

**Missouri Court of Appeals
Western District**

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COMPLETE TITLE OF CASE

BRYAN COURTNEY and GRACE E. ROGGY, by her Next Friend, BRYAN COURTNEY,

Respondents,

v.

GINA M. ROGGY and MARK L. ROGGY,

Appellants.

DOCKET NUMBER WD70143

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 10, 2009

Appeal from

The Circuit Court of Nodaway County, Missouri
The Honorable Roger M. Prokes, Judge

APPELLATE JUDGES

Division Three: Thomas H. Newton, C.J., and Mark Pfeiffer and Karen King Mitchell, JJ.

ATTORNEYS

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Attorney for Respondents,

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BRYAN COURTNEY and GRACE E. ROGGY,
by her Next Friend, BRYAN COURTNEY,
Respondents,
v.

GINA M. ROGGY and MARK L. ROGGY,
Appellants.

No. WD70143

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Before Division Three Judges: Newton, C.J., and Pfeiffer and Mitchell, JJ.

Appellants Mark Roggy and Gina Roggy, husband and wife, appeal the judgment of the Circuit Court of Nodaway County declaring Respondent Bryan Courtney to be the father of Grace Roggy and granting Bryan visitation rights and ordering him to pay child support. Grace was born as a result of an affair between Gina Roggy and Bryan Courtney. A DNA test conducted when Grace was two years of age confirmed that Courtney is her father. Though Grace had a limited relationship with Courtney from the age of two to five, she does not know he is her father and has had no contact with him for three years.

In appealing the trial court's order, appellants raise four points. In their first point, they argue that the trial court erred in declaring Courtney's paternity because, after seven years of acting as her father, Mark's parental presumption is in Grace's best interest and should defeat Bryan's parental presumption. In their second point, appellants assert that Bryan should not receive visitation because it is not in Grace's best interests. In their third point, appellants claim that the trial court should have stayed the paternity proceeding until after an adoption proceeding concluded. Finally, in their fourth point, appellants contend that the trial court should have been required to appoint a guardian ad litem.

AFFIRMED.

Division Three holds:

Appellants' first point raises numerous arguments based upon the idea that Courtney should not be permitted to assert paternity when Mark Roggy was married to Gina Roggy at Grace's birth and has acted as her father for seven years. They maintain that Mark's parental presumption based upon his marriage to Grace's mother is superior to Courtney's parental presumption based upon the DNA test results. Appellants also argue that Courtney's failure to assert his paternity for seven years means that he should be equitably estopped from the paternity action. Appellants further contend that the paternity action should not be allowed to go forward because it would not be in Grace's best

interest. Finally, appellants maintain that the concept of promissory estoppel means that Courtney should be bound by a statutorily void contract that he signed, promising not to assert his parental rights.

The above arguments all fail because Missouri's statutory scheme governing the declaration of paternity is clear, unambiguous, and on these facts, requires that Bryan Courtney be deemed the natural father of Grace Roggy. Appellants' arguments to the contrary that are based upon equitable principles are in conflict with the plain language of the statute and would require this court to substitute its judgment for that of the legislature.

In their second point, appellants challenge the trial court's grant of visitation to Courtney because they contend that it was not in Grace's best interest. Appellants' arguments that Courtney should not be granted visitation run contrary to Missouri's policy of a father having contact with his children. Since there were no allegations of abuse, the trial court properly granted visitation, although it limited that visitation to allow Grace to adjust to the idea of a new father.

In their third point on appeal, appellants argue that the trial court should have stayed the paternity proceeding until after an adoption proceeding was concluded. Though section 211.093 RSMo allows for concurrent adoption and paternity proceedings, it makes clear that the result of the paternity proceeding would be controlling in the event of an inconsistent verdict. It would be inefficient and illogical to stay a proceeding that is ripe for adjudication in favor of a subsequently filed action that, when it was decided, would be subservient where it was inconsistent with the already pending paternity suit. The trial court properly refused to stay the paternity proceeding.

In their final point on appeal, the appellants assert that the trial court erred in not appointing a guardian ad litem for Grace. They maintain that Grace's interests and Courtney's interests diverged, so that his appointment as her next friend was improper and a guardian ad litem should have been appointed.

According to section 210.830 RSMo "[a] guardian ad litem shall be appointed for the child only if child abuse or neglect is alleged, or if the child is named as a defendant, or if the court determines that the interests of the child and his next friend are in conflict." Here, appellants concede that there was no allegation or evidence of abuse or neglect and they did not make the argument that Courtney's and Grace's interests diverged to the trial court. The trial court did not abuse its discretion by not appointing a guardian ad litem.

Opinion by: Mark Pfeiffer, Judge

November 10, 2009

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