

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

State, Department of Revenue v. Hartsell

189 So. 3d 363 (Fla. 1st DCA 2016) · Decided April 29, 2016

SUMMARY

The Florida Department of Revenue sought certiorari review of an order requiring genetic testing of a minor child in a paternity and child-support proceeding. The court held that the legal father's pleadings substantially complied with Florida's paternity-disestablishment statute, but the trial court departed from the essential requirements of law by ordering testing without allowing the parties to present and rebut evidence establishing good cause. The order was quashed and the matter remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Robertts, C.J.; Roberts, C.J.; Swanson, J.; Kelsey, J.
JURISDICTION	Florida
DECIDED	April 29, 2016
DISPOSITION	quashed
PROCEDURAL POSTURE	The Florida Department of Revenue sought certiorari review of a trial court order compelling genetic testing of a minor child at the request of the child's legal and presumptive father.
STANDARD OF REVIEW	Certiorari review requires the petitioner to show that the order departs from the essential requirements of law and causes irreparable harm that cannot be remedied by plenary appeal.
PRECEDENTIAL VALUE	published and precedential Florida First District Court of Appeal opinion
PARTIES	State, Department of Revenue, Cynthia M. Hartsell v. Hartsell

TOPICS

paternity child support writ of certiorari appellate procedure evidence

PRACTICE AREAS

family law appellate procedure civil procedure evidence

QUESTIONS PRESENTED

1. Whether the trial court's order compelling genetic testing departed from the essential requirements of law because it did not find that good cause existed for the testing.
2. Whether Mr. Hartsell's motions substantially complied with the pleading requirements of section 742.18, Florida Statutes.
3. Whether an order erroneously compelling paternity testing causes irreparable harm sufficient to support certiorari review.

HOLDINGS

1. A party is not entitled to an order compelling genetic testing unless paternity is in controversy and good cause exists. Good cause requires the father to allege and ultimately prove newly discovered evidence relating to the child's paternity. The trial court departed from the essential requirements of law by ordering testing without giving Mr. Hartsell an opportunity to prove the alleged newly discovered evidence and the Department an opportunity to rebut it.
2. Mr. Hartsell's signed, sworn, and notarized motions substantially complied with the pleading requirements of section 742.18 because they alleged newly discovered evidence, requested testing because he lacked custody of the child, and satisfied the applicable child-support-related requirement.
3. An order erroneously requiring paternity testing constitutes irreparable harm that cannot be remedied by plenary appeal.

KEY QUOTATIONS

“To be entitled to certiorari relief, the petitioner must demonstrate [1] that the order under review departs from the essential requirements of the law and [2] that the order will cause irreparable harm that cannot be remedied via plenary appeal.” (365)

“To establish good cause [for paternity testing], the father must allege (and ultimately prove) ... that there is newly discovered evidence of the paternity of the child.” (365)

FACTUAL BACKGROUND

Mr. Hartsell was married to Mrs. Hartsell when C.L.M.H. was born and signed the child's birth certificate, making him the child's legal and presumptive father. After the Department sought to establish child support and other relief, Mr. Hartsell filed signed, sworn, and notarized motions alleging newly discovered information from Mrs. Hartsell and her mother indicating that he might not be the biological father. Although Mr. Hartsell was present and available to testify, the trial court ordered genetic testing without receiving evidence supporting the allegation or allowing the Department to rebut it.

PROCEDURAL HISTORY

The Department filed a petition to establish child support and other relief. In response, Mr. Hartsell moved for genetic paternity testing, alleging newly discovered information suggesting that he was not the child's biological father. The trial court granted the motion after finding substantial compliance with section 742.18 but without

receiving evidence or making a good-cause finding. The First District granted the certiorari petition, quashed the order, and remanded for further proceedings.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The trial court must give Mr. Hartsell an opportunity to prove, and the Department an opportunity to rebut, the existence of newly discovered evidence relating to his paternity. Any written order granting or denying the petition should address the rule 1.360 prerequisites that paternity be in controversy and that good cause exist.

CASES CITED

- Fla. Dep't of Rev. ex rel. Corbitt v. Alletag, 156 So. 3d 1110, 1112 (Fla. 1st DCA 2015)
- Dep't of Rev. ex rel. Carnley v. Lynch, 53 So. 3d 1154, 1156-57 (Fla. 1st DCA 2011)
- State, Dep't of Rev. ex rel. Lawson v. Young, 995 So. 2d 1080, 1081-82 (Fla. 1st DCA 2008)
- State ex rel. Chambers v. Travis, 971 So. 2d 157, 162 (Fla. 1st DCA 2007)
- Wade v. Wade, 124 So. 3d 369, 375 (Fla. 3d DCA 2013)
- Russenberger v. Russenberger, 639 So. 2d 963, 965 (Fla. 1994)

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