[Cite as *Curtis v. Prince*, 2010-Ohio-5999.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

ROBERT W. CURTIS Appellee v. LAURA PRINCE Appellant	C. A. No. 25194 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. 2003-04-1305

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

MOORE, Judge.

{¶1} Appellant, Summit County Child Support Enforcement Agency, appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division. This Court reverses.

I.

{¶2} Laura Prince and Vicki Griffin were domestic partners. At some point prior to July of 2002, Griffin approached their friend Robert Curtis, who is homosexual, and asked him to donate sperm so that they could have a child. Initially, Curtis declined, but when asked again to provide his sperm for artificial insemination, he agreed. Prince, Griffin and Curtis apparently signed a written agreement, which provided that Curtis' name would not appear on the birth certificate and that he would not be designated as the father, but that he could babysit from time

to time.[1] On July 23, 2002, the child in question, M.P., was born to appellant, Laura Prince. The parties agree that Curtis instituted administrative proceedings to establish that he was M.P.'s biological father.

{¶3} On November 27, 2002, the Agency entered an administrative paternity determination that Curtis was M.P's father. On March 6, 2003, the Agency ordered that Curtis provide child support in the amount of $282.56 per month. Curtis appealed the child support determination but did not challenge the determination of paternity. On August 4, 2003, the trial court determined that Prince had waived child support. The August 4, 2003 journal entry further noted that Curtis sought an order for parenting time. It stated that he would have to file a separate motion for a determination of that issue. He did not do so, rather, Curtis moved to Florida, where he continued to reside. Several years later on December 16, 2008, the Agency, on behalf of Prince, sought an order of child support against Curtis. On January 20, 2009, the Agency filed an amended motion to set support. On April 2, 2009, the motion was heard before a magistrate. Both Curtis and Prince appeared, but neither was represented by an attorney. During the hearing, Curtis informed the magistrate that he essentially served as a sperm donor for Prince and her then-partner. The magistrate issued a decision finding that Prince was entitled to monthly child support in the amount of $533.22.

{¶4} Curtis obtained counsel and filed an objection to the magistrate's decision. In the objection, Curtis contended that M.P. was conceived via artificial insemination and thus, under R.C. 3111.95(B), Curtis, as the donor, could "not be treated in law or regarded as the natural father of [the] child."

[1] While the parties testified to the existence of the agreement, the document does not appear in the record and is not listed on the docket on appeal.

{¶5} The Agency responded that an unchallenged administrative determination of paternity was made on November 27, 2002, and noted that such an order is conclusive under R.C. 3111.49 unless challenged in court within 30 days. On December 17, 2009, the trial court issued a judgment entry sustaining Curtis' objection. The trial court found that Curtis was a sperm donor and, as such, there was no legal basis for imposing upon him a child support order.

{¶6} The Agency timely filed a notice of appeal and has raised two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> "THE TRIAL COURT ABUSED ITS DISCRETION AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN FINDING THAT THE PARTIES PARTICIPATED IN ARTIFICIAL INSEMINATION AFTER A FINAL DETERMINATION OF A PARENT-CHILD RELATIONSHIP."

{¶7} In the Agency's first assignment of error, it contends that the trial court abused its discretion and ruled against the manifest weight of the evidence by finding that the parties participated in artificial insemination after a final determination of a parent-child relationship had been made. We agree that the trial court erred.

{¶8} The Agency contends that res judicata bars Curtis from relitigating the issue of paternity and its attendant responsibilities. "A determination of whether the doctrine of res judicata bars an action is a question of law which this Court reviews de novo." *Brott v. City of Green Bd. of Zoning Appeals*, 9th Dist. No. 21209, 2003-Ohio-1592, at ¶11, citing *Davis v. Coventry Twp. Bd. of Zoning Appeals* (Feb. 14, 2001), 9th Dist. No. 20085; *Payne v. Cartee* (1996), 11 Ohio App.3d 580, 586-587. We have held that:

> "The doctrine of res judicata involves both claim preclusion, historically known as estoppel by judgment in Ohio, and issue preclusion, known as collateral estoppel. Under claim preclusion, a valid, final judgment rendered upon the

> merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. Res judicata (claim preclusion) is an affirmative defense. On the other hand, collateral estoppel precludes the relitigation of an issue that has been actually and necessarily litigated and determined in a prior action.
>
> " * * *
>
> "Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.
>
> "With regard to decisions of administrative agencies, a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transactions or occurrence that was the subject matter of the previous action. Accordingly, before res judicata/collateral estoppel can apply one must have a final judgment." (Internal quotations and citations omitted.) *Ganley v. Subaru of Am.*, 9th Dist. No. 07CA0092-M, 2008-Ohio-3588, at ¶30-31.

We have previously held that administrative determinations when not timely appealed constitute final judgments on the merits. See *Douglass v. Copley Twp. Bd. of Zoning Appeals*, 9th Dist. No. 22064, 2004-Ohio-6765, at ¶14. Under R.C. 3111.49 the administrative determination of paternity was a final judgment on the merits as to Curtis. Because the administrative determination of paternity in 2002 was a final judgment upon the merits, Curtis could only have challenged it through a timely appeal. The record indicates that Curtis did not avail himself of an appeal on the issue of paternity. Instead, he appealed only on the issue of child support, which Prince then waived. Any challenge regarding artificial insemination should have been raised at that time. Therefore, collateral estoppel barred him from raising artificial insemination as a defense to the child support action brought several years later. In light of the personal relationships in place at the time of the child's conception, the trial court's attempt to create an equitable result is understandable. However, Curtis' failure to challenge the paternity determination at the appropriate time precludes him from doing so at this time. The Agency's

first assignment of error is sustained. We reverse the trial court's judgment and remand for proceedings consistent with this opinion.

ASSIGNMENT OF ERROR II

> "THE TRIAL COURT ABUSED ITS DISCRETION AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE SINCE NO EVIDENCE WAS PRESENTED TO JUSTIFY ITS FINDING THAT FATHER IS NOT REQUIRED TO PAY CHILD SUPPORT."

{¶9} In its second assignment of error, the Agency contends that the trial court abused its discretion and ruled against the manifest weight of the evidence because no evidence was presented that justifies the finding that Father is not required to pay child support because he is a sperm donor under R.C. 3111.95(B).

{¶10} There is nothing in the record to demonstrate that Curtis and Prince complied with the statutory requirements to establish artificial insemination. However, even if there were evidence on this issue, our resolution of the Agency's first assignment of error renders the second assignment of error moot and we decline to address it. App.R. 12(A)(1)(c).

III.

{¶11} The Agency's first assignment of error is sustained, and we decline to address the second assignment of error as moot. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division is reversed and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

SHERRI BEVAN WALSH, Prosecuting Attorney, and LISA M. VITALE, Assistant Prosecuting Attorney, for Appellant.

SARAH GABINET, Attorney at Law, for Appellee.