

IN THE UTAH COURT OF APPEALS

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Kirk J. Peterson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20040562-CA
v.)	
)	F I L E D
Hollie J. Peterson,)	(September 9, 2005)
)	
Respondent and Appellee.)	2005 UT App 386

Third District, Salt Lake Department, 024902937
The Honorable Timothy R. Hanson

Attorneys: James H. Deans, Salt Lake City, for Appellant

Before Judges Billings, Bench, and McHugh.

PER CURIAM:

This is before the court on appeal from an interlocutory order. Kirk Peterson appeals the trial court's order requiring him to submit to genetic testing to determine the paternity of D.P. Peterson asserts the trial court exceeded its authority in ordering the testing because Peterson had filed a voluntary declaration of paternity establishing him as D.P.'s father.

Under the Voluntary Declaration of Paternity Act (Act), although a declaration of paternity "is a legal finding of paternity," it is still subject to rescission or challenge. Utah Code Ann. § 78-45e-4(1) (2002) (repealed May 2005).¹ A declaration may be challenged in court on the basis of fraud, duress, or material mistake of fact. See id. § 78-45e-4(2)(a). Under the plain terms of the statute, the trial court has discretion to order genetic testing when paternity is challenged. See id. § 78-45e-4(3).

¹Parts of the Act were repealed effective May 2005 and replaced with more specific provisions located in the Utah Uniform Parentage Act. See Utah Code Ann. §§ 78-45g-101 to -902. However, the prior version of the Act controls this case.

Section 78-45e-4(3) provides that "[i]n determining whether to rescind the declaration the court has the same authority and obligation with regard to genetic testing as is provided in Section 78-45a-7." Id. Utah Code section 78-45a-7, part of the Uniform Act on Paternity, provides that "[t]he court may, on its own initiative, order the mother, the child, and the alleged father to submit to testing." Utah Code Ann. § 78-45a-7(2) (2002). It further establishes the types of testing the court may require. See id. § 78-45a-7(3). The statute explicitly grants the trial court the authority to order genetic testing even where a declaration has been filed.

Because the trial court had explicit statutory authority to order genetic testing, Peterson has not shown that it exceeded its authority in ordering him to submit to such testing. Accordingly, the trial court's order is affirmed.

Judith M. Billings,
Presiding Judge

Russell W. Bench,
Associate Presiding Judge

Carolyn B. McHugh, Judge