Circuit Court for Prince George's County
Case No. CAP16-39344

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1239

September Term, 2017

HAIYUN Y. RATLIFF

v.

DANIEL S. DONNELLY

Fader, C.J.
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: October 25, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On July 31, 2017, the Circuit Court for Prince George's County ordered the removal of Daniel Donnelly's ("Appellee") name as father on the birth certificate of a minor child. The mother of the minor child, Haiyun Ratliff ("Appellant"), timely filed this appeal and presents the following questions for our review, which have been rephrased for clarity:[1]

I. Did the circuit court err by not appointing a Best Interest Attorney for the minor child in the proceedings related to amending her birth certificate?

II. Did the circuit court err by not considering the best interests of the minor child when amending the birth certificate?

III. Did the circuit court err by not dismissing the Petition to Amend the Birth Certificate based on the applicable statutes of limitation?

For the following reasons, we answer all of Appellant's questions in the negative and affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 8, 2008, Haiyun Ratliff ("Appellant") and Daniel Donnelly ("Appellee") were present for the birth of a minor child in Prince George's County, Maryland. At the time of the minor child's birth, Appellant and Appellee were not married. Appellee believed he was the biological father of the minor child and as such executed an Affidavit of Parentage ("the Affidavit") provided by the State of Maryland to that effect.

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[1] Appellant presents the following questions:

1. Did PG County circuit court perform fair trials without even pointing a Guardian ad Litem to present the child?
2. Did PG County circuit court ever consider what's the best interest for this child?
3. Has PG County circuit court given a full consideration of the stats of limitation, MD court jurisdiction and the unusual circumstance associated with Kellie's affidavit of parentage and birth certificate?

At the time of the child's birth, Appellant did not disclose to Appellee that Appellee was one of three possible biological fathers to the minor child. Prior to the minor child's birth, Appellant had sex with the three men, including Appellee, within the same month that she conceived the minor child. However, Appellant told Appellee that she only had sex with the two other men in the month before conceiving the minor child. Based on Appellant's reassurance that she had only had sex with Appellee during the month of conception, Appellee believed he was the only possible biological father to the minor child.

Between September 7, 2008 and July 11, 2013, Appellee held himself out to the world as the biological father of the minor child. Following the separation of the parties in June 2009, Appellee moved to New York while the Appellant remained in Fairfax, Virginia with the minor child.[2] While living in New York, Appellee was subject to and complied with a child support order through the New York Court System.[3]

In 2013, Appellee began to have doubts as to whether he was the biological father of the minor child based on Appellant's renewed relationship with one of the other two men whom she had been intimate with prior to the child's birth. On July 11, 2013, Appellee received the results of a private paternity test confirming his suspicion that he was not the biological father of the minor child. Based on the paternity test results, Appellee filed pleadings in New York to vacate the existing child support order. However, the New York court could not vacate the child support order because it did not have jurisdiction to

[2] Appellant and Appellee moved to Virginia in 2008 so that their eldest daughter, Sophia, could go to Fairfax County Public Schools.

[3] Appellee still resides in New York.

overturn the paternity determination as set out by the Affidavit. Thus, Appellee brought suit in the Circuit Court for Prince George's County requesting a declaratory judgment to rescind the Affidavit.

In June 2015, Appellee filed an initial suit, *Donnelly v. Ratliff*, Case No. CAL 14-12495 (hereinafter "*Donnelly I*"), asking for a declaratory judgment to rescind the Affidavit of Parentage based on Appellant's alleged fraud. Appellee claimed that Appellant fraudulently induced him into believing he was the biological father of the minor child and had him sign the Affidavit to that effect even though Appellant knew Appellee might not be the biological father. The Circuit Court for Prince George's County, however, found that the fraud issue could not be addressed at the time because the Affidavit was missing and could not be put into the record. Consequently, on July 22, 2015, the court declared that the birth certificate was the controlling document as to the child's parentage.

On August 20, 2015, Appellee filed a Motion to Exercise Revisory Power after obtaining a copy of the Affidavit from the Department of Health and Mental Hygiene. On November 12, 2015, the Circuit Court for Prince George's County, having the Affidavit admitted into evidence, "found the [A]ffidavit to be fraudulent and ordered it rescinded." The court, however, did not clarify whether that order changed the parentage of the minor child. In *Donnelly I*, Appellant failed to file a timely appeal.

