COURT OF APPEALS DECISION DATED AND FILED

March 30, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. ***See*** **WIS. STAT. § 808.10 and RULE 809.62.**

Appeal No. 2009AP266

Cir. Ct. No. 1993PA113858

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN RE THE PATERNITY OF ASHLEY I.

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TYROND B.,

RESPONDENT-APPELLANT,

ANGELITA I.,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

Before Fine, Brennan and Kessler, JJ.

¶1 PER CURIAM. Tyrond B. appeals the circuit court's order denying his motion to reopen a paternity judgment. The issue is whether Tyrond B.'s action is barred by issue preclusion. We affirm.

¶2 Ashley I. was born on September 10, 1992. On July 7, 1993, Tyrond B. was adjudicated to be her father. On April 28, 1999, Tyrond B. moved to reopen the paternity judgment. On July 28, 1999, the circuit court denied the motion. Tyrond B. did not appeal. On May 7, 2001, Tyrond B. again moved to reopen the judgment based on the results of a paternity test. On July 25, 2001, after a hearing at which Tyrond B., the mother and the guardian ad litem appeared, the circuit court denied the motion on the grounds that it would not be in the best interest of Ashley I. to reopen the judgment based on the apparent bonding between Tyrond B. and Ashley I. Tyrond B. did not appeal. On October 3, 2008, Tyrond B. moved to reopen the paternity judgment for the third time. On December 17, 2008, the circuit court concluded that the judgment should not be reopened based on issue preclusion.

¶3 Issue preclusion "is a doctrine designed to limit the relitigation of issues that have been contested in a previous action between the same or different parties." ***Michelle T. v. Crozier***, 173 Wis. 2d 681, 687, 495 N.W.2d 327, 329 (1993). Issue preclusion may limit subsequent litigation if the question of fact or law was actually litigated in a previous action and is necessary to the judgment. ***Mrozek v. Intra Fin. Corp.***, 2005 WI 73, ¶17, 281 Wis. 2d 448, 463–464, 699 N.W.2d 54, 61. "If the issue actually has been litigated and is necessary to the judgment, the circuit court must then conduct a fairness analysis to determine whether it is fundamentally fair to employ issue preclusion given the circumstances of the particular case at hand." ***Id.***, 2005 WI 73, ¶17, 281 Wis. 2d at 464, 699 N.W.2d at 61. Whether issue preclusion applies to limit litigation in

an individual case is a question of law. ***Id.***, 2005 WI 73, ¶15, 281 Wis. 2d at 463, 699 N.W.2d at 61.

¶4 In determining whether it would be fundamentally fair to apply issue preclusion, courts may consider the following factors:

> (1) could the party against whom preclusion is sought, as a matter of law, have obtained review of the judgment; (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law; (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue; (4) have the burdens of persuasion shifted such that the party seeking preclusion had a lower burden of persuasion in the first trial than in the second; or (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action?

Paige K.B. v. Steven G.B., 226 Wis. 2d 210, 220–221, 594 N.W.2d 370, 375 (1999) (citation omitted).

¶5 Ashley I.'s paternity was established nearly seventeen years ago. Since then, the circuit court has decided three times that the judgment should not be reopened. Tyrond B. did not appeal either of the two prior orders denying his motions to reopen and the current motion, Tyrond B.'s third, was not brought until over seven years after the second motion. Before the second motion to reopen was denied, the circuit court held an evidentiary hearing at which all of the parties were present and Tyrond B. was able to fully present his evidence and arguments. We will not disturb the finality of this paternity judgment after such an extensive period of time where the parties previously presented the same evidence and arguments regarding the merits. There has been no change since

then that makes it fundamentally unfair to apply issue preclusion here. Therefore, we conclude that this claim is barred based on issue preclusion.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.