COURT OF APPEALS
DECISION
DATED AND FILED

May 28, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0061

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

IN RE THE PATERNITY OF PHILLIP J.F.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN ON BEHALF OF
DARLA J.S.,

PETITIONER-RESPONDENT,

V.

JESUS G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: MORIA KRUEGER, Judge. *Affirmed.*

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

PER CURIAM. Jesus G. appeals from an amended order denying his motion to reopen a paternity judgment. The issue is whether the circuit court

erroneously exercised its discretion in denying his motion to reopen that judgment and to order blood tests. Because we conclude that the circuit court did not erroneously exercise its discretion, we affirm.

Jesus appeared *pro se* at a 1991 paternity hearing and the circuit court found that he "acknowledged to the Court in both English and Spanish that he understood his rights and wanted to admit paternity." The judgment stated that Jesus "admitted paternity, having knowingly waived his right to an attorney, blood tests, further pretrial proceedings, and jury trial, and stipulated to the facts, orders and judgment." Because Jesus did not request blood tests, none were ordered. In 1993, Jesus stipulated to pay increased support.

In 1996, Jesus moved to reopen the judgment, pursuant to § 806.07(1)(h), STATS., and sought blood tests because: (1) the child's mother (Darla) saw other men during the conceptive period; (2) Darla did not report Jesus's surname on the birth certificate as that of the child (Phillip); (3) Jesus is Hispanic with a dark complexion, black hair and a stocky build, whereas Phillip has a lighter complexion, light hair and a slim build; (4) in 1992, Darla consistently refused to have blood tests taken to determine Phillip's paternity; (5) in 1992 and 1993, Darla told Phillip numerous times (in Jesus's presence) that Jesus was not his father and forbade Phillip from accepting gifts from Jesus; and (6) in 1993, Darla repeatedly "threatened to take [Jesus] to Court" to declare that he was not Phillip's father. Jesus had admitted paternity because, as a recent Mexican immigrant, he believed Darla when she told him that he was Phillip's father. Jesus explained that Darla was his only girlfriend since arriving in the United States and he "accepted her word as loyalty and trust are customary in [his] native country of Mexico."

The circuit court denied the motion because: (1) it was not brought within a reasonable time; and (2) there were no extraordinary circumstances to warrant relief. Jesus appeals.

Section 806.07(1)(h), STATS., allows a court to relieve a party from a judgment for "[a]ny ... reasons justifying relief from the operation of the judgment." This court reviews an order denying a motion for relief under § 806.07, STATS., for an erroneous exercise of discretion. *See* ***Nelson v. Taff***, 175 Wis.2d 178, 187, 499 N.W.2d 685, 689 (Ct. App. 1993) (citation omitted). "[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." ***LaRocque v. LaRocque***, 139 Wis.2d 23, 27, 406 N.W.2d 736, 737 (1987) (citations omitted). "We will not find an erroneous exercise of discretion if the record shows that the [circuit] court exercised its discretion and that there is a reasonable basis for its decision." *See* ***Nelson***, 175 Wis.2d at 187, 499 N.W.2d at 689 (citation omitted).

Although Jesus acknowledges that he must show an erroneous exercise of discretion to obtain a reversal, he argues the facts as if the circuit court's ruling were not entitled to deference, rather than demonstrating how the circuit court erroneously exercised its discretion.[1] Upon reviewing the findings of

[1] Jesus relies on ***State ex rel. Cynthia M.S. v. Michael F.C.***, 181 Wis.2d 618, 511 N.W.2d 868 (1994), because of the factual similarities to this appeal, namely the movant's lack of sophistication and inexperience with the legal system. *See* ***id.*** at 621-23, 511 N.W.2d at 870. But, the determinative factor in ***Cynthia M.S.*** was the circuit court's proper exercise of discretion, not the movant's lack of sophistication. *See* ***id.*** at 632, 511 N.W.2d at 874. Jesus also relies on ***Nehls v. Nehls***, 151 Wis.2d 516, 522, 444 N.W.2d 460, 462 (Ct. App. 1989). However, in ***T.E.D. v. P.S.G.***, 170 Wis.2d 231, 237, 487 N.W.2d 644, 646 (Ct. App. 1992), we distinguished ***Nehls*** because it was a divorce action in which the issue of paternity was not contested or (continued)

fact, conclusions of law, paternity judgment, Jesus's affidavit, the transcript of the motion hearing, and the amended order, we conclude that the circuit court did not erroneously exercise its discretion in denying Jesus's motion to reopen the stipulated paternity judgment.

Because Jesus's suspicions about Phillip's paternity began in 1992, the circuit court found no acceptable reason for his failure to challenge the paternity judgment for more than three years. The circuit court found that Jesus's cultural differences and his prior trust in Darla did not constitute extraordinary circumstances under § 806.07(1)(h), STATS.[2] It also concluded that "there [wa]s no basis" to reopen the judgment because blood tests would not be in Phillip's best interests. We conclude that the circuit court applied the facts (as Jesus presented them) to the law under § 806.07(1)(h), and provided a reasonable basis for its decision. Consequently, we conclude that the circuit court did not erroneously exercise its discretion.

By the Court.—Order affirmed.

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litigated. ***T.E.D.*** is similar to this case because it involves an action for paternity, not divorce. Consequently, ***Nehls*** is inapplicable.

[2] The circuit court noted that Jesus

> was at liberty to at least consult with an attorney or to ask the Commissioner [at the paternity hearing] questions. [The circuit court] c[ould] not believe, different as the cultures may be, that … [e]very man in Mexico accepts the statement by a woman that he is the father of the child she has borne. [The circuit court] ha[s] difficulty believing that every male in Mexico simply accepts that as truth and then takes on the responsibilities of fatherhood. Those are some pretty basic human conditions that [the circuit court] do[es]n't think necessarily change by virtue of a change in cultures.

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