

No. 1-14-2774

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> TERRY A., JR.)	Appeal from the Circuit Court
)	of Cook County.
Minor-Respondent-Appellant)	
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 14 JA 00419
)	
Terry A., Sr.,)	
)	
Putative Father-Respondent;)	
)	
and)	
)	
Sonya P.,)	
)	Honorable Maxwell Griffin, Jr.,
Mother-Respondent).)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court correctly dismissed a putative father as a party to an adjudication of wardship petition involving a minor after DNA analysis demonstrated that he was not the minor’s biological father.

¶ 2 In this case, we must determine whether testimony can trump biology in the judicial determination of fatherhood. A panel of justices from the Fifth District of our court recently ruled on a similar issue, and we believe that court's reasoning is sound. See *In re A.A.*, 2014 IL App. (5th) 140252, *appeal allowed*, No. 118605 (Dec. 23, 2014). Because Supreme Court Rule 311(a) (Ill. Sup. Ct. R. 311(a) (eff. Feb. 26, 2010)) requires us to consider this case on an expedited basis, and because our supreme court has accepted a petition for leave to appeal from the Fifth District's opinion in *A.A.*, we have decided to issue a relatively brief dispositional order, recognizing that the supreme court will soon have the last say on the matter.

¶ 3 BACKGROUND

¶ 4 The minor-respondent-appellant Terry A., Jr., is now 17 years old. During his entire life, Terry Jr. has recognized Terry A., Sr., as his father. Terry Jr. was not raised either by Terry Sr., who is now incarcerated, nor by his mother, Sonya P. He was raised by Terry Sr.'s mother, Daisy A. Shortly after Terry Jr.'s birth, a probate court order entered an order naming Daisy A. as his guardian.

¶ 5 Years later, circumstances changed when Daisy A. died. The State filed a petition for adjudication of wardship under Article II of the Juvenile Court Act of 1987 (705 ILCS 405/2-1 *et seq.* (West 2012)), alleging that Terry Jr. was neglected and dependent due to Daisy's death, his putative father's incarceration, and his mother's history of drug use and lack of involvement in Terry Jr.'s life. By the time of the temporary custody hearing at issue below, Sonya had seven other children from various relationships who were in the custody of the Illinois Department of Children and Family Services (DCFS) as the result of Sonya's abuse, neglect, and unfitness. Both Terry Sr. (who was transported to court from prison under a writ) and Sonya testified below that Terry Sr. was Terry Jr.'s father. Sonya also testified that there was no previous paternity

finding by any court that Terry Sr. was not present at Terry Jr.'s birth, and that Terry Sr. signed neither the birth certificate nor a Voluntary Acknowledgment of Paternity form. Upon hearing these details, the trial court ordered a DNA test on the two Terrys to determine whether they were, in fact, biologically related, stating "it's in the best interest of the child to make a determination in that regard and *** it's important, not only for health, but mental health reasons, moving forward in the child's life." The court placed Terry Jr. in the temporary custody of DCFS, and continued the case for the DNA test results.

¶ 6 The DNA analysis showed that there was a 0% probability that Terry Sr. was Terry Jr.'s father. The Cook County Public Guardian, who represents Terry Jr., asked that the court not enter a finding of non-paternity as to Terry Sr., but instead find that Terry Sr. was Terry Jr.'s father, noting that no party asked for a DNA test and that Terry Sr. had acknowledged his fatherhood of Terry Jr. Alternatively, Terry Jr. asked that the court allow Terry Sr. to retain party status as an interested person pursuant to *In re A. K.*, 250 Ill. App. 3d 981 (4th Dist. 1993). Based on the DNA evidence, however, the trial court overruled Terry Jr.'s objection, found that Terry Sr. was not Terry Jr.'s father, and dismissed Terry Sr. from the case. In so doing, the trial court noted that there were "no examples of support – either emotional or financial that the father – the putative father has provided," and that Terry Sr. was incarcerated. Terry Sr. has not appealed from that ruling. Terry Jr., however, has. Terry Jr. asks this court to reverse the finding of non-paternity, which would have the effect of reinstating Terry Sr. as a party to the pending adjudication of wardship petition. No one else claiming to be Terry Jr.'s biological father has ever come forward.

¶ 7

ANALYSIS

¶ 8 This case presents an issue of statutory construction – whether the Illinois Parentage Act of 1984 (the Parentage Act) (750 ILCS 45/1 *et seq.* (West 2012)) requires a finding of nonpaternity in a wardship adjudication case where DNA analysis shows no biological relationship between the putative father and the minor. We review this issue *de novo*. *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 286 (2008).

