Appeal No.   **2015AP714**

STATE OF WISCONSIN

Cir. Ct. Nos. 1999PA36
1999PA35PJ

IN COURT OF APPEALS
DISTRICT III

IN RE THE PATERNITY OF D. D. S. AND D. D. S.:

STATE OF WISCONSIN AND SHELLIE K. RICCI P/K/A SHELLIE K. TALLEY,

PETITIONERS-RESPONDENTS,

V.

BRETT P. CHRISTIANSON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1   PER CURIAM. Brett Christianson appeals an order denying his motion under WIS. STAT. § 806.07 (2013-14)[1] for relief from January 19, 2000

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[1] All references to the Wisconsin Statutes are to the 2013-14 version.

stipulations and judgments finding he is the father of Shellie Talley's twin sons. The circuit court denied the motion, concluding the motion was not filed within a reasonable time and the need for finality trumped Christianson's claim that the stipulations were the product of Talley's fraud. We affirm the order.

BACKGROUND

¶2   The State and Talley commenced these paternity actions in 1999 based on Talley's affidavit stating she had intercourse with Christianson during the conceptive period. In January 2000, the parties entered a stipulation that Christianson was the twins' father. The stipulation included the statement, "The mother of the child was married; however, the marital presumption under s. 891.31, Wis. Stats. does not apply, because the conception and birth of the child did not occur while the mother was married." Identical stipulations, judgments and support orders were entered as to both of the children.

¶3   In May 2004, represented by counsel, Christianson filed a motion requesting genetic testing and to reopen the paternity judgments pursuant to WIS. STAT. § 806.07. He noted he was not represented by counsel at the time of the earlier stipulations and judgments. He said on one occasion when speaking with Talley's mother, she made reference to "the other guy," but would not elaborate who she was talking about, causing Christianson to suspect he was not the father. The guardian ad litem opposed reopening the paternity issue. The parties reached a stipulation to conduct genetic testing, the results of which would be sealed and delivered to the judge to decide whether to release the results. The circuit court ordered the records to remain sealed. From that order, Christianson assumed he was not the father and again, with the assistance of counsel, asked to learn the

results of the paternity test. The court denied the motion to reopen the paternity judgment in January 2005.

¶4   In April 2005, again represented by counsel, Christianson filed another motion for relief from the judgments pursuant to WIS. STAT. § 806.07(1)(h). He also sought relief from the 2004 stipulation to conduct genetic testing and the 2005 order dismissing his motion to reopen the paternity judgments. The court denied the motion, and Christianson appealed. In May 2006, this court affirmed the order.

¶5   In October 2012, Christianson filed a motion in Minnesota to vacate the Wisconsin support order based on Talley's alleged fraud on the court based on her lying about her marital status. He alleged he recently discovered Talley was not divorced from her husband until 2001. He alleged she lied about being single during their relationship, and he quoted the part of the stipulation in which they stated the marital presumption under WIS. STAT. § 891.39 did not apply because the conception and birth did not occur while the mother was married. Talley responded, averring she learned of her pregnancy in March 1999 and did not have sexual intercourse with anyone else "in that timeframe." She contended the allegedly fraudulent statement in the stipulation—that the conception and birth did not occur while she was married—contradicts itself and clearly was an error. She contended Christianson should have raised questions about her marital status upon reading "The mother of the child was married." She further averred her husband could not possibly be the children's father because they separated in 1992 after one year of their marriage, and she had no contact with him until he approached her with divorce papers in 2001. The Minnesota court denied Christianson's motion.

¶6   In August 2014, Christianson filed the present motion for relief from the paternity judgments, again alleging Talley's fraud on the court based on her alleged misrepresentation of her marital status at the time the children were conceived and born. He also characterized his discovery of Talley's marital status as newly discovered evidence and argued the paternity judgments were void because her husband was not given notice of the proceedings or an opportunity to participate. Christianson testified Talley told him she was single at the time of their relationship. He said he first learned she was still married at the time of the paternity stipulation when he saw the 2001 divorce judgment as a part of the Minnesota court proceedings.

