THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2018 Term

August Session

Case No. 2018-0013

HALEY ST. PIERRE v. ADAM THATCHER

Appeal from Final Orders of the Grafton County Superior Court

REPLY BRIEF FOR RESPONDENT - APPELLANT

ADAM THATCHER

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R. Peter Decato, Esquire, files this written brief and will argue orally, if necessary

REPLY BRIEF

N.H. Sup. Ct. RULE 16(3)(b) requires the Appellant to include in his brief the questions presented for review. After each statement of a question presented, there should be a specific reference to the volume and page of the transcript where the issue was raised and where an objection was made, or to the pleading which raised the issue. Failure to comply with this requirement shall be cause for the court to disregard or strike the brief in whole or in part.

N.H. Sup. Ct. RULE 16(4) states that the Appellee's brief need not include the Questions Presented, presumably because the questions have already been stated in Appellant's brief.

Appellee did not cross appeal. The only issues on appeal are those stated by the Appellant. Appellant notes that Appellee has restated the questions Appellant presented, failed to make a specific reference to the volume and page of the transcript where their issue was raised and where an objection was made or to a pleading that raised the issue.

Appellee's Statement of the Case misstates the issues in this case. For example, Appellee states that the key issues in the case include whether a court can rescind an Affidavit of Paternity based on a successful challenge. Appellant never raised this issue in its Notice of Appeal. Moreover, Appellee's issue assumes there was a challenge. One of Appellant's issues is: Did the trial court err in allowing the Affidavit of Paternity to be attacked given the lack of a pleading attacking the affidavit? See, Appellant's Brief at p. 1.

In Appellee's State of the Facts, Appellee cites repeatedly to Colby Santaw's Memorandum of Law. What Colby Santaw said in a Memorandum of Law are not facts and should not be considered by the Court on appeal. The facts are described in the transcripts and in the admitted trial exhibits.

In Appellee's State of the Facts (page 4), Appellee states that there is no dispute that Mr. Santaw is Marlena's father. Appellant would disagree as there is, indeed, a dispute as to whether Mr. Santaw is Marlena's father. Adam Thatcher and Haley St. Pierre (now Santaw) each signed an Affidavit of Paternity. Neither party moved to rescind the affidavit within 60 days. See, RSA 5-C:28(I); therefore, "After the 60-day rescission period has passed, any challenge to the affidavit, shall be decided only by a court of competent jurisdiction." RSA 5-C:28(II). Neither the Appellee nor the Intervenor ever challenged the affidavit by pleading; therefore, Adam Thatcher remains Marley's father.

In Appellee's Statement of the Facts, Appellee alleges that she believed that there were mistakes made by the hospital in the medical record. See, page 6 of Appellee's Brief. Despite this assertion, Appellee fails to point to the medical record to pinpoint where the mistake was made.

On page 8 of Appellee's Statement of the Facts, Appellee mentions RSA 522. This statute deals with paternity testing. In the case at bar, paternity was not initially contested, so RSA 522 doesn't apply. Indeed, one of the ways to establish paternity is the filing of an affidavit of paternity. See RSA 168-A:2((b). No one has ever challenged this affidavit; therefore, Adam Thatcher remains Marley's father.

Appellee refuses to acknowledge that when paternity is established by affidavit, it constitutes a judgment. RSA 168-A:2(I)(b) states that an affidavit of paternity filed with the clerk of the town where the birth of the child occurred shall have the legal effect of establishing paternity without requiring further action pursuant to RSA 168-A, unless rescinded pursuant to RSA 5-C:28. Although rescission was ordered, neither Ms. St. Pierre nor Mr. Santaw challenged

the Affidavit. The Court rescinded sua sponte without a proper pleading before the Court. Moreover, rescission was given because "Either way, Mr. Santaw would not have been aware of Marlena's existence until he started dated Ms. St. Pierre in October, 2015. He would not have had a reason to contact Ms. St. Pierre or Mr. Thatcher prior to that time. He was relying on incorrect information Ms. St. Pierre gave him about the child's paternity." Given this discourse, it seems clear that Ms. St. Pierre (now Santaw) didn't challenge the Affidavit of Paternity. Neither did Mr. Santaw; yet, the Court treated Mr. Santaw as if he could challenge the Affidavit even though he wasn't a signatory to the Affidavit and even though he never filed an official challenge or indicated how or why the Affidavit was the product of fraud or "mutual mistake." The "mutual mistake" aspect of the statement clearly pertained only to Ms. St. Pierre (Santaw) and Mr. Thatcher and had nothing to do with Mr. Santaw.

On page 11 of Appellee's brief, in her Summary of the Argument, Appellee argues that "the burden of challenging paternity was never Haley St. Pierre's burden, because she was not a putative father." Appellee fails to cite to a particular statute or to case law in making this statement. RSA 5-C:28(I) states that only a parent or a legal guardian may request to rescind an affidavit of paternity within 60 days. After the 60-day rescission period has passed any challenge to the affidavit shall be decided by a court a of competent jurisdiction. Nowhere in RSA 5-C does the statute give standing to a putative father.

Appellee also states at page 11 of her brief that "A New Hampshire Affidavit of Paternity" is not a judgment of paternity in New Hampshire." According to Appellee, it is RSA 522:1 that allows putative fathers to challenge paternity. Such a suggestion ignores the Court's statements in Watts v. Watts, 115 N.H. 186 (1975) (the court held that the presumption of

paternity could not be rebutted by blood tests because the defendant had acknowledged the children as his own without challenge for over 15 years).

CONCLUSION

The Trial Court's decision in this case should be reversed and remanded on the issue of whether Mr. Santaw had standing. We ask the Court to find and rule that only signatories to an Affidavit of Paternity can challenge the Affidavit. We ask that the trial court's ruling that Mr. Santaw and/or Ms. St. Pierre met their burden of proving fraud and/or a material mistake of fact be reversed. In doing so, we ask the Court to find and rule that Mr. Santaw and Ms. St. Pierre's blood test results are irrelevant and should not have been given any weight in the hearing below.

Dated this 1st day of November, 2018.

Adam Thatcher
By His Attorneys
Decato Law Office

By: R. Peter Decato

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ORAL ARGUMENT

The Appellant requests the opportunity to be heard at oral argument. The Appellant sees this matter as a case of first impression. The issues raised in this brief are of sufficient magnitude that the full court should consider its merits. The Appellant leaves this to the discretion of the court.

By: R. Peter Decato
R. Peter Decato, Esquire (NH Bar #613)

CERTIFICATIONS

I hereby certify that on November 1, 2018, two copies of the foregoing will be forwarded to Jay Markell, Esquire, attorney for the Appellee and Colby Santaw.

By: R. Peter Decato
R. Peter Decato, Esquire (NH Bar #613)