STATE OF MICHIGAN

COURT OF APPEALS

DANA A. TAYLOR,

Plaintiff-Appellee,

v

WILLIAM TAYLOR, JR.,

Defendant-Appellant.

UNPUBLISHED
May 9, 2019

No. 346299
Washtenaw Circuit Court
Family Division
LC No. 16-000787-DM

Before: BOONSTRA, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying his motion to revoke paternity of the minor child, SH, under the Revocation of Paternity Act (RPA), MCL 722.1431 *et seq*. We reverse and remand for further proceedings.

Plaintiff and defendant married in 2000 and, during their marriage, plaintiff gave birth to four children. At issue in this case is plaintiff's youngest child, SH, born in 2011. The parties were separated at SH's birth and agree that defendant is not SH's biological father. Indeed, genetic testing confirms that there is no possibility that defendant is the child's father. Plaintiff instructed defendant to stay away from the hospital at SH's birth and the parties have always told SH that another man, Charles Henderson, was her father. In fact, SH has had a parent-child relationship with Henderson since her birth and plaintiff and SH have lived with Henderson since 2014. Plaintiff informed defendant that he was not to attempt to parent SH and defendant obliged with this request.

In March 2016, plaintiff filed a complaint for divorce from defendant. Then, a month later, defendant moved to revoke his presumed paternity over SH under MCL 722.1443(1). The trial court dismissed the motion, however, concluding that it lacked jurisdiction under MCL 722.1441(2) to enter the order of revocation because defendant had not made the motion within three years of SH's birth. This Court then reversed the dismissal, concluding that the three-year limitation did not apply to motions brought in the context of a divorce proceeding. *Taylor v Taylor*, 323 Mich App 197; 916 NW2d 652 (2018).

On remand, the trial court considered whether declaring SH to be "born out of wedlock" would be in the child's best interests. See MCL 722.1443(4). The trial court noted that SH was five years old at the time defendant first sought to revoke his paternity. According to the trial court, the financial ties between SH and defendant, including the child support defendant paid to SH and the possibility of SH inheriting from defendant or sharing in his insurance or potential Social Security benefits, weighed in favor of upholding paternity. The trial court opined that neither plaintiff nor Henderson would be able to provide SH with the same financial support. The trial court also noted Henderson's extensive criminal history, including convictions of homicide, involuntary manslaughter, and multiple attempted robbery charges and concerns that Henderson had been violent towards plaintiff in SH's presence. The trial court found troubling the fact that Henderson could potentially establish paternity over SH if defendant's paternity were revoked. Based on these concerns, the trial court held that SH's best interests would not be served if she were declared born out of wedlock and denied defendant's motion for revocation of paternity. This appeal followed.

"This Court reviews a trial court's factual findings in proceedings under the RPA for clear error." *Jones v Jones*, 320 Mich App 248, 253; 905 NW2d 475 (2017). "The trial court has committed clear error when this Court is definitely and firmly convinced that it made a mistake." *Id.* (internal citation and quotation marks omitted).

"The RPA provides the procedures for courts to determine the paternity of children in certain situations." *Id.* One such situation is when a child's paternity is challenged during a divorce proceeding. MCL 722.1441(2). Under the RPA, a child conceived by or born to a married woman is presumed to be the child of the married woman's husband. MCL 722.1433(e). At divorce, however, the presumed father may challenge this presumption and the trial court may declare the child to be "born out of wedlock." MCL 722.1443(2)(d). Nevertheless, even when the child is proven not to be the biological child of the presumed father, the trial court may refuse to enter an order "determining that [the] child is born out of wedlock if the court finds evidence that the order would not be in the best interests of the child." MCL 722.1443(4). In making this decision, the trial court may consider the following factors:

> (a) Whether the presumed father is estopped from denying parentage because of his conduct.
>
> (b) The length of time the presumed father was on notice that he might not be the child's father.
>
> (c) The facts surrounding the presumed father's discovery that he might not be the child's father.
>
> (d) The nature of the relationship between the child and the presumed or alleged father.
>
> (e) The age of the child.
>
> (f) The harm that may result to the child.

(g) Other factors that may affect the equities arising from the disruption of the father-child relationship.

(h) Any other factor that the court determines appropriate to consider. [MCL 722.1443(4).]

The trial court must find the child's best interests by a preponderance of the evidence. *Jones*, 320 Mich App at 257 n 4. If the trial court rules that paternity remains despite the fact that the child is not the issue of the presumptive father, the trial court needs to justify its decision with specific reasons on the record because of the unusual nature of the conflicting rulings. *Id.* at 256.

Here, the trial court's refusal to declare SH born out of wedlock was based primarily on two considerations. First, the trial court expressed concern that Henderson would be able to establish paternity over SH if defendant's paternity were revoked. While we agree that Henderson's criminal record is troubling, we note that Henderson has been the child's *de facto* father since her birth and that refusing to revoke defendant's paternity would not spare SH from Henderson's influence. Moreover, the record indicates that, should Henderson move forward with establishing paternity, the Department of Health and Human Services would file for termination of his parental rights. Accordingly, the concern that Henderson would have legal authority over SH was minimal.

Second, the trial court focused on several types of financial harm that could befall SH should defendant's paternity be revoked. The trial court noted that SH could inherit from defendant in intestate succession, but defendant could easily avoid such an inheritance by enacting a will. Next, the trial court concluded that SH could be eligible for Social Security or insurance benefits from defendant in the event that defendant became injured or disabled. Defendant, however, could exclude SH from any insurance policy he contracted and, to the extent that SH could recover Social Security benefits from defendant, there was no indication that defendant was likely to become disabled in the future.

Finally, the trial court noted that SH was receiving child-support payments from defendant and that neither plaintiff nor Henderson were likely to be able to make up the financial difference should these payments cease. Contrary to defendant's assertion on appeal, financial harm is a relevant best-interest consideration. See *Demski v Petlick*, 309 Mich App 404, 436-437; 873 NW2d 596 (2015). Yet, in this case, the only relevant link between defendant and SH is financial. Defendant has never held SH out to be his daughter and has never had a relationship with her. SH has never seen defendant as her father and plaintiff has forbade defendant from taking any role in SH's life—except for providing financially for SH. Although defendant's contributions to SH's household will surely be missed, state resources are available to assist the family. Because no relevant connection exists between defendant and SH, except for the financial connection created by the support obligation, we conclude that the trial court clearly erred by refusing to declare SH born out of wedlock. See *Jones*, 320 Mich App at 257 (noting the lack of any bond between the presumed father and child as support for revocation of the presumed father's paternity).

Reversed and remanded for further proceedings consistent with this opinion. Defendant may tax costs. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood