

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN B. PRICE,

Plaintiff-Appellant,

v

GERALD WILLINGHAM and DARLA
WILLINGHAM,

Defendants-Appellees.

UNPUBLISHED

January 14, 2000

No. 213039

Ionia Circuit Court

LC No. 96-017580 DP

Before: Sawyer, P.J., and Gribbs and McDonald, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting defendants' motion for relief from judgment and setting aside a previous order of paternity and parental rights favoring plaintiff. We affirm.

At the time plaintiff filed his paternity action, MCL 722.714(7); MSA 25.494(7) provided:

The father or putative father of a child born out of wedlock may file a complaint in the circuit court in the county in which the child or mother resides or is found, praying for the entry of the order of filiation as provided for in [MCL 722.717; MSA 25.497].

“Child born out of wedlock” is defined by MCL 722.711(a); MSA 25.491(a) as

a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child *that the court has determined* to be a child born or conceived during a marriage but not the issue of that marriage. (Emphasis added.)

Plaintiff argues that the Supreme Court, in *Girard v Wagenmaker*, 437 Mich 231; 437 NW2d 231 (1991), erred in concluding that the phrase “which the court has determined,” contained in MCL 722.711(a); MSA 25.491(a), requires a *prior* trial court determination that a child was born out of wedlock *before* a putative father has standing to commence a paternity action. We disagree.

First, a decision of the Supreme Court is binding on this Court until the Supreme Court overrules itself. *Hauser v Reilly*, 212 Mich App 184, 187; 536 NW2d 865 (1995). It is the Supreme Court's obligation to overrule or modify its case law, and until and unless it takes such action, this Court and all lower courts are bound by its authority. *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 51-52; 575 NW2d 79 (1997). We are thus precluded from revisiting a holding of the Supreme Court. See *O'Dess v Grand Trunk W R Co*, 218 Mich App 694, 700; 555 NW2d 261 (1996).

Nevertheless, we would decline to limit the application of the ruling in *Girard, supra*, in the present case.

We are constrained to give meaning to all the words of a statute, *Aikens v Dep't of Conservation*, 387 Mich 495, 499; 198 NW2d 304 (1972), because "it will not be presumed that the legislature intended to do a useless thing." *Girard, supra* at 244, quoting *Klopfenstein v Rohlfing*, 356 Mich 197, 202; 96 NW2d 782 (1959). Moreover, the literal reading of the "has determined" language to require a prior determination that the child is not the issue of a marriage comports with the traditional preference for respecting the presumed legitimacy of a child born during a marriage. *Girard, supra* at 246. The statutory "has determined" language actually comports with the Legislature's overall concern about the natural mother's rights in divorce or support actions where the husband was determined not to be the biological father of the child. See *Girard, supra* at 246-247. Allowing a putative father standing in a paternity action does not promote this concern; the only possible conclusion can be that the circuit court cannot decide paternity without meeting the prior determination requirement. *Id.* at 247. We therefore conclude that the trial court properly ruled that because no previous action had taken place to determine whether the child was born out of wedlock, plaintiff's petition for paternity could not be maintained and he had no standing to bring a claim under MCL 722.714(7); MSA 25.494(7). See *Girard, supra* at 242-243.

Plaintiff next argues that defendants waited too long before filing their motion to set aside the order of paternity. We disagree. A trial court's decision on a motion for relief from judgment is governed by MCR 2.612(C). We review a trial court's decision whether to grant relief from judgment for abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

The record shows that the trial court's paternity order favoring plaintiff was the result of a default judgment against defendants. A court may set aside an entry of default and a judgment by default in accordance with MCR 2.612. MCR 2.603(D)(3).

(1) A motion to set aside a default or a default judgment except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

MCR 2.612 provides, in pertinent part:

(C) Grounds for Relief from Judgment.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) any other reason justifying relief from the operation of the judgment.

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken.

Even without any action by the parties, the trial court has a discretionary right on its own to open, vacate, or set aside a judgment inadvertently entered or for an error in law. *L & S Bearing Co v Morton Bearing Co*, 355 Mich 219, 225; 93 NW2d 899 (1959).

Moreover, MCR 2.613(A) addresses the limitations placed on courts regarding the correction of errors and states:

(A) Harmless Error. An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

After reviewing the record, we conclude that the trial court's error of law in granting plaintiff a default judgment and establishing him as the child's biological father, without a prior determination of paternity, was not consistent with substantial justice and therefore cannot be deemed harmless. Whether as a result of defendant's motion to set aside the paternity order or as a result of the trial court's own initiative, the order was properly set aside. Although defendants may have waited more than one year to bring their motion, MCR 2.612(C)(1)(f) provided the trial court with proper authority to vacate the paternity order. See also MCR 2.613(A).

Lastly, plaintiff argues that application of the Supreme Court's holding in *Girard, supra*, results in a violation of his due process rights under the United States and Michigan Constitutions. Again, we disagree.

We review constitutional issues de novo as questions of law. *Mahaffey v Attorney General*, 222 Mich App 325, 334; 564 NW2d 104 (1997).

The federal and Michigan constitutions guarantee that the state cannot deny people "life, liberty, or property without due process of law." US Const, Am XIV; Const 1963, art 1, § 17; see also *Kampf v Kampf*, 237 Mich App 377, 381; ___ NW2d ___ (1999). Due process is similarly defined under both constitutions, *Palmer v Bloomfield Hills Bd of Ed*, 164 Mich App 573, 576; 417 NW2d 505 (1987). A statute is presumed constitutional unless the contrary is plainly evident. *Kampf, supra*, slip op at 3. The party challenging the constitutionality of a statute bears the burden of showing its unconstitutionality. *Id.*

The United States Supreme Court, in *Michael H v Gerald D*, 491 US 110; 109 S Ct 2333; 105 L Ed 2d 91 (1989), determined that a putative father has no protected liberty interest in establishing and maintaining a relationship with his child when the child's mother gave birth to the child while married to another man; the United States Constitution does not grant an unwed father parental interests comparable to that of a married father. *Id.* at 130. Justice Brennan, dissenting in *Michael H, supra*, specifically stated that an unwed father's mere biological link, without a "substantial parent-child relationship," with his child was insufficient to establish a liberty interest. *Id.* at 142-143. In *Hauser, supra*, we agreed with the reasoning of Justice Brennan, concluding that if the plaintiff had established a substantial relationship with his child, he would have had a protected liberty interest in that relationship, entitling him to due process of law under the Michigan Constitution. *Id.* at 188.

The record in the present case fails to show that plaintiff developed a "substantial relationship" with the child sufficient to ensure him due process protection; the child's only association with plaintiff consisted of several visits to his place of incarceration after her birth. Thus, plaintiff's only claim to paternity is limited to a "mere biological link" with the child. We therefore conclude that plaintiff's due process argument cannot be validated in this appeal. See *Michael H, supra*; see *Hauser, supra*.

Because the child in the present case was born when her mother was married to another man, plaintiff's due process claim under the United States Constitution also fails. See *Michael H, supra*.

Affirmed.

/s/ David H. Sawyer
/s/ Roman S. Gribbs
/s/ Gary R. McDonald