NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CW 0175

STATE OF LOUISIANA

VERSUS

GREGORY GRIFFIN

Judgment Rendered: SEP 19 2014

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Appealed from the
Eighteenth Judicial District Court
In and for the Parish of West Baton Rouge
State of Louisiana
Docket Number 1219

The Honorable J. Robin Free, Judge Presiding

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Richard Ward, **District Attorney** **Lonnie Guidroz,** **Assistant District Attorney** **Maringouin, LA**	**Counsel for Plaintiff/Appellant,** **State of Louisiana**
Gregory Griffin **Erwinville, LA**	**Defendant/Appellee,** **Pro Se**

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

Higginbotham, J. concurs with special reasons.

McClendon, J. concurs with the result reached.

WHIPPLE, C.J.

This matter is before us on appeal by plaintiff, the State of Louisiana, on Behalf of the Department of Children and Family Services ("State"), from a judgment of the trial court ordering paternity testing. For the following reasons, we convert the appeal to an application for supervisory writs, grant the writ, and reverse the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

On August 25, 2010, J.J.G. and J.R.G. (twins) were born to Erica Timpson at Baton Rouge General Hospital.[1] On the following day, August 26, 2010, Gregory Griffin signed an "Acknowledgment of Paternity Affidavit Child Born Outside of Marriage," acknowledging his paternity of both children and certifying his receipt of "oral and written notice of the legal rights and consequences resulting from [his] acknowledging the paternity of [the] child[ren]." He was also named as the father on both birth certificates. In August 2011, Erica Timpson moved with the children to South Carolina where she received Family Assistance and Food Stamp benefits.[2]

On December 17, 2012, the Louisiana Department of Children and Family Services received a verified "Uniform Support Petition and Initial Request" from the South Carolina Office of Child Support Enforcement, pursuant to the Uniform Interstate Family Support Act (UIFSA), requesting that the State of Louisiana obtain an order establishing paternity and for child support and medical support for the children. The State of Louisiana thereafter

[1]Pursuant to the Uniform Rules-Court of Appeal, Rules 5-1(a) and 5-2, the initials of the children are used in this opinion to protect and maintain the privacy of the minor children.

[2]Although the precise date of Timpson's relocation to South Carolina is not set forth, her affidavit in support of the petition states she (and eventually the children) lived together with the defendant in Louisiana from August 2009 to January 2011.

instituted the instant support collection case against Griffin, as the named defendant.

On April 11, 2013, a hearing on the Uniform Support Petition was held before the hearing officer for the Eighteenth Judicial District Court, at which time Griffin orally motioned for a blood test of the children to contest paternity. The motion was granted and the issue of child support was "suspended" until the mother submitted the children and herself for testing.

On April 15, 2013, the State of Louisiana filed an objection to the hearing officer's recommendation and findings of fact ordering paternity testing, contending that: (1) the signing of an acknowledgment of paternity "is deemed to be a legal finding of paternity and is sufficient to establish a child support obligation" pursuant to LSA-R.S. 9:405; and (2) the defendant did not comply with LSA-R.S. 9:406, which sets forth the procedures for revoking an acknowledgment of paternity. On October 10, 2013, a hearing on the State's objection was held before the trial judge, who upheld the hearing officer's recommendation.[3] A judgment was signed on November 6, 2013.

The State then filed the instant appeal, averring the trial court erred as a matter of law in granting the paternity tests as Griffin failed to timely file a petition, by ordinary process, to revoke his acknowledgement of paternity within the two-year period set forth in LSA-R.S. 9:406.

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[3]While the **transcript** in the record indicates that the proceedings on October 10, 2013 were before the hearing officer, the **minutes** in the record indicate that the proceedings took place before the trial judge. In the event of discrepancies between the minutes and the transcript, the transcript rules. However, this appears to be an obvious typographical error, as the trial judge subsequently signed a judgment stating that the objection to the hearing officer's recommendation came **before him** on October 10, 2013. Additionally, the State concedes in its appellant's brief that the October 10, 2013 proceedings were before the trial judge.

