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DISTRICT IV

May 26, 2015

To:

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Dean A. Hallam
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You are hereby notified that the Court has entered the following opinion and order:

2014AP1364

In re the paternity of C. C. H.: Paula D. Cain and State of
Wisconsin v. Dean A. Hallam (L.C. # 1991PA1098)

Before Lundsten, Higginbotham and Sherman, JJ.

Dean Hallam, pro se, appeals a circuit court order denying Hallam relief from child support orders. Hallam argues that the child support orders were arbitrary, against public policy, and demonstrate an erroneous exercise of discretion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We summarily affirm.

In December 1991, the family court commissioner entered a paternity judgment ordering Hallam to pay Paula Cain \$58 per week in child support, to begin the first Friday after Hallam

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

and Cain separated. In April 1997, Cain informed the State that Hallam and Cain had separated in April 1995. In July 1997, the family court commissioner ordered Hallam's child support obligation effective as of May 5, 1995.

In March 2013, the State moved to hold Hallam in contempt for failing to comply with the court's child support order. The family court commissioner found Hallam in contempt, and Hallam moved for a hearing de novo. In March 2014, the circuit court held a hearing de novo. Hallam appeared pro se and disputed that there was a valid child support order in effect imposing arrears against him. The circuit court directed the State to investigate the imposition of child support and to submit in writing the balance of Hallam's child support arrears. The court directed Hallam to inform the court if he had any dispute with the information provided by the State.

The State submitted a brief arguing that child support had been validly imposed and that the child support agency had properly calculated the balance of Hallam's child support arrears. Hallam filed a response arguing that child support had been wrongly imposed in the first instance and moving the circuit court to vacate all of the arrears in the record. The circuit court denied Hallam's motion to vacate the arrears, determining that the child support orders were lawful, that Hallman had been afforded due process, and that the current balance is accurate. The court determined that Hallam had no reason or explanation for delaying his challenge to the child support orders.

Hallam contends first that the December 1991 child support order was arbitrary, against public policy, and an erroneous exercise of the court commissioner's discretion. Hallam cites WIS. STAT. § 49.22(9) for the proposition that the department's rules to determine child support

shall consider the income of each parent and the amount of placement with each parent. Hallam argues that, in December 1991, Hallam and Cain were living together with their child; that there was no evidence presented to establish the parties' relative financial situations; and that there was no basis to follow the child support guidelines and impose the obligation for child support solely upon Hallam. Next, Hallam contends that the July 1997 order enforcing the child support order does not demonstrate an exercise of discretion. He contends that, under WIS. STAT. § 767.805(4m), liability for past support may be imposed limited to the period after the day on which a motion for support is filed; Hallam argues that, here, the motion for support was filed in April 1997, and thus the court erred by imposing child support effective May 1995.

Because Hallam did not timely seek review of the 1991 and 1997 child support orders, Hallam's motion to the circuit court to vacate the arrears functioned as a motion for relief from the child support orders under WIS. STAT. § 806.07(1). We review a circuit court's decision on a motion for relief under § 806.07(1) for an erroneous exercise of discretion. *Price v. Hart*, 166 Wis. 2d 182, 195, 480 N.W.2d 249 (Ct. App. 1991).

WISCONSIN STAT. § 806.07(1)(a)-(g) allow a circuit court to grant relief from orders for specific reasons,² while § 806.07(1)(h) is a catch-all provision allowing relief for “[a]ny other reasons justifying relief.” A party seeking relief under WIS. STAT. § 806.07(1) bears the burden to prove that relief is warranted. See *Connor v. Connor*, 2001 WI 49, ¶28, 243 Wis. 2d 279, 627 N.W.2d 182. As best we can tell from our review of Hallam's brief to the circuit court and his

briefs in this court, Hallam is seeking relief from the child support orders under § 806.07(1)(h) on grounds that the child support orders were unfairly entered and the arrears that have accumulated under the orders have caused him great financial burden. That is, Hallam has not articulated an argument that any of the specific provisions under WIS. STAT. § 806.07(1) warrant relief from the orders, instead asserting a general fairness argument that is best suited for an analysis under (1)(h).

To obtain relief under § 806.07(1)(h), the moving party must show that extraordinary circumstances justify relief and that relief was sought within a reasonable time. *State ex rel. Cynthia M.S. v. Michael F.C.*, 181 Wis. 2d 618, 625-26, 511 N.W.2d 868 (1994). Whether extraordinary circumstances justify relief depends on:

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 there are intervening circumstances making it inequitable to grant relief.

State ex rel. M.L.B. v. D.G.H., 122 Wis. 2d 536, 552, 363 N.W.2d 419 (1985). As to whether relief was sought within a reasonable time, courts consider the extraordinary circumstances alleged, the reasons for the delay, and any prejudice to the other party. *Cynthia M. S.*, 181 Wis. 2d at 627-28.

² WISCONSIN STAT. §§ 806.07(1)(a) through (g) allow relief based on mistake, inadvertence, surprise, or excusable neglect; newly-discovered evidence; fraud, misrepresentation, or other misconduct of an adverse party; a void judgment; satisfaction of the judgment; reversal of a prior judgment upon
(continued)

Here, Hallam has failed to demonstrate that extraordinary circumstances justify relief or that he brought his motion within a reasonable time. First, the paternity judgment indicates that Hallam appeared at the hearing and knowingly waived his rights to an attorney, blood tests, further pretrial proceedings and trial, and nothing in the record or Hallam's briefs contests Hallam's knowing waiver at that time. Hallam did not have counsel for the paternity hearing, which arguably weighs in Hallam's favor. However, nothing in the record or Hallam's briefs indicates the remaining factors would support a finding of extraordinary circumstances warranting relief. Additionally, while Hallam asserts generally that emotional distress and personal hardships prevented him from bringing his motion earlier, Hallam has not provided any specific reason for the many years between the child support orders and the motion for relief from those orders. Accordingly, we cannot conclude that the circuit court erroneously exercised its discretion by denying relief.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

which the judgment is based; or because it is no longer equitable that the judgment should have prospective application.