[Cite as *State ex rel. Jackson Cty. Child Support Enforcement Agency v. Long*, 2004-Ohio-2184.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
JACKSON COUNTY

THE STATE OF OHIO EX REL. JACKSON COUNTY CHILD SUPPORT ENFORCEMENT AGENCY,	:	
and	:	Case No. 03CA1
PATRICIA E. HAMAD,	:	
and	:	DECISION AND JUDGMENT ENTRY
LUKE BRYAN HAMAD,	:	
	:	**Released 4/22/04**
Plaintiffs-Appellees,	:	
v.	:	
MARK W. LONG,	:	
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT:	Richard M. Lewis Andrew T. White 295 Pearl Street P.O. Box 664 Jackson, Ohio 45640
COUNSEL FOR APPELLEE JACKSON COUNTY CHILD SUPPORT ENFORCEMENT AGENCY:	Timothy E. Forshey 25 East South Street Jackson, Ohio 45640
GUARDIAN AD LITEM:	William C. Martin P.O. Box 926 Jackson, Ohio 45640

EVANS, J.

{¶1} Defendant-Appellant Mark W. Long appeals the decision of the Jackson County Court of Common Pleas, Juvenile Division, which ordered that he pay retroactive child support. Appellant asserts that the trial court abused its discretion when it determined that the action for child support was not barred by the affirmative defense of laches. Appellant also asserts that the trial court was without jurisdiction to decide the paternity and child support action because Plaintiffs-Appellees Patricia E. Hamad and the Jackson County Child Support Enforcement Agency failed to exhaust their administrative remedies as required by R.C. 3111.22.

{¶2} For the reasons that follow, we disagree with appellant's arguments and affirm the judgment of the trial court.

Lower Court Proceedings

{¶3} Plaintiff-Appellee Patricia E. Hamad and Defendant-Appellant Mark W. Long were involved in a romantic relationship which ended in May 1990. At the time their relationship ended, Hamad and Long discussed the possibility that Hamad was pregnant. However, Hamad's pregnancy had not been confirmed, and Long was uncertain as to whether he was the father of the child. The couple had no contact with each other after their relationship ended until December 1990.

{¶4} In December 1990 Hamad, who was nearing the end of her

pregnancy, and Long talked with each other on two occasions, once via telephone and another time at Hamad's residence. During these conversations Long attempted to reconcile with Hamad, but Hamad was unwilling to do so. At the time, Long suspected that he may be the unborn child's father but was uncertain. It was apparent to Long that Hamad wanted to be left alone.

{¶5} On January 13, 1991, Hamad gave birth to a son, Plaintiff-Appellee Luke Bryan Hamad. Hamad declined to put any putative father's name on the child's birth certificate. After the child's birth, Hamad had no contact with Long and Long had no contact with Hamad, although both of them were aware of where the other lived.

{¶6} In December 1998 Hamad sent a letter to Long explaining that he was Luke's father and requesting payment of $1,000 within seven days. Hamad also informed Long that she preferred to keep things as they were. Long made no response to Hamad's letter, and she sought assistance from Plaintiff-Appellee the Jackson County Child Support Enforcement Agency (JCCSEA). In January 1999 the agency and Hamad, in her individual capacity and on behalf of her son, filed a parentage action against Long. The complaint also sought current and past child support commencing from the date of Luke's birth. Finally, the complaint alleged that all administrative remedies

had been exhausted due to the alleged father's nonparticipation and included a "Waiver of the Administrative Process" signed by Hamad. JCCSEA also moved for genetic testing in order to determine Luke's paternity. The trial court granted the motion, ordering genetic testing to determine if Long was Luke's father.

{¶7} Long subsequently filed his answer and specifically denied paternity and that administrative proceedings were exhausted, stating that he has never been contacted by JCCSEA and was not asked to participate in any administrative proceedings. The results of the genetic testing established that Long was Luke's father, and Long admitted paternity.

{¶8} In November 1999 a hearing was held before the trial court, after which the parties submitted briefs on certain issues including current child support and arrearages. Subsequently the trial court issued its decision, ordering Long to pay current and past child support. Long was ordered to pay $61.20 per week in current child support. However, the trial court did not determine the amount of child support arrearages that Long would be required to pay.

{¶9} Long appealed the decision of the trial court. However, we dismissed the appeal for lack of a final appealable order due to the failure to reduce the child support arrearages to a specific amount. See *State ex rel. Jackson County Child Support Enforcement Agency v. Long*, Jackson App. No. 00CA15,

2002-Ohio-408.

{¶10} On remand the trial court ordered appellant to pay child support arrearages from January 13, 1991, through January 27, 1999, in the amount of $54,565.03.

The Appeal

{¶11} Long timely filed his notice of appeal. This Court referred the matter to mediation which, unfortunately, did not resolve the case. Appellant therefore presents the following assignments of error for our review.

{¶12} First Assignment of Error: "The trial court erred by not applying the doctrine of laches and, thereby, determining that appellant must pay child support arrearage."

{¶13} Second Assignment of Error: "The trial court erred by ordering back child support and current child support when the Jackson County Child Support Enforcement Agency failed to exhaust all administrative remedies to establish paternity."

I. Laches and Child Support

{¶14} In his first assignment of error, appellant argues that the trial court erred by not applying the doctrine of laches to extinguish appellees' claims for retroactive child support. Laches constitutes "'an omission to assert a right for an unreasonable and explained length of time, under circumstances prejudicial to the adverse party. It signifies delay independent of limitations in statutes. It is lodged

principally in equity jurisprudence.'" *Wise v. Wise* (1993), 86 Ohio App.3d 702, 705, 621 N.E.2d 1213, quoting *Connin v. Bailey* (1984), 15 Ohio St.3d 34, 35, 472 N.E.2d 328, quoting *Smith v. Smith* (1957), 107 Ohio App. 440, 146 N.E.2d 454. Delay itself does not give rise to the defense of laches. Id. In order to invoke a laches defense the defending party must show that he has been materially prejudiced by the delay of the party asserting the claim. Id.; see, also, *Smith v. Smith* (1959), 168 Ohio St. 447, 156 N.E.2d 113, paragraph three of the syllabus.

{¶15} "Material prejudice is established upon a showing of either (1) the loss of evidence helpful to the defendant's case; or (2) a change in the defendant's position that would not have occurred had the plaintiff not delayed in asserting her rights." *Weber v. Weber*, Jackson App. 01CA7, 2001-Ohio-2648, citing *State ex rel. Donovan v. Zajac* (1998), 125 Ohio App.3d 245, 250, 708 N.E.2d 254. However, as a matter of law, "[t]he mere inconvenience of having to meet an existing obligation imposed not only by statute but by an order or judgment of a court of record at a time later than that specified in such statute or order cannot be called material prejudice." *Smith v. Smith*, 168 Ohio St. at 457; *State ex rel. Donovan v. Zajac*, 125 Ohio App.3d at 250; *Scioto Cty. Child Support Enforcement Agency v. Gardner* (1996), 113 Ohio App.3d 46, 58, 680 N.E.2d 221.

{¶16} The doctrine of laches is applicable to a

parentage action. *Wright v. Oliver* (1988), 35 Ohio St.3d 10, 517 N.E.2d 883, syllabus. Nevertheless, the determination of whether laches is applicable in a given case and the weighing of evidence are factual matters. *Kinney v. Mathias* (1984), 10 Ohio St.3d 72, 74, 461 N.E.2d 901. Application of the doctrine of laches is within the sound discretion of the trial court. *State ex rel. Donovan v. Zajac*, 125 Ohio App.3d at 252; *Gardner*, supra; see, also, *Weber*, supra.

{¶17} "In a domestic relations case a trial court must have the discretion to do what is equitable based upon the facts and circumstances of the particular case." *Weber* (citing *Briganti v. Briganti* (1984), 9 Ohio St.3d 220, 459 N.E.2d 896; *Scioto Cty. Child Support Enforcement Agency v. Gardner*, 113 Ohio App.3d 46). Consequently, our role as a reviewing court is limited to determining whether, considering the totality of the circumstances, the trial court abused its discretion. See *Weber*, supra, citing *Focke v. Focke* (1992), 83 Ohio App.3d 552, 615 N.E.2d 327. An abuse of discretion connotes more than a mere error of law or judgment; it suggests an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140; see, also, *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 1996-Ohio-159, 662 N.E.2d 1 (holding that to constitute an abuse of discretion, "the result

must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will, but the perversity of will, not the exercise of judgment, but the defiance of judgment, not the exercise of reason but, instead, passion or bias."). Furthermore, when applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court but must be guided by the presumption that the findings of the trial court are correct. *In re Jane Doe* (1991), 57 Ohio St.3d 135, 566 N.E.2d 1181.

{¶18} The sole issue regarding Hamad's delay in seeking child support from Long, as it pertains to laches, is whether the delay materially prejudiced Long. Appellant primarily asserts that he was materially prejudiced by Hamad's delay in bringing the paternity and child support action in that he was denied visitation, custody, or a role in Luke's upbringing. In support of his argument, appellant relies on this Court's earlier decision in *Park v. Ambrose* (1993), 85 Ohio App.3d 179, 619 N.E.2d 469.

{¶19} In *Park*, a mother and her child brought an action against the child's father for child support arrearages. The action, however, was brought when the "child" was already more than twenty years of age. In his opposition to the action the father asserted the affirmative defense of laches. In noting the applicability of laches in parentage actions, we stated:

{¶20} "The single mother of an illegitimate child has the right to establish paternity and to obtain support from the natural father. But, as with any right, the mother may decide to forego that right and elect to raise the child by herself without any interference or contribution from the father. *If the natural father is interested in the child, he may enforce his paternal rights by establishing paternity, an amount for support, and visitation, or perhaps even custody. He, too, may waive those rights by his inaction."* (Emphasis added.) Id. at 184.

{¶21} We held, under the specific facts in *Park*, that the mother's claim for child support arrearages was barred by the doctrine of laches. In so doing we note that the prejudice to a custodial parent who received no child support is obvious. However, we found just as obvious the prejudice to a non-custodial parent who is denied any input into the child's upbringing. Id. at 185.

{¶22} Nevertheless, we held that laches did not bar the child's claim for support arrearages because that claim was separate and distinct from the mother's claim and because it would be unjust to "allow those actions taken by [the mother] during [the child's] infancy to negate the child's claim for paternal support." Id. In a subsequent case, however, we clarified this holding. In *Sexton v. Conley*, Scioto App. No.

01CA2823, 2002-Ohio-6346, we stated that our holding in *Park* was that the laches of the mother would not be *imputed* to the child in order to bar the child's claim for support. Thus, we held that a child may bar a child's claim for support, where the child by his or her own inactions materially prejudiced the rights of the father. See Id. at ¶12.

{¶23} The record clearly reveals that Long suspected that he could be the father of the child his former lover was carrying. In addition, appellant was aware of Hamad's location since their relationship ended. There is no reason why appellant could not have taken action to establish his rights as Luke's father. So, while we agree that it is apparent that Hamad did not want appellant involved in her life, and possibly Luke's upbringing, there was nothing to prevent appellant from seeking a meaningful role in his son's early years. In *Park*, we noted that the father was deprived of an opportunity to be his daughter's father during her formative years and minority. But we also noted that the daughter's father "waived those rights by failing to assert them during the term of [his daughter's] minority." Id. at 184-185. Consequently, while we find that Hamad materially prejudiced Long in denying him a role in his son's first nine years of life, we also find that for that same time period Long waived his rights as a father by failing to assert them.

{¶24} Furthermore, we find that *Park* is easily distinguishable from the facts of the case presently at bar. The foremost difference between the two scenarios is that in *Park* the father was denied any role in his daughter's life throughout the entirety of her minority (i.e., she was more than twenty years of age when the support action was brought). In the case sub judice appellant has substantial opportunity to be involved in, and make a meaningful impact on, his son's life.

{¶25} Based on the foregoing, while we find that laches bars Hamad's claim for retroactive child support, there is no such bar for Luke's claim for support. Therefore, based on our review of the record, we cannot find that the trial court abused its discretion in awarding retroactive child support. Consequently, we overrule appellant's first assignment of error.

II. Administrative Process

{¶26} In appellant's second assignment of error, he asserts that the trial court was without jurisdiction to entertain the paternity action and to award current and past child support because appellees failed to exhaust their administrative remedies. Appellant relies on former R.C. 3111.22(A)(1) as support for his argument.[1] Accordingly, our analysis commences with this statutory provision.

[1] R.C. 3111.22 was repealed by Am.Sub.S.B. No. 180, effective March 22, 2001. Provisions analogous to those found in former R.C. 3111.22 are now contained in R.C. 3111.381. Our references to R.C. 3111.22 are to the repealed

{¶27} R.C. 3111.22(A)(1) provides:

{¶28} "Except as otherwise provided in division (A)(2) of this section, no person may bring an action under sections 3111.01 to 3111.19 of the Revised Code before requesting an administrative determination of the existence or nonexistence of a parent-child relationship from the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides."

{¶29} At first glance, we note that the statute does not require that a person exhaust their administrative remedies before filing a paternity action. The statute merely requires that a "request" for an administrative determination be made before an action is commenced.

{¶30} Nevertheless, appellant turns our attention to this Court's decision in *Bailey v. Bailey* (1996), 109 Ohio App.3d 569, 672 N.E.2d 747. In *Bailey*, this Court noted that R.C. 3111.22(A)(1) "requires an *administrative* determination of parentage before filing a parentage action." (Emphasis sic.) Id. at 572. However, our decision in *Bailey* is not on point with the case sub judice.

{¶31} In *Bailey*, a couple had their marriage dissolved. Prior to the dissolution the couple had tried to conceive a child by way of artificial insemination. Their efforts did not

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statute.

work, and they proceeded with the dissolution. The dissolution decree found that no children had been born during the marriage, and the separation agreement, which had been incorporated into the decree, further stated that there were no expected but unborn children. Two weeks after the dissolution was finalized, the woman was driven by her former husband to the artificial insemination clinic where she conceived a child. When the child was born, his father (ex-husband) signed the birth certificate as the child's father. Four years after the dissolution was final, the child's mother filed a motion in the finalized dissolution case seeking to establish a child support order. The trial court found the ex-husband to be the child's father pursuant to contract and estoppel principles and entered a child support order.

{¶32} On appeal we framed the issue before this Court as follows: "we must address the trial court's jurisdiction to decide parentage and ultimately award child support *in a domestic relations action that had been terminated*." Id. at 571. The posture of the *Bailey* decision is quite different from the present case, and when taken out of its proper context, that portion of the decision upon which appellant relies does appear to support his argument. However, our decision was actually addressing a trial court's claim of continuing jurisdiction "in a domestic relations case that had been terminated." Id.

{¶33} We are convinced, as JCCSEA points out, that to adopt appellant's argument would place form over function. The purpose of the statute is to set up a process by which paternity may be determined. In the case sub judice paternity has already been established and, in fact, admitted at this time; whether specific administrative procedures were required by statute is immaterial. The only way reversing the trial court's decision on this basis can effect the outcome is if, somehow, appellant can establish that he is not Luke's father, a position that is untenable.

{¶34} Therefore, we overrule appellant's second assignment of error.

Conclusion

{¶35} For the foregoing reasons, we overrule appellant's assignments of error in toto and affirm the judgment of the trial court.

Judgment affirmed.

Abele and Harsha, JJ., concur in judgment only.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellees recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & Harsha, J.: Concur in Judgment Only

For the Court

BY: _____
David T. Evans, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.