

UNREPORTED

IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1697

September Term, 2016

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JAMES RATHELL,

v.

JULIAN EDWARD MORETON, *et al.*

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Eyler, Deborah S.,  
Kehoe,  
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: April 28, 2017

\*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from an order for genetic testing by the Circuit Court for Baltimore City. Appellees Julian Edward Moreton et al., filed a Third Party Complaint for Custody, wherein they sought legal and physical custody of their grandchild, Mary Louise Rathell, and named both Appellant James Rathell and Appellee Michael Stewart as defendants. Stewart, thereafter, filed a Request for Genetic Testing for Paternity pursuant to FL § 5-1029, through which he sought the court's permission to submit himself and the minor child for a paternity test. Rathell, the minor child's legal father, filed an objection.

The circuit court granted appellee Stewart's Request for Genetic Testing on September 12, 2016. Appellant noted an appeal to this Court on October 3, 2016. He also filed a motion to stay the genetic testing, pending appeal, which the court denied on November 7, 2016. Thereafter, Stewart and the child submitted themselves for testing. The parties attended a December 23, 2016 hearing, where the court accepted and read the results of the genetic test into the record. In an order dated December 27, 2016, the circuit court described the steps necessary for "the Court to proceed further" in the underlying custody action and stated that any such proceedings were "subject to the further jurisdiction of this Court."

On February 6, 2017, appellees Moreton and Stewart filed a joint "Motion to Dismiss" in this Court, on the grounds that the completed test and published results had rendered the appeal moot. Appellant opposed the motion, arguing that this appeal is not moot because, should this Court find in his favor, he would "continu[e] to be the legal father" for purposes of the underlying custody action.

We ordered, on March 15, 2017, that appellant show cause why this Court should not dismiss the above captioned appeal as premature pursuant to Md. Rule 8-602(a)(1). Appellant filed his response on March 30, 2017. For the reasons set forth below, we find that the appeal is premature, and therefore, grant appellees' motion to dismiss.

## DISCUSSION

### **I. The circuit court's granting of appellee's Request for an Order Permitting Genetic Testing was not a final order, and, therefore, appellant's appeal is premature.**

“[A]ppellate review of a trial court's ruling ordinarily must await the entry of a final judgment that disposes of all claims against all parties.” *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Associates, P.A.*, 392 Md. 75, 84 (2006) (citing *Salvagno v. Frew*, 388 Md. 605, 615 (2005)). “[T]here are only three exceptions to that final judgment requirement: appeals from interlocutory orders specifically allowed by the statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine.” *Id.*

Maryland Courts and Judicial Proceedings Article § 12-303 describes the instances in which a party may appeal from an interlocutory order entered by a circuit court in a civil case. Section 12-303(x) allows an appeal from an interlocutory order “[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order.” *See also In re Karl H.*, 394 Md. 402, 431 (2006) (“[O]rders [that] adversely affect a parent's rights to care and custody entitle the parent to an immediate appeal.”). Appellant contends his appeal is not premature because the circuit court's order

permitting genetic testing adversely affects his parental rights, and is, therefore, immediately appealable.

We disagree. The circuit court in this matter has made no ruling whatsoever on the care or custody of the minor child. Nor has the court made any changes to the rights of the appellant with regards to the minor child's care or custody. As appellant himself admits, he remains the minor child's legal father. *See Gruber v. Gruber*, 369 Md. 540, 547 (2002) (finding the father had not been deprived of care and custody of the child nor a change in the terms of such an order when court accepted jurisdiction over mother's divorce proceeding).

Moreover, “[i]n determining whether a particular court order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case.” *In re Katherine L.*, 220 Md. App. 426, 437 (2014). As the circuit court noted, the underlying custody action is still pending, and any further actions in that case are “subject to the further jurisdiction of [that] court.”

We, therefore, find that appellant's parental rights have not been affected. Thus, the appeal is premature.

**APPEAL DISMISSED. COSTS  
TO BE PAID BY APPELLANT.**