COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2350-FT

Cir. Ct. Nos. 1999PA35
1999PA36

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE PATERNITY OF DAKOTA D. S. AND DYLAN D. S.:

SHELLIE K. T.,

PETITIONER-RESPONDENT,

V.

BRETT P. C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PETERSON, J.[1] Brett C. appeals an order denying his motion for: (1) relief from a paternity judgment adjudging him to be the father of Dakota S. and Dylan S.; (2) relief from a stipulation that dismissed with prejudice his motion to reopen the paternity judgment; and (3) disclosure of genetic test results. Brett argues the circuit court erroneously exercised its discretion when it denied his motion because it did not properly balance or consider the required factors. We reject Brett's arguments and affirm the order.[2]

BACKGROUND

¶2 Shellie T. gave birth to twin boys, Dakota and Dylan, on September 19, 1999. Shellie contended Brett was the father. Brett, without counsel, waived his first appearance and acknowledged that he was the father. No genetic testing was performed. In January 2000, a stipulation and judgment of paternity naming Brett as the father was filed.

¶3 Later, Brett retained counsel. In May 2004, he moved to reopen the paternity judgment and sought genetic testing. In August, Brett and Shellie reached a stipulation, which provided that Shellie retain sole custody and primary placement of the boys and also set a visitation schedule with Brett. The parties

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] Shellie T. also argues that we lack jurisdiction because the appealed order arose from a motion that was "in essence, a motion for reconsideration" of a prior order. Because no right to appeal exists from an order denying reconsideration, Shellie argues, we have no jurisdiction to hear Brett's appeal. *See* ***Orth v. Ameritrade, Inc.***, 187 Wis. 2d 162, 167, 522 N.W.2d 30 (Ct. App. 1994). To the extent Shellie argues Brett's arguments regarding the August 2004 stipulation are not properly before this court, we disagree. Brett had no basis to directly appeal an order entered upon his stipulation, as any error was invited. Brett properly challenged that order by virtue of his WIS. STAT. § 806.07 motion and this timely appeal. Because we affirm the whole of the appealed order on the merits, we decline to further parse Shellie's jurisdictional arguments.

agreed that genetic testing would be performed, the results would be sealed and delivered to the court, and the court would decide "if and when" to reveal the results. Finally, the stipulation stated Brett's motion to reopen the paternity judgment would be dismissed with prejudice. The court entered an order incorporating the stipulation.

¶4 The genetic tests were performed, the results were received by the court, and the court ordered the results sealed without disclosing them to the parties. In December, Brett moved for disclosure of the test results. The court denied Brett's motion in a January 2005 order.

¶5 In April, Brett filed another motion, seeking relief from the 2000 paternity judgment, relief from the August 2004 stipulation, and disclosure of the test results. The circuit court denied Brett's motion in an August 2005 order. Brett now appeals that order.

STANDARD OF REVIEW

¶6 When we review an order denying a WIS. STAT. § 806.07 motion, we reverse only if there has been a clear erroneous exercise of discretion. ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 541, 363 N.W.2d 419 (1985). A court properly exercised its discretion "if the record shows that the circuit court exercised its discretion and that there is a reasonable basis for the court's determination." ***Id.*** at 541-42.

DISCUSSION

¶7 Brett brought his motion for relief from the original paternity judgment and the August 2004 stipulation under WIS. STAT. § 806.07(1)(h).[3] Because Brett's motion was filed more than one year after judgment was entered and alleges factors that arguably lie within § 806.07(1)(a), (b) or (c), Brett can only obtain relief upon showing extraordinary circumstances. *See* ***M.L.B.***, 122 Wis. 2d at 549-50. Our supreme court has articulated factors courts should consider when determining whether extraordinary circumstances exist.

> In exercising its discretion, the circuit court should consider factors relevant to the competing interests of finality of judgments and relief from unjust judgments, including the following: whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim; and whether

[3] The relevant portions of WIS. STAT. § 806.07 provide:

> (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> ….
>
> (h) Any other reasons justifying relief from the operation of the judgment.

> there are intervening circumstances making it inequitable to grant relief.

Id. at 552-53.

¶8 When the circuit court is presented with a motion for relief under WIS. STAT. § 806.07(1)(h), it undertakes a three-step process to determine whether to grant relief. It must first examine the allegations contained in the motion and determine whether the facts alleged constitute extraordinary circumstances. If the motion alleges sufficient facts, a hearing is held on the truth of the allegations. Finally, "[a]fter determining the truth of the allegations and upon consideration of any other factors bearing upon the equities of the case, the court shall decide what relief if any should be granted the claimant and upon what terms." ***Id.*** at 557. Relief should be granted only where the sanctity of final judgment is outweighed by "the incessant command of the court's conscience that justice be done in light of all the facts." ***Id.*** at 550.

¶9 The extraordinary circumstances Brett alleged in support of his motion for relief from the 2004 stipulation were as follows. Brett did not understand the "dismissed with prejudice" language in the stipulation, nor was he counseled on the effect of that language. He believed that, if the genetic tests excluded him as the father, he could later challenge the underlying paternity judgment.

¶10 Brett contends the circuit court erroneously exercised its discretion when it denied his motion because it did not consider the ***M.L.B.*** factor of whether his counsel at the time of the 2004 stipulation was ineffective. In its decision, the court indicated that it would not "second-guess in a civil case the wisdom of counsel, the wisdom of somebody's choices." However, the court's order includes

a finding that Brett's counsel was effective. Thus, the circuit court considered that factor and concluded it weighed against granting relief.

¶11 Brett has also failed to demonstrate that the court's finding that counsel was effective is clearly erroneous. Brett essentially contends counsel must have been ineffective because the contents of the stipulation are contradictory. The stipulation requires genetic testing but does not allow Brett to challenge paternity if the tests reveal he is not the father, which he contends was "the whole purpose behind having the tests done." However, the alleged contradictions in the stipulation do not compel a finding that counsel was ineffective. The stipulation also includes visitation rights for Brett, rights that are arguably inconsistent with his desire to actively parent only if the tests confirmed he was the boys' biological father. The guardian ad litem's report also states Brett indicated he did not need genetic tests to be a parent to the boys.

¶12 Brett next argues the circuit court overemphasized finality. He contends that, when a dispute is resolved by stipulation, finality is less important than when a dispute is resolved after a contested trial or hearing. Here the stipulation was circulated and signed by mail, not placed directly on the record, and therefore the court did not engage in a colloquy with him to make sure he knowingly and intelligently agreed to the stipulation's terms. However, the court noted that Brett stipulated to paternity not once, but twice, the second time with the assistance of counsel. It considered that Brett indicated a desire to parent the boys regardless of genetic test results and obtained visitation rights with them. Relief should be granted only where the sanctity of final judgment is outweighed by "the incessant command of the court's conscience that justice be done in light of all the facts." ***Id.*** at 550. That the circuit court found finality to be particularly important here was not an erroneous exercise of discretion. The court considered

all the facts Brett presented. Brett merely disagrees with the manner in which the court balanced the various factors and with the conclusion the court reached. That is not a legitimate basis to overturn what is otherwise a proper exercise of the circuit court's discretion.

¶13 Brett also argues the circuit court erroneously exercised its discretion when it denied his motion for relief from the original paternity judgment entered in 2000. However, Brett subsequently stipulated to paternity in 2004, and we have rejected his arguments challenging that stipulation. Thus, even if we concluded that Brett is entitled to relief from the 2000 stipulation, he would nonetheless be the boys' legal father by virtue of the subsequent 2004 stipulation. We therefore decline to address Brett's arguments challenging the 2000 judgment of paternity. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

¶14 Finally, Brett argues that if we reverse the circuit court's order denying relief from the two stipulations, we should also reverse the court's order denying disclosure of the paternity test results. Because we have rejected Brett's arguments regarding the stipulations, we likewise decline to reverse that portion of the court's order denying disclosure of the test results. Brett stipulated to leaving disclosure of results to the circuit court's discretion and offers no compelling reason to be relieved from that stipulation.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.