STATE OF MICHIGAN

COURT OF APPEALS

BECKY SUE CLOUGH, LARRY CLOUGH, and SUZAN CLOUGH, Plaintiffs-Appellees,	UNPUBLISHED December 21, 2001
v	No. 224575 Kent Circuit Court
KENT JAMES BALLIET, Defendant-Appellant.	LC No. 98-009196-DP

Before: Holbrook, Jr., P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying his motion for summary disposition under MCR 2.116(C)(10). We reverse.

Plaintiffs filed a claim seeking child support for a child born on January 13, 1983. Plaintiff Becky Sue Clough, the child's mother, sought to establish defendant's paternity through the Paternity Act, MCL 722.717. She also sought child support retroactive to the date the complaint was filed (September 4, 1998) under the act. Plaintiffs Larry Clough and Suzan Clough, the child's legal guardians, sought child support retroactive to the child's birth under MCL 722.3 and the common law.

Defendant conceded paternity after DNA testing and further conceded his obligation to pay child support beginning September 4, 1998. Defendant argued, however, that he was not obligated to provide support retroactive to the child's birth, and he moved for summary disposition with regard to such support. The trial court denied defendant's motion, relying on *Phinisee v Rogers*, 229 Mich App 547; 582 NW2d 852 (1998).

We review de novo a trial court's decision with regard to a motion for summary disposition. *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999).

We agree with defendant's contention that child support retroactive to birth generally may not be granted under the Paternity Act if the claim is filed more than six years after the child's birth. See MCL 722.717(2). However, plaintiff guardians' demand for child support retroactive

to birth in this case was not sought under the Paternity Act; rather, it was sought under MCL 722.3 and the common law.

MCL 722.3 provides a statutory basis for a child to pursue support from his or her biological parents, see *Tanielian v Brooks*, 202 Mich App 304, 307; 508 NW2d 189 (1993), but nothing in the statute provides for an award of child support retroactive to birth. Even if application of the in pari materia rule[1] to MCL 722.3 and the Paternity Act would support the availability of child support retroactive to birth, it would also mandate application of the six-year bar to prevent the retroactive child support from extending to periods before the filing of the complaint. Thus, we conclude that MCL 722.3 provided no basis for child support retroactive to birth in this case.

Nor did the common law provide a basis for retroactive support. While *Phinisee, supra* at 559-560, sets forth the availability of retroactive support in a common law action,[2] it also states that "a common-law right exists for an illegitimate child *over age eighteen* to bring a suit for support . . . ." *Phinisee, supra* at 556 (emphasis added). Because the child was only fifteen years old at the time the instant suit was filed, the trial court erred by denying defendant's motion for summary disposition.

However, the child in the instant case is now eighteen. Therefore, she may elect to file an action for retroactive child support under the common law.[3] See *Phinisee, supra* at 559. If the child chooses to file such an action, the court, in considering the issue of retroactive support, "may consider any appropriate friend of the court support guidelines in effect for the relevant years, but may also consider the unique circumstances of th[e] case." *Id.* at 561.

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[1] Where two statutes are construed that "arguably relate to the same subject or share a common purpose, the statutes are in pari materia and must be read together as one law, even if they contain no reference to one another and were enacted on different dates." *People v Webb*, 458 Mich 265, 273-274; 580 NW2d 884 (1998). The object of this rule is to effectuate the Legislature's intent as found in harmonious statutes. *Id.* "If statutes lend themselves to a construction that avoids conflict, then that construction should control." *Id.*

[2] *Phinisee* states that "[i]f a cause of action for paternity under the common law is preserved by the tolling provisions of MCL 600.5851(1) . . . , it must be assumed that appropriate damages can be sought, which in a paternity action, of course, means support from the time a child was born." *Phinisee, supra* at 559-560. We read this portion of *Phinisee* to mean that a child who has reached the age of eighteen may, within one year of reaching eighteen, file an action for child support retroactive to birth. We concede that the *Phinisee* decision seems at odds with the limitation on retroactive support found in the Paternity Act, but *Phinisee* nonetheless constitutes binding authority on this Court, see MCR 7.215(I)(1), and we are bound to follow it.

[3] We acknowledge that in this case, paternity has already been established, and an action by the child will not be a "paternity" action as mentioned in *Phinisee, supra* at 559, but will merely be an action for support. We conclude that *Phinisee* allows for this type of action.

Reversed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter