

STATE OF MICHIGAN
COURT OF APPEALS

MACOMB COUNTY DEPARTMENT OF SOCIAL
SERVICES, on behalf of VICTORIA LYNNE
VENTIMILGLIA and SARA ELIZABETH
VENTIMIGLIA,

UNPUBLISHED
June 18, 1996

Plaintiff-Appellee,

v

No. 175071
LC No. 90-001371

RADE KOSTADINOVSKI,

Defendant-Appellee.

Before: Cavanagh, P.J., Hood and J.J. McDonald*, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's order of filiation determining that he is the father of the minor child, Sara Elizabeth Ventimiglia (DOB 1/18/89). We affirm.

This action arose from Victoria Ventimiglia (plaintiff) filing a paternity action against defendant, claiming that he is the father of her minor child. Plaintiff testified that she met defendant in January 1988. She began dating him at the end of February 1988, and began having sex with him toward the end of March. Plaintiff continued having sexual relations with defendant until he went to Europe on May 1, 1988. Plaintiff claimed that from March through May 1988, she did not have sexual relations with anyone other than defendant.

Plaintiff testified that she became pregnant in April 1988, but did not discover her pregnancy until the end of May 1988. At that time, plaintiff called defendant in Yugoslavia to inform him of her pregnancy. Defendant claimed that the baby was not his. Plaintiff gave birth to Sara on January 17, 1988. Defendant returned to the United States in August 1988. Defendant did not provide any support for the child from the time she was born until the time of trial, nor did he have any contact with her.

Kimberly Paticka testified that she had known defendant for fifteen years and was employed at his bakery for approximately eight years. She had known plaintiff for approximately five years. She testified that plaintiff met defendant at the end of February or the beginning of March, rather than January. According to Paticka, plaintiff made a comment that she was seeing a man named Tony near the end of February or the beginning of March, and that she made a reference to Tony spending the night with her. However, on redirect examination, plaintiff testified that she dated Tony a few years earlier, and did not have a relationship with him in 1988.

The jury heard testimony that paternity blood testing had been completed. However, the results of the blood tests were not introduced at trial because a witness for plaintiff was not available, presumably to lay a foundation, and defendant did not stipulate to the admission of the tests. Additionally, the child appeared in court briefly so that the jury could observe her.

Defendant's sole argument on appeal is that the trial court abused its discretion by failing to grant him a new trial because the jury verdict was against the great weight of the evidence. When presented with a motion for a new trial, the trial court must determine whether the overwhelming weight of the evidence favors the losing party. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). This Court's function is to determine whether the trial court abused its discretion in making such a finding. *Id.* This Court gives substantial deference to the conclusion of a trial court that a verdict was not against the great weight of the evidence. *Id.* The question of whether a conviction is against the great weight of the evidence generally involves issues of credibility or circumstantial evidence. *In re Robinson*, 180 Mich App 454, 455; 447 NW2d 765 (1989). This Court will not resolve credibility issues anew. *Id.*, pp 454-455. A jury's verdict should not be set aside if there is competent evidence to support it. *Domako v Rowe*, 184 Mich App 137, 144; 457 NW2d 765 (1990).

In order to establish paternity, plaintiff was required to prove each of the following elements by a preponderance of the evidence: (1) that plaintiff had sexual relations with defendant on or about the date of conception; (2) that plaintiff gave birth to a child named Sara Elizabeth Ventimiglia on January 17, 1989; (3) that plaintiff was unmarried from conception to the date of birth of the child; and (4) that defendant is that father of the child. SJ12d 95.05. Defendant only challenges the first and fourth elements. He claims that there was no conclusive evidence as to the date of conception or the birth. Additionally, defendant does not dispute that he had sexual relations with plaintiff on or about the date of conception. Rather, he argues that because plaintiff also had sexual relations with another man around that time, there is no proof that defendant is the father.

We find that the overwhelming evidence did not favor defendant. There was evidence that plaintiff had sexual relations exclusively with defendant from March through May 1988. Plaintiff became pregnant in April 1988, and gave birth to Sara on January 17, 1988.¹ Plaintiff also testified that she saw a resemblance between Sara and defendant. The jury was given the opportunity to observe Sara.

Defendant attempted to contradict this evidence with the testimony of Paticka regarding plaintiff's relationship with Tony. Plaintiff, however, testified that she was certain that defendant was

Sara's father because she was conceived in April 1988, and she did not have sexual relations with anyone other than defendant between March and May 1988. The issue of whether defendant was Sara's father required the jury to weigh the credibility of plaintiff and Paticka. The jury apparently believed plaintiff. This Court will not assess the credibility issues anew on appeal. *In re Robinson, supra*.

Furthermore, defendant's argument that the verdict was against the great weight of the evidence because the results of the blood tests were not admitted is without merit. The results of the blood tests were not introduced at trial because a witness for plaintiff was not available, and defendant did not stipulate to their admission. Because there was competent evidence to support the jury's verdict that defendant is Sara's father, we conclude that the trial court did not abuse its discretion in denying his motion for a new trial.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald

¹ Because witness testimony is evidence, plaintiff's testimony regarding the dates of Sara's conception and birth was appropriate evidence for the jury to consider. Moreover, defendant failed to challenge the accuracy of those dates at trial or on appeal. Therefore, defendant's argument that the verdict is against the great weight of the evidence because plaintiff failed to provide any record of the dates of the conception or the birth is without merit.