STATE OF MICHIGAN

COURT OF APPEALS

DANIEL MARTIN RITCHIE,

Plaintiff-Appellant,

v

DOTTIE HOPE BARNETT,

Defendant-Appellee.

UNPUBLISHED
April 3, 2001

No. 220942
Charlevoix Circuit Court
LC No. 99-177218-DP

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition, and taxing costs and fees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was married to William Barnett from February 15, 1986 until his death on March 14, 1999. On January 20, 1999 defendant gave birth to a daughter. On February 10, 1999 plaintiff filed a complaint seeking relief under the Paternity Act, MCL 722.711 *et seq*.; MSA 25.941 *et seq*. The complaint alleged that it was believed that plaintiff was the biological father of defendant's child. Plaintiff sought an order of filiation and other relief. Defendant moved for summary disposition pursuant to MCR 2.116(C)(5), (C)(7), and (C)(8), arguing that plaintiff lacked standing to bring a paternity action because there had been no determination that the child was born out of wedlock. The family court granted defendant's motion, noting that the law in this area was clear, and questioning why plaintiff would initiate an action under such circumstances. Subsequently, the family court granted defendant's motion for costs and fees, finding that plaintiff's claim was frivolous.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Standing under the Paternity Act is conferred on the mother of a child born out of wedlock, the father of a child born out of wedlock, or the Family Independence Agency on behalf of a child born out of wedlock, if the child is supported by public assistance. MCL 722.714(1); MSA 25.494(1). A child is considered to have been born out of wedlock if the mother was

* Circuit judge, sitting on the Court of Appeals by assignment.

unmarried from the time of conception until the time of birth, or if the child is one that "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); MSA 25.491(a). This statutory language has been interpreted to mean that at the time of the filing of the complaint, there must have been a prior circuit court determination that the child was not the issue of the marriage. *Girard v Wagenmaker*, 437 Mich 231, 242-243; 470 NW2d 372 (1991). We have consistently applied the *Girard* Court's interpretation of the standing requirement in MCL 722.714(1); MSA 25.491(1). See, e.g., *McHone v Sosnowski*, 239 Mich App 674, 678; 609 NW2d 844 (2000) (and cases cited therein).

Plaintiff argues that the family court erred by granting defendant's motion for summary disposition. We disagree and affirm. Plaintiff did not challenge the constitutionality of the standing requirement in MCL 722.714(1); MSA 25.491(1), but rather simply advocated that the family court reject the *Girard* Court's interpretation of the statute. The family court had no authority to do so. A decision of our Supreme Court is binding until the Supreme Court reverses itself. *Hauser v Reilly*, 212 Mich App 184, 187; 536 NW2d 865 (1995). The family court was required to apply *Girard*, *supra*, and grant defendant's motion for summary disposition.

Finally, plaintiff argues that the family court clearly erred by awarding costs to defendant on the ground that his claim was frivolous. We disagree and affirm the award. At the time the claim was filed, both plaintiff and his counsel were aware that under existing law, specifically MCL 722.714(1); MSA 25.491(1) as interpreted by *Girard*, *supra*, plaintiff lacked standing to pursue relief. Plaintiff did not set forth a good faith argument for reversal of existing law, and his position was void of arguable legal merit. The award of costs was warranted under the facts, and was not clearly erroneous. MCR 2.114(E); MSA 2.625(A)(2); MCL 600.2591(1), (3)(a); MSA 27A.2591(1), (3)(a); *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard