IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

In re the Matter of:

KELLY MCQUILLEN, *Petitioner/Appellant*,

v.

KYLE HUFFORD, *Respondent/Appellee*.

STATE OF ARIZONA, ex rel., THE DEPARTMENT OF ECONOMIC SECURITY, *Real Party in Interest*.

No. 1 CA-CV 19-0240 FC
FILED 4-30-2020

Appeal from the Superior Court in Maricopa County
No. FC2017-096669
The Honorable Adele Ponce, Judge

AFFIRMED

COUNSEL

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OPINION

Presiding Judge Kenton D. Jones delivered the Opinion of the Court, in which Judge James B. Morse Jr. and Judge Diane M. Johnsen[1] joined.

J O N E S, Judge:

¶1 Kelly McQuillen (Mother) appeals the family court's judgment in favor of Kyle Hufford on Mother's petition for paternity, legal decision-making, parenting time, and child support, and its order denying her motion to alter or amend the judgment. Construing A.R.S. §§ 25-812 and -814 together, we hold that a voluntary acknowledgment of paternity filed with the state has the same force and effect as a court judgment and thereafter must control over all other presumptions of paternity identified within A.R.S. § 25-812(A). Because Mother failed to set forth circumstances justifying relief from the prior determination that Matthew H. (Voluntary Father) is the father of her minor child (Child), we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In October 2017, Mother petitioned to establish paternity, legal decision-making, parenting time, and child support for Child, born in 2014. Mother alleged Hufford was Child's biological father and requested genetic testing to confirm paternity. She also asked the family court to order Hufford to pay child support, both retroactive to Child's birth and

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[1] Judge Johnsen was a sitting member of this Court when this matter was assigned to this panel of the Court. She retired effective February 28, 2020. In accordance with the authority granted by Article VI, Section 3, of the Arizona Constitution, and pursuant to Arizona Revised Statutes (A.R.S.) § 12-145, the Chief Justice of the Arizona Supreme Court has designated Judge Johnsen as a judge *pro tempore* in the Court of Appeals, Division One, for purpose of participating in the resolution of cases assigned to this panel during her term in office.

into the future, as well as Mother's medical expenses related to Child's birth.

¶3 In the same petition, however, Mother admitted that Voluntary Father had voluntarily acknowledged paternity of Child in January 2016. Indeed, Mother and Voluntary Father both signed a form issued by the Arizona Department of Economic Security (ADES) entitled "Acknowledgment of Paternity" that identified Voluntary Father as Child's father. In the Acknowledgment, Mother and Voluntary Father affirmed under penalty of perjury that they signed voluntarily and understood that the Acknowledgment would result in a legal determination of paternity. They then provided the Acknowledgment to the Arizona Department of Health Services (ADHS), which amended Child's birth certificate to reflect Voluntary Father as Child's father and to change Child's last name accordingly.

¶4 Although genetic testing later confirmed Hufford is Child's biological father, Hufford moved for summary judgment, arguing Mother was precluded from seeking an order of paternity because Child already had a legal father. In her response, Mother asserted she and Voluntary Father had executed and filed the Acknowledgment of Paternity knowing it was false. Mother asked the family court to set aside the Acknowledgment on the grounds of fraud and then apply a presumption of paternity in favor of Hufford based upon the genetic test results.

¶5 After taking the matter under advisement, the family court granted Hufford's motion and dismissed the action against him. Mother moved unsuccessfully to amend the judgment, and then timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1)[2] and -2101(A)(1), (2). *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 428, ¶ 14 (App. 2016) (concluding a ruling on a motion to set aside a judgment is appealable as a "special order made after final judgment") (citations omitted).

