STATE OF MICHIGAN

COURT OF APPEALS

OLIVIA FAY DENNIS, Plaintiff-Appellant,	UNPUBLISHED March 21, 2017
v	No. 331503 Allegan Circuit Court
STEVE TYLER, Defendant-Appellee.	LC No. 13-052663-DM

Before: SERVITTO, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

BT, the child at the center of this Revocation of Paternity Act (RPA) case, was born one day before plaintiff Olivia Fay Dennis married defendant Steve Tyler. Eighteen months later, Dennis and Tyler divorced. Tyler inaccurately advised the judge handling the divorce proceedings that he had signed an acknowledgement of parentage. The judgment of divorce identified BT as the parties' child.

DNA testing performed after the divorce revealed that Tyler had not fathered BT. Dennis filed a motion for revocation of paternity; Tyler countered with a motion for summary disposition. The circuit court granted summary disposition to Tyler, finding that the question of BT's fatherhood had been determined in the divorce proceeding. We hold to the contrary and remand for further proceedings.

I. FACTS AND PROCEEDINGS

Our recitation of the facts is necessarily detailed, as what occurred in the circuit court – and what did not occur – guides our legal analysis.

BT was born on July 26, 2012. The parties married the next day. BT's birth certificate does identify Tyler as his father and Dennis signed the birth certificate.[1] The parties agree that Tyler never signed an acknowledgement of parentage pursuant to MCL 722.1003.

[1] While the dissent emphasizes that Dennis signed the birth certificate certifying that Tyler was the father of BT, that fact has no legal significance under the Revocation of Paternity Act.

On December 4, 2013, Dennis filed an in pro per complaint for divorce. She used a form provided by the State Court Administrative Office (SCAO), which provides check-the-box and fill-in-the-box options. Paragraph four of the form complaint required Dennis to identify "Minor children of the parties born or adopted during or before the marriage," and offered boxes for filling in the pertinent information. Dennis circled the word "before" in green ink and wrote in BT's name and birthdate. The form complaint's fifth paragraph sought information regarding "Minor children born during the marriage that are not the husband's children," again offering boxes for filling in information. Dennis listed BRD, with a date of birth of July 8, 2013.

Tyler, also acting in pro per, filed a document that the court accepted as an answer to the complaint, asserting that he was the father of both children. Dennis and Tyler remained unrepresented throughout the proceedings and until after the Judgment of Divorce was filed.

Initially, the divorce proceedings focused primarily on BRD's paternity. Dennis informed the circuit court that Tyler had not fathered the child, and that she and Tyler were separated when BRD was conceived. The court ordered DNA testing, which revealed that another man had fathered BRD. In July 2014, Dennis filed a motion requesting an order of non-paternity, again on a court-provided form. Paragraph three states, "The following child(ren) is/are not biologically a product of this marriage:" Dennis listed *both* children in this paragraph, with their respective birth dates. Paragraph four asked how the moving party "know[s] the child(ren) is/are not a product of the marriage" and Dennis wrote that she and Tyler were not living together at the time she conceived. Dennis provided the name of the man whom she believed to be the father of the children in paragraph five. She also attached the DNA test results for BRD. Dennis's request for relief sought an order that BRD was not Tyler's child. Dennis also wrote on the form: "Please order DNA testing for minor child [BT]."

At the September 15, 2014 hearing on Dennis's motion for an order of non-paternity, the circuit court declared that BRD was not a child of the parties' marriage, based on the DNA test results and Dennis's testimony. As to BT, Dennis pointed out that she previously asked for a DNA test. The circuit court sought Tyler's position regarding DNA testing; Tyler represented that he was on the birth certificate and– falsely, as it turned out – that he had signed an acknowledgment of parentage. Dennis asserted that she and Tyler were aware of the possibility that Tyler might not be the biological father when BT was born. Tyler acknowledged that someone else could have fathered BT, but expressed that he considered himself the child's father. Tyler further stated that he "wouldn't mind knowing . . . as long as [his] rights [to the child] don't get taken away."

