

STATE OF MICHIGAN
COURT OF APPEALS

VICTORIA KAIULANI BRANCHER,

Plaintiff-Appellee,

v

TAL MICHAEL PETERS,

Defendant-Appellant.

UNPUBLISHED

April 13, 2010

No. 294998

Iosco Circuit Court

Family Division

LC No. 09-004751-DS

Before: Davis, P.J., and Donofrio and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's denial of his motion to revoke his acknowledgment of parentage. We reverse and remand.

On April 16, 2003, plaintiff gave birth to a son, Colton Peters. At the time, plaintiff was living with defendant. Believing Colton to be his biological son, defendant and plaintiff executed an acknowledgment of parentage. In September 2004, when the relationship between plaintiff and defendant began to sour, defendant obtained a DNA test that confirmed he was not Colton's biological father. In spite of this, defendant remained with plaintiff and Colton. Approximately one year later, defendant broke off his relationship with plaintiff, moving out of the home. There was conflicting testimony as to whether defendant made a clean break, cutting off contact in approximately July or August of 2005, or whether he attempted to remain a part of Colton's life for a short time. In whichever case, by spring 2006 at the latest defendant had cut nearly all contact with plaintiff and Colton. Occasionally, Colton's uncle, who worked with defendant, would bring Colton to their place of work. Eventually, defendant asked Colton's uncle to stop bringing the boy to work, and the uncle complied.

On January 26, 2009, plaintiff, represented by the Iosco County Prosecutor's Office, brought an action against defendant for child support. Relying on the DNA test results, defendant moved, pursuant to MCL 722.1011, to revoke the acknowledgment of parentage. Following a hearing, the trial court denied the motion, concluding that revocation was not equitable under the circumstances. Noting the four-and-a-half-year delay between defendant having learned that he was not the biological father and moving for revocation, the court found that the delay prejudiced plaintiff, making it inequitable to allow revocation. The court then found that defendant was Colton's father, granted the parties joint legal custody, gave plaintiff sole physical custody, and ordered defendant to pay child support.

In equitable matters, we review a trial court's factual findings for clear error, but "whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *Sinicropi v Mazurek (After Remand)*, 279 Mich App 455, 462; 760 NW2d 520 (2008).

When an unmarried woman gives birth to a child, that woman may join with a man in completing an acknowledgment of parentage form, and if they do so, that man is considered the natural father of the child, MCL 722.1003, and becomes a "legal parent" of the child, *Bay Co Prosecutor v Nugent*, 276 Mich App 183, 188; 740 NW2d 678 (2007). The man who signs an acknowledgment of parentage may later file a claim to revoke the acknowledgment. MCL 722.1011(1). Such a claim may be made as a motion in an existing action for child support. *Id.* The claim must be accompanied by an affidavit setting out facts supporting at least one of five enumerated grounds for revocation, one of which is mistake of fact. MCL 722.1011(2)(a). If the court finds the affidavit sufficient, the claimant has the burden of proving by clear and convincing evidence (1) that the child is not his, and (2) "that, considering the equities of the case, revocation of the acknowledgment is proper." MCL 722.1011(3).

There is no dispute that the acknowledgment of parentage was valid, that the motion for revocation was proper, that defendant sufficiently supported his motion by showing mistake of fact (one of the five enumerated grounds), and that he proved by clear and convincing evidence that Colton is not his biological son. The parties do dispute, however, whether the equities support revocation of the acknowledgment of parentage. The trial court based its decision chiefly on the equitable doctrine of laches, holding that defendant's delay in attempting to revoke his acknowledgment of parentage made revocation inequitable. Laches requires more than a showing of a passage of time; "there must also have been a change of conditions which would render it inequitable to enforce the claim, or a showing that the defendant was prejudiced by the delay." *Tray v Whitney*, 35 Mich App 529, 535; 192 NW2d 628 (1971).

The trial court's conclusion that defendant's actions have prevented plaintiff from looking for Colton's biological father makes little sense under these facts. Just as defendant has known for four and a half years that he is not Colton's biological father, so too has plaintiff known. She was not prevented from seeking out the biological father during that time, nor was she prevented from seeking support from defendant.

The trial court compared this case with an Ohio case, *Crago v Kinzie*, 106 Ohio Misc 2d 51; 733 NE2d 1219 (Ct of Common Pleas, 2000). In the Ohio case, the parents and the children resided in the same household for years, with the father having voluntarily signed two separate birth certificates as the father. When they separated, the mother sought public support and the state ordered her to institute a child support action. Even after receiving information about genetic testing as part of the documents in the child support case, the Ohio father failed to act for another year. *Id.* at 59-60. The trial court reasonably concluded that the children, the mother and the public had relied upon the plaintiff's assumption of parental responsibility and that it was inequitable to leave the children fatherless and on public benefits for survival. *Id.* at 59-60, 70-71. The same cannot be said of plaintiff in the case at hand.

It is truly unfortunate that neither parent acted earlier. Nonetheless, we conclude that defendant's delay in attempting to revoke his acknowledgment of parentage was not unreasonable under the circumstances. Defendant had no relationship with Colton for about

three years prior to the initiation of this litigation, and plaintiff acquiesced to that state of affairs for the same time period. There is no reason to believe that plaintiff relied on the acknowledgment of parentage during that time. Under these circumstances, revocation was the proper result. Accordingly, we reverse.

The trial court's denial of the motion to revoke acknowledgment of parentage is reversed. Because the trial court's judgment of filiation, including its award of child support, was based on the acknowledgment of parentage, that judgment is vacated, and the case is remanded to the trial court for proceedings not inconsistent with this judgment. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Pat M. Donofrio

/s/ Cynthia Diane Stephens