

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001574-MR

JOHNNY CARPENTER

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, SPECIAL JUDGE
ACTION NO. 02-CI-00620

GINA F. HINES AND
NATALIE HINES

APPELLEES

OPINION AND ORDER
(1) AFFIRMING
AND
(2) GRANTING MOTION TO STRIKE

** ** * * *

BEFORE: GUIDUGLI, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a summary judgment awarding appellees twelve years of back child support.

Appellant argues that he was denied due process when the court refused to allow him an evidentiary hearing to challenge the underlying 1990 agreed paternity order on grounds of fraud and lack of notice. Since the challenge to the 1990 agreed paternity order has already been addressed and ruled on in the

Whitley District Court, we adjudge that appellant is barred from relitigating the issues in this case pursuant to the doctrine of *res judicata*. Hence, we affirm.

On October 19, 1990, appellee, Gina Hines filed a petition for paternity and child support against appellant, Johnny Carpenter, in the Whitley District Court. On November 9, 1990, an agreed paternity order was entered in the case adjudicating Johnny to be the father of Natalie Hines, born September 22, 1983, and setting Johnny's child support obligation at \$100 per week. The agreed order contains the signature of "Johnny Carpenter".

Twelve years later, on July 1, 2002, Gina and Natalie filed an action in the Laurel Circuit Court seeking \$78,330 in back child support and interest, pursuant to the agreed paternity order. Natalie turned eighteen on September 22, 2001, but did not graduate from high school until May 2002. According to the complaint, Johnny paid \$195 a month in rent for Gina from 1990 through 1994. At that point, Johnny told Gina he would not be able to pay anything, but represented that he had been placing money in a trust fund for Natalie's college. He told Gina that after Natalie graduated from high school there should be approximately \$80,000 in the trust fund. After Natalie turned eighteen, Gina confronted Johnny about the trust fund and

he said he could give her only \$1,500. It is undisputed that no child support was paid to Gina after 1994.

Johnny's answer to the Laurel Circuit complaint alleges that the agreed paternity order in the Whitley District Court was obtained by fraud. Johnny maintains that his signature on the document was forged. In support of this claim, Johnny filed the results of a handwriting analysis conducted by a handwriting expert who determined that the signature on the agreed paternity order was not Johnny's.

On August 2, 2002, Johnny filed a CR 60.02 motion to reopen the 1990 Whitley District Court action. In this motion, Johnny apparently alleged that it was not his signature on the agreed order and that he never received a copy of the summons in the case or notification of the action.¹ Johnny moved the Whitley District Court to vacate the paternity order based upon lack of notice and that the signature on the paternity order was a forgery. On February 10, 2003, the Whitley District Court denied Johnny's motion to vacate the paternity order because,

¹ Only select portions of the Whitley District Court record are contained in the record before us. The appendix to appellant's brief contains a copy of the summons issued in the Whitley District Court, an affidavit by Marcia Smith, appellees' attorney, filed in the Whitley District Court, and a copy of the petition for paternity and child support filed in the Whitley District Court. None of those documents from the Whitley District Court were filed in the Laurel Circuit Court record before us. Fortney v. Elliott's Adm'r, 273 S.W.2d 51 (Ky. 1954). Consequently, appellees filed a motion to strike these documents from appellant's brief, which motion was passed to this three-judge panel. Accordingly, we grant appellees' motion to strike these documents from appellant's brief.

according to the record, the agreed paternity order had been sent to Johnny's correct address and there was no indication that it had been returned as undelivered and because Johnny had admitted to paying some support to Gina. Also, the court adjudged that the motion to vacate had not been filed within a reasonable time under CR 60.02.

On February 26, 2003, Johnny filed a notice of appeal with the Whitley Circuit Court seeking reversal of the District Court's denial of his motion to vacate and a hearing to demonstrate that the paternity order was fraudulently obtained. On July 18, 2003, the Whitley Circuit Court ordered that paternity testing be done in the case. The results of the testing established that Johnny was indeed the biological father of Natalie. On November 3, 2003, the Whitley Circuit Court entered an order affirming the district court's order without a hearing. Johnny thereafter filed a motion for discretionary review with the Court of Appeals. This Court denied the motion on February 26, 2004.

On November 19, 2003, Gina and Natalie filed a motion for summary judgment in the Laurel Circuit Court case, citing the Whitley Circuit Court's November 3, 2003, order affirming the Whitley District Court. Gina and Natalie later renewed the motion on grounds that the Court of Appeals had denied discretionary review of the Whitley District Court decision. On

July 6, 2004, the Laurel Circuit Court granted the motion for summary judgment. The judgment awarded Gina and Natalie \$50,450 in back child support plus prejudgment and postjudgment interest, with a credit to Johnny for the \$195 a month payments he made from 1990 to 1994. This appeal by Johnny followed.

Johnny's primary argument is that his procedural due process rights were violated when he was not provided with notice of the Whitley County paternity action and was not afforded an evidentiary hearing in the Whitley District Court, the Whitley Circuit Court or the Laurel Circuit Court on his claims of fraud and lack of notice. In our view, Johnny is barred from raising these arguments in the Laurel Circuit Court under the doctrine of *res judicata* since these arguments were raised and litigated in the Whitley District Court. For the doctrine of *res judicata* to apply, there must be identity of parties, identity of causes of action, and the action must have been decided on the merits. Newman v. Newman, 451 S.W.2d 417, 419 (Ky. 1970). "[T]he rule of *res judicata* does not act as a bar if there are different issues or the questions of law presented are different." Id. Here, the parties are the same and the underlying cause of action to establish paternity and child support is the same. Natalie and Gina are now simply seeking a judgment for back child support pursuant to the agreed paternity order in the Whitley District Court. Johnny raised

the same issues in the Whitley District Court that he now raises in the Laurel Circuit Court - lack of notice of the original paternity action and fraud in obtaining the agreed paternity order. The Whitley District Court adjudged that the evidence demonstrated that Johnny had received notice of the agreed paternity order that he had signed since he had paid some child support and the order was not returned as undelivered. This ruling was affirmed by the Whitley Circuit Court on appeal, and discretionary review was denied by this Court. Accordingly, Johnny cannot relitigate these same issues in the Laurel Circuit Court.

Johnny's final argument is that his procedural due process rights were violated when the Court of Appeals denied his motion for discretionary review of the Whitley District Court order denying his CR 60.02 motion to vacate. This is not the proper avenue for challenging this Court's denial of a motion for discretionary review in another case. Thus, the argument is devoid of merit.

For the reasons stated above, the judgment of the Laurel Circuit Court is affirmed, and the motion to strike is granted.

ALL CONCUR.

ENTERED: March 3, 2006

/s/ Wil Schroder
JUDGE, COURT OF APPEALS

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