COURT OF APPEALS
DECISION
DATED AND FILED

June 10, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3252-FT

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

IN RE THE PATERNITY OF COLE D. S.:

JACQUELINE M. L.,

PETITIONER-RESPONDENT,

V.

KOREY D. S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Jackson County: ROBERT W. RADCLIFFE, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Korey D.S. appeals from an order vacating a paternity judgment against him.[1] Korey claims he was entitled to full reimbursement of the child support payments which he had made, as well as contributions toward his attorney fees and the paternity test. For the reasons discussed below, we agree that Korey should recover those child support payments which were on deposit with the Jackson County Clerk of Court at the time the appeal was filed, but we reject his other claims.

BACKGROUND

Jacqueline M.L. bore a child, Cole D.S., on June 29, 1992. She named Korey D.S., the man with whom she was then living, as the only potential father when she applied to the Medical Assistance Program, and on December 2, 1992, Korey's paternity of Cole was adjudicated by stipulation. Korey was not represented by counsel.

On December 17, 1996, after Korey and Jacqueline separated, Korey was ordered to pay child support in the amount of $183 per month. Korey made sporadic payments over the next year and a half until the court finally found him in contempt on May 11, 1998, and ordered him to pay $2,700 in back support as a purge condition.

On July 6, 1998, Korey obtained the results of a DNA test which excluded him as Cole's biological father. On July 10, 1998, he moved to reopen the paternity judgment. On August 4, 1998, the court agreed to reopen the paternity judgment, and stayed payment of the child support arrears subject to the

[1] This is an expedited appeal under RULE 809.17, STATS.

outcome of Korey's motions to set aside the paternity judgment and the arrears. On August 12, 1998, Korey deposited the $2,700 arrears with the Jackson County Clerk of Court.

After a hearing held on September 17, 1998, the court vacated the paternity judgment pursuant to § 806.07(h), STATS. However, the court determined that the $2,700 which Korey had deposited for back child support would be forfeited to the Jackson County Child Support Agency, and it denied Korey's requests for reimbursement of the $1,427 in child support payments which had already been disbursed to Jacqueline, and for contributions toward his attorney fees and the $445 bill for the DNA test. By a supplemental order entered on October 26, 1998, the court ordered the guardian ad litem's fee of $584.50 to be deducted from the $2,700 on deposit with the clerk of court, and the balance of that amount to be held until further order of the court, pending Korey's appeal.

STANDARD OF REVIEW

The parties agree that motions for relief from final judgments are reviewed under the erroneous exercise of discretion standard. ***Kovalic v. DEC Inernat'l***, 186 Wis.2d 162, 166, 519 N.W.2d 351, 353 (Ct. App. 1994). The trial court also has discretion to determine contributions to costs and attorney fees. *See, e.g.,* ***Van Offeren v. Van Offeren***, 173 Wis.2d 482, 499, 496 N.W.2d 660, 666 (Ct. App. 1992). We will sustain discretionary acts by the trial court so long as the court "examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Modica v. Verhulst***, 195 Wis.2d 633, 650, 536 N.W.2d 466, 474 (Ct. App. 1995).

ANALYSIS

Under § 806.07, STATS., the trial court may relieve a party from a final judgment "upon such terms as are just." Here the terms for relief from the paternity judgment included the trial court's determination that none of Korey's child support payments would be returned to him.

We do not consider it unjust, and therefore see no misuse of discretion, for the trial court to determine that the $1,427 in child support payments, which Korey had made and which had already been distributed pursuant to a paternity judgment which was in effect at the time of the payments, need not be returned. This is particularly true since Korey waited over five-and-a-half years before challenging the paternity judgment, during which time his child support payments were presumably spent, and no payments were collected from anyone else, as they might have been had the judgment been challenged sooner.

The $2,700 in back child support payments which have not yet been distributed stands on different equitable footing, however, because it was deposited with the clerk of court *after* Korey had moved to vacate the paternity judgment and placed the respondents on notice that he would be seeking to set aside the arrears. The trial court indicated it would be equitable for Korey to forfeit the deposited funds because he had failed to comply with the support order when it was in effect and his primary motivation for seeking to vacate the paternity judgment was to escape his child support obligations. However, seeking to evade a support obligation to someone else's child[2] is not quite the same as

[2] The record shows that Korey had become aware of the fact that Cole was likely not his biological son by 1996, but he lacked the money for a retainer to hire an attorney to challenge his paternity at that time.

seeking to avoid a support obligation to one's own child. As was noted in ***State ex rel. MLB v. DGH***, 122 Wis.2d 536, 555, 363 N.W.2d 419, 428 (1985):

> a court's adherence to a paternity agreement entered into by an 18 year-old putative father, without counsel, without a trial, without a blood test, when a subsequent blood test offered in proof positively excludes the male as the father, might very well undermine the public's faith in our system of justice.

We think the same logic may be applied to the disbursement of child support arrears which have been shown to be based upon a flawed paternity judgment. We therefore conclude the trial court erroneously exercised its discretion when it ordered the $2,700 to be forfeited to the county. Accordingly, we reverse that portion of the trial court's order. However, Korey does not challenge the trial court's deduction of $584.50 from the deposited funds for the guardian ad litem. It is therefore unnecessary to remand that issue to the trial court. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis.2d 475, 491, 588 N.W.2d 285, 292 (issues not raised on appeal are deemed abandoned). Accordingly, upon remand, the trial court shall make arrangements for the return of the $2,115.50 still on deposit to Korey.

Korey also maintains the trial court should have ordered Jacqueline to pay him $445 for the DNA test. However, we note that counsel indicated in a letter to the court dated April 14, 1998, that the genetic test "would be paid for entirely by [Korey]." The trial court did not erroneously exercise its discretion by holding Korey to counsel's representation.

Finally Korey argues that the trial court should have ordered Jacqueline to contribute to his attorney fees. Attorney fees generally may be awarded upon a showing of need, ability to pay and the reasonableness of the fees.

See § 767.262(1)(a), STATS.; ***Van Offeren***, 173 Wis.2d at 499, 496 N.W.2d at 666. The trial court is also entitled to order a contribution to attorney's fees based upon a finding of "overtrial," defined as "needless days of trial and extra preparation time." ***Ondrasek v. Ondrasek***, 126 Wis.2d 469, 483, 377 N.W.2d 190, 196 (Ct. App. 1985). Korey does not explain how either standard is satisfied here, and does not cite any authority which would entitle him to a contribution toward his attorney fees on some other basis. This court need not address undeveloped and unsupported arguments. ***State v. O'Connell***, 179 Wis.2d 598, 609, 508 N.W.2d 23, 27 (Ct. App. 1993).

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

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