

Retroactive Application of Michigan's Revocation of Paternity Act to Reenactment Cases

On June 12, 2012, Michigan's Revocation of Paternity Act, MCL 722.1431, *et seq.*, went into effect to remedy various deficiencies in Michigan law. Specifically, in *Girard v Wagenmaker*, 437 Mich 231; 470 NW2d 372 (1991), the Michigan Supreme Court held that if a man attempts to establish his fatherhood of a child that was born when the mother was legally married to someone else the biological father cannot establish his fatherhood unless there had been a prior court ruling that the mother's spouse was not the father of the child. The Court reached this conclusion because "a child conceived and born during a marriage is legally presumed the legitimate child of that marriage, and the mother's husband is the child's father as a matter of law." *Pecoraro v Rostagno-Wallat*, 291 Mich App 303, 305–306; 805 NW2d 226, *lv den* 489 Mich 951, *reh den* 490 Mich 883 (2011). The unfortunate consequence of this law was that many men were unable to establish fatherhood and meaningful relationships with their children despite their willingness to do so due to the marital status of the child's mother.

All this changed on June 12, 2012, when the Revocation of Paternity Act went into effect. This Act allows a child's mother, presumed father, alleged father, or the Department of Human Services, to file an action to determine that the child was born out of wedlock for the purpose of establishing paternity under certain circumstances. See MCL 722.1441; Bill Analysis, SB 557, June 15, 1980, p 1. The Act further allows an action to revoke an acknowledgment of parentage to be brought by the child's mother, the acknowledged father, an alleged father, or a prosecuting attorney. See MCL 722.1437; Bill Analysis, SB 557, June 15, 1980, p 1. Lastly, the Act allows an action to set aside an order of filiation to be brought by the affiliated father, the mother, or an alleged father, if the affiliated father failed to participate in the court proceedings that determined filiation. See MCL 722.1439; Bill Analysis, SB 557, June 15, 1980, p 1.

Obviously, the Revocation of Paternity Act applies to paternity actions brought on or after June 12, 2012. However, fathers who unsuccessfully attempted to establish paternity under the old law may now be eligible to establish paternity under the new Revocation of Paternity Act. Pursuant to a legal doctrine known by its Latin name "res judicata," a person is generally barred from bringing more than one lawsuit to enforce their rights concerning a particular transaction or event. "Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). "A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Id.* "The doctrine of res judicata was judicially created in order to 'relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.'" *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999) (citations omitted).

However, “[w]here questions of law are involved, the courts have been reluctant to apply the rule of res judicata.” *Young v Edwards*, 389 Mich 333, 338; 207 NW2d 126 (1973). Thus, an issue that was previously litigated may be relitigated a second time where the issue is one of law and a new ruling is justified in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws. *Id.* at 38–39. See also, *Pike v City of Wyoming*, 431 Mich 589, 598–99; 433 NW2d 768 (1988); *Riley v Northland Geriatric Ctr*, 425 Mich 668, 689–90; 391 NW2d 331 (1986). Thus, the Black Letter law of Michigan is that “[r]es judicata does not bar litigation where a subsequent change in the law alters the legal principles on which the subsequent decision is to be resolved.” 6A Mich. Pl. & Pr. § 42:136 (2d ed. 2011).

If a biological father has brought a prior paternity action and has been denied the opportunity to establish that he is the father due to the marital status of the mother, he may be able to take advantage of the new rights created by the Revocation of Paternity Act. By bringing a second action pursuant to the Revocation of Paternity Act, the biological father would be presenting to the court an issue of law (*i.e.*, whether he was entitled to relief under the Revocation of Paternity Act), and a new ruling would be justified to take into account the intervening change of the applicable legal context or to avoid the inequitable administration of the law that would result by allowing some fathers to establish paternity under the new law while preventing other fathers from doing the same.

Even if a court found that the doctrine of res judicata applied, a biological father may still relitigate the issue by filing in the first action a Motion for Relief from Judgment pursuant to MCR 2.612. Preclusive doctrines such as res judicata and collateral estoppel apply only where there is a previous action and a separate subsequent action; where a subsequent challenge is made *in the same action*, these doctrines do not apply. See, *e.g.*, *Sumner v Gen Motors Corp*, 245 Mich App 653, 660 fn3; 633 NW2d 1 (2001); *Harvey v Harvey*, 237 Mich App 432, 436–37; 603 NW2d 302 (1999). Thus, by filing a Motion for Relief from Judgment or some other post-judgment motion within the first paternity action, the application of res judicata may be avoided altogether.

If you are a biological father who has already brought a paternity action but has been denied the opportunity to establish your fatherhood due to the marital status of the mother, you may be eligible to take advantage of new rights created by the Revocation of Paternity Act. For further information regarding your rights under this new law, please contact our office to schedule a confidential consultation.