STATE OF MICHIGAN

COURT OF APPEALS

In re L. M. B., Minor.

UNPUBLISHED
March 13, 2018

No. 338169
Wayne Circuit Court
Family Division
LC No. 2016-000241-AD

ON REMAND

Before: O'BRIEN, P.J., and JANSEN and MURRAY, JJ.

PER CURIAM.

This case comes back to this Court on remand from our Supreme Court, which vacated our prior decision and remanded "for reconsideration in light of the December 18, 2017 Court of Appeals order in *Sarna v Healy* (Docket No. 341211)." *In re LMB*, ___ Mich ___; 905 NW2d 598 (2018). We have considered that order and, because it does not vacate the order of filiation establishing respondent's father's status as LMB's legal father, we dismiss this appeal as moot.

The facts of this case as stated in our previous opinion are as follows:

> LMB was conceived out of wedlock, and respondent mother and respondent father were never married. Shortly after respondent mother found out that she was pregnant, she informed respondent father. During her pregnancy, respondent mother decided that she wanted to place LMB up for adoption, although it was unclear whether respondent father would consent. An adoption agency placed respondent mother in contact with petitioners, who sought to adopt LMB. However, after LMB was born, respondent father objected to the adoption and sought custody of the child. The matter proceeded to a contested hearing. At the time of the hearing, respondent father was not LMB's legal father. As a result, the trial court was asked to decide whether termination of respondent father's parental rights was appropriate under MCL 710.39(1), which applies to putative fathers. The trial court declined to terminate respondent father's parental rights under this statutory provision, finding that LMB's best interests would not be served by termination. Petitioners filed the instant appeal challenging that ruling.
>
> However, while the adoption proceeding was pending, and apparently unknown to the trial court, respondent father filed a second suit in a different division of the Wayne Circuit Court. After petitioners filed the instant appeal, the

> trial court, in the second case, entered an order of filiation declaring respondent father to be the legal and biological father of LMB. [*In re LMB*, unpublished per curiam opinion of the Court of Appeals, issued August 14, 2017 (Docket No. 338169), pp 1-2 (footnote omitted), vacated ___ Mich ___ (2018).]

We decided that petitioners' appeal was moot for the following reasons:

> The relief ultimately sought by petitioners [was] an order terminating respondent father's parental rights pursuant to MCL 710.39(1). By its terms, this statute only concerns the termination of the parental rights of putative fathers. See MCL 710.39(1). Because respondent father is LMB's biological and legal father, MCL 710.39(1) is no longer applicable. [*In re LMB*, unpub op at 2 (footnote omitted).]

After our original opinion in this case was released, and while petitioners' application for leave to appeal that decision to our Supreme Court was pending, petitioners filed an appeal in their separate paternity action in Docket No. 341211. In that appeal, petitioners argued that the trial court in the paternity action erred by entering (1) the June 7, 2017 order of filiation declaring respondent father to be LMB's legal father and (2) a June 20, 2017 order denying petitioners' motion to stay the paternity proceedings.[1] In its application for leave to appeal, petitioners argued that it was improper to enter the order of filiation when the matter should have been stayed pending the outcome of their appeal in the adoption matter. Petitioners asked this Court to do the following:

> [P]eremptorily reverse the Trial Court's decision to deny a stay of the paternity action, vacate every order entered after the order denying the stay, and remand to the trial court for entry of a stay in the Paternity Case until the adoption appeal is concluded.

This Court's peremptory order provided some of the requested relief, but did not vacate the order of filiation. In its entirety, this Court's order states:

> In lieu of granting the delayed application, the Court orders, pursuant to MCR 7.205(E)(2), that the June 20, 2017[] order of the Wayne Circuit Court denying the stay is REVERSED. In light of the pending adoption appeal, and under the totality of the circumstances, while considering the best interests of the child, which the circuit court failed to do, the circuit court abused its discretion in not staying this paternity action. Thus, the entry of a stay at this juncture is required pursuant to MCR 7.209.

