

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN RE PARENTAGE OF M.J.M.,)	
)	DIVISION ONE
Minor Child.)	
)	No. 64124-7-1
RUSS FULTON, acknowledged father,)	
)	
Appellant,)	UNPUBLISHED OPINION
)	
v.)	
)	
MEGHAN COTTON, mother, and)	
FRANK JONATHAN MILLER,)	
adjudicated father,)	
)	FILED: July 6, 2010
Respondents.)	
_____)	

Dwyer, C.J. — We must determine whether, pursuant to the Uniform Parentage Act (UPA), chapter 26.26 RCW, the legal father-child relationship established between an acknowledged father and a child survives where a different man is later adjudicated to be the child’s father. Because the UPA is unambiguous, we hold that an acknowledged father no longer has a legal father-child relationship with the child when another man is adjudicated to be the father based on adequate genetic testing. Accordingly, we affirm.

Meghan Cotton learned that she was pregnant and informed Russ Fulton, with whom Cotton had an intimate relationship, that he was the child’s father.

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When Cotton's son, M.J.M., was born, Fulton was identified as the father on the birth certificate. Fulton and Cotton also executed an acknowledgment of paternity recognizing Fulton as M.J.M.'s father.

However, shortly after M.J.M. turned one year old, Cotton informed another man, Frank Miller, that he could be M.J.M.'s father. Results of subsequent genetic testing indicated that there was a 99.9997 percent probability that Miller was M.J.M.'s biological father.

Miller timely filed a petition for establishment of parentage in order to commence an adjudication of paternity.¹ The trial court subsequently entered an order declaring that Miller was M.J.M.'s biological father and dismissed Fulton from the action on summary judgment.²

Fulton appeals.

II

Fulton contends that his father-child relationship with M.J.M., established through his acknowledgment of paternity, survives notwithstanding that Miller's paternity was timely adjudicated. We disagree.

We must determine whether the UPA, chapter 26.26 RCW, compels that an acknowledged father loses his legal relationship with the child when a different man is adjudicated to be the child's father. The meaning of a statute is

¹ Fulton had earlier filed a petition for support and residential placement, and the trial court had entered a temporary parenting plan assigning primary residential placement to him. Miller's petition was filed separately from Fulton's support and placement action. The two cases were eventually consolidated.

² A guardian ad litem represented M.J.M.'s interests throughout these proceedings.

a question of law that we review de novo. Lake v. Woodcreek Homeowners Ass'n, ___ Wn.2d ___, 229 P.3d 791, 795 (2010). “Statutory interpretation begins with the statute’s plain meaning,” and our inquiry ends with a review of the plain language of an unambiguous statute. Lake, 229 P.3d at 796.

In 2000, Washington adopted the then-current version of the UPA. The UPA governs determinations of parentage. RCW 26.26.021(1). Parents are defined by the statute to be those individuals who have established a parent-child relationship under RCW 26.26.011, which provides the means for establishing both a mother-child legal relationship and a father-child legal relationship.

Pursuant to the UPA, a father-child relationship can be established in several ways.³ Two ways are of particular relevance to this appeal. First, a father-child relationship is established between a child and a man by an adjudication of the man’s paternity. RCW 26.26.101(2)(c). Second, a father-

³ With respect to the father-child relationship, the statute provides:

- (2) The father-child relationship is established between a child and a man by:
 - (a) An un rebutted presumption of the man’s paternity of the child under RCW 26.26.116;
 - (b) The man’s having signed an acknowledgment of paternity under RCW 26.26.300 through 26.26.375, unless the acknowledgement has been rescinded or successfully challenged;
 - (c) An adjudication of the man’s paternity;
 - (d) Adoption of the child by the man;
 - (e) The man’s having consented to assisted reproduction by his wife under RCW 26.26.700 through 26.26.730 that resulted in the birth of the child; or
 - (f) A valid surrogate parentage contract, under which the father is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260.

RCW 26.26.101.

child relationship is established between a child and a man by “[t]he man’s having signed an acknowledgment of paternity under RCW 26.26.300 through 26.26.375, unless the acknowledgement has been rescinded or successfully challenged.” RCW 26.26.101(2)(b). “[A] valid acknowledgment of paternity filed with the state registrar of vital statistics is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all the rights and duties of a parent.” RCW 26.26.320(1).

