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ARKANSAS COURT OF APPEALS

DIVISIONS I & II
No. CA09-1072

TREMAYNE SCOGGINS APPELLANTS V. EVON M. MEDLOCK APPELLEE	**Opinion Delivered** May 5, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. DR2009-1376] HONORABLE MARY SPENCER McGOWAN, JUDGE SUBSTITUTED OPINION ON DENIAL OF REHEARING: APPEAL DISMISSED

JOSEPHINE LINKER HART, Judge

Tremayne Scoggins appeals from an order of the Pulaski County Circuit Court, Ninth Division, dismissing, pursuant to Rules 12(b)(6) and 12(b)(1) of the Arkansas Rules of Civil Procedure, Scoggins's petition to be declared the father of a deceased child, Trayvon Scoggins. On appeal, he argues (1) that the trial court erred in dismissing his petition because he had standing to "conclusively establish paternity" by DNA testing where there still exists easily obtainable biological material from the deceased child and where appellee Evon M. Medlock had previously acknowledged that he was the father of the deceased child in court filings; and (2) that the trial court erred in finding that it did not have subject-matter jurisdiction to establish paternity. We dismiss this appeal as moot.

Trayvon A. Scoggins was tragically killed in an accident involving a taxicab on June 9,

2006. He was less than fifteen months old. On June 20, 2006, the child's mother, Evon Medlock, petitioned to be named special administratrix of the child's estate. In her petition, Medlock stated that "Tremayne Scoggins is the biological father of the child." On August 6, 2006, a wrongful death and survivor action was filed in Pulaski County Circuit Court. A settlement offer of $362,500 was made. The circuit judge, sitting in the Twelfth Division of Pulaski County Circuit Court, determined that Scoggins should be represented by counsel. Over Medlock's objection, the trial court appointed counsel for Scoggins. Scoggins subsequently petitioned to establish paternity in the Ninth Division of Pulaski County Circuit Court.[1]

Scoggins's petition, styled "Petition for Paternity," was filed on March 12, 2009. In his petition, Scoggins stated that on March 26, 2005 [sic], Evon Medlock delivered an out-of-wedlock child, Trayvon A. Scoggins, who was now deceased. He claimed that he had acknowledged paternity of the child. Further, he asserted that Medlock acknowledged under oath that he was the child's father. However, Medlock subsequently claimed that he was only the "putative" father. The petition further stated that the court should order DNA testing pursuant to Arkansas Code Annotated section 9-10-108 and following. In the prayer for relief, Scoggins asked that he be declared the natural father of the deceased minor child. On July 2,

[1] We note that the appeal sub judice is taken from an order out of the Ninth Division of the Pulaski County Circuit Court. For reasons that will become painfully obvious, it is apparent that matters taken up in the respective divisions of the same court directly affected this case, but were not considered by the other division. It appears that these proceedings violate the spirit, if not the letter of Amendment 80.

2009, Scoggins filed a motion asking for paternity testing pursuant to Arkansas Code Annotated section 9-10-108. In it, he asserted that the Arkansas Crime Laboratory had verified that a sample of the blood of the deceased child, Trayvon Scoggins, was available.

Meanwhile, in the Twelfth Division of Pulaski County Circuit Court, Medlock was replaced as the Special Administratrix of Trayvon Scoggins's estate. On April 21, 2009, the successor special administrator filed a document stipulating Scoggins's paternity of the deceased minor child. This fact is of crucial importance in this case. The only reason why Scoggins had filed his petition for DNA testing was because his status as Trayvon's father was being challenged by Ms. Medlock in her capacity as Special Administratrix of Trayvon's estate. Accordingly, we hold that under the facts of this case, the filing of the stipulation had the conclusive legal effect of ending the necessity of Scoggins having to secure a DNA test to establish paternity.

