

Affirmed and Memorandum Opinion filed July 29, 2010.



In The

**Fourteenth Court of Appeals**

---

NO. 14-09-00249-CV

---

**IN THE INTEREST OF J.A., A CHILD**

---

**On Appeal from the 311th District Court  
Harris County, Texas  
Trial Court Cause No. 2008-70032**

---

**M E M O R A N D U M   O P I N I O N**

Appellant, Larry Alexander, appeals from an order denying his petition to contest an acknowledgement of paternity (“AOP”). In two issues, appellant contends that he was entitled to relief under chapter 160 of the Texas Family Code—rescission of the AOP or setting aside the judgment in the underlying parentage suit—because he was fraudulently induced to sign the AOP.<sup>1</sup> We affirm.

**BACKGROUND**

Appellant and Tiffany Johnson had a dating relationship in 2004. On March 25, 2005, Johnson gave birth to J.A. The following day, appellant executed an AOP attesting his paternity of J.A. The couple’s relationship ended thereafter, and in 2006, appellant

---

<sup>11</sup> See Tex. Fam. Code Ann. §§ 160.308–.309 (Vernon 2008).

initiated SAPCR proceedings seeking custody of J.A. *See Alexander v. Johnson*, No. 14-08-00778-CV, 2010 WL 11201, at \*1 (Tex. App.—Houston [14th Dist.] Jan. 5, 2010, no pet.) (mem. op.).<sup>2</sup>

#### ***A. 2006 SAPCR Proceedings***

In 2006, appellant filed a suit affecting parent-child relationship requesting that he be appointed J.A.'s managing conservator. Johnson challenged appellant's petition by filing a countersuit. *Id.* Although appellant initiated the SAPCR suit to establish and protect his conservatorship rights with regard to J.A., appellant later changed his position and petitioned the court for voluntary relinquishment and termination of his parental rights. The trial court subsequently held a final hearing on the parties' petitions. *Id.* Johnson appeared with counsel, but appellant failed to appear in person or by counsel. *Id.* The trial court found appellant in default and proceeded with the final hearing in his absence. *Id.*

After hearing testimonial and documentary evidence on paternity and support, the trial court signed a default SAPCR order appointing Johnson sole managing conservator of J.A. and appellant possessory conservator. *Id.* The default SAPCR order also compelled appellant to pay child support. Thereafter, appellant challenged the default SAPCR order by way of a petition for bill of review. *Id.*

#### ***B. 2007 Bill of Review Proceedings***

In 2007, appellant filed a petition for bill of review in which he alleged that Johnson fraudulently induced him to sign the AOP and misled him to believe that he was J.A.'s father when in fact he was not. *Id.* Appellant claimed that he was entitled to bill-of-review relief and requested that the default SAPCR order be set aside and the AOP rescinded. *Id.* The trial court held a hearing on appellant's petition and denied the

---

<sup>2</sup> In a related case, appellant filed a bill of review, seeking identical relief: rescission of the AOP and setting aside the underlying support order. *Alexander*, 2010 WL 11201, at \*1. As discussed below, the trial court denied the petition for bill of review, and we affirmed the trial court's denial. *Id.* at \*4.

petition for bill of review. *Id.* Appellant appealed the trial court’s denial to this Court, and we affirmed the trial court’s ruling. *Id.* at \*4.

### ***C. 2008 Petition to Contest AOP Proceedings***

In 2008, appellant filed a “petition to contest” the 2005 AOP. In his first amended petition to contest the AOP, appellant contended that the AOP should have been set aside on the bases of fraud, duress, and material mistake. Appellant argued that he signed the AOP because Johnson represented that he was J.A.’s father. He claims that he subsequently realized that J.A. had been conceived while he was working offshore. Appellant requested DNA testing and rescission of the AOP. The associate judge denied the petition after hearing evidence at a hearing.

Appellant appealed the associate judge’s findings and ruling to the district judge. The district judge held a hearing and likewise denied appellant’s petition to contest the AOP, as a matter of law. Appellant now appeals from the trial court’s order denying his petition to contest the AOP. Appellant articulates the following two arguments:

1. Can an acknowledgment of paternity be revoked if the motion is presented within the time period designated by the Texas Family Code?
2. Can the Court deny . . . a Petition to Contest Acknowledgment of Paternity as a matter of law?

