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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1536**

Justin Thies, petitioner,
Appellant,

vs.

Sara Kay Kramp,
Respondent,

Meeker County, Intervenor,
Respondent.

**Filed April 2, 2012
Reversed
Stoneburner, Judge**

Meeker County District Court
File No. 47FA09325

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Brian M. Olson, Cokato, Minnesota (for respondent Kramp)

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Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and
Cleary, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant father challenges the district court's order granting respondent Guardian Ad Litem's rule 12 motion to dismiss his petition to vacate a Recognition of Paternity as moot and barred by principles of res judicata. Because, on this record, we cannot conclude that the petition is moot or barred by principles of res judicata, we reverse.

FACTS

Respondent Sara Kay Kramp gave birth to N.T. on September 26, 2006. Appellant Justin Thies signed a Recognition of Parentage (ROP) acknowledging that he is N.T.'s father. Kramp, Thies, and N.T. lived together for more than a year after N.T.'s birth. Thies held N.T. out to be his biological child even after Thies and Kramp separated.

In February 2009, Thies petitioned the district court for an adjudication of paternity of N.T., an award of joint legal custody, and an award of physical custody and parenting time "in a fair and equitable manner." Thies also filed a motion in April 2009, seeking an order adjudicating paternity, joint legal custody, and parenting time. Thies's affidavit, filed in support of his April 2009 motion, asserts that he had acknowledged paternity and had been adjudicated the child's father in Court File # 49-FA-09-188, which involved the determination of Thies's child-support obligation. But file # 49-FA-09-188 contains a copy of the ROP and does not contain any separate "adjudication of parentage."

In May 2009, the district court issued a judgment based on a stipulation of the parties for joint legal custody and sole physical custody with Kramp, subject to a detailed parenting-time schedule. One of the stipulated findings in the judgment states that the parties acknowledge paternity and that “an adjudication of parentage shall be entered herein,” but there is no further mention of an adjudication of parentage in the judgment.

In mid-2010, Thies submitted DNA samples to a genetic testing laboratory, asserting that the samples were from him and N.T. The laboratory reported that the probability of his paternity, based on tests of these samples, is zero percent. In late October 2010, Thies petitioned to “Set Aside Judgment And To Declare Non-Paternity.” The petition asserts that Kramp falsely represented that she did not have sexual relations with anyone other than Thies at the time the child could have been conceived and, based on these false representations, Thies “admitted that he was the natural father . . . resulting in an adjudication of paternity.” The petition requests (1) an order setting aside the May 2009 judgment under “Minn. Stat. § 549.14”¹; (2) a declaration that Thies is not N.T.’s father; and (3) judgment against Kramp for all child support paid to her or to the county on her behalf plus interest. Kramp answered, seeking dismissal of Thies’s petition and an order requiring the parties to use alternative dispute resolution to determine arrangements in N.T.’s best interests prior to seeking court assistance.²

¹ Minn. Stat. § 549.14 (2010) deals with costs and disbursements in certain actions and, therefore, appears to be a typographical error in the petition.

² Kramp’s responsive pleading purports to assert a counterclaim, but the counterclaim essentially asserts facts to refute Thies’s petition.

In February 2011, Thies filed an amended petition “To Vacate [ROP] Pursuant to Minn. Stat. 257.75, subd. 4.” The amended petition acknowledges that Thies signed a ROP and held the child out as his own. A copy of the DNA test results is attached to the petition and, in the petition, Thies asserts that, but for Kramp’s representations made “either fraudulently . . . or [as] the result of a material mistake of fact,” Thies would not have executed a ROP. The petition requests (1) an order finding that Thies has established a prima facie basis for vacating the ROP; (2) an order requiring Kramp, Thies, and N.T. to submit to blood testing; (3) an order vacating the ROP if testing establishes that Thies is not N.T.’s biological father; and (4) an order terminating his child-support obligation.

The district court issued an order making Meeker County and N.T. parties to the action and appointing a guardian ad litem (GAL) to represent N.T.’s interests. The GAL filed a report that includes statements from Kramp that DNA testing in 2010 established that a person other than Thies is N.T.’s biological father. The report states that the GAL contacted this person, and he is not interested in being a part of N.T.’s life. The GAL’s report notes that Thies and N.T. have had a father-son relationship for more than four years, and despite the current litigation, the GAL saw a “bond” when she observed Thies and N.T. together. The GAL reports that Thies told her that he wants to continue to be part of N.T.’s life but feels he is no longer responsible for N.T.’s support. In spite of the GAL’s concern about Thies’s anger towards Kramp being “played out toward” N.T., the GAL recommended that Thies continue to legally be N.T.’s father, with supervised visitation until “key issues have been resolved in counseling.”

The GAL then moved to dismiss Thies's petition for failure to state a claim for which relief can be granted under Minn. R. Civ. P. 12.02(e). In a memorandum supporting the rule 12 motion, the GAL argues that Thies's claim for vacation of the ROP is moot and barred by res judicata. The GAL argued to the district court that (1) vacating the ROP would not "by itself" vacate the May 2009 "order which adjudicates him as the child's father"; (2) vacating the ROP "does not necessarily destroy the presumption of paternity created by Minn. Stat. § 257.55 subd. 1(d) (2010) (holding the child out as his own)"; and (3) an action for declaration of nonexistence of the father-child relationship is precluded by principles of res judicata because the May 2009 order adjudicating paternity is final.³

After a hearing on the GAL's motion to dismiss, the district court granted the motion, concluding that Thies's petition "is moot and barred by principles of res judicata." The district court dismissed Thies's petition with prejudice. This appeal followed.

D E C I S I O N

I. Standard of review

Because the district court relied on documents outside of the pleadings, we review the district court's decision as a grant of summary judgment. Minn. R. Civ. P. 12.02 (providing that "[i]f, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleadings are presented to

³ The GAL also argued that any motion to vacate the judgment under Minn. R. Civ. P. 60 is time barred. Thies is not seeking any relief under rule 60, therefore we do not address that rule.

and not excluded by the court, the motion shall be treated as one for summary judgment”).

“On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law.” *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011). The reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). In this case, viewing the facts in the light most favorable to Thies, there are no material fact issues: the only issue is whether the district court misapplied the law. Questions of law are reviewed de novo. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007) (stating that “[w]hen the material facts are not in dispute, we review the [district] court’s application of law de novo”).

II. Effect of ROP

A ROP has the force and effect of a judgment or order determining the existence of a parent-child relationship when it has been properly executed and filed, has not been revoked within 60 days after its execution, and there are no competing presumptions of paternity. Minn. Stat. § 257.75, subs. 3, 4 (2010).

A. Statutory provision for vacation of ROP

Minn. Stat. § 257.75, subd. 4, provides, in relevant part, that an action to vacate a ROP must be brought

... within one year of the execution of the [ROP] or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the man who executed the

[ROP]is not the father of the child. . . . If the court finds a prima facie basis for vacating the [ROP], the court shall order the child, mother, [and] father . . . to submit to blood tests. . . . If the results of the blood tests establish that the man who executed the [ROP] is not the father, the court shall vacate the [ROP]. . . . The court shall terminate the obligation of a party to pay ongoing child support based on the [ROP].

(b) The burden of proof in an action to vacate the [ROP] is on the moving party. The moving party must request the vacation on the basis of fraud, duress, or material mistake of fact.

Id.

Thies asserts that his petition to vacate the ROP followed the procedure contained in Minn. Stat. § 257.75, subd. 4, and no exceptions, timelines, or doctrines of res judicata or mootness exist under the statute to deny the relief provided. We agree. And we conclude that there is no merit in the GAL's argument that the statute precludes a petition to vacate a ROP based on test results if the petition is not filed within one year after the execution of the ROP. The plain language of the statute does not support the GAL's argument.

We conclude that, whether Thies is entitled to vacation of the May 2009 judgment or to an order declaring that he is not the child's father, even if the ROP is vacated, is beyond the scope of this appeal. Because the statute plainly entitles Thies to seek vacation of the ROP in the circumstances of this case, we conclude that the district court erred by holding that Thies's petition to vacate the ROP is moot or precluded by principles of res judicata.

Reversed.