IN THE COURT OF APPEALS OF IOWA

No. 3-848 / 13-0540
Filed December 5, 2013

Upon the Petition of
KATHERINE ERIN HENDRICKSON,
Petitioner-Appellant,

And Concerning,
COREY L. HENDRICKSON and
DENNIS SCOTT VAUGHN,
Respondents-Appellees.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

Katherine Hendrickson appeals from the denial of her motion for summary judgment and the grant of Dennis Vaughn's motion for summary judgment in her action to disestablish paternity of her child. **AFFIRMED.**

Nicole S. Facio of Newbrough Law Firm, L.L.P., Ames, for appellant.

Eric Borseth of Borseth Law Office, Altoona, for appellee Vaughn.

Heard by Vogel, P.J., and Potterfield and McDonald, JJ.

POTTERFIELD, J.

Katherine Hendrickson appeals from the denial of her motion for summary judgment and grant of Dennis Vaughn's motion for summary judgment in her action to disestablish paternity. She argues the district court improperly interpreted and applied Iowa Code section 600B.41A (2011). We affirm the district court's dismissal of Katherine's action.

I. Facts and Proceedings.

Katherine Campbell (n/k/a Katherine Hendrickson) gave birth to a child in 1997. A few months later, she began a relationship with Corey Hendrickson. Katherine and Corey married in 1999. In 2001, they signed a paternity affidavit pursuant to Iowa Code section 252A.3A (2001) establishing Corey as the child's father. Both knew when they signed the affidavit that Corey was not the child's father.

In February of 2012, when the child was fourteen years old, Katherine filed a petition to disestablish Corey's paternity—though the two were still married and planned to continue their relationship with each other and Corey's parental relationship with the child. Katherine petitioned to establish Dennis Vaughn as the child's father. She also sought payment from Dennis for "past support and maintenance for the minor child, permanent support, and medical support of the minor child." A DNA test showed Dennis was the child's biological father. A guardian ad litem (GAL) was appointed for the child. The report from the GAL stated both Katherine and Corey wished for Corey's paternity to be disestablished, and the child wished to have contact with Dennis. Katherine and Dennis both moved for summary judgment.

The district court granted Dennis's motion, finding Katherine could not meet her statutory burden to show the paternity affidavit was the result of fraud under Iowa Code section 600B.41A(3)(f)(2) (2011), concluding "[n]othing in the existing record can be reasonably construed as constituting [proof the affidavit was based on fraud, duress, or material mistake of fact]. Clearly, neither Ms. Hendrickson nor Mr. Hendrickson defrauded, tricked, pressured, or otherwise coerced the other into signing the paternity affidavit." Katherine appeals.

II. Analysis.

"Our review of paternity actions under chapter 600B is for errors at law. Likewise, our review of statutory interpretation is at law." *Callender v. Skiles*, 591 N.W.2d 182, 184 (Iowa 1999). We review a district court's grant of summary judgment for the correction of errors at law. *Campbell v. Delbridge*, 67 N.W.2d 108, 110 (Iowa 2003). Katherine argues the district court interpreted the fraud requirement in Iowa Code section 600B.41A too narrowly. The statute reads in relevant part as follows:

> Paternity which is legally established may be overcome as provided in this section if subsequent blood or genetic testing indicates that the previously established father of a child is not the biological father of the child. Unless otherwise provided in this section, this section applies to the overcoming of paternity which has been established according to any of the means provided in section 252A.3, subsection 10, by operation of law when the established father and the mother of the child are or were married to each other, or as determined by a court of this state under any other applicable chapter.
> . . . .
> 3. Establishment of paternity may be overcome under this section if all of the following conditions are met:
> . . . .
> f. The court finds all of the following:

> (1) That the conclusion of the expert as disclosed by the evidence based upon blood or genetic testing demonstrates that the established father is not the biological father of the child.
> (2) If paternity was established pursuant to section 252A.3A, the signed affidavit was based on fraud, duress, or material mistake of fact, as shown by the petitioner.

Katherine argues "the signed affidavit was based on fraud" because both she and Corey signed the affidavit knowing Corey could not be the biological father of the child. She also argues several public policy reasons for interpreting Iowa Code section 600B.41A "in a way that allows Katherine to overcome the paternity of Corey and establish the paternity of Dennis." Dennis, in contrast, argues that to construe the statute to allow Katherine's action "would be rewarding dishonest behavior and encouraging more of the same."

A review of the statutory language pertinent to this case reveals that it is discretionary—it reads legally established paternity *may be overcome*. Iowa Code § 600B.41A(1), (3); *see also* Iowa Code § 4.1 (noting the use of the word "may" in statutory construction confers a power); *John Deere Waterloo Tractor Works of Deere & Co. v. Derifield*, 110 N.W.2d 560, 562 (Iowa 1961) ("The verb 'may' usually is employed as implying permissive or discretional rather than mandatory action or conduct. It imports a grant of opportunity or power and is never properly used in a denial, a restriction or a limitation, except in connection with the word 'not'."). Our supreme court has previously noted the discretion given to the district court in a prior iteration of this statute, stating, "We believe the broad grant of discretionary authority vested in the trial court by [Iowa Code

section 600B.41A] was wisely exercised and warrants our affirmance." *Dye v. Geiger*, 554 N.W.2d 538, 540 (Iowa 1996).[1]

While the district court found Katherine's petition should not be granted based upon its interpretation of the word "fraud" in the statute, both parties made arguments below (and continue these arguments before us now) regarding the purpose of the statute under these particular circumstances.

> Ordinarily, we do not decide issues not reached by the district court, but we may affirm an order on alternative grounds supported by the record and urged below. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994) ("[A] successful party need not cross-appeal to preserve error on a ground urged but ignored or rejected by the district court."). Here, we are well positioned to do so because the parties already briefed this issue before the district court and on appeal, no party has requested the opportunity to offer additional evidence, and undisputed facts in the record are determinative.

Office of Citizens' Aide/Ombudsman v. Edwards, 825 N.W.2d 8, 22 (Iowa 2012), reh'g denied (Jan. 16, 2013). We therefore address both arguments.

The undisputed facts show Katherine and Corey live in Missouri, where they met in 1997. They have raised the child together since shortly after her birth and plan to continue to do so. They have two other children whom they have raised together with the child. They have continuously been married since 1999 and plan to remain married. While Corey desires to relinquish his legal paternal status, he plans to continue as the child's father. There is only brief mention given to the child's wishes; the GAL states the child wishes to have contact with

[1] In *Dye*, our supreme court affirmed the dismissal of an action to disestablish paternity under a prior version of 600B.41A, which included the requirement of a best-interests test prior to disestablishment. *See* 554 N.W.2d at 540. Though this section (former Iowa Code section 600B.41A(3)(g) (1995)) no longer exists, the discretionary language of the statute remains undisturbed.

Dennis. Primary importance is given by both parties to child support—Katherine states she is simply asking us to force Dennis to make good on his obligation.

"It is clear our legislature intended chapter 600B as a means to force parents to comply with their obligation to support their children." *Callender*, 591 N.W.2d at 186. But this obligation is not without limit as Katherine suggests. While our statute does not give a specific limitation period for bringing such an action, our supreme court has previously noted there is an element of time required regarding actions for the establishment (or disestablishment) of paternity.

> [A]lthough we recognize a right for Charles to petition the court to challenge paternity in this case, we also recognize this right can be lost by waiver, which may be the threshold question to consider before addressing paternity. If the challenge is not a *serious and timely expression of a meaningful desire to establish parenting responsibility*, it may be lost.

Id. at 192. We find such a requirement for serious and timely action should likewise pertain to Katherine in this case. She has known for fourteen years who this child's biological father is, but she declined to petition the court to establish Dennis's paternity. Meanwhile, the child's legally-established father has provided and plans to continue to provide for the child's needs. Katherine requests this court to become an accomplice in her efforts to obtain child support from a man whose connection to her child she chose not to acknowledge for fourteen years. She chose another legal father for her child, and she plans to continue to have this man act as father to her child. Such use of the child support system was not contemplated by our legislature in its enactment of Iowa Code section 600B.

