

STATE OF MICHIGAN
COURT OF APPEALS

DAVID MICHAEL THAMM, JR.,

Plaintiff-Appellant,

v

HOLLI CRUM,

Defendant-Appellee.

UNPUBLISHED
December 6, 2005

No. 255483
Genesee Circuit Court
LC No. 03-245770-DP

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition to defendant. We affirm.

A motion for relief from judgment under MCR 2.612 may only be reviewed for an abuse of discretion. *McNeil v Caro Community Hosp*, 167 Mich App 492, 497; 423 NW2d 241 (1988). "In civil cases, an abuse of discretion exists when the decision is so violative of fact and logic that it evidences a defiance of judgment and is not the exercise of reason, but rather, of passion or bias." *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 355; 554 NW2d 43 (1996).

Plaintiff first argues that, pursuant to MCR 2.507, the parties' agreement as to custody, visitation, paternity, and child support was binding because it was made in open court and there was no allegation of fraud, deceit, collusion, or bad faith. But plaintiff does not address the fact that this agreement was properly set aside by a motion for relief from judgment under MCR 2.612 after the trial court determined that plaintiff had no standing to sue under the Paternity Act. Plaintiff also claimed he had standing under the Paternity Act because his child was judicially determined to have been born out of wedlock during the same trial proceeding.

Generally, to show standing, a party must have a "substantial interest and a personal stake in the outcome of [a] controversy." *Altman v Nelson*, 197 Mich App 467, 475; 495 NW2d 826 (1992). But "when the cause of action is created by statute, the plaintiff may be required to allege specific facts in order to have standing. Such is the case in a paternity action." *Id.* "In order to have standing to seek relief under the Paternity Act, [the] plaintiff must allege that the child was born out of wedlock." *Id.* at 475-476. A "[c]hild born out of wedlock" is defined as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child which the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a).

Since it is undisputed that the child in question was born during an intact marriage, plaintiff has “no standing to establish paternity . . . “ without a *prior* determination that the mother’s husband is not the father. *In re KH*, 469 Mich 621, 632; 677 NW2d 800 (2004)(emphasis added). Because it is undisputed that there was no prior adjudication establishing that the mother’s husband is not the father, plaintiff has no standing to sue under the Paternity Act.

Defendant did not raise the question of standing with the trial court until after an agreement between plaintiff and defendant had been articulated in open court. An agreement between parties, made in open court, is generally binding upon the parties. MCR 2.507. But, as this Court has previously indicated, a defendant may challenge a judgment awarded in favor of a putative father who lacks standing under the Paternity Act by filing an appeal or a motion to set aside the judgment. *Altman, supra* at 479. Here, defendant filed a motion to set aside the verdict in a timely manner.

A motion for relief from judgment or order may be granted if it meets one of five specified criteria or one general one. MCR 2.612(C). The criteria are:

- (a) Mistake, inadvertence, surprise, or excusable neglect.
 - (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
 - (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
 - (d) The judgment is void.
 - (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
 - (f) Any other reason justifying relief from the operation of the judgment.
- [MCR 2.612(C)(1).]

Because there was no evidence to indicate mistake, new evidence, fraud, a void judgment, or any applicable prior judgment, MCR 2.612 (C)(1)(f) is the only provision potentially applicable to this case. A motion for relief from judgment under MCR 2.612(C)(1)(f) may only be granted if three requirements are fulfilled: “(1) the reason for setting aside the judgment must not fall under sub-rules ([a]) through ([e]); (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside[;] and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice.” *Altman, supra* at 478.

First, as indicated, none of the five specific criteria under the rule apply, so the first requirement under sub-paragraph (f) was fulfilled. Second, according to the requirements of the Paternity Act, plaintiff has no standing to bring an action and therefore has no rights under that act to be abridged. Therefore, plaintiff’s substantial rights are not detrimentally affected by setting aside a judgment that he had no standing to receive in the first place. Thus, the second criteria under sub-paragraph (f) was fulfilled. Finally, there are extraordinary circumstances here as it was clear on the face of the pleadings that plaintiff had no standing to sue under the Paternity Act, and the trial court should not have permitted proceedings under that act to occur. Justice would not be served by sustaining a judgment in favor of a plaintiff who had no standing

to initiate the action. Additionally, the interests of justice would not be served in granting parental rights to plaintiff because that would necessarily terminate the parental rights of defendant's husband who never was a party to the proceedings. Thus, the third and final criteria had been fulfilled. Because all of the requirements to set aside a judgment under MCR 2.612(C)(1)(f) were met, the trial court did not abuse its discretion when it granted defendant's motion for relief from judgment and set aside the parties' agreement.

Plaintiff alternately argues that the Paternity Act, as applied to himself, violated his rights to equal protection and due process under the Michigan and United States Constitutions. Plaintiff failed to properly present this issue for review, citing no pertinent authority and providing no argument beyond bald assertions. Although, we may decline to address an issue that has been given only cursory treatment with little or no supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655; 358 NW2d 856 (1984), we note that this Court has previously held that a putative father of a child born in wedlock (who is not married to the mother of the child) has no constitutionally protected liberty interest in a relationship with that child. *Aichele v Hodge*, 259 Mich App 146, 167-168; 673 NW2d 452 (2003); *McHone v Sosnowski*, 239 Mich App 674, 679-680; 609 NW2d 844 (2000).

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder