STATE OF MICHIGAN

COURT OF APPEALS

LINDA M. HALL,

Plaintiff-Appellee,

v

MICHAEL NOVIK,

Defendant-Appellant.

UNPUBLISHED
August 22, 1997

No. 192369
Oakland Circuit Court
LC No. 91-405744-DP

Before: Markey, P.J. and Jansen and White, JJ.

PER CURIAM.

In this paternity action, defendant appeals by leave granted the circuit court's order voiding the parties' earlier settlement agreement. We affirm.

In 1991, plaintiff filed an action against defendant under the Paternity Act, MCL 722.711 *et seq*.; MSA 25.491 *et seq*., seeking child support and an order of filiation regarding Natalie Novik. The parties reached a settlement agreement pursuant to MCL 722.713; MSA 25.493. In the agreement, defendant promised to pay $1,000 per month for Natalie's support and education, plus other expenses, until she reaches eighteen years of age. Defendant did not acknowledge that he is Natalie's father, but relinquished his right to a judicial determination of the paternity issue. The agreement specified that the payments and other obligations were not subject to modification. The circuit court entered a consent order approving the agreement in December, 1991.

In 1995, plaintiff filed a petition for modification of child support. At the hearing on the petition, the circuit court declared the consent order void pursuant to this Court's decision in *Dones v Thomas*, 210 Mich App 674; 534 NW2d 221 (1995).

Dones was decided on May 19, 1995. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990. Administrative Order 1996-4, 451 Mich xxxii. Accordingly, we are bound by *Dones*.

On appeal, defendant contends that the instant case is factually distinguishable fom *Dones* because *Dones* applies only when the father acknowledges paternity. We cannot agree. The *Dones* Court did not rely on the fact that the defendant acknowledged paternity of the child. To the contrary, the Court's decision reasoned that with the abolition of Lord Mansfield's rule in divorce cases and the availability of sophisticated scientific paternity testing, there is no longer a difference in the manner in which disputed issues of paternity are resolved in paternity actions and divorce proceedings. *Id.* at 677-679. Because the Court in *Dones* declared MCL 722.713; MSA 25.493 unconstitutional without regard to whether the defendant admitted or denied paternity, *id.* at 679, *Dones* cannot be distinguished on this basis.

Alternatively, defendant asserts that *Dones* is not binding because it implicitly overruled *Hisaw v Hayes*, 133 Mich App 639; 350 NW2d 302 (1984), and *Crego v Coleman*, 201 Mich App 443; 506 NW2d 568 (1993), and *Crego* was decided after November 1, 1990. We conclude, however, that *Dones* is binding. The analysis set forth by the Court in *Hisaw* and later adopted in *Crego* did not consider whether MCL 722.713; MSA 25.493 itself violates equal protection, as did *Dones*.[1]

Next, defendant argues that the trial court erred in giving *Dones* retroactive effect. Generally, decisions finding statutes unconstitutional are applied retroactively. *Stanton v Lloyd Hammond Produce Farms*, 400 Mich 135, 144-148; 253 NW2d 114 (1977). In the instant case, defendant has not distinguished this case from *Dones*, and has not established detrimental reliance to justify a finding of limited retroactivity with regard to *Dones*.[2] Further, the rule relied on by defendant regarding vested contract rights limits courts from affecting, on principles of equity and justice, contractual or other rights obtained in reliance on prior court decisions. *Citizens Bank v Raleigh*, 159 Mich App 110, 118; 406 NW2d 479 (1987). *Dones* did not overrule prior case law. Rather, *Dones* declared MCL 722.713; MSA 25.493 unconstitutional to the extent that it prevents modification of a support order. Lastly, defendant was deprived of no vested rights. The agreement was based on MCL 722.713; MSA 25.493, which the *Dones* Court declared unconstitutional.

Next, defendant contends that the trial court's decision declaring the consent order void was barred by the doctrine of res judicata. We disagree. *Dones* declared MCL 722.713; MSA 25.493 unconstitutional and determined that support orders under paternity agreements are subject to modification. Res judicata is therefore inapplicable.

Finally, defendant argues that plaintiff's petition for modification constituted an improper collateral attack on a final judgment because it was not filed within one year after the 1991 consent order was entered. Assuming MCR 2.612 applies, defendant's reliance on the one-year limitation set forth in MCR 2.612(C)(2) is misplaced. Although the trial court did not specify which subrule it relied upon, it is clear that the 1991 consent order was not set aside for any of the grounds specified in subrules (C)(1)(a), (b) or (c). Therefore, the one-year limitation does not apply. Plaintiff filed her motion for modification within a reasonable time.

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Helene N. White

[1] *Hisaw* addressed the issue whether it is permissible to modify a child support provision in a paternity settlement while leaving the father bound by his agreement to surrender his right to a judicial determination of paternity. Here, there is no concern that defendant will be denied his right to a trial on the disputed question of paternity because the circuit court declared the entire agreement void and reinstated the question of paternity.

[2] Further, *Dones* was not entirely unpredictable. In *Boyles v Brown*, 69 Mich App 480; 245 NW2d 100 (1976), this Court held that the trial court had the authority to modify the level of child support specified in a judgment of filiation and support. In so holding, the Court indicated that support orders regarding illegitimate children must be subject to modification in order to comport with the requirements of equal protection. *Id.* at 483-484. Although this Court would later disagree with *Boyles*, it did so "to the extent that, in a paternity settlement like that at issue here, it would permit a court to increase the alleged father's support obligation, albeit leaving him bound by his agreement to surrender his right to a judicial determination of paternity." *Crego*, *supra*, quoting *Hisaw*, *supra*, 133 Mich App 644-645. *Dones* does not compel that result; the agreement can be declared void as in the instant case.