Presumably because BT was born before the parties married, the circuit court declared: "Well I don't know that you have any rights. I mean you have rights arising from this acknowledgment of paternity [sic] I suppose, but I don't have that in front of me. Where is that document?" When Tyler stated that he had it, the trial court stated, "Well, you'll send in a copy to the court file in the next 7 days. . . . And, then, I'll give you a written decision about how we're going to proceed on DNA testing."

At the conclusion of the hearing, the circuit court took Dennis's motion for DNA testing as to BT under advisement and told the parties he would research whether the divorce action was the right vehicle to contest the paternity of a child born and conceived before the marriage, or

whether a separate action was required. The September 16, 2014 order memorializing the court's findings states that Tyler is not the biological father of BRD, and that Dennis was to submit a proposed stipulated judgment of divorce within 21 days. The order did not mention the court's decision to take Dennis's motion for DNA testing regarding BT under advisement. The register of actions, however, reads for September 15, 2014: "Motion hearing log: parties present in pro per. Court determined child is not of marriage. Court took under advisement: Order (re paternity)."

On October 6, 2014, Dennis filed a motion requesting additional time to prepare the judgment of divorce, indicating that she needed more information and more time to complete DNA testing regarding BT. At the December 1, 2014 hearing, the court stated "I don't even understand why she wants more time." Dennis reminded the judge that she had asked for DNA testing of BT "since the very beginning," and that the court had agreed to decide her motion. The court stated: "Oh. That's it, that's the best you have to offer?"

The circuit court ordered Dennis to file a stipulated judgment of divorce by December 3, 2014 or it would dismiss the case, reasoning that Dennis could not state a legitimate reason for failing to raise the paternity issue earlier in the proceedings and almost a year had passed since she filed for divorce. Before leaving the courtroom, Tyler asked the court if the parties could still have the DNA testing done "outside of the divorce." The judge told the parties that he could see nothing that would prevent DNA testing if the parties agreed. Dennis, once again, asked if the paternity issue could be resolved in the judgment of divorce. Tyler responded that he did not wish to start the divorce "all over again." The circuit court admonished Dennis for not having BT's DNA testing completed when BRD was tested and restated that the divorce case would be dismissed if a judgment of divorce was not submitted by "12:01 on December 3."

Dennis filed a stipulated judgment of divorce on December 3, 2014. Again, this was simply a basic form entitled "Judgment of Divorce" which required Dennis to check a box to indicate whether there were or were not minor children of the parties. Dennis checked the box indicating that there was a minor child of the parties and listed BT in the space provided. The judgment of divorce also provided a joint custody arrangement for the parties. The trial court held a pro confesso hearing that same day, at which Dennis admitted that she had stated in her complaint that Tyler was the BT's father. Dennis also admitted that there was no contrary DNA testing currently available. At the conclusion of this hearing, the trial court found that the custody arrangement was fair and equitable, and it signed the judgment of divorce.

Following entry of the judgment of divorce, Dennis filed a motion for revocation of an acknowledged father's paternity under MCL 722.1437 of the RPA. She conceded that she had not properly pleaded in her divorce complaint that Tyler was not BT's biological father, but contended that the issue of paternity had not been determined during the divorce proceedings. Dennis asked the trial court to determine through DNA testing that Tyler was not the child's father and to revoke his paternity. Dennis appended an affidavit in which she averred that there had been a mistake of fact, and that although Tyler had agreed to a DNA test while the divorce remained pending, he failed to attend the test she arranged.

Tyler opposed the motion, but a stipulated order for DNA testing was ultimately entered. DNA testing then determined a 0% probability that Tyler was the child's father. However, the

alleged father reported by Dennis was also tested and was also excluded as the child's father. The record does not mention any other alleged fathers. After the DNA test results were available, the parties retained counsel for the first time.