¶7   Talley testified she did not have sexual relations with anyone other than Christianson during the conceptive period. When asked whether the statement in the stipulation regarding her marital status was untrue, she responded, "No. I was married. That's what it states." She conceded, however, that the portion of the sentence that says the conception and birth did not occur while she was married was untrue. She testified that, during their relationship, she told Christianson she was married, but she did not directly answer when during their relationship she told him about her marital status. She testified she was not represented by counsel at the time she signed the stipulation and did not know of the statutory presumption that her husband was the father of the children.

¶8   In their closing arguments, Talley suggested the circuit court should unseal the paternity results. She said, "I don't have any other father to name. I was not with my husband. I want my kids to be happy, but I also want them to know the truth." The guardian ad litem opposed reopening the paternity action, noting, "It's because of old documents, old witnesses, bad memory, confusion, and

that's all what we heard today." The guardian ad litem argued the issue of fraud was fully adjudicated in the Minnesota action and should not be relitigated.

¶9   The circuit court noted that, at the time of the 2004 proceedings, Christianson indicated he "was going to be the father, notwithstanding the paternity test." The court found there was misrepresentation on the original child support applications, which caused the county child support director to draft the stipulation with the erroneous or inconsistent information about Talley's marital status. Based on the need for finality, Christianson's 2004 representation that he would act as the children's father regardless of the test results, and the fact that fourteen years had passed since the paternity adjudication, the court ordered the genetic test results to remain sealed and denied the motion to reopen the paternity judgments.

DISCUSSION

¶10   The time limits for filing a motion for relief from a judgment are set out in WIS. STAT. § 806.07(2). The motion must be filed within a reasonable time, and if based on § 806.07(1)(a) or (c), not more than one year after the judgment was entered. Subsection (1)(c) includes fraud, misrepresentation, or other misconduct of an adverse party. Christianson circumvents the one-year restriction by bringing the motion under subsection (1)(h), "any other reason justifying relief from the operation of the judgment." The one-year limit does not apply to motions under subsection (1)(h) when the moving party alleges fraud, provided he or she can establish exceptional circumstances. *See State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 551, 363 N.W.2d 419 (1985). However, regardless of whether the moving party establishes exceptional circumstances to defeat the one-year restriction, the motion must still be made within a reasonable time. WIS.

STAT. 806.07(2). Whether a motion to reopen a judgment was filed within a reasonable time is committed to the circuit court's discretion. ***Rhodes v. Terry***, 91 Wis. 2d 165, 170, 280 N.W.2d 248 (1979).

¶11 The circuit court properly exercised its discretion when it concluded that Christianson's motion was not filed within a reasonable time. The motion was filed fourteen years after the paternity judgments, more than nine years after Christianson, while represented by counsel, stipulated to dismissing his initial challenge to the judgments, and nearly two years after he learned of Talley's true marital status at the time of the stipulation. Talley's marital status could have been discovered at the time of the initial paternity adjudication. The circuit court also properly considered the guardian ad litem's objection to Christianson's motion, noting that the children have only known him as their father, and continuation of that relationship and support is in their best interests.

¶12 Finally, Christianson's focus on the rebuttable presumption that Talley's husband was the children's father provides no basis for reopening the judgments. Talley's uncontradicted testimony that she had no interaction with her husband for seven years before the children were conceived is sufficient to rebut the presumption. In addition, Christianson has no standing to vindicate a third-party's constitutional rights. *See **Mast v. Olsen***, 89 Wis. 2d 12, 16, 278 N.W.2d 205 (1979). The circuit court could properly conclude the interest in finality trumped Christianson's attempt to apply the presumption that Talley's husband is the father and his suspicion that he is not the father.

> *By the Court.*—Order affirmed.

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