

IN THE COURT OF APPEALS OF IOWA

No. 9-599 / 09-0021
Filed August 19, 2009

SAMUEL SCHROCK,
Petitioner-Appellee/Cross-Appellant,

vs.

DIETER G. ERDELT,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Fayette County, James C. Bauch,
Judge.

Biological father appeals the district court's decision voiding a prior
paternity judgment due to lack of personal jurisdiction over the legal father.

AFFIRMED.

Dieter Erdelt, Oelwein, appellant pro se.

Mark A. Roeder of Roeder Law Office, Manchester, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

EISENHAUER, J.

This case concerning the visitation, custody, and paternity of Rachel Schrock has been litigated in the district courts of two Iowa counties and is the subject of a prior court of appeals decision.

I. Background Facts and Buchanan County Proceedings.

Thirty-year-old Edna Helmuth, a member of an Amish community, was employed at sixty-seven-year-old Dieter Erdelt's business. When Edna realized she was pregnant with Dieter's child, she informed Samuel Schrock, her prospective Amish spouse. Edna and Samuel were married in December 2003.

When Rachel was born in March 2004, Samuel, as Rachel's husband, was listed as the father on the birth certificate. In July of 2004, the Schrocks moved to another Amish community in Wisconsin. Shortly thereafter, Dieter filed a petition admitting paternity of Rachel and seeking joint legal custody and visitation. Dieter named Edna Schrock as a party, but did not name either Samuel or Rachel. Further, a guardian ad litem was not appointed for Rachel. Edna's answer admitted she and Dieter are the natural parents of Rachel.

After the trial, the Buchanan County district court ruled: "Samuel Schrock is the legal father of Rachel. Dieter Erdelt is the biological father of Rachel." The order stated in part: "Dieter's petition does not seek to overcome Samuel's legal paternity or disestablish him as Rachel's legal father. This decision therefore does not address that issue further."

Dieter filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) requesting the court disestablish Samuel's paternity. In December 2005, the

district court ruled: “Samuel Schrock is disestablished as the legal father of Rachel. Dieter Erdelt is established as the legal father of Rachel.”

Dieter’s subsequent appeal of other issues was dismissed in March 2006, after the Buchanan County district court approved Edna and Dieter’s jointly-signed “stipulated modification of decree.”

II. Fayette County Proceedings.

Two months later, in May 2006, Samuel filed an equity petition in the interest of Rachel Schrock, in Fayette County, the county of Dieter’s residence. The petition sought a declaratory judgment ruling the Buchanan County judgement was void because neither Samuel nor Rachel was made a party to the suit and a guardian ad litem was not appointed to represent Rachel’s interests. In June 2006, Dieter filed a motion to dismiss, or in the alternative, to move the case to Buchanan County. The motion was summarily denied in July 2006. On August 11, 2006, Samuel sought summary judgment.

In February 2007, the district court dismissed Samuel’s petition and ruled it did not have subject matter jurisdiction. Samuel appealed, and in January 2008, this court reversed the Fayette County district court. *Shrock v. Erdelt*, No. 07-0614 (Iowa Ct. App. Jan. 30, 2008). We concluded the issue was the authority of the Fayette County court to hear the case (venue) rather than whether the court had subject matter jurisdiction. After concluding Samuel’s petition was a direct attack on the Buchanan County judgment, we ruled Dieter waived any venue challenge by not objecting to or appealing the Fayette County court’s July ruling denying a change of venue. Thus, “the Fayette County district

court had the authority to proceed to hear the case.” We accordingly reversed the district court’s ruling dismissing Samuel’s petition and remanded.

On remand, the Fayette County district court ruled, “[a] judgment made without notice to the proper parties is void and has no legal value; therefore it may be attacked in any proceeding, direct or collateral, and at any time.” The court concluded:

This court finds that Samuel was not made a party nor did he receive proper notice of the Buchanan County suit. This court further finds that Rachel was not made a party nor was a guardian ad litem appointed to represent her interests. Therefore, it is hereby ordered that the judgment, orders, and proceedings of Buchanan County case . . . Dieter Erdelt v. Edna Schrock, are hereby declared void.

The Fayette court also summarily dismissed Dieter’s counterclaim and taxed guardian ad litem fees to Samuel and court costs to Dieter. Dieter’s subsequent motion to amend or enlarge was denied and this appeal followed. Samuel cross-appeals the court’s guardian ad litem fee award.

III. Standard of Review.

Our scope of review in a “declaratory judgment action submitted on motion for summary judgment is for correction of errors at law.” *City of Clinton v. Sheridan*, 530 N.W.2d 690, 692 (Iowa 1995).

IV. Buchanan County Judgment.

On appeal Dieter requests we void the Fayette County proceedings and argues: (1) the Fayette County court erred in not using the “best interests of the child” standard when voiding the Buchanan County court’s judgment; (2) Samuel submitted to the jurisdiction of the court by being a witness in the Buchanan

County hearings; (3) Samuel is using the “legal technicality” of failure of notice as a means to void the Buchanan County proceedings; (4) the Buchanan County proceedings are final because no appeal was completed; (5) biological parents can enter into an agreement without interference from a legal husband, otherwise Dieter’s constitutional rights as a biological parent are violated; and (6) the other parties are guilty of deceit and collusion.

We find no merit in any of Dieter’s arguments, including arguments advanced, but not listed above. A void judgement can be attacked at any time and neither laches nor estoppel can validate it. *Rosenberg v. Jackson*, 247 N.W.2d 216, 218 (Iowa 1976). Notice is not a mere technicality, rather, “[i]t is fundamental that a person ‘is not bound by a judgment in personam in a litigation in which he or she is neither designated as a party nor made a party by service of process.’” *Ryan v. Iowa Dist. Court*, 329 N.W.2d 658, 660 (Iowa 1983) (citation omitted); see Iowa Code § 600B.41A (2007) (requiring notice to be served upon any parent in actions to overcome paternity). Further, Samuel’s appearance as a witness in the Buchanan County proceedings does not confer in personam jurisdiction. See *Ryan*, 329 N.W.2d at 660.

We affirm the Fayette County court’s voiding of the Buchanan County proceedings. Since the Buchanan County judgment is void, “the matter stands as though no judgment had been rendered.” *Miller v. Farmers Co-op Co.*, 176 N.W.2d 832, 836 (Iowa 1970).

V. Guardian Ad Litem Fees.

At the conclusion of the case, the Fayette County court ordered Samuel to pay the guardian ad litem fees while ordering Dieter to pay court costs. Samuel filed the action and requested the appointment of the guardian ad litem. Equity necessarily tempers our review in cases such as this one. Upon review of the record, we decline to tamper with this discretionary decision. We find no abuse of discretion and affirm.

Costs on appeal are taxed to Dieter.

AFFIRMED.