NOT DESIGNATED FOR PUBLICATION

No. 109,997

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

LORRAINE HARASYMEZUK,
Appellee,

v.

DANNY R. NAPIER, JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS KELLY RYAN, judge. Opinion filed May 2, 2014. Affirmed.

Linus L. Baker, of Stillwell, for appellant.

Erma C. Schmidt, of Department for Children and Families, Child Support Services, of Overland Park, for appellee.

Before LEBEN, P.J., BUSER and ATCHESON, JJ.

LEBEN, J.: Danny Napier, Jr., appeals the district court's order that he submit to genetic paternity testing to establish whether he is the biological father of a 17-year-old boy (M.B.) who lives in North Carolina. Danny argues that the district court may not order genetic testing without first having a hearing to determine whether such testing would be in the child's best interests. In support, Danny cites *In re Marriage of Ross*, 245 Kan. 591, 783 P.2d 331 (1989).

But *Ross* involved a situation in which the proposed paternity testing could have disrupted the preexisting relationship between a child and the man who was married to the child's mother at birth. The mother in *Ross* sought to establish that *another* man, not her former husband and the man the child had always believed was his father, actually was the biological dad. Here, Danny is the only person the child has ever been told is her father. *Ross* does not require that a best-interests hearing be held in such a case before testing is ordered. We therefore affirm the district court's order for genetic paternity testing.

FACTUAL AND PROCEDURAL BACKGROUND

The legal proceedings here began with the filing of a petition in North Carolina under the Uniform Interstate Family Support Act. Lorraine Harasymezuk, the grandparent of M.B., sought to establish paternity and to obtain appropriate support orders. Along with the petition, an affidavit was filed by M.B.'s mother, Melissa B. Melissa said in the affidavit that Danny had admitted being M.B.'s father and had visited his child. In written testimony, Lorraine said that she was caring for the child, and an amended petition was filed making the request for a paternity finding and a support order a joint request by Lorraine and Melissa.

The district court ordered genetic paternity tests but Danny opposed that order, and the district court agreed to hold a hearing on the matter. The district court appointed a guardian ad litem for the child and held a hearing. Neither party has provided us with a transcript of the hearing, but the district court's written ruling concluded that M.B. had "not known anyone other than Mr. Napier as his 'father.'" Although the court said that "no legal presumption of paternity existed at the time of filing this case," the court also said that "the facts presented [at the hearing] support the finding that Mr. Napier is the only presumed father in this case." Given these facts, the district court determined that it need not make a finding under *Ross* about whether it was in M.B.'s best interests to have

paternity testing, and the court ordered testing to establish whether Danny was M.B.'s father.

Danny appealed that order to this court.

ANALYSIS

On appeal, Danny argues that the district court was required to make a best-interests finding under *Ross* before it could order genetic testing. But the factors that required such a hearing in *Ross* are not present here.

In *Ross*, the child was born during a marriage, and a divorce decree had determined that the husband was the father and made custody and support orders. The mother and former wife later brought a paternity action claiming that another man was the child's biological father. The Kansas Supreme Court determined that in a case like that—where there was a preexisting relationship between the child and an apparent father—the court should consider the best interests of the child before ordering genetic testing. In its syllabus paragraph, the court specifically required this be done "[p]rior to ordering a blood test to determine whether the presumed parent is the biological parent." 245 Kan. 591, Syl. ¶ 5.

That's not our situation at all. There is no threat here of disrupting an existing father-child relationship: To the extent that M.B. has an existing father-child relationship, it's with Danny.

Danny has not cited any case in which there was only one putative father and a Kansas appellate court nonetheless required a *Ross* best-interests hearing before genetic tests could be ordered. We see no need for such a rule, which would be far beyond either the ruling or rationale of *Ross*. The district court found that M.B. has known only one

man as his father, and that's Danny. A *Ross* hearing is not required where there is only one putative father. See *State ex rel. Secretary of SRS v. Miller*, 24 Kan. App. 2d 822, 826, 953 P.2d 245 (1998).

We therefore affirm the district court's judgment.