Thereafter, Tyler filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10). Tyler claimed that the parties recently learned that he had not actually signed an acknowledgment of parentage. Tyler argued that his acknowledgment of parentage could not be revoked if he was not an "acknowledged father"[2] under the RPA, rendering Dennis's motion under MCL 722.1437 incorrectly brought. Tyler instead posited that he was an "affiliated father"[3] under the RPA based on the entry of the judgment of divorce, which declared him to be the child's father. The circuit court ultimately agreed with Tyler and granted his motion under MCR 2.116(C)(8) for Dennis's failure to state a claim on which relief could be granted.[4]

II. ANALYSIS

The question at the core of this case is whether the parties' divorce judgment determined BT's paternity. Accepting Dennis's allegations as true, as we must, her complaint adequately sets forth a claim under the Revocation of Paternity Act. Nor was summary disposition proper under MCR 2.116(C)(10), as the circuit court failed to resolve the question of BT's paternity, which was disputed throughout the divorce proceedings.

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(8). *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). MCR 2.116(C)(8) "tests the legal sufficiency of the claim on the basis of the pleadings alone," *id.*, and "all factual allegations contained in the complaint must be accepted as true," *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). As the court considered evidence beyond the pleadings in rendering judgment for Tyler, we review the decision as if made under MCR 2.116(C)(10). See *Haynes v Village of Beulah,* 308 Mich App 465, 467; 865 NW2d 923 (2014). We review such decisions de novo, considering whether the plaintiff presented sufficient evidence to create a genuine issue of material fact and whether moving party is entitled to judgment as a matter of law. *Weingartz Supply Co v Salsco Inc*, 310 Mich App 226, 232; 871 NW2d 375 (2015).

The circuit court erred in finding summary disposition to be proper under MCR 2.116(C)(8). Dennis's motion for revocation of parentage alleged that she engaged in intimate behavior with someone other than Tyler at the time of the child's conception. She alleged the

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[2] The RPA defines an "acknowledged father" as "a man who has affirmatively held himself out to be the child's father by executing an acknowledgment of parentage under the acknowledgement of parentage act, 1996 PA 306, MCL 722.1001 to MCL 722.1013." MCL 722.1433(a).

[3] The RPA defines an "affiliated father" as "a man who has been determined in court to be the child's father." MCL 722.1433(b).

[4] The court also denied Tyler's motion under MCR 2.116(C)(10), but did not fully explain its reason for doing so.

possibility that Tyler was not the child's father and requested DNA testing to support her claim. Accepting her factual allegations as true, *Simko*, 448 Mich at 654, and testing the legal sufficiency of her claim alone, *Bailey*, 494 Mich at 603, it is possible that further factual development of Dennis's claim could have justified recovery, *Maiden*, 461 Mich at 119. For instance, through DNA testing, it might have been possible for Dennis to support her request for Tyler's paternity to be revoked. It was not until *after* Dennis filed her motion that the parties learned that no acknowledgment of parentage was ever signed by Tyler. The trial court improperly focused on this fact, rather than considering only the allegations as pleaded in Dennis's motion. See *Simko*, 448 Mich at 654. Accordingly, summary disposition was improper under MCR 2.116(C)(8).

Neither would summary disposition have been proper under MCR 2.116(C)(10). The RPA recognizes five classifications of fathers:

> (a) "Acknowledged father" means a man who has affirmatively held himself out to be the child's father by executing an acknowledgement of parentage under the acknowledgement of parentage act, 1996 PA 306, MCL 722.1001 to MCL 722.1013.
>
> (b) "Affiliated father" means a man who has been determined in court to be the child's father.
>
> (c) "Alleged father" means a man who by his actions could have fathered the child.
>
> (d) "Genetic father" means a man whose paternity has been determined solely through genetic testing under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, the summary support and paternity act, or the genetic parentage act.
>
> (d) "Presumed father" means a man who is presumed to be the child's father by virtue of his marriage to the child's mother at the time of the child's conception or birth. [MCL 722.1433.]

