

SUPREME COURT OF NEBRASKA

Tyler F. v. Sara P.

306 Neb. 397 (2020) · No. Nos. S-19-513, S-19-514 · Decided July 10, 2020

SUMMARY

The Nebraska Supreme Court considered whether a signed acknowledgment of paternity could be disregarded after genetic testing excluded the acknowledged father as the biological father. The court held that the acknowledgment legally established paternity and had to be set aside on statutory grounds before another individual's paternity could be considered. It affirmed the denial of the challenge to the acknowledgment, reversed the joint custody award involving the acknowledged father, biological father, and mother, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	July 10, 2020
DOCKET	Nos. S-19-513, S-19-514
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tyler appealed a district court custody, parenting-time, child-support, and paternity determination, and Geoffrey cross-appealed. The Nebraska Supreme Court reviewed consolidated appeals from the Lancaster County District Court.
STANDARD OF REVIEW	Child-custody determinations in a filiation proceeding are reviewed de novo on the record for abuse of discretion. Statutory interpretation presents a question of law reviewed independently. The court may notice plain error at its option.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Tyler F. v. Sara P., Geoffrey V., as next friend of J.F., a minor child

TOPICS

paternity

child custody

statutory interpretation

plain meaning rule

appellate procedure

PRACTICE AREAS

family law

paternity

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statutory interpretation

QUESTIONS PRESENTED

1. Whether the district court committed plain error by considering Geoffrey's paternity complaint without first setting aside Tyler's properly executed acknowledgment of paternity.
2. Whether Sara established fraud, duress, or material mistake of fact sufficient to set aside Tyler's acknowledgment of paternity.
3. Whether Nebraska law permits simultaneous legal paternity determinations for more than one father.
4. Whether the district court's award of joint legal and physical custody to Sara, Tyler, and Geoffrey could stand after the court failed to give legal effect to Tyler's acknowledgment.

HOLDINGS

1. A properly executed, voluntary, and unrescinded acknowledgment of paternity becomes a legal finding of paternity after the statutory rescission period expires and gives the acknowledged father the legal status and parental rights of a parent, regardless of later genetic-test results.
2. Later DNA testing showing that the acknowledged father is not the biological father is insufficient by itself to set aside a properly executed acknowledgment of paternity.
3. A previous paternity determination, including a properly executed and undisturbed acknowledgment of paternity, must be set aside before a third party's paternity may be considered.
4. Sara failed to prove that Tyler's acknowledgment resulted from fraud, duress, or material mistake of fact, so the district court properly denied her request to set it aside.

KEY QUOTATIONS

“Accordingly, we hold that a previous paternity determination, including a properly executed and undisturbed acknowledgment, must be set aside before a third party’s paternity may be considered.” (306 Neb. at 412)

“A father whose paternity is established by a final, voluntary acknowledgment has the same right to seek custody as the child’s biological mother, even if genetic testing shows he is not the biological father.” (306 Neb. at 406-407)

“In accordance with all of the above, the district court committed plain error in considering Geoffrey’s complaint to establish his paternity of J.F. when Tyler’s acknowledgment remained in place and established Tyler as J.F.’s father.” (306 Neb. at 414)

FACTUAL BACKGROUND

Tyler and Sara signed a notarized acknowledgment of paternity when J.F. was born, and Tyler was listed as J.F.'s father on the birth certificate. Sara had also had sexual intercourse with Geoffrey around the time of conception and knew during pregnancy that Geoffrey might be the biological father, but she did not disclose that possibility to Tyler. After DNA testing excluded Tyler as J.F.'s biological father, Sara sought to rescind the acknowledgment

and Geoffrey sought to establish his own paternity. The district court denied Sara's request to set aside the acknowledgment but nevertheless recognized both Tyler and Geoffrey as fathers and awarded joint custody among Sara, Tyler, and Geoffrey.

PROCEDURAL HISTORY

Tyler filed an action to establish paternity, custody, and parenting time after a dispute with Sara concerning J.F.'s residence and schooling. Sara counterclaimed to set aside Tyler's acknowledgment of paternity, and Geoffrey later filed a separate paternity complaint after DNA testing excluded Tyler as J.F.'s biological father. The district court recognized Tyler and Geoffrey as fathers and awarded custody and support involving all three adults. The Nebraska Court of Appeals reversed and remanded for consideration of Geoffrey's individual claims; on remand, the district court reinstated its prior order with the qualification that it applied to Geoffrey individually. The Nebraska Supreme Court affirmed denial of Sara's request to set aside Tyler's acknowledgment, but reversed the three-party custody award and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings after reversal of the district court's award of joint legal and physical custody to Sara, Tyler, and Geoffrey. The denial of Sara's counterclaim to set aside Tyler's acknowledgment of paternity was affirmed.

CASES CITED

- State on behalf of Kaaden S. v. Jeffery T., 303 Neb. 933, 932 N.W.2d 692 (2019)
- Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018)
- In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019)
- Osantowski v. Osantowski, 298 Neb. 339, 904 N.W.2d 251 (2017)
- Mays v. Midnite Dreams, 300 Neb. 485, 915 N.W.2d 71 (2018)
- In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016)
- Cesar C. v. Alicia L., 281 Neb. 979, 800 N.W.2d 249 (2011)
- State on behalf of B.M. v. Brian F., 288 Neb. 106, 846 N.W.2d 257 (2014)
- Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)
- Barr v. Bartolo, 927 A.2d 635 (Pa. Super. 2007)
- Sinicropi v. Mazurek, 273 Mich. App. 149, 729 N.W.2d 256 (2006)
- Alisha C. v. Jeremy C., 283 Neb. 340, 808 N.W.2d 875 (2012)
- DeVaux v. DeVaux, 245 Neb. 611, 514 N.W.2d 640 (1994)
- Tyler F. v. Sara P., 24 Neb. App. 370, 888 N.W.2d 537 (2016)

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