

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3057-08T1

R.C.,

Plaintiff-Appellant,

v.

L.L.,

Defendant-Respondent.

Submitted November 17, 2009 - Decided December 11, 2009

Before Judges Wefing and Grall.

On appeal from Superior Court of New
Jersey, Chancery Division, Family Part,
Monmouth County, Docket No. FD-13-606-09C.

Rebenack, Aronow & Mascolo, attorneys for
appellant (Craig M. Aronow, of counsel;
Ryan D. Loxam, on the brief).

Law Office of Edward Fradkin, attorneys for
respondent (Edward Fradkin, of counsel;
Matthew Gerber, on the brief).

PER CURIAM

On October 2, 2008, plaintiff R.C., who was then fifty-one
years of age, filed a complaint under the New Jersey Parentage
Act of 1983 (the Act), N.J.S.A. 9:17-38 to -59, to compel
defendant L.L. to submit to a paternity test. On defendant's

motion for summary judgment, the trial court dismissed the complaint on the ground that the action was barred by N.J.S.A. 9:17-45b. That statute establishes a "twenty-three-year statute of repose, commencing from the date of the child's birth." R.A.C. v. P.J.S., Jr., 192 N.J. 81, 95 (2007). Because plaintiff has not established "extraordinary circumstances consistent with legislative intent" warranting "equitable tolling," we affirm. Id. at 101.

These are the facts viewed most favorable to the plaintiff. In 1956, defendant was in the United States Army and stationed in Germany. While there and during the time when plaintiff was conceived, he had an intimate relationship with plaintiff's mother, who was an unmarried woman and a resident of Germany. Before defendant left Germany, he responded to a charge that he was plaintiff's father and the matter was closed.

Throughout plaintiff's life it has bothered him that he did not know his father. Plaintiff's mother told plaintiff that defendant was his father when he was a teenager or a young adult. Plaintiff is in possession of photographs depicting defendant as a young man and letters defendant wrote to his mother before he was born. Plaintiff, who has resided in Germany throughout his life, is married and has a daughter.

Neither plaintiff nor his daughter "have any medical condition or concerns."

In 1987, plaintiff commenced efforts to locate defendant. Plaintiff had no success until 2006. In June of that year he contacted defendant, and thereafter they communicated and met. Although defendant told plaintiff he would submit to a paternity test, a subsequent misunderstanding about the terms of their agreement about the sequence of a hiatus in plaintiff's communications with defendant and his wife and the taking of the test led defendant to change his mind.

On October 2, 2008, plaintiff filed a complaint seeking an adjudication of defendant's paternity, damages, equitable relief, inheritance rights under the law of New Jersey, counsel fees and costs and expert fees. At oral argument before the trial court, plaintiff withdrew all requests for relief other than an adjudication of paternity.

The Act "was intended to establish the principle that regardless of the marital status of the parents, all children and parents have equal rights with respect to each other and to provide a procedure to establish parentage in disputed cases." Id. at 94 (internal quotations omitted). To that end, the Act "provides the means for legally identifying the father by granting the 'alleged' father or 'any person with an interest

recognized as justiciable by the court' standing to bring an action 'for the purpose of determining the existence or nonexistence of the parent and child relationship.'" Id. at 94-95 (quoting N.J.S.A. 9:17-45a). A "child" alleging that a man is his or her father is among the persons who may invoke the Act to establish the parental relationship. N.J.S.A. 9:17-45a.

Regardless of the status claimed by the person seeking to establish parentage, "[n]o action shall be brought under [the Act] more than five years after the child attains the age of majority." N.J.S.A. 9:17-45b. It is well-settled that N.J.S.A. 9:17-45b "establishes a 'twenty-three-year statute of repose,' commencing from the date of the child's birth." R.A.C., supra, 192 N.J. at 95 (quoting Wingate v. Estate of Ryan, 149 N.J. 227, 233 (1997)). Plaintiff filed this complaint when he was fifty-one years of age, twenty-eight years after the period expired, and he acknowledges that he did not commence his efforts to identify his father until he was about thirty years old, seven years after the period expired.

"The primary consideration underlying a statute of repose is 'fairness to a defendant,' the belief that there comes a time when the defendant 'ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations.'" Id. at 96-97 (quoting Rosenberg v. Town of N.

Bergen, 61 N.J. 190, 201 (1972) (secondary internal quotations omitted). Although the Supreme Court has concluded that principles of "equitable tolling" can be applied to the Act's statute of repose, "in light of the purpose . . . , which is to set a fixed end to the limitations period," the Court indicated its expectation that "equitable tolling will arise only in extraordinary circumstances consistent with legislative intent." Id. at 100-01.

In this case, plaintiff did not demonstrate "extraordinary circumstances" consistent with legislative intent. As the Supreme Court has recognized, "[t]he Legislature evidently knew what has been known since time immemorial—that children would be born of adulterous relationships and that the true identity of the father might not be known for more than twenty-three years." Id. at 102. The same can be said of children born out of wedlock. Nonetheless, the Legislature did not "carve out" an exception for either situation. Ibid. In this case, plaintiff bought forth no unique or extraordinary reason for confirming what he professes to believe is true, that defendant is his father. There is no basis for a court to assume that the members of the Legislature were unaware of the natural desire to identify one's parents that may not diminish with age, and that is the only interest in establishing parentage expressed by

plaintiff in the documents included in the records provided to this court on appeal.

The brief submitted on plaintiff's behalf on appeal relies on another interest that is more likely than not shared by other adults who do not know the identity of their father. That interest is in confirming whether defendant is his father so that he can acquire information about health risks inherent in his genetic make-up. But, as noted above, in an affidavit submitted on the motion, plaintiff acknowledged that neither he nor his daughter had "any medical conditions or concerns." Thus, plaintiff has not alleged facts that would bring him within the scope of dicta in R.A.C., which indicates that an adult child of an alleged father whose family members carry a "muscular dystrophy gene" "might" establish an "extraordinary circumstance" by asserting a need to confirm parentage and the risk of passing on that gene. Id. at 105 n.13. In this case, there is no comparable claim of a specific medical condition that would distinguish the circumstances of this case from that of any other "child" who files a claim twenty-eight years beyond the period fixed by the Legislature.

In general, the circumstances that our courts have recognized as warranting "equitable tolling" of statutes limiting a cause of action are based on misconduct of the defendant

related to the delay in pursuit of the claim. See id. at 103-04, 107-08 (discussing cases). There is no evidence of conduct of that sort in this case. A failure to come forward and acknowledge the potential relationship is not within the scope of those exceptions. Id. at 104. And, allowing an exception in this case would require us to ignore the terms of the statute and disregard the Legislature's intention to provide repose after a child has reached the age of twenty-three. The correspondence exchanged between plaintiff and defendant, which is included in this record, illustrates that keeping the book open may result in recriminations and intrusions that may be as disruptive to the life of a defendant and his family relationships as any financial consequence.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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