DISCUSSION

I. Establishing Paternity

¶6 Mother challenges the family court's entry of judgment in Hufford's favor, first arguing the court misapplied competing presumptions of paternity. We review both the grant of summary

[2] Absent material changes from the relevant date, we cite the current version of rules and statutes.

judgment and the interpretation of statutes *de novo*. *Palmer v. Palmer*, 217 Ariz. 67, 69-70, ¶ 7 (App. 2007) (citing *Urias v. PCS Health Sys., Inc.*, 211 Ariz. 81, 85, ¶ 20 (App. 2005), and *Maycock v. Asilomar Dev., Inc.*, 207 Ariz. 495, 500, ¶ 24 (App. 2004)). The material facts are not in dispute. Accordingly, we will affirm if we find Hufford "is entitled to judgment as a matter of law." *See* Ariz. R. Fam. Law P. 79(a).

¶7 Resolution of this issue requires reconciliation of A.R.S. §§ 25-812 and -814 as they relate to an acknowledgment of paternity. As relevant here, A.R.S. § 25-812 allows:

> the parent of a child born out of wedlock [to] establish the paternity of a child by filing . . . with the clerk of the superior court, the department of economic security or the department of health services . . . [a] notarized or witnessed statement that contains the social security numbers of both parents and that is signed by both parents acknowledging paternity or two separate substantially similar notarized or witnessed statements acknowledging paternity.

A.R.S. § 25-812(A)(1). "A voluntary acknowledgment of paternity made pursuant to this section is a determination of paternity and has the same force and effect as a superior court judgment." A.R.S. § 25-812(D).

¶8 Pursuant to A.R.S. § 25-814(A):

> A man is presumed to be the father of the child if:
>
> 1. He and the mother of the child were married at any time in the ten months immediately preceding the birth or the child is born within ten months after the marriage is terminated . . . .
>
> 2. Genetic testing affirms at least a ninety-five per cent probability of paternity.
>
> 3. A birth certificate is signed by the mother and father of a child born out of wedlock.
>
> 4. A notarized or witnessed statement is signed by both parents acknowledging paternity or separate substantially similar notarized or witnessed statements are signed by both parents acknowledging paternity.

Subsection (C) of A.R.S. § 25-814 provides:

> Any presumption under this section shall be rebutted by clear and convincing evidence. If two or more presumptions apply, the presumption that the court determines, on the facts, is based on weightier considerations of policy and logic will control. . . .

¶9 Mother argues two competing presumptions of paternity exist under A.R.S. § 25-814(A) here — one that Hufford is the father under subsection (2) (genetic testing), and one that Voluntary Father is the father under subsection (4) (acknowledgment of paternity). *See* A.R.S. § 25-814(A). She argues the presumption of paternity based on the genetic test results has not been rebutted by clear and convincing evidence, and the family court erred in failing to consider which presumption was "based on weightier considerations of policy and logic" under A.R.S. § 25-814(C). Hufford argues the Acknowledgment of Paternity established Voluntary Father as the father of Child with "the same force and effect as a superior court judgment," A.R.S. § 25-812(D), such that the issue of paternity was not subject to balancing under A.R.S. § 25-814.

¶10 "Our goal in statutory interpretation is to effectuate the legislature's intent." *Meno's Constr., L.L.C. v. Indus. Comm'n*, 246 Ariz. 521, 526, ¶ 16 (App. 2019) (quoting *SolarCity Corp. v. Ariz. Dep't of Revenue*, 243 Ariz. 477, 480, ¶ 8 (2018)); *see also Brummond v. Lucio*, 243 Ariz. 360, 363-64, ¶ 13 (App. 2017). "The best indicator of that intent is the statute's plain language, and when that language is unambiguous, we apply it without resorting to secondary statutory interpretation principles." *Id.* (quoting *SolarCity*, 243 Ariz. at 480, ¶ 8). "When 'statutes relate to the same subject or have the same general purpose[,] they should be read in connection with, or should be construed together with other related statutes, as though they constituted one law.'" *State ex rel. Dep't of Econ. Sec. v. Pandola*, 243 Ariz. 418, 419-20, ¶ 6 (2018) (quoting *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970), and citing *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017)).