Thereafter, Appellant continued to use the original birth certificate listing Appellee as the biological father to obtain child support through the New York courts. Because she sought child support in this manner, Appellee sought a court order amending the birth certificate to remedy the situation. On July 28, 2016, Appellee filed a Motion for

Modification of Birth Certificate in the Circuit Court for Prince George's County. On August 22, 2016, the Circuit Court for Prince George's County denied and dismissed Appellee's motion. The Court explained that the modification motion could not be filed under *Donnelly I*.

On December 20, 2016, Appellee filed the Petition to Amend Birth Certificate as part of a separate action in the Circuit Court of Prince George's County, Case No. CAP 16-39344 (hereinafter "*Donnelly II*"). On July 31, 2017, the circuit court ordered, in relying on the *Donnelly I* decision to rescind the Affidavit, that the birth certificate be amended by the Department of Health. Specifically, the circuit court ordered that the birth certificate now reflect that Appellee is not the biological father of the minor child.

Meanwhile, in New York, Appellee was still required to pay child support to the Appellant due to the order in *Donnelly I* stating the original Birth Certificate was the binding legal document as to the parentage of the minor child. As a result, on November 3, 2017, Appellee sought relief by filing a Motion to Exercise Revisory Power and/or a Motion to Clarify the Order in *Donnelly I* to explain that the original birth certificate was no longer the controlling legal document as a result of the circuit court's decision in *Donnelly II*. Finding for Appellee, the Court ordered "that for any and all purposes . . . the amended birth certificate as declared in [*Donnelly II*] [is] the controlling legal document governing the parentage of [the minor child]." This appeal followed.

DISCUSSION

I. Appointment of a Best Interest Attorney

A. Parties' Contentions

Appellant argues it was not in the best interest of the minor child when the Circuit Court for Prince George's County failed to appoint a special interest attorney for the minor child. Appellant contends "that there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Appellant asserts that Appellee took advantage of Appellant and the minor child because Appellant could not afford an attorney. Further, Appellant avers that there was inequity of justice because the minor child did not have representation in court when the dispute dealt with the amendment of the minor child's birth certificate.

Appellee disagrees, asserting that there is nothing in the record of the lower court to suggest that Appellant requested a special interest attorney. Nor did Appellant ever object to the trial proceeding without an attorney being appointed for the minor child. Appellee's argument is based upon the holding in *Buck v. Cam's Broadloom Rugs, Inc.*, that under Maryland law, "ordinarily a party will not be permitted to raise on appeal an error to which [she] has not interposed a seasonable objection at trial." 323 Md. 51, 55 (1992).

B. Standard of Review

On appeal, the appellate court must decide whether the lower court was legally correct in applying Maryland law when it did not appoint a best interest attorney for the minor child. *Schisler v. State*, 394 Md. 519, 535 (2006). Therefore, this is an issue of law and subject to de novo review.

C. Analysis

Appellant argues that there was an "inequity of justice" when the Circuit Court for Prince George's County did not appoint a best interest attorney for the minor child. Md.

Code Ann., FAM. LAW, § 1-202(a) provides that counsel may be appointed "in an action in which custody, visitation rights, or the amount of support of a minor child is contested." The underlying litigation does not deal with issues of custody, visitation, or child support. The issue under review is whether the court was correct in ordering the amendment of the child's birth certificate to reflect the rescinded affidavit of parentage. Thus, the issue here does not require an attorney or representative for the minor child.

The Maryland Court of Appeals has held, "ordinarily a party will not be permitted to raise on appeal an error to which [she] has not interposed a seasonable objection at trial." *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 61 (1992). There is no evidence in the record of the underlying litigation, *Donnelly II,* or the earlier case, *Donnelly I*, that Appellant requested the appointment of a best interest attorney for the minor child. Nor did Appellant object when the court failed to appoint a best interest attorney for the minor child. Therefore, Appellant is barred from raising this issue on appeal.

II. Consideration of the Best Interests of the Minor Child

A. Parties Contentions

Appellant argues that the circuit court failed to consider what was in the best interest of the minor child when the court ordered the removal of Appellee's name from the disputed birth certificate. Appellant contends that the removal of the Appellee's name from the birth certificate was not in the minor child's best interest because the minor child's life

will be changed for the worse if Appellee is no longer her legal father. Further, Appellant asserts that Appellee is the only father the minor child has ever known.[4]

Appellee disagrees, arguing that the Circuit Court for Prince George's County did not need to consider the best interest of the minor child because the best interest of the minor child was not at issue in this case. Appellee contends that the best interest of the minor child was an appropriate issue in the earlier case, *Donnelly I*, where the substantive decision dealt with the issue of parentage.

B. Standard of Review

In cases regarding the best interest of a child, "[the court] will not set aside factual findings made by the chancellor unless clearly erroneous, and will not interfere with a decision . . . founded upon sound legal principles unless there is a clear showing that the chancellor abused his discretion." *McCready v. McCready*, 323 Md. 476, 484 (1991). Abuse of discretion is applied because the trial court has the unique "opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Petrini v. Petrini*, 336 Md. 453, 470 (1994).

C. Analysis

Md. Code Ann., FAM. LAW, § 5-3011 specifies what a court should consider when considering the best interest of a minor child during a dispute. It lists multiple factors in considering the best interest of a child, including, but not limited to: (1) the welfare of the

[4] Appellee has been in the minor child's life for ten years consistently.

child, (2) the parents' well-being, and (3) the nature and amount of contact with each parent.[5] *Id.*

With that said, Md. Code Ann., FAM. LAW, § 5-1038 provides that "a declaration of paternity in an order is final." The order from *Donnelly I* rescinding the Affidavit of Parentage is by law a declaration of paternity, making it final. The Court of Special Appeals has held that "the child's best interests play no role in the statutory question of whether a declaration of paternity may be set aside." *Faison v. MCOCSE ex el rel. Murray*, 235 Md. App. 76, 91 (2017). The circuit court was correct in not considering the child's best interests in the first action because it had no bearing on the paternity finding. Accordingly, the Circuit Court for Prince George's County did not have to consider the child's best interest because the purpose of that litigation was to amend the birth certificate to accurately reflect the final decision of the court in *Donnelly I*.

III. Venue and Jurisdiction

A. Parties' Contentions

Appellant contends that Prince George's County was not the proper venue for this matter because the minor child did not currently live there at the time of trial.

Appellee argues that Appellant failed to raise a jurisdictional issue in both her pre-trial pleadings and during trial in this matter and should therefore be precluded from doing so in this Court. We agree to the extent that she is challenging venue and personal jurisdiction.

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[5] Md. Code Ann., FAM. LAW § 1-202(a)(1)(ii) states the court may, "appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who *may not* represent any party to the action."

B. Standard of Review

Appellant asks this court to review whether the lower court's decisions regarding jurisdiction over this matter was legally correct. The proper appellate review of a lack of jurisdiction "is whether the trial court was legally correct." *Bond v. Messerman*, 391 Md. 706, 718 (2006). Therefore, in evaluating the relevant evidence as to the determination of proper venue, we review the lower court's decision *de novo*. *See Olson v. Olson,* 64 Md. App. 154, 161-168 (1985).

C. Analysis

Appellant argues that the Circuit Court for Prince George's County was an improper venue for the matter because the minor child did not reside there at the time of trial. Maryland Rule 2-322 mandates that to raise the defense of improper venue, a party must file a preliminary motion in regard to the matter. "If not so made and the answer is filed, these defenses are waived." *See* Md. Rule 2-322. Appellant failed to file the proper preliminary motion at the onset of the underlying litigation and is thus barred from bringing the issue on appeal.

