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Recent Developments: Jessica G. v. Hector M.: Mother's Unsuccessful Paternity Action Does Not Bar Child's Subsequent Paternity Action

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punitive damages, *Ellerin v. Fairfax*, clarifies the relationship between two seemingly settled areas of law. The law, its elements, and the standards by which it is measured, are in constant need of refinement and interpretation. However, whereas the standard for punitive damages in a fraud action is more focused, the value

of the court's dicta, on excessive punitive damages, is unknown. The lack of an authoritative judicial decision may further confuse the issue. Adding another variable to the equation does not solve the problem. However, consideration of legislative policy may lay the foundation for an effective judicial tool regarding the reasonable-

ness of punitive damages awards.

Nevertheless, given the precarious political climate, at the state and national level, concerning tort reform and punitive damages, it is encouraging that the issue of excessive punitive damages has entered the judicial discussion.

- Terrence J. Daly

Jessica G. v. Hector M.:

**MOTHER'S
UNSUCCESSFUL
PATERNITY ACTION
DOES NOT
BAR CHILD'S
SUBSEQUENT
PATERNITY ACTION.**

In a case of first impression, the Court of Appeals of Maryland held that a paternity action brought by a mother, then dismissed with prejudice, does not necessarily bar a subsequent paternity action brought by the child. Of even more importance, the court's ruling in *Jessica G. v. Hector M.*, 337 Md. 388, 653 A.2d 922 (1995) broadly construed Family Law Code, section 5-1038(b), to allow the modification or setting aside of all paternity orders except declarations of paternity. Thus, even an order terminating litigation, such as a dismissal with prejudice, can be set aside and the paternity issue relitigated by the child's subsequent paternity action.

In March 1985, Joyce G. and Hector M. had an intimate relationship. In December of that same year, Joyce gave birth to Jessica G. Soon after Jessica's birth, Joyce filed a paternity action against Hector in the Circuit Court for Harford County. Blood tests of the three parties indicated that there was a 99.97% chance that

Hector was Jessica's father. Nonetheless, Hector refused to admit paternity. After two years of prolonged discovery, Joyce asked to stop the paternity action. A consent order to dismiss the action with prejudice was drafted and signed by all parties but Joyce. When the Assistant State's Attorney explained the meaning of with prejudice, Joyce refused to sign the order. However, in March 1988, the State's Attorney docketed the consent order.

Joyce tried repeatedly to continue the paternity action. She filed another paternity suit in the Family Court of New York. The New York court dismissed the action, relying solely on the 1988 Harford County dismissal with prejudice. While Joyce was pursuing various avenues of appeal, Jessica filed a paternity action against Hector in the Circuit Court for Harford County.

Hector responded by filing a motion to dismiss Jessica's action based on the doctrine of res judicata. The circuit court found that Joyce was rep-

representing Jessica's interests in the original paternity suit. Thus, it held that Joyce's original suit barred Jessica's subsequent paternity suit. Jessica appealed to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland granted certiorari prior to the intermediate court's consideration of the issue.

The court of appeals began its analysis by noting that other jurisdictions have ruled on the issue of whether a child can bring a paternity action after the mother's unsuccessful action. Usually such actions were decided on res judicata principles. *Jessica*, 337 Md. at 395, 653 A.2d at 926. Noticing a split in authority among these jurisdictions, the court explored the alternative conclusions.

Initially, the court discussed the jurisdictions supporting the conclusion that any unsuccessful paternity action brought by a mother has a preclusive effect on any subsequent paternity action brought by the child. *Id.* at 397, 653 A.2d at 927. The court noted the rationale for barring a child's subsequent action, as espoused by the Indiana Court of Appeals in *T.R. v. A.W. by Pearson*, 470 N.E.2d 95, 97 (Ind. Ct. App. 1984). That court stated four reasons for not allowing a child to relitigate a mother's unsuccessful paternity action. To begin, allowing successive paternity actions would undermine the court's goal of a final judgment. Secondly, courts dis-

courage inconsistent judgments. Relitigation of the paternity action would invite incongruous results. A third concern voiced by the Indiana court was the need to avoid harassing litigation. Finally, the court noted that failing to apply the doctrine of res judicata would result in wasted time and court costs. *Id.*

Next, the court of appeals analyzed the jurisdictions adopting the opposite conclusion. The majority of these decisions involved prior paternity actions where the merits of the case were never actually litigated. *Id.* at 399, 653 A.2d at 928. In quoting *Johnson v. Hunter*, 447 N.W.2d 871, 877 (Minn. 1989), the court of appeals noted that if the child's specific interests were not addressed on the merits in the first action, a subsequent paternity action was available to that child. *Id.* at 400, 653 A.2d at 928.