¶11 Any uncertainty about the effect of an acknowledgment of paternity is resolved by the legislature's directive that "[a] court decree establishing paternity of the child by another man rebuts the presumption." A.R.S. § 25-814(C). A voluntary acknowledgment of paternity filed with the state "has the same force and effect as a superior court judgment," A.R.S. § 25-812(D), and qualifies as a "court decree establishing paternity" for purposes of A.R.S. § 25-814(C). With this statement, the legislature has unambiguously expressed a preference for finality in paternity

determinations — however obtained — that trumps any "weight[y] considerations of policy and logic" the parties might later advance in favor of another presumption. Indeed, a presumption of paternity has no logical effect when a child has a legal father established through the filing of an acknowledgment of paternity; the child already has a father. *See Gutierrez v. Fox*, 242 Ariz. 259, 269, ¶ 40 (App. 2017) (holding the "mere *presumptions* of paternity" contained in A.R.S. § 25-814 are "subordinate to . . . the voluntary *establishment* of paternity" governed by A.R.S. § 25-812).

¶12 Our interpretation does not, as Mother suggests, render A.R.S. § 25-814(A)(4) meaningless. As the statute makes clear, the mere execution of a document acknowledging paternity under that provision does not create a judgment; the acknowledgment must be filed with the state — through the clerk of the superior court, ADES, or ADHS — before it establishes paternity with "the same force and effect as a superior court judgment." *See* A.R.S. § 25-812(A) (specifying that paternity of a child may be established by "filing" the required document). An unfiled acknowledgment may warrant a presumption of paternity under A.R.S. § 25-814(A)(4) that is subject to rebuttal and policy arguments as stated in A.R.S. § 25-814(C). As detailed above, however, once the acknowledgment is filed with the state, it gains the force and effect of a superior court judgment, and that determination of paternity controls over all other claims.

¶13 The Acknowledgment of Paternity, filed with ADHS, establishes Voluntary Father's paternity of Child here. Accordingly, the family court could consider the newly identified genetic-testing presumption only if it first set aside the existing determination of paternity.

II. Relief From Judgment

¶14 A voluntary acknowledgement of paternity "is presumed valid and binding until proven otherwise." *Alvarado v. Thomson*, 240 Ariz. 12, 15, ¶ 12 (App. 2016) (quoting *Andrew R. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 453, 457, ¶ 17 (App. 2010)). Where, as here, the sixty-day period to rescind an acknowledgment of paternity has expired, *see* A.R.S. § 25-812(H)(1), an interested party "may challenge a voluntary acknowledgment of paternity established in this state . . . only on the basis of fraud, duress or material mistake of fact," A.R.S. § 25-812(E) (citing what is now Arizona

Rule of Family Law Procedure 85(b),[3] which governs the grounds for relief from a final judgment).[4] These statutory limitations represent a "clear intent to narrow an untimely collateral attack on another person's statutorily presumed paternity" to only those situations involving "fraud, duress or material mistake of fact." *Stephenson v. Nastro ex rel. Cty. of Maricopa*, 192 Ariz. 475, 484, ¶ 29 (App. 1998); *see* A.R.S. § 25-812(E).

¶15 The challenger of an acknowledgment of paternity bears the burden of proving the existence of circumstances that justify setting aside the judgment. A.R.S. § 25-812(E). We review the denial of a motion to set aside a final judgment for an abuse of discretion. *Quijada v. Quijada*, 246 Ariz. 217, 220, ¶ 7 (App. 2019) (citing *Clark v. Kreamer*, 243 Ariz. 272, 275, ¶ 10 (App. 2017)).

¶16 Mother argues the family court erred by finding she failed to prove fraud justifying relief from the judgment. In essence, Mother asserts that her own knowing fraud upon the court is sufficient to set aside the judgment of paternity. Principles of equity dictate otherwise.