The UPA provides signatories to the acknowledgment direct opportunities to contest the acknowledgment itself through RCW 26.26.330 and .335.⁴ However, nonsignatories cannot directly contest an acknowledgment. Rather, nonsignatories must bring a petition to adjudicate paternity in order to contest paternity that is established through such an acknowledgment.⁵ A man who is not the acknowledged father must contest a child’s paternity established through

⁴ RCW 26.26.330 and .335 provide the means to contest an acknowledgment only to the child’s mother and the child’s acknowledged father, who are the only signatories of the acknowledgment. RCW 26.26.300. The signatories may attempt to rescind the acknowledgment pursuant to RCW 26.26.330 or may challenge the acknowledgment pursuant to RCW 26.26.335.

⁵ The only parties with standing to maintain a proceeding to adjudicate paternity are:

- (1) The child;
- (2) The mother of the child;
- (3) A man whose paternity of the child is to be adjudicated;
- (4) The division of child support;
- (5) An authorized adoption agency or licensed child-placing agency;
- (6) A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or
- (7) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260.

an acknowledgment by bringing an action for adjudication of paternity within two years of an acknowledgment being signed. RCW 26.26.540.⁶

Once an adjudication of paternity is timely commenced, the paternity of a child with an acknowledged father “may be disproved *only* by admissible^[7] results of genetic testing excluding that man as the father of the child or identifying another man to be the father of the child.” RCW 26.26.600(1) (emphasis added).⁸ Thus, according to a plain reading of the statute, only where admissible genetic testing reveals that a different man is the child’s biological father can an acknowledged father’s paternity be disproved. Without a signatory rescinding or successfully challenging the acknowledgment or without a nonsignatory petitioning for an adjudication of paternity, an acknowledged father’s paternity remains established.

Where genetic testing discloses that a man has at least a 99 percent

⁶ The statute of limitations for directly contesting the acknowledgment or bringing an action to adjudicate the paternity of a child with an acknowledged father is provided in RCW 26.26.540:

(1) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity must commence any proceeding seeking to rescind or challenge the paternity of that child only within the time allowed under RCW 26.26.330 or 26.26.335.

(2) If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.

⁷ The parties herein stipulated to the admission of the genetic test.

⁸ Pursuant to RCW 26.26.600, “[t]he paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man to be the father of the child.” RCW 26.26.600(1).

probability of being the biological father of a child, the tested man is rebuttably identified as the child's father. RCW 26.26.420(1).⁹ A man rebuttably identified as the child's father may rebut his paternity only by providing other admissible genetic testing excluding that man or identifying another man as the child's father. RCW 26.26.420(2). Where more than one individual is identified by genetic testing as the possible father, the trial court must order further genetic testing to identify the child's biological father. RCW 26.26.420(3).

Where the results of genetic testing are properly admitted and meet the statutory threshold probability requirements, the UPA mandates that the man ultimately identified by genetic testing as the child's biological father "must be adjudicated the father of the child." RCW 26.26.600(2).¹⁰ Thus, where genetic

⁹ RCW 26.26.420 provides:

(1) Under this chapter, a man is rebuttably identified as the father of a child if the genetic testing complies with this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 and the results disclose that:

(a) The man has at least a ninety-nine percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and

(b) A combined paternity index of at least one hundred to one.

(2) A man identified under subsection (1) of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 which:

(a) Excludes the man as a genetic father of the child; or

(b) Identifies another man as the father of the child.

(3) Except as otherwise provided in RCW 26.26.445, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

¹⁰ The full text of RCW 26.26.600 provides:

The court shall apply the following rules to adjudicate the paternity of a child:

(1) The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man to be the father of the child.

testing establishes that a man is a child's biological father, the trial court *must* legally establish that man's paternity. Correspondingly, the statute also provides that "a man excluded as the father of a child by genetic testing must be adjudicated *not* to be the father of the child." RCW 26.26.600(4) (emphasis added).

The UPA provides that the paternity of an acknowledged father is disproved where genetic testing establishes that another man is the child's biological father. This is because a child can have only one biological father. Where genetic testing identifies a child's biological father, all other men are necessarily excluded as that child's biological father. This is so even where more than one man is initially identified by genetic testing as the possible father of the child; the uncertainty is resolved by further genetic testing, which the trial court must order to identify the true biological father.¹¹ Where genetic testing identifies a man other than the acknowledged father to be the child's biological father, the acknowledged man has been excluded as the child's biological father by genetic testing. The statute requires that a man excluded as the father by

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, the man identified as the father of the child under RCW 26.26.420 must be adjudicated the father of the child.