JURISDICTION

At the outset, we recognize that the November 6, 2013 judgment on appeal appears to be an interlocutory judgment, as it clearly does not determine, in whole or in part, the merits of the underlying child support case and, further, addresses only preliminary matters in the course of this action. LSA-C.C.P. art. 1841. Specifically, the judgment sets forth that:

> After hearing the testimony, evidence and argument of counsel, the court finds judgment as follows:
>
> **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the recommendation made by the Hearing Officer on April 11, 2013, is hereby upheld and made a final judgment of the Court.
>
> **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that the defendant, Gregory Griffin, is to pay all costs of the paternity testing.

However, the hearing officer's written recommendation merely states "recommend blood test[.] Case suspended until mother submits children for testing." Despite this procedural posture, the trial court certified the judgment as final, without assigning express reasons to support the determination.

The trial court's judgment ordering genetic testing in response to Griffin's oral request for blood tests is not susceptible to being certified as final for purposes of immediate appeal, pursuant to LSA-C.C.P. art. 1915. However, in the interest of judicial economy, and mindful of the purpose of the statutory scheme and the underlying policy reasons mandating an expedited process for establishing paternity and enforcement of child support, see LSA-R.S. 46:236, *et seq.*, we elect to exercise our supervisory jurisdiction herein and convert the "appeal" of this interlocutory judgment to an application for supervisory writs.[4]

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[4]Notice of the November 6, 2013 judgment was mailed on November 13, 2013. The State filed its motion for appeal on December 12, 2013, thirty days from the notice of judgment and, thus, within the time delays for filing a writ application. See Rule 4-3 of the Louisiana Uniform Rules-Courts of Appeal.

LSA-Const. art. V, § 10(B); See also State ex. rel. Dept. of Social Services v. Howard, 2003-2865 (La. App. 1 Cir. 12/30/04), 898 So. 2d 443, 444, n.1. (Interlocutory judgment was rendered denying the State's request for a paternity test and the State appealed. In the interest of judicial economy, the appeal was converted to a writ application and the decision of the trial court was vacated.) Further, to the extent that the judgment at issue herein upheld the hearing officer's recommendation and "suspended the case until mother submits children for testing," we find immediate resolution of the issues presented herein is warranted. Specifically, we recognize that no adequate remedy exists on appeal if the trial court is ultimately found to have erred in ordering the mother and/or the children to submit to the blood tests, as there would be no means of reversing these intrusive procedures once accomplished.

Accordingly, we will consider the State's challenges to the November 6, 2013 judgment of the district court.

DISCUSSION

Louisiana Revised Statute 9:406 governs the procedure for revoking authentic acts of acknowledgment and provides, in pertinent part, that a person who executed an authentic act of acknowledgment may, **without cause**, revoke it within sixty days of the execution of the act. LSA-R.S. 9:406A(1). However, if an act of acknowledgement has not been revoked within sixty days of execution of the act, as in this case, then the mover "shall institute the proceeding **by ordinary process, within a two-year period commencing** with

the execution of the authentic act of acknowledgment of paternity."[5] (Emphasis added.) The statute further provides that "[i]f the court finds **based upon the evidence presented** at the hearing that there is a substantial likelihood that fraud, duress, material mistake of fact or error existed in the execution of the act or that the person who executed the authentic act of acknowledgment is not the biological father, **then, and only then, the court shall order genetic tests pursuant to R.S. 9:396.**" (Emphasis added.) LSA-R.S. 9:406(B)(2). Citing LSA-R.S. 9:406, the State contends that the trial court erred in granting Griffin's request for paternity tests, as Griffin failed to timely file a petition, by ordinary process, to revoke his acknowledgments of paternity within two years of executing the acts. After careful review, we agree.

Although this is a UIFSA case which originated in South Carolina, with Louisiana acting as the responding tribunal to that state's request for an order establishing paternity and child support, Louisiana's laws on paternity are applicable. As set forth in LSA-Ch.C. art. 1307.1(B), "In a proceeding to determine parentage, a responding tribunal of this state shall apply the procedural and substantive law of this state and the rules of this state on choice of law." Thus, under the applicable laws of this state, an acknowledgment of paternity by authentic act is deemed to be a legal finding of paternity and is sufficient to establish an obligation to support the child and to establish visitation without the necessity of obtaining a judgment of paternity. See LSA-R.S. 9:405.

