NOT DESIGNATED FOR PUBLICATION

No. 91,613.

STATE of Kansas, ex rel. Secretary of Social and Rehabilitation Services, G.O.B., minor child, by and through Sonya E. Singleton, next friend and mother, and Sonya E. Singleton, Appellees,

v.

Gregory J. BARNES, Appellant.

Court of Appeals of Kansas

October 1, 2004

Appeal from Sedgwick District Court; David J. Kaufman, judge. Opinion filed October 1, 2004. Affirmed.

Gregory J. Barnes, appellant pro se.

Randy M. Barker, Department of Social and Rehabilitation Services, for appellees.

Before RULON, C.J., MCANANY, J., and BRAZIL, S.J.

PER CURIAM.

Gregory J. Barnes appeals from the trial court's order denying his motion to set aside

the judgment in a paternity action. We affirm.

In February 2001, the Secretary of Social and Rehabilitation Services (SRS) filed a paternity action against Barnes alleging he was the father of G.B. who was born December 8, 2000. On behalf of G . B. and her mother, SRS requested that Barnes be declared the child's father and be ordered to provide child support. Barnes answered, denying the allegations of paternity.

On April 24, 2001, the district court ordered that Barnes, the child, and the child's mother undergo genetic testing pursuant to K.S.A. 38-1118. The test results indicated that Barnes could not be excluded as the biological father of G.B., and that there is a 99.97% probability that Barnes is her father. The matter was originally set for trial in August 2001. However, the trial was continued on Barnes' motion in order for him to obtain independent blood tests at his own expense.

Trial was set for October 26, 2001. Barnes failed to appear in person. His attorney requested a continuance due to Barnes' absence. Because the matter had been continued before, the trial court denied the motion. Following the testimony of the mother and the admission of the genetic test results, the district court found Barnes was the child's natural father and ordered him to pay $300 per month child support, to maintain health insurance coverage for the child, and to repay $4,416 to SRS for reimbursement of medical assistance paid on behalf of the child.

Barnes filed a motion to set aside the judgment. The trial court overruled the motion. Barnes appealed and this court, in case No. 88,669, affirmed the decision of the trial court. *State of Kansas ex rel. Secretary of SRS v. Barnes,* unpublished opinion filed May 16, 2003. The mandate in the first appeal was issued on June 19, 2003.

Less than a month after the mandate, Barnes filed a motion in the district court to set aside the judgment based on newly discovered evidence. That evidence apparently consisted of opinions from his medical doctors regarding his low serum testosterone level. The court denied the motion, finding that the proffered evidence was not "newly discovered" and could have been produced at trial with reasonable diligence.

Barnes then filed another motion to set aside the judgment of paternity, alleging, as he did in earlier motions, that he was not physically capable of fathering a child. The court denied the motion. Barnes appeals again.

Barnes raises a variety of issues, most of which are outside of our jurisdiction. Barnes argues there was not sufficient evidence to support the finding of paternity "beyond a reasonable doubt." Barnes also contends he was denied effective assistance of counsel. Barnes further asserts the trial court erred in admitting genetic test reports without supporting expert testimony.

All these issues relate to the proceedings that resulted in the order of paternity journalized in the court's journal entry of January 7, 2002. Barnes appealed that decision on February 25, 2002, and this court affirmed the actions of the trial court. "Res judicata prevents relitigation of previously litigated claims and consists of the following four elements: (1) same claim; (2) same parties; (3) claims were or could have been raised; and (4) a final judgment on the merits." *Magstadtova v. Magstadt,* 31 Kan.App.2d 1091, 1093, 77 P.3d 1283 (2003). To the extent Barnes again attacks the January 2002 judgment, such an attack is barred by res judicata. The issues were litigated and he lost; he then appealed and lost. Accordingly, he cannot now seek appellate review of matters relating to the January 2002 judgment that he previously raised or could have raised in his first appeal.

After the first appeal the trial court overruled Barnes' third motion to set aside the judgment. Barnes' motion was based on K.S.A. 60-260(b)(6), which allows relief where there is "any other reason justifying relief from the operation of the judgment." The ruling on a motion for relief from judgment rests within the sound discretion of the trial court and, absent an abuse of that discretion, will not be reversed. *In re Marriage of Welliver,* 254 Kan. 801, 811, 869 P.2d 653 (1994). We will find an abuse of discretion only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Zodrow,* 240 Kan. 65, 68, 727 P.2d 435 (1986).

In this case, the trial court heard a minimum of three different motions to set aside the judgment. In all three motions, the primary basis for the motions was Barnes' evidence that he suffered from a medical condition that rendered him incapable of fathering a child. Because Barnes' third motion to set aside the judgment failed to establish significantly different grounds to support his claims of error, the district court did not abuse its discretion in denying the motion. Public policy favors the end of litigation and the resolution of disputes so that an issue is not continuously reargued. *Steele v. Guardianship & Conservatorship of Crist,* 251 Kan. 712, 721, 840 P.2d 1107 (1992).

In its most recent order, the district court found that Barnes made the choice to not attend the October 2001 paternity hearing. Barnes had an opportunity to present his testimony and his medical evidence but chose to forego it. Accordingly, the court found no good cause to set aside the judgment.

Barnes claims that had his lawyer correctly informed the court as to the true reason for his absence on the day of trial, the court would have granted a continuance and he could have

been present at a later trial date. Thus, he asserts he was deprived of the effective assistance of counsel. However, Barnes cites no authority that establishes he has a constitutional right to counsel in a civil paternity action. In other contexts, this court has held that "without a constitutional right, there can be no claim of ineffective assistance of counsel." *Holt v. Saiya,* 28 Kan.App.2d 356, 362, 17 P.3d 368 (2000). See also *Foy v. State,* 17 Kan.App.2d 775, 844 P.2d 744, *rev. denied* 252 Kan. 1091 (1993) (holding that there is no constitutional right to counsel in discretionary criminal appeals). The case cited by Barnes, *Moore v.. Reynolds,* 153 F.3d 1086 (10th Cir.1998), was a federal collateral challenge to the petitioner's conviction and death sentence for first-degree felony murder. Barnes' dissatisfaction with his lawyer in these civil proceedings did not require the trial court to set aside the judgment.

Affirmed.