(3) If the court finds that genetic testing under RCW 26.26.420 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, along with other evidence, are admissible to adjudicate the issue of paternity.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

¹¹ The UPA contains a specific provision addressing circumstances where identical brothers are each identified as a child's possible father. RCW 26.26.445.

genetic testing must be adjudicated not to be the child's father. RCW 26.26.600(4). The acknowledged father's legal relationship with the child no longer exists once a different man is adjudicated to be the child's biological father based on the results of adequate genetic testing.

Fulton contends that RCW 26.26.600(4)—requiring that “a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child”—means only that the nonbiological father must be adjudicated not to be the *father*, not that the nonbiological father must be adjudicated not to be a *parent* of the child. In support of this contention, Fulton notes that the UPA defines “parent” but does not define “father” and, therefore, contends that the legislature's recognition that a man is not a child's father is not equivalent to the legislature excluding that man as a legal parent of the child. However, Fulton's attempt to distinguish “parent” from “father” fails. “Parent” is defined as “an individual who has established a parent-child relationship under RCW 26.26.101.” RCW 26.26.011(12). Parent-child relationships are defined as either “mother-child” or “father-child” relationships. RCW 26.26.101. By excluding a man as the father of a child, the man is excluded as the child's parent because he has neither a “father-child” nor a “mother-child” relationship pursuant to RCW 26.26.101.¹²

Fulton next argues that the best interests of the child must be considered

¹² Moreover, Fulton's claim that the UPA is “silent” on the effect of an adjudication of paternity on an acknowledgment is unavailing. See RCW 26.26.600(1), (4).

prior to the trial court determining paternity through an adjudication. This argument is not supported by the plain language of the statute. Rather, his argument unconvincingly rests on cases decided prior to Washington's adoption of the current UPA. See, e.g., McDaniels v. Carlson, 108 Wn.2d 299, 738 P.2d 254 (1987); In re Marriage of Wendy M., 92 Wn. App. 430, 962 P.2d 130 (1998). Pursuant to the holdings in those cases, trial courts were required to consider the best interests of the child before allowing a paternity contest between a presumed father and an alleged father to proceed. The pre-2000 cases do not address circumstances where an acknowledged father's paternity is being contested through an adjudication of paternity. To the contrary, however, Washington's adopted version of the UPA specifically addresses when and how such an adjudication is to proceed. The UPA does not require an evidentiary hearing to determine the child's best interests prior to adjudicating the paternity of a child when the child has an acknowledged father, a petition for adjudication is timely brought, and genetic testing reveals that a different man is the child's biological father.¹³ When admissible genetic testing disproves that a man is the biological father of a child, he must be adjudicated not to be the father. RCW 26.26.600(4). The best interest of the child is not a factor properly considered

¹³ Fulton contends in his reply brief that the UPA discriminates against the children of unmarried parents in favor of the children of married parents because the trial court may decline to order genetic testing based on the best interests of the child in circumstances in which the child has a presumed father but the trial court has no such authority where the child has an acknowledged or adjudicated father. Because Fulton fails to support this contention with any legal argument or citation to relevant authority, we decline to consider it. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

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by the trial court in complying with the mandate of RCW 26.26.600.

Because Miller was identified with 99.9997 percent probability as being M.J.M.'s father, Fulton was statutorily excluded as being M.J.M.'s father.

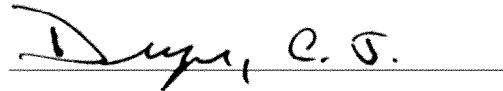
Therefore, Fulton had to be adjudicated not to be the father. RCW 26.26.600(4).

The trial court correctly ruled that Fulton no longer has a legal father-child relationship with M.J.M.

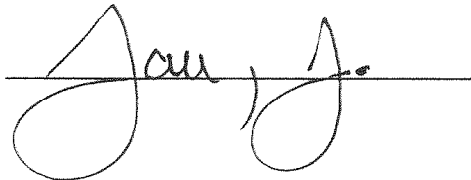
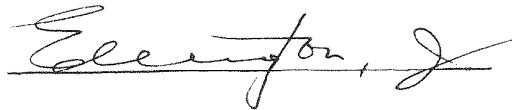
III

Finally, Fulton contends that a common law claim for de facto parent status is available to him. However, Fulton did not properly raise this issue before the trial court and the trial court did not formally rule upon it. Accordingly, it is not properly before us. We decline to address it.

Affirmed.¹⁴

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We concur:

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¹⁴ Appellant and respondents each request an award of attorney fees and costs on appeal pursuant to RCW 26.26.625. The trial court did not award attorney fees or costs below. We decline to award such fees and costs on appeal.