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[5]As this court notes in Bruce v. Bruce, 2012-1748 (La. App. 1st Cir. 8/9/13), 136 So. 3d 796, 799-800, LSA-R.S. 9:406 was originally enacted by La. Acts 2006, No. 344 §4, which became effective on June 13, 2006. As originally enacted, the statute did not provide a time limitation within which a petition to rescind an act of acknowledgment could be filed. However, pursuant to La. Acts 2008, No. 533, §1, the legislature amended LSA-R.S. 9:406 to establish a prescriptive period for filing an action to revoke an authentic act of acknowledgment of paternity. Thus, pursuant to the amended version of LSA-R.S. 9:406, a person seeking to revoke a notarial act of acknowledgment must institute the proceeding to revoke within two years of the date of the execution of the authentic act acknowledging paternity.

Louisiana Revised Statute 9:406 specifically addresses whether and under what circumstances a court may order genetic testing when an authentic act of acknowledgment of paternity has been signed. By statute: (1) an action to revoke must be brought by ordinary process; (2) the action must be brought within two years of execution of the act; (3) evidence must be presented; and (4) then, and only then, can the court order genetic tests.[6] None of these prerequisites are satisfied in this case.

First, there is nothing of record to show that Griffin ever filed a petition to revoke the authentic act of acknowledgment.[7] Second, the two-year time period to bring such an action had clearly run and was no longer available to Griffin when he made the request for testing, as he undisputedly executed the authentic act of acknowledgment on August 26, 2010. Third, there was no evidence presented to satisfy the statutorily required showing of a substantial likelihood of fraud, duress, material mistake of fact or error, or that the person who executed the authentic of acknowledgment is not the biological father. Although Griffin claimed at the hearing that the children's mother told him, while pregnant and in front of his family members that he was not the father, this claim was unsupported. Nonetheless, even accepting as true that Timpson made such a statement, by Griffin's own contention, this alleged statement was purported to have been made while she was pregnant and **prior** to his execution of the acts of acknowledgment of paternity.

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[6]Although not clearly specified as such in the judgment under review herein, we consider the order for "blood tests" to be an order for "genetic testing."

[7]In State v. A.Z., 12-560 (La. App. 5th Cir. 2/21/13), 110 So. 3d 1150, the defendant signed an acknowledgement of paternity. A paternity test (although not clear how obtained, i.e., whether voluntary or court ordered) later revealed that the defendant was not the biological father. Thus, the trial court declared the acknowledgment null and void and invalidated the child support judgment. The appellate court reversed, finding that no petition to revoke paternity was filed, and, accordingly, the trial court's action in revoking the acknowledgment was erroneous.

Accordingly, on the record before us, we conclude that the trial court erred as a matter of law in ordering genetic testing, whether of the mother, the children, or both, when no statutory or legal basis existed for such. In apparent recognition of the desirability of limiting the circumstances in which such testing is warranted, the legislature has set forth specifically delineated procedural requirements to support genetic testing after an acknowledgement of paternity has been signed. None of these exist herein. Accordingly, the judgment must be reversed.

CONCLUSION

For the above reasons, we convert the State's motion for appeal to an application for supervisory writs, grant the writ, and reverse the November 6, 2013 judgment of the trial court. The case is remanded to the trial court for further proceedings, with instructions that the proceedings be conducted as expeditiously as possible. All costs of these proceedings are assessed to defendant, Gregory Griffin.

MOTION FOR APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRITS; WRIT GRANTED AND JUDGMENT REVERSED; CASE REMANDED WITH INSTRUCTIONS.

STATE OF LOUISIANA

VERSUS

GREGORY GRIFFIN

STATE OF LOUISIANA

COURT OF APPEAL

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TMH

BEFORE: WHIPPLE C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J., SPECIALLY CONCURRING.

HIGGINBOTHAM, J.

I concur with the decision of the majority, based on the facts of this particular case. But I must opine that it is in the best interest of children, when paternity becomes an issue, for the trial court to always have the authority to order paternity testing. A father who has acknowledged a child should not be excused from paying child support pending such testing, unless specifically provided for by law.