

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Termination of:)	No. 29071-9-III
)	
William G.M.,)	Division Three
)	
Minor Child.)	UNPUBLISHED OPINION

Korsmo, A.C.J. — The trial court dismissed this motion to vacate a termination order because it was untimely and it did not raise supportable grounds. We affirm.

FACTS

Pauline Melville’s parental rights to her two-year-old son, William G.M., were terminated in 2006 due to her incarceration for narcotics-related offenses. She appealed the termination order, which this court affirmed. The Supreme Court denied review.

Paternal relatives adopted William G.M. in 2007; Ms. Melville had requested that Child Protective Services (CPS) place him with a maternal relative during her incarceration.

In January 2010, Ms. Melville filed a motion pursuant to Civil Rule 60(b) to vacate the termination order. She explained that the motion was filed more than three

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years after the termination order because she was incarcerated for almost two of those years at a prison which had no law library, inhibiting her ability to correctly file the motion.

To support the motion, Ms. Melville cited five newspaper articles regarding investigations into the CPS office in Colville which discovered misconduct in several termination and dependency cases. None of the articles discussed her case. She nonetheless maintained that the investigation raised a suspicion that her own termination case had also been mishandled.

The trial court ruled that the motion was untimely under CR 60(b). The court also determined that Ms. Melville failed to raise supportable grounds for her motion, holding that the cited articles failed to demonstrate that any misconduct took place in either the termination ruling or the placement decision.

Ms. Melville then timely appealed to this court.

ANALYSIS

This appeal challenges the dual bases for denying Ms. Melville's motion. Each is addressed in turn.

Timeliness of the Motion. Ms. Melville first contends that the trial court erred when it concluded that her motion was untimely. She argues that her claim is not time

barred by subsections (1), (3) of CR 60(b) and that it was brought within a reasonable time under CR 60(b)(11).

An appellate court reviews a trial court’s decision on a motion to vacate for an abuse of discretion. *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 894, 1 P.3d 587 (2000), *review denied*, 146 Wn.2d 1016 (2002). Discretion is abused where it is exercised on untenable grounds or for untenable reasons. *Id.*

In Washington, a party may seek to vacate a judgment against her pursuant to CR 60(b), which provides in part:

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

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

.....

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

.....

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order or proceeding was entered or taken.

CR 60(b).

Despite its broad language, the use of CR 60(b)(11) should be limited to situations involving “extraordinary circumstances” that are not encompassed by any other section of

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the rule. *State v. Keller*, 32 Wn. App. 135, 140, 647 P.2d 35 (1982). The extraordinary circumstances must relate to irregularities unrelated to the action of the court or questions concerning the regularity of the court's proceedings. *Id.* at 141. A reasonable time under CR 60(b)(11) is determined by examining the circumstances and facts of the case, and major factors that should be considered include prejudice to the nonmoving party and whether the moving party has good reasons for the delay in filing. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 312-313, 989 P.2d 1144 (1999), *review denied*, 140 Wn.2d 1026 (2000).

Ms. Melville contends that her motion was brought within a reasonable time under CR 60(b)(11). Thus, the initial question is whether her motion may be brought as a CR 60(b)(11) motion. In support of her motion, Ms. Melville cites newly-discovered evidence in the form of newspaper articles detailing the CPS investigation as well as a "general culture of deception and deceit" at CPS. Appellant's Br. at 7. Her motion falls under the provisions of either CR 60(b)(3), which explicitly concerns newly-discovered evidence, or CR 60(b)(1), which covers motions brought on the basis of irregularity. Motions brought under either of these provisions must be brought within one year. Thus, Ms. Melville's motion is untimely.

However, even if Ms. Melville's motion had fit under CR 60(b)(11), it still was

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not brought within a reasonable time. Whether a CR 60(b)(11) motion is brought within a reasonable time is determined by consideration of the prejudice to the nonmoving party if the motion is granted as well as whether the moving party has good reasons for the delay in filing. *Luckett*, 98 Wn. App. at 312-313. Although Ms. Melville contends that she had good reason for the delay, she does not address the issue of prejudice, which was the basis for the trial court's ruling.

The prejudice analysis in a case involving a dependent child should include consideration of prejudice to the child. Children have a right to conditions of basic nurturing, physical and mental health, and safety, and in a situation where there is a conflict between the parent's rights to the child and the child's rights, "the rights and safety of the child should prevail." RCW 13.34.020. A child's right to basic nurturing includes the right to a stable and permanent home and a speedy resolution of dependency and termination proceedings. *Id.*

The guardian ad litem (GAL) testified that William G.M. is completely settled in his adopted home and recommended against granting the motion since it would return him to state care and interrupt his stable living environment. This testimony supported the trial court's determination that there would be prejudice to the child by granting the motion. This was a tenable basis for concluding that the motion was not brought in a

reasonable amount of time.

Ms. Melville has not established that her motion was properly brought under CR 60(b)(11) or that it was brought within a reasonable time. The trial court did not abuse its discretion in holding that the motion was untimely.

Supportable Grounds. Ms. Melville also challenges the trial court's determination that she failed to raise supportable grounds for her CR 60(b) motion. She contends that the newspaper articles she cited reveal misconduct by CPS employees, which raises a suspicion that the Department of Social and Health Services (DSHS) mishandled her own termination case.

As discussed previously, we review a trial court's denial of a motion to vacate for a manifest abuse of discretion. *DeYoung*, 100 Wn. App. at 894. We consider only the "propriety of the denial and not the impropriety of the underlying judgment." *State v. Gaut*, 111 Wn. App. 875, 881, 46 P.3d 832 (2002) (emphasis omitted).

Ms. Melville argues that the allegations of CPS misconduct make everything in her own termination matter suspect, especially the placement of William G.M. with a paternal relative rather than the maternal one she requested. She insists that the termination must be vacated or reexamined. We disagree.

The trial court reviewed the record from the trial on the termination and failed to

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find any indication of the type of misconduct discussed in the articles and alleged by Ms. Melville. To the contrary, the trial court noted that the fundamental fact in the termination case was that because Ms. Melville was going to be incarcerated for a lengthy period of time, termination would be in the best interest of William G.M. As a result, the trial court determined that the newspaper articles cited by Ms. Melville did not concern her termination case or support a finding of mistake, fraud, newly discovered evidence, or any other grounds impacting termination of Ms. Melville's parental rights.

There were tenable grounds for denying the motion. The articles Ms. Melville relies on to support her motion did not concern her case, and the trial court found the record of the termination trial to be lacking any evidence of misconduct by DSHS. Furthermore, the trial court heard evidence that placement with the paternal relatives was determined to be in the best interest of William G.M.

The record reflects very tenable reasons for denying reconsideration. There was no abuse of discretion.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, A.C.J.

WE CONCUR:

Sweeney, J.

Siddoway, J.