The issue of mootness has not been raised by the parties; however, it is a jurisdictional issue that we raise on our own motion. *Gee v. Harris*, 94 Ark. App. 32, 223 S.W.3d 88 (2006). As a general rule, subject to a few exceptions that are not germane to this case, the appellate courts of this state will not review issues that are moot. *Davis v. Brushy Island Pub. Water Auth.*, 375 Ark. 249, 290 S.W.3d 16 (2008). While the appellant presents an interesting question, for us to answer it would be to render advisory opinions, which this court will not do. *Id.* Generally a case becomes moot when any judgment rendered would have no practical legal effect upon a then-existing legal controversy. *Id.* The issue of the apportionment of the

wrongful death/survivor action is under consideration in the Twelfth Division of the Pulaski County Circuit Court, where the special administrator has stipulated to Scoggins's paternity. Further proceedings on this issue in the Ninth Division—and in the appeal—will have no practical legal effect on this case. Accordingly, we hold that this case is moot, and the appeal must be dismissed.

Appeal dismissed.

GLADWIN, BAKER, and BROWN, JJ., agree.

PITTMAN and HENRY, JJ., dissent.

JOHN MAUZY PITTMAN, Judge, dissenting. The majority holds, *sua sponte* and without citation to authority, that a "stipulation" by two people in a separate case,[1] standing alone, conclusively binds a third person, who did not join the stipulation, in this case. In her petition for rehearing, appellee argues, *inter alia*, that an agreement by the appellant-putative father and the (purported) special administrator of a deceased child's estate, without more, cannot conclusively determine a matter as against appellee, the child's mother. Because I agree with appellee on this point, I dissent from the denial of her petition for rehearing.

There are critical problems with the majority opinion. First, there is nothing to show that appellee ever joined the "stipulation," and she is actively contesting appellant's paternity of the deceased child. The majority cites nothing for the proposition that the rights of appellee,

[1]Actually, the "stipulation" is a document signed by one person (not the appellant or appellee) in which that person concedes that the appellant in this case is the father of a particular deceased child. The "stipulation" essentially agrees with appellant's allegations of paternity.

a nonparty to a stipulation, are concluded by the stipulation, and, indeed, the general rule provides just the opposite. *See* 73 AM. JUR. 2D *Stipulations* § 8 (2001); 83 C.J.S. *Stipulations* § 7 (2000). Moreover, this record is devoid of anything to demonstrate that the "stipulation" was ever considered by the trial court in the case in which it was purportedly filed, much less anything to show that it was accepted by either trial court.

In any event, the majority's acceptance of the stipulation and attribution of it to the "special administrator" of the child's estate are based on nothing more than an exhibit attached to a response to appellee's motion to dismiss. The response was filed in this paternity case by the attorney for the appellant-putative father. The exhibit, however, is entitled "stipulation" and was purportedly filed in a *separate case* in a *separate court*. It is signed by a third person who purports to be the special administrator of the estate, but the stipulation was not introduced into evidence in this case, it is not certified by the clerk of the court as being a true and correct copy of a document on file with the clerk in the separate case, and the record before us contains no order of appointment of the special administrator. Effectively, the majority has on its own motion wrongly taken judicial notice of a document that may or may not have been filed in another court by a person who may or may not have been authorized to file it. *See Leach v. State*, 303 Ark. 309, 796 S.W.2d 837 (1990) (judicial notice may not be taken of the record in a separate case); *Braswell v. Gehl*, 263 Ark. 706, 567 S.W.2d 113 (1978) (courts may not take judicial notice of the record and proceedings of other courts, even if the other causes involve the same parties). Likewise, the majority engages in supposition when it states that the only

challenge to appellant's paternity in the separate probate case came in the form of a filing by appellee in her former capacity as special administratrix of the child's estate. Again, we do not have the record in the separate case, and we do not know what it might show. However, it is clear that appellee is objecting to appellant's claim of paternity in the case now on appeal to us, and she is an "interested person" in her deceased infant's estate, entitled to an opportunity to participate in her personal capacity in the proceedings in the separate probate case. *See* Ark. Code Ann. § 28-1-102(a)(11) (Repl. 2004).

I disagree that a purported agreement in a separate case by the appellant-putative father and the supposed special administrator of a deceased child's estate, without more, can conclusively determine a matter adversely to the interest of the appellee-mother when that matter is actively being contested by the appellee. Therefore, I respectfully dissent.

HENRY, J., joins in this dissent.