



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Strang v. Malay and Hernandez
CV-25-0233-SA

PARTIES:

Petitioner: Tyler Strang (“Strang”)

Respondents : Caitlyn Malay (“Malay”)
Christian Hernandez (“Hernandez”)

FACTS: Caitlyn Malay had sexual relations with both Strang and Hernandez at around the time she conceived a child in 2021. She learned that she was pregnant in March 2021. The child was born on September 16, 2021. Malay and Hernandez signed an Acknowledgment of Paternity on September 18, 2021, acknowledging Hernandez’s paternity. Although Malay and Hernandez believed that Hernandez was the biological father of the child at the time of the Acknowledgment of Paternity, Hernandez took a paternity test in April 2022, more than six months after signing the Acknowledgment. The paternity test indicated that he was not the child’s biological father.

Mother was incarcerated from May 2022 until June 2023. During her incarceration, Hernandez took care of the child. In November 2023, Strang took a paternity test that revealed that he was the biological father of the child..

On February 5, 2024, Malay filed a Petition to Establish Legal Decision-Making (Legal Custody) and Parenting Time in which she alleged that Hernandez was not the biological father of the child. She did not identify Strang as the biological father in that filing.

On February 7, 2024, Hernandez filed a Petition to Establish Paternity, alleging that he was the biological father of the child and not identifying Strang as the father. Following the filing of their respective petitions, Malay and Hernandez stipulated to temporary orders providing for joint legal decision-making and a parenting plan with respect to the child.

In June 2024, Strang took another paternity test which confirmed that he was the biological father of the child. On August 19, 2024, Strang filed a Motion to Intervene, which the Family Court granted. On November 27, 2024, Strang filed a Petition to Establish Paternity.

On December 26, 2024, Hernandez filed a Motion to Dismiss Intervenor’s Petition to Establish Paternity. Strang then filed a Motion to Set Aside Acknowledgment of Paternity. He argued that the Acknowledgment filed by Malay and Hernandez was founded on a material mistake of fact and that, under A.R.S. § 25-814(A), his paternity test results were clear and convincing evidence that rebutted the presumption of paternity favoring Hernandez. [Note: A.R.S. § 25-814(A) provides that “a man is presumed to be the father of the child if . . . (2) Genetic testing affirms at least

a ninety-five per cent probability of paternity.”]

Hernandez objected to Strang’s Motion to Set Aside Acknowledgment of Paternity, arguing that it was filed outside the 6-month deadline set forth in Rule 85, Rules of Family Law Procedure. He also argued that, under A.R.S. § 8-106.01(E), an adoption statute, Strang’s claim of paternity failed since he did not timely register with the Putative Father Registry.

After considering the parties’ arguments, the Family Court issued a ruling rejecting Strang’s efforts to establish his rights as a father. The ruling was based upon A.R.S. § 25-812(D) (providing that an acknowledgment of paternity “has the same force and effect as a superior court judgment”) and A.R.S. § 25-812(E) (“[p]ursuant to Rule 85(c) of the Arizona rules of family law procedure, the . . . [biological father] . . . may challenge [an] acknowledgment of paternity . . . at any time after the sixty day period only on the basis of fraud, duress or material mistake of fact . . .”).

The Family Court therefore dismissed Strang’s Petition to Establish Paternity, reaffirming Hernandez’s rights as the child’s father. Strang then filed a special action in the Arizona Supreme Court, arguing that the Court should accept jurisdiction because two opinions of the Court of Appeals were in direct conflict on the point in question: *Roger S. v. James. S.*, 251 Ariz. 555 (App. 2021) (Division 1) (holding that under A.R.S. § 25-812 (E) a biological parent must challenge the acknowledgment of paternity within 6 months or lose all rights to their child); and *Brummond v. Lucio*, 243 Ariz. 360 (App. 2017) (Division 2) (holding that A.R.S. § 25-814(C) authorizes a biological father to bring an independent paternity action challenging an acknowledgment of paternity even past the six-month time limit under A.R.S. § 25-812(E)).

The Arizona Supreme Court agreed to accept jurisdiction and decide whether it should grant relief to Strang or allow the result below to stand.

ISSUE:

“A parent has a fundamental right to the care, custody, and control of his child that cannot be terminated without satisfying due process notice requirements. Here, the trial court’s interpretation of A.R.S. § 25-812(E) bars Strang’s paternity action as untimely, and is a de facto termination of Strang’s parental rights without notice of any kind. Did the trial court therefore violate Strang’s fundamental right to parent and due process by misapplying A.R.S. § 25-812(E) without also applying A.R.S. § 25-814(C).”

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