MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Paternity of S.L.R.,

Brooke Pace,
Appellant-Petitioner,

v.

Cameron Richardson,
Appellee-Respondent.

July 5, 2022

Court of Appeals Case No. 22A-JP-482

Appeal from the Grant Superior Court

The Honorable Brian F. McLane, Magistrate

Trial Court Cause No. 27D02-2011-JP-106

Bradford, Chief Judge.

Case Summary

[1] Brooke Pace ("Mother") became involved in a romantic relationship with Camron Richardson ("Father") in late 2018. Mother gave birth to S.L.R. ("Child") on May 19, 2019. Mother and Father executed a paternity affidavit on the date Child was born, establishing Father as Child's legal father. Mother and Father subsequently became involved in a dispute regarding custody and parenting time of Child. During this dispute, Mother attempted to have the previously-executed paternity affidavit overturned, claiming that Father had committed fraud when he signed it because he had known that he was not Child's biological father. The trial court rejected this attempt and denied Mother's subsequent motion to correct error.

[2] Mother challenges the denial of her motion to correct error on appeal. For his part, Father argues that the trial court did not abuse its discretion in denying Mother's motion to correct error and requests that we order Mother to pay his appellate attorney's fees. Upon review, we affirm the trial court's denial of Mother's motion to correct error but deny Father's request for appellate attorney's fees.

Facts and Procedural History

[3] Mother and Father became involved in a romantic relationship prior to Child's birth. Child was born on May 29, 2019. On the date of Child's birth, Mother

and Father executed a paternity affidavit,[1] establishing Father as Child's legal father. That same day, Mother signed a document entitled "Verification of Birth Facts," in which she listed Father as Child's father. Appellee's App. Vol. II p. 12.

[4] Mother and Father subsequently became involved in a custody and parenting time dispute, which led to Father filing a verified petition to establish paternity, custody, parenting time, and child support. On February 4, 2021, Mother responded by filing a motion to dismiss Father as a party, claiming that the previously-executed paternity affidavit should be set aside because Father had admitted that "he was not the biological father of [Child]" and he had known that "he was not the biological father of [Child at] the time he signed the Paternity Affidavit." Appellant's App. Vol. II p. 15.

[5] On January 5, 2022, the trial court denied Mother's motion to dismiss Father as a party, stating

> 2. The paternity affidavit provided to the court appears to have signatures of both parties, executed on the day of the birth of the child.
>
> 3. Father had previously testified that he knew he was not the biological father of the child at the time he executed the affidavit.
>
> 4. Mother seeks to set aside the paternity affidavit alleging

[1] Although Mother argues on appeal that the Paternity Affidavit was not made part of the record below, review of the transcript reveals that both the trial court and Mother's trial counsel acknowledged that the Paternity Affidavit was part of the record before the trial court.

fraud.

5. Pursuant to I.C. § l6-37-2-2.1(l), a paternity affidavit may not be rescinded after 60 days of its execution unless the court determines that fraud, duress or mistake of fact existed in the execution of the affidavit. Additionally, it is required that at the request of a man executing a paternity affidavit, a genetic test was ordered and the man is excluded as the biological father of the child.

6. The [Court] does not find that fraud, duress or mistake of fact existed in the execution of the affidavit.

7. Moreover, Mother does not have standing to request a genetic test of the man executing a paternity affidavit. By the plain words of the statute, only a man may request the court to order genetic testing.

Appellant's App. Vol. II pp. 9–10. Mother subsequently filed a motion to correct error, which the trial court denied on March 7, 2022.

Discussion and Decision

[6] On appeal, Mother contends that the trial court abused its discretion in denying her motion to correct error. For his part, Father contends that the trial court properly denied Mother's motion to correct error and requests that this court order Mother to pay his appellate attorney's fees.

I. Denial of Mother's Motion to Correct Error

[7] "[W]e generally review a ruling on a motion to correct error for an abuse of discretion, we will only reverse where the trial court's judgment is clearly

against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law." *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021) (internal quotation omitted). "However, to the extent we are reviewing the courts' interpretation and application of the paternity statutes, our review is de novo because the interpretation of a statute is a question of law." *In re Paternity of H.H.*, 879 N.E.2d 1175, 1177 (Ind. Ct. App. 2008) (emphasis omitted).

[8] "A man's paternity may only be established: (1) in an action under [Article 14 of Title 31]; or (2) by executing a paternity affidavit in accordance with [Indiana Code section] 16-37-2-2.1." Ind. Code § 31-14-2-1. "Once a man executes a paternity affidavit in accordance with I.C. § 16-37-2-2.1, he 'is a child's legal father' unless the affidavit is rescinded or set aside pursuant that same statute." *In re Paternity of H.H.*, 879 N.E.2d at 1177 (quoting Ind. Code § 31-14-7-3). When more than sixty days have passed since the execution of a paternity affidavit, the affidavit may not be rescinded unless a court:

> (1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and
>
> (2) at the request of a man described in subsection (k), has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

Ind. Code § 16-37-2-2.1(l).