[1] The timeline of certain relevant events in the paternity proceeding is somewhat confusing. Petitioners filed a motion to intervene in the paternity matter and stay the case, which the trial court denied at a hearing on June 2, 2017. However, the order reflecting those decisions was not entered until after a different hearing on June 20, 2017.

> The motion for stay is GRANTED. The child should be returned to the care of the prospective adoptive parents pending resolution of the adoption appeal in the Michigan Supreme Court and pending a decision after an evidentiary hearing regarding custody in the instant matter.
>
> The motion "for production of the orders from the December 11, 2017 hearing, which pertain to the emergency motion for stay filed on December 12, 2017 and an anticipated appeal of right (assuming one of the orders constitutes a 'final order' under the paternity act)" is DENIED.
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> This order is to have immediate effect, MCR 7.215(F)(2). This Court retains no further jurisdiction. [*Sarna v Healy*, unpublished order of the Court of Appeals, entered December 18, 2017 (Docket No. 341211).]

This Court's order in Docket No. 341211 did not vacate the order of filiation, despite petitioners' request for this Court to do so. In fact, this Court's order says nothing about vacating or otherwise disturbing any orders entered in the paternity case other than the order denying a stay. Because this Court's order did not disturb the order of filiation, that order is still in effect. Therefore, our reasoning from our previous case remains undisturbed in light of this Court's order in Docket No. 341211.

Further, we are bound to follow this Court's recent decision in *In re MGR*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 338286, February 27, 2018). In that case, the trial court entered an order refusing to terminate the then-putative father's parental rights to MGR pursuant to MCL 710.39, and then, while the petitioners' appeal of that decision was pending, the trial court entered an order of filiation determining the putative father to be the child's legal father. *Id*. at ___ (slip op at 3).[2] The majority reasoned as follows:

> After the trial court entered its opinion and order declining to terminate appellee's parental rights under MCL 710.39(2), the same court entered an order of filiation in the separate paternity action, declaring appellee to be MGR's biological and, therefore, legal father. Accordingly, appellee is no longer a putative father, and neither we nor the trial court can grant relief under MCL 710.39(1) and (2), which both exclusively address termination of a *putative father's* rights during the course of an adoption. As appellee is now considered a legal parent, his rights can only be terminated pursuant to MCL 712A.19b. See *In re MKK*, 286 Mich App 546, 558; 781 NW2d 132 (2009) ("Once a man perfects his legal paternity, he is considered a 'parent,' with all the attendant rights and

[2] In *In re MGR*, the trial court handled both the adoption and paternity proceedings, and was aware of the effect that entering its order of filiation would have on the adoption appeal. *In re MGR* ___ Mich App at ___ (slip op at 4-5) (O'BRIEN, J., dissenting). Here, in contrast, different trial courts handled the adoption and paternity proceedings, and it is unclear whether the trial court was aware of the pending adoption appeal or the effect that its order of filiation would have on that appeal. This case, therefore, does not raise the concerns of the dissent in *In re MGR*.

> responsibilities, and termination of his parental rights can generally only be accomplished in cases of neglect or abuse under MCL 712A.19b."). A remand to address statutory provisions that pertain to putative fathers, when there is no longer a putative father in this case, would provide no proper legal remedy at all. [*In re MGR*, ___ Mich App at ___ (slip op at 3).]

The pertinent facts of this case are the same as in *In re MGR*, and, as a published decision, *In re MGR* is binding precedent. MCR 7.215(C)(2). Accordingly, because respondent father is LMB's legal father, it is impossible for this Court to grant petitioners' requested relief and remand for a determination of whether respondent legal father's rights should be terminated under a section only applicable to putative father. *In re MGR*, ___ Mich App at ___ (slip op at 3).

Appeal dismissed as moot.

/s/ Colleen A. O'Brien
/s/ Kathleen Jansen
/s/ Christopher M. Murray