

Court of Appeals, State of Michigan

ORDER

Nicholas David Burnett v Tracy Lynn Ahola

Kathleen Jansen
Presiding Judge

Docket No. 354996

Colleen A. O'Brien

LC No. 2014-312262-DP

Jonathan Tukel
Judges

Pursuant to MCR 7.205(E)(2), the Genesee Circuit Court's July 14, 2020 order granting plaintiff's motion in limine is VACATED and the matter REMANDED to that court. The trial court must comply strictly with remand orders from our Supreme Court. *K & K Construction Inc v Dept of Environmental Quality*, 267 Mich App 523, 548; 705 NW2d 365 (2005). Our Supreme Court ordered the circuit court to "(1) conduct an evidentiary hearing in open court and on the record and determine whether the plaintiff committed intrinsic fraud or fraud on the court during the proceedings under the Revocation of Paternity Act (ROPA), MCL 722.1431 et seq., considering all relevant evidence that has been or may be discovered after entry of the ROPA judgment; and (2) if so, determine to what, if any, remedy the defendants are entitled" and to expedite consideration and resolution of the case. *Burnett v Ahola*, 504 Mich 1002; 934 NW2d 266 (2019). On remand the circuit court shall conduct the ordered evidentiary hearing in open court, consider the recorded statements by plaintiff and witness testimony regarding those statements, and determine whether plaintiff obtained the ROPA judgment by intrinsic fraud or fraud upon the court. The parties may call, examine, and cross-examine witnesses who previously testified or could have testified at the ROPA trial insofar as their testimony is relevant to showing the truth or falsity of the recorded conversations between plaintiff and defendant Tracy Lynn Ahola. The circuit court is directed to complete this evidentiary hearing and make its findings within 56 days of the clerk's entry of this order. If the court finds that plaintiff committed intrinsic fraud or fraud upon the court during the ROPA proceedings, it shall then proceed to determine defendants' remedy. This order is to have immediate effect. MCR 7.215(F)(2).

We do not retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 30 2020

Date



Chief Clerk