¶ 9 Section 6-9 of the Juvenile Court Act of 1987 specifies that if parentage is at issue in a wardship case, the Parentage Act “shall apply.” 705 ILCS 405/6-9(1) (West 2012). The Parentage Act provides a “ ‘statutory mechanism that serves to legally establish parent and child relationships in Illinois.’ ” *J.S.A. v. M.H.*, 224 Ill. 2d 182, 198 (2007) (quoting *In re Estate of Poole*, 207 Ill. 2d 393 (2003)). It provides that “[t]he parent and child relationship *** extends equally to every child and to every parent, regardless of the marital status of the parents.” 750 ILCS 45/3 (West 2012); *J.S.A.*, 224 Ill. 2d at 198. Under the Parentage Act, legal paternity is established in one of three ways: by presumption (750 ILCS 45/5 (West 2012)), by consent (750 ILCS 45/6 (West 2012)) or by judicial determination (750 ILCS 45/7 (West 2012)). *J.S.A.*, 224 Ill. 2d at 198.

¶ 10 Under section 5(a)(3) of the Parentage Act, a man is presumed to be the natural father of a child if he and the child’s mother have signed a voluntary acknowledgment of paternity, commonly known as a VAP. 750 ILCS 45/5(a)(3) (West 2012). However, section 5(b) of the Parentage Act provides that a presumption arising under section 5(a) is not conclusive and may be rebutted by clear and convincing evidence. 750 ILCS 45/5(b) (West 2012). Such evidence may include DNA test results establishing that another man is in fact the child’s biological

father. See 750 ILCS 45/11 (West 2012). Here, we note that while both the mother and Terry Sr. acknowledged paternity through testimony, Terry Sr. never signed a VAP.

¶ 11 As we noted above, this case is quite similar, if not identical, to *A.A.* In that case, the court noted that the paternity argument made by the nonbiological father was essentially grounded in a “best interests” standard. *A.A.*, 2014 IL App. (5th) 140252, ¶ 29. Essentially, he contended that because he was recognized as the child’s father and interacted with him like a father, he was an “equitable parent.” See *In re A.K.*, 250 Ill. App. 3d 981, 989. Under that doctrine, the parties’ admission of fatherhood should govern over the biological evidence because that would be best for the minor. The court found that the best interests standard cannot “be applied to determine a parent’s rights to custody, visitation, and support” unless the party is actually a biological parent. *A.A.*, 2014 IL App. (5th) 140252, ¶ 30. It also determined that “a man who has signed a voluntary acknowledgment of paternity and lists himself as the father on a child’s birth certificate is only presumed to be the father of the child, but that presumption can be rebutted by clear and convincing evidence that another man is the biological father of the child.” *Id.* ¶ 31. We find that the *A.A.* court’s reasoning is sound and we adopt it as our own.

¶ 12 We commend Terry Sr.’s paternal instincts and recognize that his mother raised Terry Jr. as if he were her grandson, but we cannot alter established facts. We also recognize Terry Jr.’s apparent desire to maintain a parent-child relationship with Terry Sr. Terry Jr. will soon reach the age of majority, but until then, Terry Sr. or a member of his family can remain active in Terry Jr.’s life either through court-granted visitation, a new guardianship or adoption.

¶ 13 Alternatively, Terry Jr. asked that the court allow Terry Sr. to retain party status as an interested person pursuant to *In re A.K.*, 250 Ill. App. 3d 981 (4th Dist. 1993). We agree with this request. The *A.K.* court explained why this is important to minors’ welfare:

“Any formerly presumed father who might qualify under the law of other States as an ‘equitable parent’ would benefit by remaining in a section 2-29 [705 ILCS 405/2-29 (West 1992)] proceeding until all issues are resolved because he would have an opportunity to persuade the court to frame its dispositional order in such a way as to be consistent with any ability he might have to adopt the child. By keeping such a person in the section 2-29 proceeding to the end, he obtains some of the protection which the ‘equitable parent’ rule might give him while, at the same time, the State is relieved of the burden of establishing his unfitness when the child’s best interests appear not to include any role for the formerly presumed father. Thus, our determination [that once the presumed father is brought into the section 2-29 proceeding he can remain in the proceeding after the presumption of parentage is rebutted] serves not only to protect that individual but also to promote the stated legislative purpose of serving the best interests of the child.

When we state that a formerly presumed father is entitled to remain in the case, we mean that he should be treated as a party entitled to notice of hearing and to present evidence, cross-examine witnesses and make argument.” *Id.* at 989.

¶ 14 The putative father in *A.K.* had an extensive criminal record, so the court found it was unlikely that his further participation would have changed the ultimate result regarding

permanent custody. *Id.* Terry Sr.'s incarceration makes the same result likely here. We believe, however, that when the trial court receives our mandate, it should take note of what appears to be a substantial bond between the two Terrys, and it should strongly consider granting Terry Sr. party status. See 705 ILCS 405/1-5 (West 2012) (permitting persons who "have a direct interest in the case" to participate in wardship adjudication hearings.)

¶ 15

CONCLUSION

¶ 16 For these reasons, we affirm the order of the circuit court.

¶ 17 Affirmed.