. (“Child”) and denial of his motion to vacate the determination in the paternity case that S.R. (“Father”) is the biological father of Child. We affirm.

Facts

- [2] Child was born in January 2013. At the hospital, M.J. (“Mother”) and Father, who were not married, executed a paternity affidavit under [Indiana Code section 16-37-2-2.1](#) indicating that Father is the “biological father of” Child. Ex. E, p. 34. Thereafter, Mother had custody of Child, and Father exercised parenting time and paid child support. In 2016, Mother married Stepfather.
- [3] In June 2019, Father filed a petition to establish paternity, custody, and child support in Sullivan Circuit Court. Father alleged he regularly paid child support and exercised parenting time with Child until April 2019, at which time Mother started denying him parenting time. A hearing was held in October 2019. At the hearing, the trial court admitted into evidence the paternity affidavit, and Mother and Father “admit[ted]” Father is the biological father of Child. Appellant’s App. Vol. II p. 141. The court granted Father visitation under the Indiana Parenting Time Guidelines and ordered the parties to mediate the remaining issues of custody and child support.

- [4] In October 2020, while those issues were still pending, Stepfather filed a petition to adopt Child, then seven years old, in Hamilton Superior Court. The petition alleged: (1) Father “is the legal father of the Child, but not the biological father of the Child,” and (2) Father’s consent to the adoption “is not required because he is not the biological father of the Child.” *Id.* at 13-14. Stepfather also asked the trial court to consolidate the paternity case with the adoption case and to order the parties to undergo DNA testing. Father filed a motion to contest and dismiss the adoption petition and a motion to transfer venue to Sullivan County, as no parties lived in Hamilton County.
- [5] In addition, Stepfather moved to intervene in the paternity case. He asked the court to (1) vacate the paternity determination, (2) order the parties to undergo DNA testing, and (3) dismiss the paternity action if the DNA testing revealed Father is not the biological father of Child.
- [6] In November 2020, the Hamilton Superior Court transferred the adoption case to Sullivan County without ruling on the pending issues. The Sullivan Circuit Court consolidated the two cases and allowed Stepfather to intervene in the paternity action “for the limited purpose of allowing the parties to proceed with the Motion to Dismiss in the Adoption cause of action.” *Id.* at 11.
- [7] In December 2020, the Sullivan Circuit Court held a hearing on all disputed issues in the paternity and adoption actions. Mother testified she was three months pregnant with Child when she met Father; Father is not the biological father of Child; Father knows he is not the biological father of Child (although

she did not identify the alleged biological father); and she lied when she testified in October 2019 that Father is the biological father of Child. Father testified he and Mother “had unprotected sex so, [Child] was [his] son.” Tr. p. 26. In January 2021, the court entered an order denying Stepfather’s request for DNA testing, granting Father’s motion to contest and dismiss the adoption petition, and denying Stepfather’s motion to vacate the paternity determination.

Specifically, the court found:

1. The Court established paternity of the minor child on the 10th day of October, 2019 at which time both the biological mother and [Father] testified under oath that [Father] was, in fact, the biological father, of [Child].^[1]
2. That the parties also signed an affidavit at the hospital showing that [Father] was the biological father of [Child].
3. It now appears, that mother has found a new husband and now wants to undo what she previously has done.
4. Biological mother now claims that she perjured herself at the original paternity hearing and claimed that [Father] is not actually the biological father.

* * * * *

¹ As explained in more detail below, paternity was conclusively established by the paternity affidavit Mother and Father executed at the hospital, not the later court proceedings.

8. The Court is not willing to “de-parent” the child, for lack of a better word, to simply allow mother’s new husband to attempt to adopt the minor child.

* * * * *

10. The Court believes that [Father]’s consent is required in this case.

Appellant’s App. Vol. II pp. 11-12.

[8] Stepfather now appeals.

Analysis

[9] Stepfather contends Father’s consent to the adoption is not required and the trial court therefore erred in dismissing Stepfather’s adoption petition. [Indiana Code section 31-19-9-1](#) provides consent to adoption is required from certain people:

(a) Except as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by the following:

(1) Each living parent of a child **born in wedlock**, including a man who is presumed to be the child’s

biological father under [IC 31-14-7-1\(1\)](#) if the man is the biological or adoptive parent of the child.^[2]

(2) The mother of a child **born out of wedlock** and the father of a child whose paternity has been established by:

(A) a court proceeding other than the adoption proceeding, except as provided in [IC 31-14-20-2](#); or

(B) a paternity affidavit executed under [IC 16-37-2-2.1](#);

unless the putative father gives implied consent under Section 15 of this chapter.

(Emphases added). According to subsection (a)(2)(B), written consent is required from “the father of a child whose paternity has been established by” a paternity affidavit. Here, Mother and Father executed a paternity affidavit. Stepfather sought to have the paternity determination vacated. Stepfather, however, has no legal basis on which to set aside the paternity determination.