If Appellant had filed the proper preliminary motions at the trial phase, the Circuit Court for Prince George's County would still be the proper venue for this matter. Prince George's County is the proper venue and has jurisdiction because Appellant and Appellee's minor child was born there and it is where all of the minor child's documentation, including birth certificate and affidavit of parentage, were filed. Therefore, the minimum contacts were met for the lower court to have jurisdiction so that the "maintenance of a suit does not offend 'traditional notions of fair play and substantial justice.'" *Van Wagenberg v. Van*

Wagenberg, 241 Md. 154, 164 (1966) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

IV. Statute of Limitations

A. Parties Contentions

Appellant argues that the statute for limitations for challenging paternity is limited to two years or less from birth of the minor child. As a result, Appellant contends that the statute of limitations had already passed for Appellee to challenge the paternity of the minor child.[6] Appellant further argues that even if Appellee was correct in asserting that Appellant had committed fraud in inducing him to sign the Affidavit of Parentage, the statute of limitations for fraud had passed as well.[7]

Appellee disagrees, arguing that Appellant failed to raise a statute of limitations issue during the trial phase of this dispute and should be precluded from doing so at the appellate level. Further, Appellee avers that even if Appellant had raised the statute of limitations issue, Appellee in *Donnelly I* was well within the three (3) year statute of limitations for fraud per Md. Code Ann., CTS & JUD. PROCS., § 5-101.

B. Standard of Review

[6] Appellant found this statute of limitations on www.legalmatch.com.

[7] Appellant cites MD Statute of Limitations for Fraud, Section 5-101(1), which stipulates that the statute of limitations for fraud is three years from when the *person knew or should have known* they had been defrauded. Appellant believes the statute of limitations has run because it has been more than three years since the Appellee signed the Affidavit of Parentage.

This court applies the abuse of discretion standard when reviewing the civil issue regarding the statutes of limitations for paternity and fraud. An abuse of discretion occurs when "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13-14 (1994). The circuit court may abuse its discretion when "it makes an error of law." *Koon v. U.S.*, 518 U.S. 81, 99 (1996). However, "the abuse of discretion standard makes generous allowances for the trial court's reasoning." *Das v. Das*, 133 Md. App. 1, 15 (2000). Thus, the appellate court will not simply overturn the decision because it would not come to the same conclusion.

C. Analysis

i. Paternity

Appellant argues that "there is a short statute of limitations for challenging paternity. If the man named as the father on the birth certificate wishes to challenge this legal status, he usually has 2 years or less from the birth of the child to do so."[8] Appellant asserts that the two-year statute of limitations has run because Appellee's name has been on the minor child's birth certificate since the child's birth in 2008. Appellee, however, brought the underlying case because he discovered that Appellant was wrongfully using the original birth certificate to obtain child support. Md. Code Ann., CTS & JUD. PROC. § 5-101 requires that a civil action must be filed within three years of the date that the harm is discovered. Appellee timely filed the complaint in the underlying action in December 2016, within the

[8] Appellant cites www.legalmatch.com

three-year statute of limitations, when he discovered Appellant's use of the original birth certificate in July 2016.

Furthermore, the statute of limitations to amend the birth certificate is appropriately not subject to appellate review because the Appellant never raised this issue in the underlying litigation. *See Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 61 (1992).

ii. Fraud

Md. Code Ann., FAM. LAW § 5-1028(d)(2)(i) states that "an executed affidavit of parentage may be challenged in court only on the basis of fraud, duress, or material mistake of fact."[9] Appellee originally challenged the validity of the Affidavit in *Donnelly I* because of fraud and the Circuit Court for Prince George's County rescinded the Affidavit based on that finding.

Appellant now argues that Appellee filed *Donnelly I* after the statute of limitations had run. Md. Code Ann., CTS & JUD. PROC., § 5-101 requires that "a civil action at law shall be filed within three years from the date it accrues." Appellee discovered the Appellant's fraud in 2013 when he received the results of a paternity test, confirming that he was not the biological father to the minor child. Appellee then timely filed *Donnelly I* in May 2014, well within the three-year statute of limitations.

Regardless, we cannot review the statute of limitations relating to *Donnelly I* because it was not part of the underlying litigation in *Donnelly II*, which is the case

[9] Md. Code Ann., FAM. LAW §5-1028 allows for challenges of fraud, duress, or mistake of material fact after the original 60-day period for rescinding the affidavit of parentage has passed.

currently before us.[10] As such, this Court need not provide any additional analysis regarding Appellant's final claim.

Accordingly, the judgment of the Circuit Court for Prince George's County is affirmed.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[10] Appellant did not file a timely appeal for *Donnelly I*, in which the fraud issue would be subject to appellate review.