[9] In this case, Mother attempted to have the paternity affidavit set aside, claiming that it was fraudulently executed because both she and Father had known that

Father was not Child's biological father at the time the paternity affidavit was executed. We considered a similar claim in *In re Paternity of H.H.*, concluding that "[w]e do not believe the legislature intended [Indiana Code section 16-37-2-2.1] to be used to set aside paternity affidavits executed by a man and woman who both knew the man was not the biological father of the child." 879 N.E.2d at 1177.

> Rather, we believe the legislature intended to provide assistance to a man who signed a paternity affidavit due to "fraud, duress, or material mistake of fact." Ind. Code § 16-37-2-2.1(i).[2] A woman who gives birth knows she is the parent of the child, *see In re Paternity of B.M.W.*, 826 N.E.2d 706, 708 (Ind. Ct. App. 2005) ("We have always been able to tell with absolute certainty who is the mother of a child."), but men do not have the same certainty. *See Adoptive Parents of M.L.V. v. Wilkens*, 598 N.E.2d 1054, 1059 (Ind. 1992) ("Because it is generally not difficult to determine the biological mother of a child, a mother's legal obligations to her child arise when she gives birth. It is more difficult, however, to determine the biological father."). Frequently, the woman is the only one who could know whether more than one man might be the father of her child. Accordingly, a woman always has the information necessary to question paternity prior to signing the affidavit. A man, however, could easily sign an affidavit without awareness of the questionable nature of his paternity; this is the situation we believe the legislature intended to address.
>
> If mothers could manipulate the paternity statutes in this manner, men would have no incentive to execute paternity affidavits, and

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[2] *In re Paternity of H.H.* cites to an earlier version of Indiana Code section 16-37-2-2.1. The subsection relating to recension of a paternity affidavit can now be found at subsection (l).

> thereby voluntarily accept the responsibility to provide for children financially and emotionally, without genetic evidence proving their paternity. If a woman can assert fraud when she and the father defrauded the State Department of Health, she presumably could assert fraud when she alone defrauded the Department and the man who signed the affidavit. Under the trial court's holding, a man could maintain his legal relationship with a child in such a situation only if he had genetic proof of his paternity. If a woman may "use" a man to support her and her children until she tires of him, and then "dispose" of him as both partner and father, an unwed father would have no guarantee his relationship with a child could be maintained without proof of a genetic relationship. This could not be the intent of our legislature. Neither could it further the public policy of this State, where "protecting the welfare of children ... is of the utmost importance." *Straub v. B.M.T. by Todd*, 645 N.E.2d 597, 599 (Ind. 1994). Therefore, once 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.

Id. at 1177–78.

[10] We find our prior decision in *In re Paternity of H.H.* to be applicable in this case. Like the father in that case, in this case, Father is the only father that Child has ever known. Mother and Father executed a paternity affidavit establishing Father as Child's legal father on the day Child was born. Also on that date, Mother signed verified birth facts relating to Child, naming Father as Child's father. In addition, Father has provided for Child financially and emotionally since her birth and has continued to visit and support her after his separation from Mother. He is her legal parent and has assumed all responsibilities attendant thereto. Changing his legal status at this date is not in the best

interests of Child, Father, or our State. As such, similar to our conclusion in *In re Paternity of H.H.*, we conclude that Mother may not now challenge Father's paternity. The trial court, therefore, did not abuse its discretion in denying Mother's motion to correct error.

II. Father's Request for Appellate Attorney's Fees

[11] Indiana Appellate Rule 66(E) provides that we "may assess damages if an appeal … is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees."

> Our discretion to award attorney fees under Appellate Rule 66(E) is limited to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay. *Manous, LLC v. Manousogianakis*, 824 N.E.2d 756, 767 (Ind. Ct. App. 2005). Moreover, while we have discretionary authority to award damages on appeal, we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal. *In re Estate of Carnes*, 866 N.E.2d 260, 267 (Ind. Ct. App. 2007). A strong showing is required to justify an award of appellate damages, and the sanction is not imposed to punish mere lack of merit, but something more egregious. *Id.*

Poulard v. Laporte Cnty. Election Bd., 922 N.E.2d 734, 737–38 (Ind. Ct. App. 2010).

[12] Father argues that "the awarding of appellee attorney fees by this Court in this matter is appropriate" because Mother "pursues this appeal based upon frivolity and it is essentially meritless in foundation and is only being done to delay the

ultimate outcome, which is that [Father] is a permanent fixture in Child's life and remains Child's father." Appellee's Br. pp. 25–26. Again, we must exercise extreme restraint when considering whether to award appellate attorney's fees due to the potential chilling effect such an award might have upon one's decision whether to exercise their right to appeal. Thus, although Mother was ultimately unsuccessful on appeal, we decline to award Father the requested appellate attorney's fees because we cannot say that Mother's appeal was "permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of dely." *Poulard*, 922 N.E.2d at 737.

[13] The judgment of the trial court is affirmed.

Najam, J., and Bailey, J., concur.