[10] [Indiana Code section 31-14-2-1](#) provides paternity “may only be established: (1) in an action under [Indiana Code article 31-14]; or (2) by executing a paternity

² Stepfather repeatedly claims Father’s consent to the adoption is not required under [Section 31-19-9-1\(a\)\(1\)](#) because Father allegedly is not the biological father of Child. *See, e.g.*, Appellant’s Br. pp. 23, 32, 33, 36; Appellant’s Reply Br. pp. 19, 21. But subsection (a)(1) only applies to a child “born in wedlock,” and here, Child was born out of wedlock. Because subsection (a)(1) does not apply, Stepfather’s arguments relying on this subsection necessarily fail.

affidavit in accordance with IC 16-37-2-2.1.”³ A paternity affidavit “conclusively establishes the man as the legal father of a child without any further proceedings by a court” and gives rise to parental rights and responsibilities regarding the right to obtain child support, health insurance, and parenting time. Ind. Code § 16-37-2-2.1(j), (p).⁴ “A man is a child’s legal father if the man executed a paternity affidavit in accordance with IC 16-37-2-2.1 and the paternity affidavit has not been rescinded or set aside under IC 16-37-2-2.1.” I.C. § 31-14-7-3.

[11] Where paternity is established by an affidavit, it may be set aside in limited circumstances. Section 16-37-2-2.1(k) gives a man “who is a party to a paternity affidavit” sixty days after executing the affidavit to file a court action requesting genetic testing. If that genetic testing excludes the man who executed the paternity affidavit as the child’s biological father, the court may rescind or set aside the paternity affidavit. I.C. § 16-37-2-2.1(n). After sixty days have passed, a court may only rescind or set aside a paternity affidavit when: (1) the court “has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit” **and** (2) the court, “**at the request of a**

³ Although Father filed a petition to “establish” paternity, custody, and child support, that does not change the fact that his paternity was established earlier by a paternity affidavit. See *Young v. Davis*, 139 N.E.3d 1099, 1103 (Ind. Ct. App. 2019) (“[A] properly executed paternity affidavit conclusively establishes paternity.”), *reh’g denied, trans. denied*.

⁴ Indiana Code section 31-14-11-1 provides that if a paternity affidavit is executed under Section 16-37-2-2.1 and the man who executed the paternity affidavit “fails to set forth evidence at a child support hearing that rebuts the man’s paternity,” “an order establishing paternity and child support for the child named in the paternity affidavit may be obtained at a child support hearing without any further proceedings to establish the child’s paternity.”

man” who executed a paternity affidavit, “has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.” *Id.* at (1) (emphasis added).

[12] [Section 16-37-2-2.1](#) does not allow Stepfather to rescind or set aside the paternity affidavit in this case; rather, it allows only Father to do so under limited circumstances. Father, however, has not sought to rescind or set aside the paternity affidavit. *Cf. In re Paternity of M.M.*, 889 N.E.2d 846, 848-49 (Ind. Ct. App. 2008) (man who executed paternity affidavit in the hospital—not a third party—sought to set aside the affidavit on grounds of fraud or material mistake of fact), *reh’g denied*. Instead, Stepfather wants to exercise the rights Child’s legal father has under [Section 16-37-2-2.1](#) to request a paternity test.

[13] Nevertheless, Indiana courts have held paternity may be indirectly disestablished by establishing paternity in another man who is determined to be the biological father based on genetic testing. *See Litton v. Baugh*, 122 N.E.3d 1034, 1040 (Ind. Ct. App. 2019); *In re Paternity of I.I.P.*, 92 N.E.3d 1158, 1162-63 (Ind. Ct. App. 2018); *In re Paternity of Infant T.*, 991 N.E.2d 596, 600 (Ind. Ct. App. 2013), *trans. denied*; *In re Paternity of N.R.R.L.*, 846 N.E.2d 1094, 1097 (Ind. Ct. App. 2006) (“Although Rogge’s execution of the paternity affidavit established him as the child’s legal father, that does not preclude another man from attempting to establish paternity of the child.”), *trans. denied*. [Indiana Code section 31-14-4-1](#) sets forth who can file a paternity action, including a man

alleging to be a child's biological father.⁵ *See also* I.C. § 31-14-5-3 (setting forth time limitations for filing paternity actions). As Stepfather points out, there is a substantial public policy in correctly identifying parents and their offspring. But here, we do not have a man alleging to be Child's biological father petitioning the court to establish paternity; rather, we have a prospective adoptive parent trying to set aside paternity in order to obviate the requirement for Father's consent.⁶

[14] Stepfather argues he properly intervened in the paternity action as a prospective adoptive parent and his status as an intervening party allowed him to request DNA testing. [Indiana Code section 31-14-21-8](#) provides:

(a) If:

(1) an adoption of a child who is the subject of the paternity action is pending; and

(2) the prospective adoptive parents file a motion to intervene;

the court having jurisdiction over the paternity action under this article shall allow the prospective adoptive parents to intervene in

⁵ Although a mother can generally file a paternity action, *see* I.C. § 31-14-4-1, Mother cannot do so here because she executed a paternity affidavit at the hospital and testified at the October 2019 hearing that Father is the biological father of Child. “[O]nce a mother has signed a paternity affidavit, she may not use the paternity statutes to deprive the legal father of his rights, even if he is not the biological father.” [Litton, 122 N.E.3d at 1043](#) (quoting *In re Paternity of H.H.*, 879 N.E.2d 1175, 1178 (Ind. Ct. App. 2008)).

