

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/15/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

L.S. TEMPLAR,) No. 1 CA-CV 10-0644
)
Petitioner/Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
STATE OF ARIZONA ex rel. THE) (Not for Publication -
DEPARTMENT OF ECONOMIC SECURITY) Rule 28, Arizona Rules of
(LAURI ANN MOODY),) Civil Appellate Procedure)
)
Respondent/Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. FC2005-091031

The Honorable Helene F. Abrams, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Carol A. Salvati, Assistant Attorney General
Attorneys for Appellee

L.S. Templar, in *Propria Persona* Mesa
Appellant

J O H N S E N, Judge

¶1 L.S. Templar appeals the denial of his petition to modify custody and child support and his "Rule 85(C)(1) Motion to Correct." For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶12 In March 2005, Templar petitioned the superior court to determine that he is the natural father of B.T., who was born out of wedlock one month before to Lauri Ann Moody. Templar simultaneously filed a notarized "Acknowledgment of Paternity." On June 3, 2005, at the conclusion of a resolution management conference that Templar attended with Moody, the superior court found Templar was the natural father of B.T. and ordered Templar and Moody to comply with their agreement concerning custody and support. The superior court entered a signed minute entry reflecting its findings. Templar did not appeal the order.

¶13 In January 2007, Templar petitioned the court for sole custody of B.T. Before the superior court could rule on Templar's motion, however, Templar absconded with the child. He later was found and incarcerated. In March 2008, the superior court held an evidentiary hearing on Templar's petition for sole custody. Templar was present and testified. After considering all relevant factors enumerated in Arizona Revised Statutes ("A.R.S.") section 25-403 (2007), the court entered a signed order granting Moody sole custody and denying Templar parenting time, pending his completion of a psychological evaluation. The court further ordered Templar to pay Moody \$325 per month in child support. Templar did not appeal the court's ruling.

¶4 On June 22, 2010, Templar filed a "Verified Petition to Modify Custody and Child Support," and on July 13, 2010, he filed a "Rule 85(C)(1) Motion to Correct."¹ The superior court denied Templar's petition and motion. We have jurisdiction of Templar's timely appeal under Article 6, Section 9, of the Arizona Constitution and pursuant to A.R.S. §§ 12-120.21 (2003) and -2101(B) (2003).

DISCUSSION

A. Standard of Review.

¶5 We review the denial of a motion filed pursuant to Arizona Rule of Family Law Procedure 85(C) for an abuse of discretion. *R.A.J. v. L.B.V.*, 169 Ariz. 92, 94, 817 P.2d 37, 39 (App. 1991) (applying Arizona Rule of Civil Procedure 60(c)).² We will uphold the superior court's denial of a motion for relief from judgment unless "undisputed facts and circumstances . . . require a contrary ruling as a matter of law." *Coconino Pulp & Paper Co. v. Marvin*, 83 Ariz. 117, 121, 317 P.2d 550, 552 (1957) (applying Arizona Rule of Civil Procedure 60(c)). We

¹ Templar's petition and motion were virtually identical, except that the petition attached a sworn affidavit. We will refer to the two collectively as the motion for relief from judgment.

² Although relief from a judgment in a family law proceeding is governed by Arizona Rule of Family Law Procedure 85(C), that rule is substantively identical to Arizona Rule of Civil Procedure 60(c). *Cohen v. Frey*, 215 Ariz. 62, 64, ¶ 1, n.1, 157 P.3d 482, 484 (App. 2007).

review the superior court's jurisdiction *de novo*. *R.A.J.*, 169 Ariz. at 94, 817 P.2d at 39.

B. Subject-Matter Jurisdiction.

¶6 Templar seems to argue on appeal that he is not the natural father of B.T., and that as a result, the superior court lacks jurisdiction to order him to pay child support.

¶7 Subject-matter jurisdiction is the power of the court to decide an issue. *Fry v. Garcia*, 213 Ariz. 70, 73, ¶ 9, n.2, 138 P.3d 1197, 1200 (App. 2006). Templar's argument fails because A.R.S. § 25-801 (2007) confers upon the superior court original jurisdiction "in proceedings to establish maternity or paternity."³ Thus, the superior court properly exercised jurisdiction to adjudicate the petition he filed in 2005 to ascertain paternity. Subsequent custody, visitation and support proceedings are within the court's continuing jurisdiction so long as Arizona remains the child's "home state." A.R.S. §§ 25-1031(A)(1) (2007), -1032(A) (2007). According to the record, Arizona has been B.T.'s home state throughout her life.