Further, we agree with the district court that Katherine failed to demonstrate the paternity affidavit signed by herself and Corey was based on fraud as she defines it under Iowa Code section 600B.41A(3)(f)(2).

> When a statute is unambiguous, we need not look beyond the plain meaning of the express statutory terms. However, if a statute is ambiguous, we must utilize the rules of statutory interpretation. We deem a statute to be ambiguous when reasonable minds could disagree as to its meaning. There are two ways in which an ambiguity may arise: from (1) the meaning of a specific term; or (2) the overall meaning of a statute when its provisions are considered in their totality. In determining the particular meaning of a statutory term, we seek to find a reasonable construction that serves the statute's purpose. We look to what the legislature actually said, not to what it should or could have said. Thus, when the language of a statute is plain, we do not read words or restrictions into a statute that are not readily apparent from the express terms. Furthermore, we may consider the context in which the words are used.

Miller v. Marshall Cnty., 641 N.W.2d 742, 748 (Iowa 2002) (internal citations and quotation marks omitted). As both parties note, fraud requires "[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." Black's Law Dictionary 731 (9th ed. 2009). Dennis argues the statute clearly requires fraud inducing a party to sign the paternity affidavit. Katherine argues she and Corey perpetrated a fraud against "the State of Iowa, [the child], and the general public when they submitted a sworn paternity affidavit which they knew was false." We agree with Dennis and the district court that to construe the statute to include fraud against the state is contrary to the purpose of the statute.

Our interpretation is in line with the conclusion reached by states with similar statutes. The Wisconsin Court of Appeals denied a similar action by a parent who signed an affidavit of paternity and then sought to disestablish his

paternity, arguing he was not the child's biological father. *Daniel T.W. v. Joni K.W.*, 762 N.W.2d 444 (Wis. Ct. App. 2008). The court concluded:

> [T]he undisputed facts of this case show that [neither fraud, nor duress, nor material mistake of fact] would have applied. [The father] knew at the time he signed the Affidavit of Parentage that he was not [the child's] father, and thus any fraud in signing the affidavit was perpetrated by, not against, [the father]. He therefore cannot benefit from that fraud.

Id. at 447. *See also In re H.H.*, 879 N.E.2d 1175, 1177 (Indiana Ct. App. 2008) ("We do not believe the legislature intended this statute to be used to set aside paternity affidavits executed by a man and a woman who both knew the man was not the biological father of the child."). The context of our statute is clear: in order to disestablish paternity that was established by affidavit under Iowa Code section 252A.3A, a petitioner must show the "signed affidavit was based on fraud, duress, or material mistake of fact." Iowa Code § 600B.41A(3)(f)(2). Upon consideration of the context of the statutory reference to fraud, it becomes clear it does not apply to the state or the public at large.[2] The state and the public incur no detriment through the issuance of a paternity affidavit—to the contrary: our code section to establish paternity is dedicated to the support of dependents. Iowa Code § 252A.3A; *see also Callender*, 591 N.W.2d at 186 (noting purpose of 600B as means to force parents to support children). Instrumental to the issuance of the affidavit is the procedure to establish child support. *See* Iowa Code § 252.3A(3), (8)(c), (10), (13). To construe this section as suggested by

[2] We are careful to note we are not presented with, and do not interpret this statute in the context where the biological father seeks to disestablish the rights of another individual whose paternity was established by affidavit. *See e.g. Callender*, 591 N.W.2d at 184 (considering a petition to disestablish paternity by a child's biological father where paternity was established by marriage to the mother at the time of the child's birth).

Katherine would be to undermine the significance of the affidavit of paternity as contemplated both in sections 600B.41A(3)(f)(2) and 252A.3A.

We conclude the district court properly granted the motion for summary judgment in Dennis's favor. Costs on appeal are taxed to Katherine.

AFFIRMED.