⁶ Stepfather cites several cases where a man and woman were married when a child was born and the statutory presumption that the man was the child's biological father applied. These cases do not apply here.

the paternity action under [Rule 24 of the Indiana Rules of Trial Procedure](#).

(b) The prospective adoptive parents may intervene under this section solely for purposes of:

(1) receiving notice of the paternity proceedings; and

(2) attempting to ensure that the putative father's paternity is not established unless the putative father is the child's biological father.

(c) A prospective adoptive parent may object to any error that occurs during the paternity proceedings.

[15] According to subsection (b)(2), prospective adoptive parents may intervene in a paternity case to attempt to ensure the putative father's paternity is not established unless the putative father is the child's biological father. But when Stepfather intervened, Father's paternity had already been established by a paternity affidavit and thus there was no "putative father."⁷ Because Father's paternity had already been established, subsection (b)(2) did not allow Stepfather to request DNA testing.⁸

⁷ A "putative father" is a man who is alleged to be or claims to be a child's father but who has not established paternity of the child in a court proceeding or by executing a paternity affidavit. *See Ind. Code § 31-9-2-100.*

⁸ For the same reason, subsection (c) did not allow Stepfather to request DNA testing.

[16] Still, Stepfather argues he could request DNA testing under two additional statutes. The first statute, [Indiana Code section 31-14-6-1](#), provides: “Upon the motion of any party, the court shall order all of the parties to a paternity action to undergo blood or genetic testing.” The purpose of this testing is to determine paternity, and where paternity is conclusively established, the purpose has been fulfilled and therefore no testing is required. *Rundel v. Shady*, 492 N.E.2d 694, 697 (Ind. Ct. App. 1986) (explaining the statute “is applicable only in adversarial settings”)⁹; see also *Schmitter v. Fawley*, 929 N.E.2d 859, 863 (Ind. Ct. App. 2010) (explaining the purpose of DNA testing is to determine paternity and “[o]nce that purpose no longer exists, the need for testing under [Indiana Code section 31-14-6-1](#) evaporates”), *superseded by rule on other grounds*. Here, Mother and Father executed a paternity affidavit, which conclusively established paternity in Father without any further proceedings by a court. In addition, Mother and Father admitted at the October 2019 hearing that Father is the biological father of Child. Stepfather could not request DNA testing under this statute.

[17] The second statute Stepfather cites, [Indiana Code section 31-14-21-9.1\(a\)](#), provides:

Except as provided under section 13 of this chapter and subject to [IC 31-19-2-14](#), at the initial hearing held under section 9 of this

⁹ [Section 31-14-6-1](#) was previously codified at [Indiana Code section 31-6-6.1-8](#), which is the statute *Rundel* addresses.

chapter,^[10] the court shall order all the parties to the paternity action to undergo blood or genetic testing.

To date, no Indiana appellate court has addressed [Section 31-14-21-9.1](#). When interpreting a statute, our goal is to ascertain the legislature’s intent and interpret the statute to effectuate that intent. *In re Paternity of D.L.*, 938 N.E.2d 1221, 1226 (Ind. Ct. App. 2010), *aff’d on reh’g*, 943 N.E.2d 1284 (Ind. Ct. App. 2011). The best evidence of legislative intent is the language of the statute itself, and therefore we strive to give the words in a statute their plain and ordinary meaning. *Id.*

[18] According to the plain language of [Section 31-14-21-9.1\(a\)](#), the trial court, at the initial hearing, shall order the parties to undergo DNA testing. Like [Section 31-14-6-1](#) above, this statute presumes paternity is being established in an adversarial setting. Here, Mother and Father executed a paternity affidavit, which conclusively established paternity in Father without any further proceedings by a court. In addition, Mother and Father admitted at the October 2019 hearing that Father is the biological father of Child. Stepfather could not request DNA testing under this statute either.

[19] Because Stepfather cannot seek to rescind or set aside the paternity affidavit in order to obviate the requirement for Father’s consent, the paternity affidavit

¹⁰ [Indiana Code section 31-14-21-9](#) provides “the court shall conduct an initial hearing not more than thirty (30) days after: (1) the filing of the paternity petition; or (2) the birth of the child; whichever occurs later.”

stands. Accordingly, Father’s consent to the adoption of Child is required. Because Father has not given that consent, the trial court properly dismissed Stepfather’s petition to adopt Child.¹¹

Conclusion

[20] We affirm the trial court’s dismissal of Stepfather’s petition to adopt Child and denial of his motion to vacate the paternity determination.

Bradford, C.J., and Brown, J., concur.

¹¹ Stepfather argues the trial court erred in excluding evidence “that was directly relevant to whether [Father] is the biological father of the Child.” Appellant’s Br. p. 40. But because we have determined Stepfather cannot seek to rescind or set aside the paternity determination, the trial court did not err in excluding this evidence.