IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREA HUNTER, A/K/A ANDREA M. TIPPETT-HUNTER,
Appellant,
vs.
MONTIE L. TRAVIS,
Respondent.

No. 45493

FILED

JAN 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order determining paternity and vacating an award of child support. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

Appellant Andrea Hunter brought the underlying action for child support in arrears in January 2002 against respondent Montie Travis.

On March 27, 1992, the district court entered an order declaring Travis to be the child's natural father, after Travis admitted to being the child's natural father. Travis, who was not represented by counsel, failed to request a blood test to determine biological paternity at that time. Further, Travis never appealed the 1992 order that established his natural paternity.

In 2003, during Hunter's underlying suit for child support arrearages, Travis requested a DNA test to establish biological paternity. The district court granted the request, and the DNA test came back negative. The district court subsequently held that Travis had been misled into believing he was the natural father when he admitted to paternity in 1992, and the district court concluded that clear and convincing evidence rebutted the presumption that Travis was the child's natural father. As a

result, the district court also vacated the outstanding child support arrears.

Normally, a pre-existing order determining natural paternity is res judicata on the alleged father's future paternity challenges.[1] However, where the original order is obtained through fraud upon the court or fraud upon the alleged father, the original order will not prevent the alleged father from proving nonpaternity.[2] Similar to a voluntary acknowledgment of paternity via affidavit,[3] an alleged father's voluntary admission that he is the natural father of a child "may not be challenged except upon the grounds of fraud, duress or material mistake of fact."[4]

The district court indicated that Hunter misled Travis into believing that he was the child's natural father. Whether this was a finding of fraud or a finding of material mistake of fact is immaterial, so long as it was a finding of at least one of the two. We conclude that the district court's finding was, at the very least, a finding of Travis' material mistake of fact that he was the child's biological father, when in fact he was not.

Based on the foregoing, we conclude that (1) Travis' paternity challenge was not barred by the doctrine of res judicata, because Travis made a sufficient showing[5] of material mistake of fact,[6] and (2) Travis'

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[1]Love v. Love, 114 Nev. 572, 577, 959 P.2d 523, 526 (1998).

[2]Id.

[3]See NRS 126.053(1).

[4]NRS 126.053(3).

[5]The record does not include a copy of the paternity test, a transcript of the paternity hearing, or other documents that would enable this court to properly review the sufficiency of the evidence. Therefore, absent

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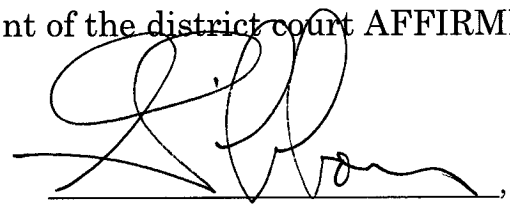
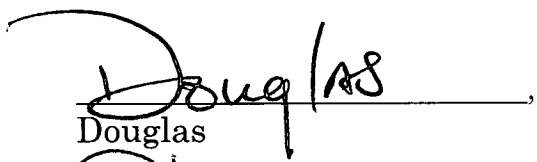
motion for DNA testing was not barred by the applicable statute of limitations.[7] Therefore, we conclude that the district court did not abuse its discretion in allowing Travis to prove nonpaternity and in declaring the award of child support in arrears null and void. Accordingly, we

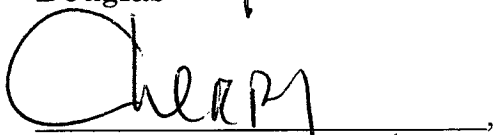
ORDER the judgment of the district court AFFIRMED.



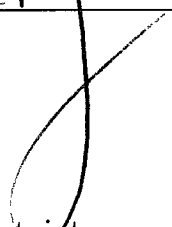
_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry



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evidence to the contrary, we presume the district court's findings were supported by the record before it. It is the appellant's burden to provide the relevant material for the record on appeal, and "'the missing portions of the record are presumed to support the district court's decision, notwithstanding an appellant's bare allegations to the contrary.'" Prabhu v. Levine, 112 Nev. 1538, 1549, 930 P.2d 103, 111 (1996) (quoting Riggins v. State, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991)).

[6]See Love, 114 Nev. at 577, 959 P.2d at 526 (husband could challenge paternity upon showing that his wife fraudulently induced him into believing his wife's child was his, even though he had stipulated to paternity several years ago); see also NRS 126.053(3).

[7]See NRS 126.081(1) ("An action brought under this chapter to declare the existence or nonexistence of the father and child relationship is not barred until 3 years after the child reaches the age of majority."). The child had not yet reached the age of majority as of the date of Travis' motion for a DNA paternity test in 2003.

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Andrea Hunter
Montie L. Travis
Clark County District Court Clerk