STATE OF MICHIGAN

COURT OF APPEALS

ANITA ANN MOORE,

Plaintiff-Appellee,

v

DWIGHT VINES,

Defendant-Appellant.

UNPUBLISHED
June 15, 2001

No. 221846
Oceana Circuit Court
LC No. 92-004342-DP

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's entry of an order reinstating a previous order of filiation, support, and education of child. We affirm.

First, defendant contends that plaintiff's motion for relief from judgment under MCR 2.612(C)(1)(c), following an order canceling defendant's child support obligations, is barred by res judicata. This argument is without merit. We review a res judicata claim de novo as a question of law. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

The doctrine of res judicata generally precludes relitigation of matters already decided absent certain compelling circumstances, such as those specified in MCR 2.612(C). *Staple v Staple*, 241 Mich App 562, 572; 616 NW2d 219 (2000). A motion for relief from judgment pursuant to MCR 2.612(C) is, in effect, an exception to the principles of res judicata. *Pike v City of Wyoming*, 431 Mich 589, 627 n 17; 433 NW2d 768 (1988) (Boyle, J, dissenting); *Colestock v Colestock*, 135 Mich App 393, 397-398; 354 NW2d 354 (1984). See also *VanderWall v Midkiff*, 186 Mich App 191, 201-203; 463 NW2d 219 (1990) (principles of res judicata require that all challenges to an underlying judgment be brought in an initial appeal or are waived, but such principles do not preclude a trial court from granting relief pursuant to MCR 2.612(C) under appropriate circumstances).

By definition, a motion for relief from judgment under MCR 2.612 requires a prior judgment, and thus res judicata is inapplicable. See *Dep't of Social Services v Franzel*, 204 Mich App 385, 390-391; 516 NW2d 495 (1994). "[A] judgment rendered by a court of competent jurisdiction on the merits is a bar to any future action between the same parties or their privies, on the same cause of action, … *as long as it remains unreversed and not in any way vacated or*

annulled …." 14 Michigan Law & Practice, Judgment, § 161, p 606 (emphasis added). The trial court's order of filiation was not erroneous on the ground that plaintiff's motion for relief from judgment was barred by res judicata.

Second, defendant claims that the trial court abused its discretion in granting plaintiff's motion for relief from judgment and in reinstating the order of filiation and support. See *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 392, 394; 573 NW2d 336 (1997) (motion under MCR 2.612(C)(1) reviewed for abuse of discretion). "An abuse of discretion occurs when the result is so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999). We find no abuse of discretion.

Defendant acknowledged paternity following the May 1992 complaint filed on behalf of plaintiff under the Paternity Act, MCL 722.711 *et seq.*, and the trial court entered an order of filiation and support. A DNA test conducted at the time indicated a 99.98 percent probability of paternity. Defendant subsequently challenged his paternity, on the basis of mistake, and requested further DNA testing, which the court granted. The record indicates that the three blood tests conducted in this matter over a seven-year period did not exclude defendant as the father and showed a ninety-eight to ninety-nine percent probability of defendant's paternity. These tests are entitled to significant weight in a paternity action. *Guise v Robinson*, 445 Mich 905; 516 NW2d 491 (1994), citing MCL 722.716.

Defendant concedes that the 1999 DNA test indicated a 99.998 percent probability of paternity, but argues that his claim that he had no access to plaintiff at the time of conception renders the probability assumptions of the test incorrect, and the test is unreliable. Defendant's claim that he had no access to plaintiff was, at most, a disputed issue, because plaintiff testified that she and defendant were together at the time of conception. The court ultimately concluded that defendant failed to produce evidence negating his paternity to warrant setting aside the order of filiation and support, and, further, that the court's 1996 order requiring additional blood tests was in error because the initial test corroborated defendant's admission of paternity.

We find no abuse of discretion in the court's determination. A trial court may grant relief from a final judgment on the basis of mistake, MCR 2.612(C)(1)(a), or misconduct of an adverse party, MCR 2.612(C)(1)(c). We conclude that relief was warranted on the basis of MCR 2.612(C)(1)(a). Plaintiff's uncontroverted testimony established that she did not submit to new blood tests because of threats and retaliation against her, which she linked to defendant. Relief was also warranted on the basis of mistake. *Altman v Nelson*, 197 Mich App 467, 477-478; 495 NW2d 826 (1992). Moreover, under the Paternity Act, providing support for children born out of wedlock is a matter of sound public policy. See *Smith v Robbins*, 91 Mich App 284, 289; 283 NW2d 725 (1979).

Affirmed.

/s/ Janet T. Neff
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder