IN THE UTAH COURT OF APPEALS

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In the matter of the guardianship of A.S., a person under eighteen years of age.	MEMORANDUM DECISION (Not For Official Publication)
	Case No. 20050964-CA
A.M., Appellant,	F I L E D (March 1, 2007)
v.	2007 UT App 72
Guardian Ad Litem, Appellee.	

Fifth District Juvenile, Cedar City Department, 461721
The Honorable Hans Q. Chamberlain

Attorneys: Jeffery E. Slack, Cedar City, for Appellant
Martha Pierce, Salt Lake City, and Karla Staheli, Cedar City, for Appellee

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Before Judges Greenwood, Billings and Davis.

PER CURIAM:

A.M. appeals an order dismissing him from the termination case and denying a motion for genetic testing.

In May 2001, the Office of Recovery Services (ORS) adjudicated R.N. to be A.S.'s father. See Utah Code Ann. § 78-45g-104 (Supp. 2006) (authorizing ORS to adjudicate parentage). R.N. appears as the father on A.S.'s amended birth certificate. The juvenile court found that "[A.M.] has failed to pay child support, failed to acknowledge that he is the father of the child, and failed to follow any of the statutory procedures outlined in the Utah Code to establish his legal paternity including failure to register with the Office of Vital Records and Statistics." The juvenile court made findings under Utah Code section 78-45g-608, which we summarize as follows: (1) A.M. was on notice of his possible paternity by having sexual relations with the mother; (2) A.M. never assumed the role of

father to the child; (3) A.M. was on notice of competing paternity claims when the petition to terminate was served on him; (4) A.M. established no relationship with the child; (5) A.S. will soon be five, and A.M. had a substantial amount of time to establish paternity; (6) A.M. failed to establish his paternity; (7) another man established paternity through ORS; (8) laches should be applied to A.M.'s belated claim.

The Guardian Ad Litem (GAL) argues that we lack subject matter jurisdiction over this appeal claiming both that A.M. is a non-party and that his appeal is not taken from a final appealable order. The GAL cited, but did not analyze, In re A.F., 2006 UT App 200, 138 P.2d 65. There, we recognized that "[i]n child welfare proceedings, unlike traditional civil cases, appeals may be heard from more than one final judgment." Id. at ¶8. Therefore, the determination of whether the permanency order appealed in that case was "final and appealable require[d] pragmatic analysis of the order itself." Id. at ¶9. We concluded that "[s]ome permanency orders end the case as a practical matter and, thus, are clearly final and appealable." Id. at ¶10. In a list of examples of such orders, we included "orders that otherwise relieve a party from further litigation." Id. A.M. appeals an order that dismissed him as a party and relieved him from further litigation. The denial of genetic testing was a basis for dismissal. Under the circumstances, we conclude that the order was final and appealable, and we have jurisdiction.

A.M. contends he was denied effective assistance of counsel when the juvenile court allowed a hearing on the motions to go forward although his appointed counsel was absent. He also claims his trial counsel was ineffective because he failed to respond in writing to the motion to dismiss and objections to paternity testing, attend the first hearing, and object to the findings supporting the denial of genetic testing.

A parent who is appointed counsel to represent him or her in a termination proceeding is entitled to effective assistance of counsel. See In re E.H., 880 P.2d 11, 13 (Utah Ct. App. 1994). The test for ineffectiveness of counsel requires us to determine, first, whether counsel rendered objectively deficient performance and, second, whether the party was prejudiced by that deficient performance. See id. A.M.'s trial counsel rendered objectively deficient performance by failing to file a response to the motion to dismiss or to appear at the hearing on that motion and the related motion for genetic testing. Nevertheless, A.M. cannot establish any resulting prejudice.

The Utah Uniform Parentage Act governs establishment of paternity and challenges to paternity. See Utah Code Ann. §§ 78-45g-101 to -623 (Supp. 2006). An adjudicated father is a man "who has been adjudicated by a tribunal to be the father of a child." Utah Code § 78-45g-102(1). R.N. is an adjudicated father by virtue of the ORS order. "If a child has an adjudicated father, the results of genetic testing are inadmissible to challenge paternity except as set forth in sections 78-45g-607 and 78-45g-608." Id. § 78-45g-613(4). Section 78-45g-607 does not apply in this case. See id. § 78-45g-607. The juvenile court denied genetic testing after making the requisite best interests analysis, including an analysis of each of the factors in section 78-45g-608. See id. § 78-45g-608.

A.M. advances no arguments reflecting a bona fide dispute of the court's findings and conclusions supporting the denial of the genetic testing he sought to challenge R.N.'s paternity. The juvenile court correctly dismissed A.M. from the case. A.M. was not prejudiced by his trial counsel's deficient performance; therefore, he was not denied effective assistance of counsel. We affirm the order denying genetic testing and dismissing A.M. from the case.

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Pamela T. Greenwood,
Associate Presiding Judge

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Judith M. Billings, Judge

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James Z. Davis, Judge