C. Determination of Paternity.

¶8 Templar argues the 2005 judicial proceedings were insufficient to establish his paternity. He contends the record contains no written acknowledgment by Moody that he is the

³ Absent material revisions after the relevant date, we cite a statute's current version.

natural father of B.T. But the court's signed June 3, 2005 order establishing paternity was a final order from which Templar failed to appeal. He may not now challenge the merits of that order. See *Pettit v. Pettit*, 218 Ariz. 529, 532-33, ¶¶ 8-10, 189 P.3d 1102, 1105-06 (App. 2008) (claim preclusion bars attempt to re-litigate paternity); *Rios v. Indus. Comm'n of Ariz.*, 120 Ariz. 374, 377, 586 P.2d 219, 222 (App. 1978) (judgment in paternity action has "[r]es judicata effect on other courts and administrative agencies").

D. Motion for Relief Due to Fraud.

¶19 Rule 85(C) allows for relief from judgment under specific circumstances. In relevant part, it provides:

C. Mistake; Inadvertence; Surprise,
Excusable Neglect; Newly Discovered
Evidence; Fraud, etc.

1. On motion and upon such terms as are just the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons:

* * *

b. newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 83(D);

c. fraud, misrepresentation, or other misconduct of an adverse party;

d. the judgment is void;

* * *

2. The motion shall be filed within a reasonable time, and for reasons . . . 1(b) and 1(c) not more than six (6) months after the judgment or order was entered or proceeding was taken.

Ariz. R. Family Law P. 85(C).

¶10 Templar asserts he is entitled to relief from the judgment of paternity pursuant to Rule 85(C) because Moody defrauded him into falsely believing and acknowledging his paternity of B.T. But his motion for relief based on that ground was untimely. See Ariz. R. Family Law P. 85(C)(2) (motion based on fraud must be filed within six months after the judgment or order was entered).

¶11 The superior court issued its order finding Templar to be the natural father of B.T. in June 2005. Templar did not file his motion for relief from that judgment until almost five years later, in April 2010. Because he did not file that motion within six months of the superior court's determination of paternity, his motion is barred by Rule 85(C)(2). *Cf. In re Estate of Travers*, 192 Ariz. 333, 337, ¶ 28, 965 P.2d 67, 71 (App. 1998) (denying relief based on untimely motion for relief pursuant to Arizona Rule of Civil Procedure 60(c)).

¶12 Nor does Rule 85(C) allow relief to Templar based on asserted newly discovered evidence. Templar seems to argue that because Moody first let him know in June 2008 that he may not

have fathered the child, he is entitled to relief pursuant to Rule 85(C)(1)(b). But again, Templar's motion is untimely because it was not filed within six months of entry of the judgment. See Ariz. R. Family Law P. 85(C)(2).

¶13 Without citing authority, Templar asserts that Rule 85(C)(2) allows a motion for relief to be filed within six months of the discovery of new evidence. The rule, however, clearly states that a motion to correct based on newly discovered evidence "shall be filed . . . for [reason of newly discovered evidence] not more than six (6) months *after the judgment or order was entered* or proceeding was taken." Ariz. R. Family Law P. 85(C)(2) (emphasis added). Therefore, Templar's motion was untimely. Indeed, Templar not only waited to file his motion nearly five years after the court entered its order of paternity, but he did not file until 21 months after he allegedly discovered he might not be B.T.'s natural father.⁴

E. Due Process.

¶14 Finally, Templar argues the superior court erred by denying his motion for relief from judgment because he was denied his due process rights at the March 26, 2008 child-

⁴ Templar further argues that because he was incarcerated at the time of the 2005 order, the six-month time limit for filing his motion for relief from judgment pursuant to Rule 85(C) was tolled. He cites the federal Antiterrorism and Effective Death Penalty Act as support for his assertion, but that statute has no application to a child-custody or paternity matter. See 28 U.S.C. § 2244(d)(1), (2) (2006).

support hearing. But the signed child-support order became final when Templar failed to appeal it. See *Pettit*, 218 Ariz. at 532-33, ¶¶ 8-10, 189 P.3d at 1105-06. Accordingly, he may not attack the 2008 order in this proceeding.

CONCLUSION

¶15 For the foregoing reasons, we affirm the superior court's denial of Templar's "Verified Petition to Modify Custody and Child Support" and "Rule 85(C)(1) Motion to Correct."

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
PATRICIA A. OROZCO, Judge

/s/
ANN A. SCOTT TIMMER, Judge