

STATE OF MICHIGAN
COURT OF APPEALS

AMANDA BROOKE KIRBY, f/k/a AMANDA
BROOKE HOLLAND,

Plaintiff-Appellant,

v

BRETT HOLLAND,

Defendant-Appellee.

UNPUBLISHED
September 15, 2015

No. 326118
Montcalm Circuit Court
Family Division
LC No. 2014-018357-DM

Before: BOONSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's February 2015 order denying her motion for the revocation of defendant's acknowledgment of parentage under the Revocation of Paternity Act (RPA), MCL 722.1431 *et seq.* We affirm.

We review a trial court's factual findings in a proceeding under the RPA for clear error and issues related to the interpretation and application of the RPA *de novo*. *Parks v Parks*, 304 Mich App 232, 237; 850 NW2d 595 (2014). A plaintiff who files an action under the RPA to revoke an acknowledgment of parentage must submit an affidavit attesting to facts that constitute at least one of five statutory grounds for relief, i.e. the revocation. See MCL 722.1437(4)¹; *Helton v Beaman*, 304 Mich App 97, 103; 850 NW2d 515 (2014) (O'CONNELL, J., lead opinion); *id* at 118-119 (K.F. KELLY, J., concurring). MCL 722.1437(4) provides:

An action for revocation under this section shall be supported by an affidavit signed by the person filing the action that states facts that constitute 1 of the following:

(a) Mistake of fact.

¹ This subsection was formerly designated MCL 722.1437(2). See 2014 PA 368.

(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress in signing the acknowledgment.

Here, the minor child was born on May 5, 2012. On May 9, 2012, plaintiff and defendant signed an affidavit of parentage that affirmed that they were the “natural parents” of the minor child. Plaintiff and defendant were married on July 14, 2012. On February 14, 2014, plaintiff filed for divorce. In her complaint, plaintiff stated that she and defendant had the minor child together. On February 28, 2014, defendant filed his answer and acknowledged that he and plaintiff had the minor child together. On March 11, 2014, plaintiff and defendant stipulated that they had the minor child together as a part of their stipulations regarding an interim parenting time order that established parenting time for both plaintiff and defendant. On September 30, 2014, the trial court entered the parties’ judgment of divorce.

Thereafter, on December 12, 2014, plaintiff filed a motion for relief from the judgment of divorce and for a DNA test to establish the paternity of the minor child. On January 2, 2015, plaintiff filed a supplemental motion for revocation of defendant’s paternity and/or the revocation of the acknowledgement of parentage. In support of that motion, plaintiff attached an affidavit. Plaintiff averred that defendant was not the minor child’s biological father. Plaintiff averred that both she and defendant knew that defendant was not the minor child’s biological father at the time they signed the affidavit of parentage.

On January 5, 2015, the trial court heard plaintiff’s motions. Although defendant’s counsel acknowledged that defendant was not the biological father of the minor child, defendant’s counsel argued that the mere fact that plaintiff and defendant signed the affidavit of parentage was not a fraud or misrepresentation because the affidavit did not require defendant to state that he was the minor child’s biological father. On February 4, 2015, the trial court entered its order and concluded that plaintiff’s affidavit was insufficient to establish fraud or misrepresentation and that plaintiff was not entitled to the revocation of defendant’s paternity.

On appeal, plaintiff argues that both she and defendant knew with 100 percent certainty that defendant was not the biological father of the minor child when they signed the affidavit of parentage. On that basis, plaintiff argues that her affidavit showed fraud and misrepresentation on the part of the parties under MCL 722.1437(4). The Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, however, did not require that the parties attest that defendant is the minor child’s biological father. *In re Moiles*, 495 Mich 944, 944-945; 843 NW2d 220 (2014). Thus, the fact that defendant is not the minor child’s biological father is insufficient to establish fraud or misrepresentation under MCL 722.1437(4). *In re Moiles*, 495 Mich at 945. The trial court did not err in finding that plaintiff’s affidavit was insufficient to establish fraud or misrepresentation. *Parks*, 304 Mich App at 237. And, where a plaintiff’s affidavit does not meet the requirements of MCL 722.1437(4), the RPA action may not proceed. *In re Moiles*, 495 Mich

at 945. The trial court did not err in refusing to proceed under the RPA and revoking defendant's paternity. *Parks*, 304 Mich App at 237.

We affirm. As the prevailing party defendant may tax costs pursuant to MCR 7.219.

/s/ Mark T. Boonstra
/s/ William B. Murphy
/s/ Jane E. Markey