It is undisputed that Tyler was not an acknowledged father because he never executed an acknowledgment of parentage. Nor was Tyler a presumed father, given that the child was born outside the marriage, or a genetic father, as established by DNA testing. Tyler qualifies as an affiliated father if the judgment of divorce was a determination of his paternity.[5]

"[T]o decide whether a man qualifies as an affiliated father requires consideration of whether he has been determined in a court to be the child's father." *Glaubius v Glaubius*, 306 Mich App 157, 167; 855 NW2d 221 (2014). A man may be classified as an affiliated father

[5] An "affiliated father's" paternity can be revoked only if "paternity was determined based on the affiliated father's failure to participate in the court proceedings" in which his paternity was determined. MCL 722.1439 (1).

"when, in a court of law, a dispute or question about [the] man's paternity has been settled or resolved and it was concluded by the court, on the basis of reasoning or observation, that the man is the child's father." *Id.* at 168. The trial court must make an "actual determination of paternity." *Id.* A judgment of divorce may be sufficient to establish paternity in this regard, "depending on the facts of the particular case and the determinations expressed in the divorce judgment." *Id.* at 169-170.

In *Glaubius*, this Court found that the judgment of divorce was not a determination of paternity and, therefore, not an order establishing the defendant as an affiliated father. *Id.* at 170. The Court highlighted that the issue of paternity was never a disputed issue during the divorce; thus, it was not a question actually resolved by the trial court. *Id.* Rather, the plaintiff alleged that the child was "born of the marriage" and treated the defendant as a presumed father. *Id.* This Court reasoned that the order was not an actual determination of paternity because "nowhere did [the] plaintiff allege, [the] defendant assert or deny, or the trial court actually ascertain that [the] defendant was in fact the minor child's father." *Id.*

In the instant case, the child at issue was born the day before the parties were married. Thus, the long standing presumption that children born or conceived during a marriage are the issue of that marriage does not apply. See, *Barnes v Jeudevine*, 475 Mich 696, 703; 718 NW2d 311 (2006)("[t]he presumption that children born or conceived during a marriage are the issue of that marriage is deeply rooted in our statutes and case law.") (citation omitted). Nevertheless, Dennis alleged in her December 4, 2013 complaint for divorce that Tyler was the child's father. In his response, Tyler affirmatively agreed with this allegation. However, in her July 8, 2014 motion requesting an order of non-paternity with respect to BRD, Dennis affirmatively stated that BT was not Tyler's biological child and requested that the trial court also order DNA testing for BT. At the September 15, 2014 hearing on Dennis's motion, Dennis again raised the issue of BT's paternity and requested DNA testing. When asked if he realized that there was the potential that someone else was the father of the oldest child, Tyler answered, "Yes sir, I think they had done a test previous but it came back that [the alleged father] was not." Dennis indicated that she and the alleged father of the older child had done a DNA test they had purchased at a store but she had been told that the results were not accurate. The court opined:

> That's a pretty trashy way to proceed and I find it unreliable.
>
> I'm going to take this under advisement for a bit and think about whether this divorce case is the right vehicle to contest paternity of a child born and conceived before this marriage began. And whether that should be the subject of a separate custody action. I want to ponder that and look at some case law. So I'll take your request for DNA under advisement.

The court concluded by asking, "Other than this DNA controversy about the paternity of [the oldest child], what other issues are in dispute in the divorce between the two of you?" The parties agreed that there were no other issues in dispute and the court indicated that it wanted the case to be completed in one way or another by December 3, 2014, the one year anniversary from the date of filing of the complaint for divorce.

