

STATE OF MICHIGAN
COURT OF APPEALS

TONYA FRESHMAN,

Plaintiff-Appellee,

v

GARY KOTT,

Defendant-Appellant.

UNPUBLISHED

December 18, 1998

No. 200052

Manistee Circuit Court

LC No. 87-005368 DS

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Defendant appeals by leave granted from a June 6, 1996 order of the circuit court in this child support case. The trial court's order granted defendant's request to terminate child support, denied defendant's request to terminate support arrearages, denied defendant's request to be reimbursed for monies paid to the Family Independence Agency (FIA)¹ for support of the child, and denied defendant's request to be reimbursed for the cost of a blood test proving that he was not the biological father of the child. We affirm in part and reverse in part.

This case began in 1987 when defendant signed an acknowledgment of paternity, in conjunction with plaintiff's application for public assistance, regarding plaintiff's child, born January 6, 1984. In 1988, a temporary support order was entered; however, no order of filiation or judgment of paternity was ever entered. In 1995, defendant requested that blood tests be done and those tests eventually excluded defendant as the father of plaintiff's child. During that time period, defendant paid \$10,280.32 to the FIA for welfare benefits for the child. However, defendant was also in arrearage for the child support payments and, as of the time of defendant's motion to terminate support obligations and be reimbursed for other costs, defendant owed \$8,372.18 to the FIA. In his motion filed in February 1996, defendant sought reimbursement for the monies paid to the FIA, reimbursement for the cost of the blood tests, which totaled \$750, that the arrearages be canceled, and that any further child support be canceled. The trial court only ruled in defendant's favor with respect to canceling future child support obligations.

Defendant first argues that he is entitled to be released from his obligation to pay the arrearages owed to the FIA. We agree.

This issue is essentially equitable in nature, with no reversal unless the trial court's factual findings are clearly erroneous or where we conclude that we would have reached a different result had we occupied the trial court's position. *Bergan v Bergan*, 226 Mich App 183, 185; 572 NW2d 272 (1997); *Guise v Robinson*, 219 Mich App 139, 143-144; 555 NW2d 887 (1996); *Dep't of Social Services v Franzel*, 204 Mich App 385, 389; 516 NW2d 495 (1994). We conclude that defendant is entitled to equitable relief with regard to the payment of arrearages because it would be inequitable to require defendant to pay money based upon inaccurate factual information; specifically, that he is actually not the father of plaintiff's child. Further, the FIA has not relied on defendant's conduct regarding the arrearages. We emphasize that this is not a situation where defendant was directly paying the mother of the child. Rather, plaintiff received welfare benefits for herself and the child and the FIA was attempting to recoup such payments from the father.

Accordingly, we reverse the trial court's order to the extent that it required defendant to pay the arrearages. It would be inequitable for defendant to have to pay the arrearages under the facts of this case.² The arrearages are hereby ordered to be canceled.

Defendant also contends that he is entitled to recovery of money previously paid to the FIA, an amount which is in excess of \$10,000. On this ground, we disagree and affirm the trial court on the basis of equitable estoppel. See *Guise, supra*, p 144. In this regard, it can affirmatively be stated that the FIA justifiably relied on defendant's acknowledgment of paternity and failure to contest paternity for nearly eight years. Thus, it would be prejudicial and inequitable to the FIA to require it to pay back defendant where there was a valid court order for child support and defendant had acknowledged paternity.

Next, defendant argues that the trial court abused its discretion when it denied his motion for reimbursement of the cost of the blood test that determined paternity. We review such a decision for an abuse of discretion. MCL 722.716(3); MSA 25.496(3); *Good v Armstrong*, 218 Mich App 1, 4; 554 NW2d 14 (1996). The trial court stated that it would be inequitable to allow defendant to recover this cost when he had waited so long to have the test done. We do not find that this decision was without justification or excuse. See *Auto Club Ins Ass'n v State Farm Ins Co*, 221 Mich App 154, 167; NW2d (1997). Moreover, we see no reason why the FIA should have to pay to the cost of the blood tests and defendant has not affirmatively shown that the trial court abused its discretion.

Affirmed in part and reversed in part.

/s/ Kathleen Jansen

/s/ Donald E. Holbrook, Jr.

/s/ Barbara B. MacKenzie

¹ The Family Independence Agency (FIA) was formerly known as the Department of Social Services. We will refer to the agency as the FIA in this opinion since that is the current name, although the agency was known as the Department of Social Services during most of the proceedings in this case.

² We acknowledge that the trial court relied on an unpublished decision of this Court to reach the opposite conclusion that defendant was not entitled to cancel the arrearages. However, unpublished decisions are not precedentially binding under the rule of stare decisis, MCR 7.215(C)(1), and the case relied upon by the trial court involved an order of filiation, which never existed in the present case.