### **ANALYSIS**

Subchapter D of the Texas version of the Uniform Parentage Act governs voluntary acknowledgment of paternity. *See* Tex. Fam. Code Ann. §§ 160.301–.316 (Vernon 2008). Under subchapter D, the mother and a man claiming to be the biological father of a child may sign an AOP with intent to establish the man’s paternity. *Id.* § 160.301. An AOP must:

- (1) be in a record;
- (2) be signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity;

- (3) state that the child whose paternity is being acknowledged:
  - (A) does not have a presumed father or has a presumed father whose full name is stated; and
  - (b) does not have another acknowledged or adjudicated father;
- (4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
- (5) state that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after four years.

*Id.* § 160.302. An AOP becomes effective on the child's date of birth or the filing of the document with the bureau of vital statistics, whichever is later. *Id.* § 160.304(c). Furthermore, a properly executed AOP is equivalent to an adjudication of the paternity of a child and confers on the acknowledged father all rights and duties of a parent. *Id.* § 160.305(a). Here, appellant concedes that he signed a valid AOP on March 26, 2005, but disclaims paternity. The statute provides two methods by which appellant could challenge the father-child relationship created by the AOP: (1) a rescission proceeding and (2) a proceeding to challenge the AOP. *See id.* §§ 160.307–.309.

#### ***A. Section 160.307 Rescission Proceeding***

A signatory to an AOP may rescind an acknowledgment of paternity by commencing a proceeding to rescind before the earlier of: (1) the 60th day after the effective date of the acknowledgment, as provided by section 160.304; or (2) the date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including child support. *Id.* § 160.307. Although appellant sought recession in his petition to contest the AOP, filed in November 2008, the time period for rescission under section 160.307 had expired. *See id.* Accordingly,

appellant was barred, as a matter of law, from bringing a rescission proceeding to attack the AOP.

***B. Section 160.308 Proceeding to Challenge the AOP***

Nevertheless, if a signatory fails to bring a proceeding to rescind within the 60-day rescission period, he “may commence a proceeding to challenge the [AOP].” *Id.* § 160.308(a). A proceeding to challenge the AOP “must be commenced before the fourth anniversary of the date the [AOP] . . . is filed with the bureau of vital statistics.” *Id.* Such challenge must be “on the basis of fraud, duress, or material mistake of fact.” *Id.* Here, appellant filed his petition to contest the AOP, seeking relief under chapter 160, within the four-year challenge period. Appellant contends that his trial testimony proves that the AOP was the result of fraud, duress, and material mistake of fact. Appellant testified that (1) he signed the AOP based on Johnson’s false representations that he, appellant, was J.A.’s father, and (2) appellant realized after signing the AOP that he was working offshore when J.A. was conceived. In contrast, the mother testified that appellant was in fact J.A.’s biological father and that she did not fraudulently induce appellant to sign the AOP. Evidence of the prior default SAPCR order was admitted during the hearing. The AOP, signed by both parties, was also entered into evidence.

As the factfinder on the issue of fraud, duress, or material mistake of fact, the trial court heard and resolved the evidence presented by the parties. Because we review the trial court’s ruling for an abuse of discretion, appellant must show that the trial court acted without reference to any guiding rules or principles. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (reviewing a trial court’s ruling on support for an abuse of discretion). In determining whether the trial court abused its discretion in the resolution of factual matters, the reviewing court may not substitute its judgment for that of the trial court and may not disturb the trial court’s decision unless it is shown to be arbitrary and unreasonable. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). We review

the record to determine whether there is some evidence to support the judgment. *Worford*, 801 S.W.2d at 109.

On this record, we cannot say that the trial court's resolution of the contested facts was an abuse of discretion. There was sufficient evidence supporting the trial court's conclusion that appellant did not sign the AOP under the influence of fraud, duress, or material mistake of fact. Furthermore, appellant was not entitled to genetic testing without first making a successful challenge to the AOP. *See In re Attorney Gen. of Tex.*, 195 S.W.3d 264, 269 (Tex. App.—San Antonio 2006, orig. proceeding) (“A trial court abuses its discretion when a child’s paternity has been legally established and it orders genetic testing before such parentage determination has been set aside); *see also Amanda v. Montgomery*, 877 S.W.2d 482, 487 (Tex. App.—Houston [1st Dist.] 1994, orig. proceeding). Because appellant did not establish that the previous parentage determination should have been set aside, he was not entitled to DNA testing. We overrule appellant’s first and second issues and affirm the trial court’s judgment.

/s/ Adele Hedges  
Chief Justice

Panel consists of Chief Justice Hedges and Justices Yates and Boyce.