The circuit court's impatience with the length of time consumed by this in pro per divorce action is understandable. Nevertheless, the record supports that the court failed to resolve the issue of BT's paternity, which was first raised in July 2014, raised again in September 2014, a third time in October 2014, and a fourth time in December 2014. Rather than applying "reasoning or observation" to the determination of the question of BT's paternity, the court essentially kicked the can down the road time and time again, ultimately forcing the parties to sign the divorce judgment without the requested DNA testing of BT.

The December 2014 hearings typify the court's approach. Dennis requested additional time in which to file the judgment of divorce, reminding the court that the last time the parties were there, she had again sought DNA testing of BT. The court asked, "What motion was that? What date did you file that?" The court pointed out that Dennis's complaint for divorce did not set forth a dispute regarding the child's paternity and that "now you seem to be changing direction and saying there's a serious question about Bryson's paternity." Dennis advised that she had scheduled a DNA test for Friday of that week. The court then launched into a lengthy discourse on the State Court Administrator Office's emphasis on efficiency in the legal system and indicted that Dennis's case "has just lingered and dawdled because you're confused and not seeking a DNA test in a timely fashion . . . ." The court concluded that Dennis should have made a statement in her complaint about the BT's paternity had him tested at the same time as BRD, and that her request for more time to conclude the divorce was not timely. When Dennis indicated that she could fill out the judgment of divorce after the scheduled DNA test was complete, the trial court stated that it would be too late and that her case would be dismissed if the judgment of divorce was not received by noon on December 3, 2014, and that they would have to start the divorce proceedings all over again with the filing of a new complaint. When Tyler expressed his objection to starting the divorce proceeding from the beginning, Dennis stated that she would just submit the judgment of divorce by December 3.

At the December 3, 2014 pro confesso hearing, the trial court questioned Dennis about paternity, and she admitted that she initially alleged that Tyler was the child's father. In response to the trial court's questioning, Dennis also admitted that there was no DNA testing currently available that established otherwise. The trial court entered the judgment of divorce on that day. The judgement of divorce was a form filled out by Dennis and signed by both she and Tyler, each acting in pro per, which provided that there was one minor child of the parties: BT.

While the judge signed the judgment of divorce following the pro confesso hearing, it cannot be said that the trial judge "actually resolved" the issue of the oldest child's paternity. Both Dennis and Tyler acknowledged during the divorce proceedings that the child could be another man's son, and both parties wanted DNA testing done. The trial judge failed to address the DNA issue despite his assurance in September 2014 that he would be issuing an order concerning the same. When Dennis appeared and requested additional time to enter the divorce judgment, given the lack of order concerning DNA testing, the judge seemed to have forgotten about his duty to resolve the DNA issue and badgered Dennis into entering the judgment in the name of efficiency. At no time did the trial court make a determination, however, that Tyler was, in fact, the child's father or that paternity had been established. As indicated in *Glaubius*, 306 Mich App at 168:

> to "determine" is "**1.** to settle or resolve (a dispute, question, etc.) by an authoritative or conclusive decision [or] **2.** to conclude or ascertain, as after reasoning or observation." *Random House Webster's College Dictionary* (1992). Applying this basic definition, it follows that an affiliated father exists when, in a court of law, a dispute or question about a man's paternity has been settled or resolved and it was concluded by the court, on the basis of reasoning or observation, that the man is the child's father. Given this understanding, it seems plain that the Legislature intended to recognize the existence of an affiliated father when there was an actual determination of paternity; that is, when there was a dispute or question presented regarding the man's paternity and the matter was in fact resolved by a court.

Further," [i]f, in the course of a divorce proceeding, the court makes a determination regarding a man's paternity and correspondingly enters an order establishing this determination," this could establish a man's status as an affiliated father. *Id* at 169. However, "for a man to have been 'determined' in a court to be a child's father, there must have been a dispute or question about the issue of paternity and an actual resolution of the matter by the trial court, culminating in a judicial order establishing the man as the child's father." *Id*. at 170. "Actual" means "[e]xisting in fact; real." Black's Law Dictionary, 7th ed. "Resolution" means "[a] formal expression of an opinion, intention, or decision . . . ." *Id*.

