

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

**FILED**  
JAN 16 2018

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT BY \_\_\_\_\_ DEPUTY  
(City of St. Louis)

\_\_\_\_\_)  
)  
Petitioner, )  
) No. 1722-FC02449  
vs. )  
) Division No. 27  
\_\_\_\_\_)  
)  
Respondent. )

ORDER

The Court has before it Petitioner Walter Walls' Petition to Challenge, Set Aside, and Rescind the Acknowledgement of Paternity Based on Fraud, Duress, and Material Mistake. The Court now rules as follows.

On or about March 3, 1995, the Court entered a default judgment finding Petitioner to be the biological father of a minor child, \_\_\_\_\_ now age 22. The Court entered a judgment approving the modification of an administrative child support order on July 25, 1997.

Petitioner has paid approximately \$10,000 in child support for \_\_\_\_\_ and currently owes approximately \$39,740.00 in child support arrears for \_\_\_\_\_.

On or about August 3, 2016, Petitioner and [REDACTED] took a blood test at the DNA Diagnostic Center. The blood test showed that Petitioner was 100% excluded from being the biological father of [REDACTED].

Petitioner now seeks to have the 1995 judgment of paternity set aside or rescinded, and seeks an abatement of all remaining child support owed by Petitioner. Petitioner also seeks reimbursement of \$10,000 from [REDACTED], [REDACTED] mother, for all child support paid by Petitioner and received by [REDACTED].

Pursuant to §210.839 RSMo, if a party fails to file an answer or otherwise appear in response to a paternity action, a default judgment shall be entered against the party. The judgment or order determining the existence of the parent and child relationship "is determinative for all purposes." §210.841 RSMo. A default judgment of paternity is a judgment which may be, but in this case was not, appealed. See State ex. rel. Moore v. Hawkins, 200 S.W.3d 91, 96 (Mo.App. W.D. 2006).

Rule 74.05(d) provides that a default judgment may be set aside upon facts constituting a meritorious defense and for good cause shown, but the motion "shall be made within a reasonable time not to exceed one year after the entry of the default

judgment." Under Rule 74.06, a judgment may be set aside because of mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation, other misconduct of an adverse party, or irregularity; but only if the motion to set aside is made within one year of the judgment.

Section 210.854.1 RSMo allows a judgment of paternity or child support to be set aside in certain circumstances, as follows:

In the event of the entry of a judgment or judgments of paternity and support, whether entered in one judgment or separately, a person against whom such a judgment or judgments have been entered may file a petition requesting a circuit court with jurisdiction over the subject child or children to set aside said judgment or judgments in the interests of justice and upon the grounds set forth in this section. Such a petition may be filed at any time prior to December 31, 2011. **After that date, the petition shall be filed within two years of the entry of the original judgment of paternity and support or within two years of entry of the later judgment in the case of separate judgments of paternity and support and shall be filed in the county which entered the judgment or judgments of paternity and support.** Any such petition shall be served upon the biological mother and any other legal guardian or custodian in the same manner provided for service of process in the rules of civil procedure. The child or children shall be made a party and shall have a guardian ad litem appointed for the child or children before any further proceedings are had. If the child or children are recipients of IV-D services as defined in subdivision (8) of section 454.460, the family support division shall also be made a party and shall be duly served.

(Emphasis added.) Not only is Petitioner many years out of time to file a motion under this section, but he does not present grounds

to have the judgment set aside within the meaning of the section. Subsection 2(1) allows the motion to be filed where there is an allegation that genetic testing was conducted "within ninety days prior to the filing of such petition" that indicates that the person has been excluded as the child's father. Petitioner alleges that genetic testing was performed on August 3, 2016; Petitioner filed this action more than a year later, on August 15, 2017.

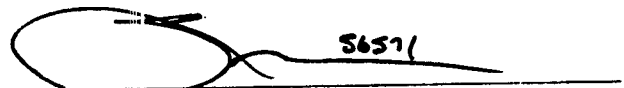
Notwithstanding the foregoing, a paternity judgment can be set aside if it can be shown that it was obtained by extrinsic fraud. Walker v. Walker, 280 S.W.3d 634, 636 (Mo.App. W.D. 2009). Extrinsic fraud is defined as "fraud that induced a party to default or to consent to judgment against him." State ex rel. Lowry v. Carter, 178 S.W.3d 634, 637 (Mo.App. W.D. 2005). Petitioner has not alleged or shown that the 1995 default judgment was procured by extrinsic fraud. He merely alleges that "it is upon information and belief, that at the time of the administrative order Respondent knew that Petitioner was not the biological Father of the then minor child." This allegation fails to invoke the equitable powers of the court. See Walker, 280 S.W.3d at 637.

"It may seem unfair to impose a child-support obligation on a person who is not biologically related to the child, but there are other principles at stake that must be honored, including the

finality of judgments, the orderly disposition of legal disputes, and the best interests of a child..." Moore, 200 S.W.3d at 96. The Court finds that is has no authority to grant the relief requested by Petitioner.

THEREFORE, it is Ordered and Decreed that Petitioner Walter Walls' Petition to Challenge, Set Aside, and Rescind the Acknowledgement of Paternity Based on Fraud, Duress, and Material Mistake is DENIED.

SO ORDERED:

  
SCOTT MILLIKAN, Judge

Dated: 1-18-18