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DISTRICT II

December 16, 2020

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You are hereby notified that the Court has entered the following opinion and order:

2019AP499 In re the Paternity of A.L.P.: State of Wisconsin and Erica L. Lex f/k/a Erica L. Panos v. Robert A. Pettis (L.C. # 2005PA44PJ)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert A. Pettis appeals pro se from a trial court order denying his motion to reopen a 2005 judgment of paternity as to his minor child, A.L.P. Upon reviewing the briefs and the

record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] We affirm.

In 2005, then-eighteen year-old Pettis voluntarily admitted to the paternity of A.L.P., after having been advised of his right to genetic testing. In 2018, Pettis requested the reopening of that judgment and genetic testing to establish paternity. The trial court found that Pettis had waited too long to reopen the judgment on the basis of paternity: he did not request genetic testing until April 2018, despite having had "ample opportunity" to raise the issue "back in 2004 or 2005 as part of the original proceeding."

A trial court may set aside a judgment of paternity pursuant to WIS. STAT. § 806.07, but where, as here, the motion for relief is more than one year past the entry of judgment, then the court must determine whether "extraordinary circumstances justify relief." ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 539-40, 552-53, 363 N.W.2d 419 (1985); § 806.07(1)(h), (2). This inquiry requires the court to balance "the competing interests of finality of judgments and relief from unjust judgments"; in doing so, it may consider, among other factors, "whether the judgment was the result of … conscientious, deliberate and well-informed choice" and whether "intervening circumstances mak[e] it inequitable to grant relief." ***M.L.B.***, 122 Wis. 2d at 552-53. We review for an erroneous exercise of discretion, meaning we will uphold the trial court's decision where it considered the facts and inferences of the case so as to reach "a conclusion based on logic and founded on proper legal standards." ***Id.*** at 541-42.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

In denying Pettis's motion, the court noted that various matters relating to support and placement had been extensively litigated throughout the years, yet Pettis did not raise the paternity issue until A.L.P. was almost fourteen. Pettis did not argue that he was somehow unable to make this challenge earlier or that any new evidence had come to light to prompt his belated claim of nonpaternity.[2] Consequently, the court found that the request was simply too untimely, as Pettis had already had "ample opportunity previously" to bring this challenge. The court further found that it would not be in the best interest of A.L.P.—who was by now into her teen years—to disturb the finality represented by the order Pettis had voluntarily agreed to shortly after she was born.

We conclude that this was an appropriate exercise of the court's discretion. The court weighed the parties' and, in particular, A.L.P.'s need for finality against the prospect that Pettis was subject to an unjust judgment. It concluded that the possibility that Pettis was not the father did not justify the harm to A.L.P. in reopening paternity, particularly given Pettis's own actions in forestalling the issue. The court correctly applied the law and properly considered the relevant facts, so as to determine that there were no "extraordinary circumstances" warranting relief. We will not disturb that decision.

Construed broadly, Pettis's next argument is that he should be relieved either from the judgment of paternity or from the operative child support order, because he was the victim of

[2] Pettis argued that he in fact raised the paternity issue at a hearing "when the child was still little," but the court did not believe him. The court found that this "certainly would have been an issue that … would show up in the minutes" in at least one of "multiple, multiple court appearances." The court was not clearly erroneous in so finding, given its familiarity with the case and its opportunity to assess Pettis's credibility. *See* ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶12, 290 Wis. 2d 264, 714 N.W.2d 530. Therefore, we accept as true its factual conclusion that Pettis, without explanation, waited nearly fourteen years to challenge paternity.

statutory rape when he fathered A.L.P. (he was then sixteen and the mother nineteen).[3] The State argues that there is no law supporting "the notion that alleged statutory rape affects child support or is a defense against paternity." In our view, the issue is not quite so clear-cut. In ***J.J.G v. L.H.***, 149 Wis. 2d 349, 354-58, 441 N.W.2d 273 (Ct. App. 1989), this court held that a minor who fathers a child with an adult may nonetheless be required to pay child support; however, the statutory rape statute upon which that decision partially rested has since been amended, potentially calling that holding into question.[4]

Nonetheless, in this context, we decline to determine whether or how WIS. STAT. § 948.09, the applicable criminal statute, affects Pettis's child support obligations. By not addressing this issue in the context of its "extraordinary circumstances" analysis, the trial court implicitly found that the parents' age difference at A.L.P.'s conception did *not* constitute an "extraordinary circumstance." Pettis gave short shrift to this aspect of his claim in the trial court, just briefly referencing it without any accompanying support in his filed petition and not mentioning it at all at the hearing. It should come as no surprise then that the trial court did not address it. Nonetheless, given the court's focus on the untimeliness of Pettis's request, we can assume that it rejected this challenge for a similar reason. Pettis's stipulation to paternity—made

[3] Although Pettis did not raise this issue at the hearing, he discussed it in his request to the court. Therefore, we disagree with the State that this issue is forfeited, and we will address it on the merits. *See* ***State v. Huebner***, 2000 WI 59, ¶¶10-11 & n.2, 235 Wis. 2d 486, 611 N.W.2d 727.

[4] *Compare* WIS. STAT. § 940.225(4) (1979) and WIS. STAT. § 948.09 (the applicable criminal statutes in effect at the time of ***J.J.G. v. L.H***, 149 Wis. 2d 349, 441 N.W.2d 273 (Ct. App. 1989), and today, respectively). Section 940.225(4) contained a rebuttable presumption that the minor was incapable of consent, a presumption that was, in fact, rebutted in ***J.J.G.*** by evidence of the father's "willing and voluntary participation." ***Id.*** at 356-58. The current applicable statute, § 948.09, contains no such presumption and instead makes it a misdemeanor for a nineteen-year-old to have sexual intercourse with a non-spouse who is sixteen.

after he had reached the age of majority—combined with his lengthy unexplained delay in seeking to revoke it, barred his attempt to raise statutory rape as a basis for relitigating paternity or support.[5] *See* ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737 (where the trial court does not explain the reasoning behind its discretionary decision, we may search the record for support). We cannot find that this was an erroneous exercise of discretion.[6]

IT IS ORDERED that the order is summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

[5] When Pettis first raised this issue, the most recent child support order was less than a year old, having been modified to reflect that Pettis was incarcerated and had no earned income. The original judgment of paternity and child support order, however, was from 2005. In such circumstance, we view the appropriate analysis as whether extraordinary circumstances justify Pettis's relief from a judgment more than one year old. *See* ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 539-40, 552-53, 363 N.W.2d 419 (1985); WIS. STAT. § 806.07(1)(h), (2).

[6] Pettis further argues that the trial court erred in not reducing or vacating child support arrears incurred during the portion of his incarceration before his child support order was modified. A trial court, however, has the statutory authority to retroactively modify arrears *only* to correct a calculation error. *See* ***State v. Jeffrie C.B.***, 218 Wis. 2d 145, 147, 149-50, 579 N.W.2d 69 (Ct. App. 1998); WIS. STAT. § 767.59(1m). Therefore, the trial court properly denied Pettis's request to do so.