However, the court of appeals noted that it need not address the issue of a factual adjudication. *Id.* Rather, in the case *sub judice*, the resolution turned on the construction of Family Law Code, section 5-1038(b): "Except for a declaration of paternity, the court may modify or set aside any order or part of an order under this subtitle as the court considers just and proper in light of the circumstances and in the best interests of the child." *Id.*

In construing the statute, the court turned to the words of section 5-1038(b). The court

determined that the statute was clear and the intent obvious. Thus, the court interpreted this section to allow "a paternity court to modify or set aside any prior order where just and proper and in the best interests of the child, regardless of the usual rules of finality applicable to non-paternity cases." *Id.* at 401, 653 A.2d at 929. The court held that the order which dismissed Joyce's paternity action with prejudice was exactly the type of order contemplated by the statute. Since the prior order was dismissed by the State's Attorney over Joyce's objection and blood tests showed a 99.97% probability of paternity, the court found it to be just and proper, and in the best interests of Jessica to allow her subsequent paternity action to proceed. *Id.* at 402, 653 A.2d at 929.

The court of appeals bolstered its opinion by stating that the holding reached was justified, even in the absence of Family Law Code, section 5-1038(b). First, the majority of other jurisdictions would not bar a child's subsequent paternity action if the mother's original action was dismissed without a factual finding on the issue of paternity. *Id.* Furthermore, to hold otherwise would directly contradict the public policy enunciated in the paternity statute. That is, to promote the best interests of illegitimate children and impose the responsibility of parenthood on the parents of such children. *Id.*

However, the court cau-

tioned that the analysis of the case *sub judice* cannot end with the holding. Noting that the New York dismissal with prejudice was based on the Harford County dismissal with prejudice and not a factual determination of the paternity issue, the court of appeals turned to Maryland's conflict of laws. It found that the res judicata effect given to the New York dismissal with prejudice must be the same effect that New York would have given the judgment. A brief review of New York law revealed a holding consistent with the holding reached by the Court of Appeals of Maryland. *Id.* at 404, 653 A.2d at 930. Thus, the Maryland court honored the Full Faith and Credit Clause. *Id.* at 405, 653 A.2d at 931.

In the concurring opinion, Justices Eldridge and Raker stated that section 5-1007 of

the Family Law Code (exempting paternity actions from rules and statutes dealing with procedure unless such application is practical under the circumstances) provided enough authority for not applying res judicata to the case *sub judice*. *Id.* at 409-10, 653 A.2d at 933. Furthermore, the justices agreed with jurisdictions which hold that res judicata does not bar a paternity action brought by a child subsequent to an unsuccessful action brought by the mother. *Id.* at 411, 653 A.2d at 933-34. The justices noted that the child has different interests than a parent in paternity actions. *Id.* at 411, 653 A.2d at 934. Thus the parties are not in privity and res judicata cannot apply. *Id.*

In *Jessica G. v. Hector M.*, the Court of Appeals of Maryland explicitly refrained from holding that a child's subsequent paternity action is not

barred by a previous, unsuccessful paternity action. However, the court left open an avenue of relief. Through a broad interpretation of Family Law Code, section 5-1038(b), the court can offer relief as it sees fit. This decision is a godsend to the children of those mothers who are unsuccessful in their paternity actions. As long as the order in the original paternity action is not a declaration of paternity, the child has a chance at maintaining his or her own paternity action against the putative father. While this might appear to be a decision that will open the floodgates of litigation, in reality, it merely offers the fatherless child a more equitable chance at initiating a paternity action.

- Kristin Heller Woolam