¶17 Relief from a judgment is available to remedy mistakes and errors that occur despite a party's diligent efforts to comply with the law. *See In re Marriage of Worcester*, 192 Ariz. 24, 26, ¶ 6 (1998) (discussing the civil counterpart to Rule 85(b)) (citing *City of Phx. v. Geyler*, 144 Ariz. 323, 332 (1985)). Thus, an innocent party may seek relief from a judgment procured by the fraud of others. This distinguishes each of the cases Mother cites; all of them involve a challenge to paternity initiated by a biological father affirmatively seeking to establish his legal rights. *See Alvarado*, 240 Ariz. at 14, 17, ¶¶ 6, 22-23 (affirming the court's order granting the biological father's motion to set aside an acknowledgment of paternity that both signatories knew to be false); *accord Brummond*, 243 Ariz. at 362-65, ¶¶ 4-22; *McGee v. Gonyo*, 140 A.3d 162, 164-68, ¶¶ 7-19 (Vt. 2016). Here,

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[3] The provisions in Rule 85 describing the procedure and grounds for relief from a final judgment changed from subsection (c) to subsection (b), effective January 1, 2019. The statute has not been updated to reflect this change.

[4] Mother suggests she and Voluntary Father could stipulate to rescind the Acknowledgment of Paternity at any time. She cites no authority to support this assertion, and we find none. To the contrary, A.R.S. § 25-812(H) specifically limits the time to rescind to "the earlier of . . . [s]ixty days after the last signature is affixed to the notarized acknowledgment of paternity that is filed . . . [or] [t]he date of a proceeding relating to the child."

Mother seeks relief from her own misconduct. But "it is axiomatic that one who has knowingly and intentionally perpetrated a fraud on another party and the court can never be entitled to relief under the rule." *Worcester*, 192 Ariz. at 26, ¶ 6. Mother is thus precluded, as a matter of law, from seeking relief based on her own fraudulent misrepresentations. Accordingly, we find no error in the family court's order denying Mother's request for relief from the determination of Voluntary Father's paternity.[5] *See id.* (rejecting a mother's claim for relief from a judgment of paternity where she herself "misrepresented the facts that resulted in the entry of the decree" establishing the child's parentage).

¶18 Mother separately suggests the genetic test results alone require the family court to vacate the Acknowledgment of Paternity. Section 25-812(E) states: "[p]ursuant to rule 85([b]) of the Arizona rules of family law procedure,"[6] a party may challenge a voluntary acknowledgment of paternity more than sixty days after its execution "only on the basis of fraud, duress or material mistake of fact." Although A.R.S. § 25-812(E) directs genetic testing and requires an acknowledgment of paternity be vacated "[i]f the court finds by clear and convincing evidence that the genetic tests demonstrate that the established father is not the biological father of the child," the statute's provisions must be read together. *See Stambaugh*, 242 Ariz. at 509, ¶ 7. By its plain language, A.R.S. § 25-812(E) requires genetic testing only *after* the court finds that a party has shown "fraud, duress or material mistake of fact" sufficient to upset the acknowledgment. *See also Stephenson*, 192 Ariz. at 484, ¶ 28 (stating mandatory genetic testing on a motion of a party under A.R.S. § 25-812(E) "requires an evidentiary showing, beyond just a mere allegation, of a permissible basis for such a challenge"). Because Mother failed to present a permissible basis upon which to challenge Voluntary Father's paternity, *see supra* ¶ 17, the court was not required to order genetic testing under A.R.S. § 25-812(E).

CONCLUSION

¶19 The family court's orders are affirmed.

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[5] Because we affirm the family court's order on its merits, we need not and do not address the parties' arguments regarding the timeliness of the motion to set aside the judgment.

[6] *See supra* n.3.

¶20 Both parties request an award of attorneys' fees and costs pursuant to A.R.S. § 25-324(A). After considering the reasonableness of the parties' positions and the asserted disparity in financial resources, we award Hufford his reasonable attorneys' fees and costs incurred on appeal upon compliance with ARCAP 21(b).

AMY M. WOOD • Clerk of the Court
FILED: AA