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NO. COA 05-1502

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STATE OF NORTH CAROLINA  
On behalf of TRACY M. MEZA,  
Plaintiff,

v.

Randolph County  
No. 05 CVD 731

ADRIAN C. MEZA,  
Defendant.

On writ of certiorari from order entered 16 July 2005 by Judge Lillian Jordan in Randolph County District Court. Heard in the Court of Appeals 24 July 2006.

*Attorney General Roy Cooper, by Assistant Attorney General Lisa Bradley Dawson, for the State.*

*No brief filed by defendant-appellee.*

MARTIN, Chief Judge.

The State appeals from an order of the district court granting defendant Adrian C. Meza's oral motion for a DNA paternity test. This Court issued a writ of certiorari for the purpose of reviewing the order on 23 August 2005. Because the issue of the minor child's paternity was previously adjudicated in a legitimation proceeding initiated by defendant pursuant to N.C.G.S. § 49-12.1 (2006), we reverse.

The record before this Court shows that plaintiff gave birth

to the minor child on 13 July 1995. She subsequently married defendant on 26 January 1996. Defendant filed a petition to legitimate the child in Chatham County Superior Court in 2000. In a consent order entered 5 May 2000, see N.C. Gen. Stat. § 49-12.1(c), the Clerk of Superior Court found as follows:

[Defendant] is the father of the minor child, . . . and [plaintiff] is the mother of said minor child, born on July 13, 1995, in Guilford County, North Carolina.

At the time of the birth of the minor child, . . . there was no father's name listed on the birth certificate.

Both [defendant] and [plaintiff] openly admit they are the biological parents of the minor child . . . .

That [defendant] and [plaintiff] were married in Alamance County, North Carolina, on January 26, 1996.

Based on these findings, the clerk concluded that "[t]he presumption of legitimacy has been overcome by clear and convincing evidence[,]"<sup>1</sup> and that "[defendant] is the father of the minor child[.]" The order decreed that the child was the legitimate son of defendant and provided for the issuance of "a new birth certificate bearing the full name of the father as Adrian Castillo Meza." After defendant's name was added to the child's birth certificate, the parents officially changed the child's name to share defendant's surname in August 2000. See N.C. Gen. Stat. § 49-12.1(b).

Plaintiff and defendant separated in 2001. On 25 April 2005,

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<sup>1</sup> See N.C. Gen. Stat. § 49-12.1(b). It appears plaintiff was married to another man at the time of the child's birth.

plaintiff filed a complaint for child support in Randolph County District Court. At a hearing held 8 June 2005, defendant requested a DNA paternity test, claiming he had been told by others that he is not the child's father. Though acknowledging defendant's legitimation of the child in May 2000, the district court concluded that defendant "is entitled to DNA testing based on his oral motion to the court that he now has doubts concerning whether he is the father of the child." The court ordered the principals to appear for genetic testing "at a date, time and place to be scheduled by the Randolph County Child Support Enforcement Agency."

The State claims the district court erred in ordering genetic paternity testing, as defendant's legitimation of the child in 2000 renders the issue of paternity *res judicata*. It further avers that, because defendant sought and obtained a judgment establishing his paternity of the child, he is estopped to relitigate this issue. We agree.

Well settled case law in this state bars a defendant from obtaining paternity testing in a child support proceeding where there is a prior adjudication of paternity extant. *State of N.C. ex rel. Bright v. Flaskrud*, 148 N.C. App. 710, 712, 559 S.E.2d 286, 288 (2002); *Ambrose v. Ambrose*, 140 N.C. App. 545, 546, 536 S.E.2d 855, 857 (2000); *State ex rel. Hill v. Manning*, 110 N.C. App. 770, 772, 431 S.E.2d 207, 208 (1993). Here, defendant legitimated the child in 2000. Moreover, the 5 May 2000 consent order included a finding by clear and convincing evidence that defendant is the child's father. The superior court's legitimation order has not

been overturned on appeal or set aside pursuant to N.C.R. Civ. P. 60(b). Accordingly, the doctrine of *res judicata* bars defendant from contesting paternity in this case. *Manning*, 110 N.C. App. at 772, 431 S.E.2d at 208 ("The doctrine has been repeatedly applied in cases where there has been a judicial finding of paternity and the defendant subsequently raises the issue of paternity in an effort to avoid payment of child support.") (citing *State ex rel. Lewis v. Lewis*, 311 N.C. 727, 319 S.E.2d 145 (1984)); *Sampson County Child Support Enforcement Agency ex rel. McNeill v. Stevens*, 101 N.C. App. 719, 720, 400 S.E.2d 776-77 (1991).

Reversed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).