The issue of paternity was never resolved by the circuit court. Paternity remained at issue with respect to BT, partially due to the circuit court's failure to address the issue despite its assurance that it would. There was no formal expression of an opinion by the trial court that the disputed issue had been resolved. Therefore, the judgment of divorce did not establish Tyler's paternity as an affiliated father under the RPA.

We respectfully disagree with the dissent's characterization of the circuit court as "very polite, careful, and kind." While it is true that the court spent extra time at this pro confesso hearing, we are unable to simply ignore the court's actions and comments at nearly all of the proceedings leading up to (and including) the pro confesso hearing, and its failure to resolve the paternity issue despite multiple reminders.

Indisputably, BT was not born during the parties' marriage. Dennis did check the box on the complaint for divorce indicating that BT was a minor child born before the marriage and fathered by Tyler; but the only other option available was to indicate that there were children born *during the marriage* that were not Tyler's. During the proceedings the parties' mutual uncertainty of whether Tyler was BT's father emerged. Dennis, a part-time, minimum wage earner without counsel, relied on the options available to her in the complaint form supplied by the circuit court. Even so, she correctly advised the court that BT had been born outside the marriage.

Dennis formally requested paternity testing of BT in her July 2014 motion. That the motion was not heard until September 2014 does not appear to be the fault of Dennis or Tyler. The circuit court clearly acknowledged at the September 2014 hearing that Tyler may not have any rights to BT, given that he was not born of the marriage and that Tyler acknowledged he may not be the child's father. The circuit court further told Tyler to produce an acknowledgment

of parentage regarding BT within seven days. The court made no effort to follow-up on this order, and apparently forgot that no acknowledgment had been produced. Rather than being "determined," the paternity issue slipped through the cracks of the court system.

At the December 1, 2014 hearing on Dennis's motion seeking more time in which to file the court-ordered stipulated judgment of divorce, Dennis reminded the judge that she remained interested in DNA testing of BT. The court responded as if it had no idea what Dennis was talking about. At least twice during the September 2014 hearing, the judge had clearly and unequivocally stated that he would issue a written opinion concerning the BT's paternity; that apparently fell by the wayside in the court's haste to enter the judgment. When the circuit judge accused Dennis of suddenly changing direction and now raising a serious question about BT's paternity Dennis responded:

> [BT] was born before we were married and there has been a question about [BT], we just never have taken the steps of finding out and we—both of us want to know and we—I actually had scheduled for the DNA test this week. So the judgment of divorce will be filled out and turned in as soon as I—
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> THE COURT: But it's more than a year since you filed your complaint, in 3 days it will be a year. I'm looking for a reason why you haven't addressed this issue, if there's some seriousness to it other than delaying litigation. Why didn't you address this earlier and why in fact you misrepresented to the Court in your complaint that [BT] was a child of you and then Tyler.
>
> ***
>
> [DENNIS]: The last time that we came to court I had asked you about doing a DNA and you said that you had to—you said let you think about it and look at a few things and you'd get back to me on that.
>
> THE COURT: Oh. That's it, that's the best you have to offer?
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> DENNIS: That is what you said to me and I went down to Legal Aid and I also went to this window out here to ask them, you know, what you meant by that because I was confused by that . . . .

Dennis made it clear that despite the trial court's failure to render a written opinion on the issue of BT's DNA testing, she had, in fact scheduled the testing for later that week and would thus be able to fully prepare a judgment of divorce shortly thereafter. Rather than focusing on resolving the issue of BT's paternity, however, the trial court focused on having a judgment of divorce entered within one year of the date of filing. Dennis said, "I'll fill out the judgment of divorce and turn it in this week." The trial court declared:

> Well that will be too late. The judgment of divorce was supposed to be in weeks ago and you haven't served it on the Tyler. So, your case is going to be dismissed a day before the one year anniversary of the filing on December 3rd. It's December 1. Your case is going to be dismissed on December 3rd unless you submit the judgment of divorce before noon on that day. And it's got to have the

> Tyler's acquiescence in those terms and agreement. If he won't sign it as fair, reasonable and accurate, the judgment won't be signed by me and the case will be dismissed, and if you want to get divorced from the Tyler we'll have to start all over again with a brand new complaint.

We question the trial judge's classification of a judgment of divorce entered more than one year after the date the complaint was filed as "too late," particularly given these circumstances where the subject of a child's paternity was and remained at issue.

The trial judge lectured Dennis at the December 1, 2014 hearing, failing to acknowledge that *he* had kept the parties waiting for a decision concerning DNA testing that *he* had said would be forthcoming:

> What has occurred here is that your case has just lingered and dawdled because you're confused and not seeking a DNA test in a timely fashion, in fact you filed a complaint here that made it clear you were the mother of BT and you were the—the Tyler was the father of BT according to your own statements, so the issue wasn't dealt with in a prompt fashion. Coming here months and months and months after the hearing, even after another child has been tested for the DNA is not a proper and timely action moving the case forward.

It was not unreasonable for Dennis to wait for the trial court to issue a decision concerning DNA testing, considering that the parties had received an order for DNA testing concerning BRD from the trial court and did not move forward with the testing until after the trial court had issued the order. Dennis did her best to point out to the trial court that she felt it would be imprudent to fill out the judgment of divorce until after BT's paternity was resolved:

> [Dennis]: The problem is that there's information on the judgment of divorce that complies with what the DNA test—
>
> [Tyler]: Why do you want to start all over?
>
> [Dennis]: I don't want to start all over.
>
> THE COURT: Yeah, you just want to keep the case alive for more than a year without taking prompt action.
>
> [Dennis]: No, I don't.
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> THE COURT: You should have taken this second child in for DNA testing in July when the first child was being DNA tested. You both knew that test was going to happen and you should have brought the second child in if there was a serious question of the paternity of the second child.
>
> [Dennis] I'm paying for it all myself.
>
> THE COURT: Right. Timeliness is important. This case is going to be dismissed on December—

[Dennis]: I'll just turn it in. I don't even care, I'll just turn it in.

Dennis's frustration and the fact that she "gave up" under the pressure from the court to get the judgment entered within 48 hours or have to start the divorce case from the very beginning is evident in her language. At the pro confesso hearing on December 3, 2014, Dennis was still not truly comfortable stating that Tyler was BT's father:

[Trial Court]: And your divorce complaint reported that [BT] born on that date was fathered by Steve Tyler. True?

[Dennis]: Well we were going to be getting a DNA test.

[Trial Court]: Yeah, but you report in your complaint that he was born—that his father was Steve Tyler, didn't you?

[Dennis]: Yes.

[Trial Court]: Okay. And there's no contrary DNA testing available right now, is there?

[Dennis]: No.

It is never the goal of this Court to leave a child without a parent. However, this Court must follow established law and ground its decisions on the entire record. Here, the circuit court dropped the ball. The issue of BT's paternity *was* contested and brought to the court's attention within a few months of the divorce being filed. *Both* parties readily acknowledged that the paternity was at issue and *both* parties desired DNA testing. This testing was not performed due to the circuit court's confusion regarding whether it was appropriate to contest paternity in this divorce proceeding or in a separate action, and its assurance to the parties that it would issue a written opinion concerning the same. The fact that the circuit court later could not recall its own ruling does not mean that these litigants, and BT, should endure the consequences of a hastily entered judgment that has proven to be fundamentally incorrect. The circuit court had all of the necessary information before it early on in the divorce proceeding to avoid placing the parties in this position. Because the circuit court never determined BT's paternity despite having been repeatedly asked to do so, the judgment of divorce did not establish Tyler's paternity as an affiliated father under the RPA.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher