

NOT DESIGNATED FOR PUBLICATION

No. 110,687

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS, *ex rel.*, Secretary,  
SOCIAL AND REHABILITATION SERVICES,  
and ANA L. RHOADS, Individually and as Natural Guardian of T.D.R., a Minor Child,  
*Appellees,*

v.

STEVEN W. MUTCH,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Lyon District Court; JEFFRY J. LARSON, judge. Opinion filed June 27, 2014.  
Affirmed.

*Steven W. Mutch*, appellant pro se.

*Chandler Maxon*, of Young Williams Child Support Services, of Topeka, for appellees.

Before PIERRON, P.J., HILL and MCANANY, JJ.

*Per Curiam:* Steven Mutch asks us to overturn the district court's finding that he is the father of a young child, T.R., born in 2000. He claims a Missouri divorce decree found there were no children born to his marriage with Ana Rhoads and because of the Full Faith and Credit Clause of the United States Constitution, the Kansas court could not say he was the father of T.R. Because Mutch failed to include the Missouri decree in the record on appeal, we reject his arguments on this point and, accordingly, affirm the district court.

*The State seeks to determine paternity.*

Ana Rhoads gave birth to T.R. in 2000. In March 2012, the Kansas Department of Children and Families filed a petition to determine paternity alleging Steven Mutch was the father of T.R. Mutch answered:

"Respondent was married to Ana Rhoads for only a few months. There were no children born to the marriage and at the time of divorce Ms. Rhoads falsely or erroneously stated that she was not pregnant as evidenced by the attached Judgment of Dissolution of Marriage. It is Respondent's understanding that the child was conceived before the date of marriage and born after the date of divorce. At the time of birth, Respondent was not aware of the birth and was not aware that he was listed as the father on the birth certificate."

The court ordered genetic testing which showed a 99.9 percent probability that Mutch was the father of T.R. In July 2013, Mutch filed a pro se motion to dismiss. He argued the Missouri district court found there were no children born of the marriage and that Rhoads was not pregnant at the time of the divorce; therefore, the Kansas district court could not declare him T.R.'s father.

The district court denied Mutch's motion to disnaiss and ordered the parties exchange financial information in order to determine child support. On October 1, 2013, the district court decreed that Mutch was T.R.'s father and ordered him to pay monthly child support.

On appeal, Mutch outlines the same full faith and credit argument he presented to the district court. He claims the Kansas district court did not have authority to declare him T.R.'s father because on August 29, 2000, a Missouri district court found there were no children born of Mutch's marriage to Rhoads. As an appendix to his brief, Mutch attached a copy of the Missouri judgment dissolving Mutch and Rhoad's marriage.

Supreme Court Rule 6.02(b) (2013 Kan. Ct. R. Annot. 39) allows a party to attach an appendix to a brief; however, the appendix is to contain extracts from the record on appeal and cannot serve as a substitute for the record itself. See *Edwards v. Anderson Engineering, Inc.*, 284 Kan. 892, 895, 166 P.3d 1047 (2007). *Edwards* held: "The court will not consider appended items which are not found in the record." The burden to designate the record on appeal falls on the party making the claim. *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644, 294 P.3d 287 (2013).

Because Mutch's argument on appeal requires an analysis of the Missouri divorce decree, Mutch's failure to include the necessary document in the record on appeal means we must reject his arguments.

The State argues that Mutch and Rhoads failed to tell the Missouri court about T.R.; therefore, the court did not know it needed to adjudicate the parentage of T.R. There is no evidence in the record on appeal to tell us whether the Missouri court knew of T.R.'s birth.

Besides, a finding that no children were born of the marriage is not the same as a determination of paternity for T.R. The Kansas district court did not rely on the fact that Mutch and Rhoads were still married when T.R. was born to establish parentage. Instead, it appears to have relied upon the genetic test, which indicated a probability of 99 percent that Mutch is T.R.'s father. K.S.A. 2013 Supp. 23-2208(a)(5) creates a presumption of paternity if a genetic test indicates a probability of 97 percent or higher. Without more information, it does not appear the Missouri court's divorce decree dictates a different outcome in this case under the Full Faith and Credit Clause.

Affirmed.