IN THE COURT OF APPEALS OF IOWA

No. 7-136 / 96-477

000475

STATE OF IOWA ex rel.
AMANDA DAWN KNIPPER,

Petitioner-Appellee,

vs.

LOWELL A. McKEEMAN,

Respondent-Appellant.

Appeal from the Iowa District Court for Fayette County, William G. Klotzbach, Judge.

Lowell McKeeman appeals a district court ruling granting the State's motion for partial summary judgment in a paternity action. **AFFIRMED.**

Larry F. Woods, Oelwein, for appellant.

Thomas J. Miller, Attorney General, and Patricia A. McGivern, Assistant Attorney General, for appellee.

Heard by Habhab, C.J., Cady, and Vogel, JJ.

CADY, J.

Lowell McKeeman appeals from a district court order granting partial summary judgment in an action by the State to establish paternity and support. We affirm.

The State instituted this action against McKeeman on March 29, 1994 to establish paternity and support of a child born out of wedlock, Amanda Knipper. Amanda was born to Betty Knipper on May 16, 1986.

The district court ordered blood testing on May 2, 1994 and a paternity evaluation was filed with the court on June 20, 1994. The test results revealed McKeeman had a probability of paternity of 99.81%.

The court administrator scheduled the trial for June 1, 1995. It was continued on May 3, 1995 at the request of counsel for McKeeman, and rescheduled for July 20, 1995.

The State filed a motion for partial summary judgment on May 1, 1995. The motion requested judgment on the issue of paternity in view of the blood test results.

McKeeman filed a resistance to the motion for partial summary judgment. He claimed other men had sexual intercourse with Betty during the period of conception, and further claimed the attorney representing the State agreed at a court hearing in February 1995 the blood samples could be used for testing with these men.

The district court granted partial summary judgment. It held McKeeman failed to challenge the presumption of paternity by filing a challenge to the test results.

McKeeman appeals. He claims summary judgment was improper because he had planned to perform additional blood tests pursuant to his agreement with the State. He also claims the State's motion for summary judgment should have been denied as untimely.

Our review is for corrections of errors at law. Iowa R. App. P. 4. We examine the record to determine whether any genuine issues of material fact are in dispute and whether the district court correctly applied the law. *See Schaller v. State,* 537 N.W.2d 738, 741 (Iowa 1995).

Blood or genetic test results by a certified expert are admissible at trial under Iowa Code section 600B.41(4) (1995). Unless a party files a notice of challenge to the test results within 20 days after the report was filed, or if a hearing has been set no later than 30 days prior to the original court day, the test results are admitted as evidence of paternity. Iowa Code § 600B.41(5). If the results show the probability of paternity is 95% or higher, a rebuttable presumption of paternity is created. Iowa Code § 600B.41(5)(b). To challenge the presumption, however, a party must file a notice of challenge within the same time period established to challenge the test results. Iowa Code § 600B.41(5)(b)(1).

In this case, McKeeman failed to file a notice of challenge as required by statute. Moreover, the probability of paternity exceeded 95%. Therefore, McKeeman waived his opportunity to challenge the presumption of paternity established by

statute. Left unchallenged, this presumption established paternity as a matter of law. *See In re Estate of Weem,* 258 Iowa 711, 715-16, 139 N.W.2d 922, 924-25 (1966).

McKeeman claims summary judgment should have been denied because he had not yet had blood testing performed on the other men he believed could have been the father pursuant to his agreement with the State. We disagree.

Even assuming the existence of an agreement by the State to allow McKeeman to have additional blood tests performed, McKeeman failed to comply with the statutory procedure to permit him to challenge his blood test. Moreover, McKeeman's remedy was to seek a continuance of the summary judgment hearing if he needed further discovery to fully respond to the motion. Iowa R. Civ. P. 237(f). Under the circumstances, the district court did not abuse its discretion by failing to order a continuance to permit McKeeman to pursue additional blood tests after McKeeman alleged the existence of the agreement with the State. McKeeman disclosed no reasons for failing to pursue his discovery earlier. *See Neoco, Inc. v. Christenson,* 312 N.W.2d 559, 560 (Iowa 1981). Furthermore, he offered no suggestion how blood samples of nonparties could be obtained.

Finally, we find the State timely filed its motion for summary judgment. By the time the motion was submitted to the district court, the trial date had been continued so that the motion was filed more than 45 days prior to the new trial date. *See* Iowa R. Civ. P. 237(c).

We have considered all the issues raised. We affirm the district court.

AFFIRMED.