

# CASE LAW SUMMARY

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May 2016

## COURTS - JURISDICTION – PERSONAL – WAIVER

If a defendant voluntarily appears in a civil action, he submits himself to the jurisdiction of the court and waives any objections regarding lack of personal jurisdiction. *Teran v Rittley*, \_\_\_ Mich App \_\_\_ File No 322016 (11-17-2015), app pending \_\_\_ Mich \_\_\_ File No 152927.

## COURTS – JURISDICTION – SUBJECT MATTER

“Jurisdiction” pertains to a court’s “adjudicatory authority” over the subject matter and the parties. *V.L. v E.L.*, \_\_\_ US \_\_\_, File No 15-648 (03-07-2016).

“Subject-matter jurisdiction ‘is the right of the court to exercise judicial power over a class of cases, not the particular case before it.’ [Citation omitted.] ‘It is the abstract power to try a case of the kind or character of the one pending, but not to determine whether the particular case is one that presents a cause of action, or, under the particular facts, is triable before the court in which it is pending.’ [Citation omitted.]” *Teran v Rittley*, \_\_\_ Mich App \_\_\_ File No 322016 (11-17-2015), app pending \_\_\_ Mich \_\_\_ File No 152927.

Section 4 of the Paternity Act provides: “A complaint shall be filed in the county where the mother or child resides. If both the mother and child reside outside of this state, then the complaint shall be filed in the county where the putative father resides or is found.” MCL 722.714(1). The Court of Appeals held that this statute is not jurisdictional; it is a mere venue provision. *Teran v Rittley*, \_\_\_ Mich App \_\_\_ File No 322016 (11-17-2015), app pending \_\_\_ Mich \_\_\_ File No 152927.

## **IMMUNITY – QUASI JUDICIAL – OFFICIAL DUTIES**

The doctrine of quasi judicial immunity provides that an individual cannot be held civilly liable for actions taken or statements made while he or she is providing services to a court. The Court of Appeals held that this doctrine clearly applies to a Friend of the Court or a FOC employee who is acting in his or her official duties. “We reach this conclusion because an FOC office is an arm of the family court, performs functions integral to the judicial process, provides critical assistance to the court related to the ultimate resolution of disputes, and because the judicial process in domestic relations matters could not properly and effectively function absent the FOC.” *Denhof v Challa*, 311 Mich App 499 (07-28-2015), app denied \_\_\_ Mich \_\_\_ File No 152195 (03-29-2016).

## **IMMUNITY – QUASI JUDICIAL – STATEMENTS MADE DURING A COURT PROCEEDING**

The doctrine of quasi judicial immunity also provides that an individual cannot be held civilly liable for statements that he or she makes during a judicial proceeding. A Friend of the Court or FOC employee is entitled to immunity for statements that he or she makes during a child support hearing. *Denhof v Challa*, 311 Mich App 499 (07-28-2015), app denied \_\_\_ Mich \_\_\_ File No 152195 (03-29-2016)

## **JUDGMENT – FULL FAITH AND CREDIT**

“Full faith and credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State.” US Const, Article IV Section 1.

“A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. [Citation omitted.] A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits.” *V.L. v E.L.*, \_\_\_ US \_\_\_, File 15-648 (03-07-2016).

“A State is not required, however, to afford full faith and credit to a judgment rendered by a court that ‘did not have jurisdiction over the subject matter or the

relevant parties.’ [Citation omitted.] ‘Consequently, before a court is bound by [a] judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court’s decree.’ [Citation omitted.] The jurisdictional inquiry, however, is a limited one. ‘[I]f the judgment on its face appears to be a “record of a court of general jurisdiction, such jurisdiction over the cause and parties is presumed unless disproved by extrinsic evidence, or the record itself.”’” *V.L. v E.L.*, \_\_\_ US \_\_\_, File No 15-648 (03-07-2016).

### **PATERNITY – REVOCATION - ACKNOWLEDGMENT –GROUNDS – MISTAKE OF FACT**

Under common law, a “mistake of fact” is “a misunderstanding, misapprehension, error, fault or ignorance of a material fact, a belief that a certain fact exists when in truth and in fact it does not exist.” The focus is on an individual’s *belief*. Therefore, a man who believes that he is the child’s father when he signs an AOP may assert a “mistake of fact” claim under the RPA if a subsequent DNA test excludes him. And this is true even if he knew that someone else might be the father. *Rogers v Wcisel*, 312 Mich App 79 (08-25-2015).

### **PATERNITY – REVOCATION – MARRIAGE – ACTION BY ALLEGED FATHER**

The mother’s husband (i.e., the presumed father) is a necessary party to a ROPA action filed by an alleged father because the husband’s rights regarding custody, parenting time and child rearing “are significant and warrant due process protection.” *Graham v Foster*, 311 Mich App 139 (06-16-2015), application pending \_\_\_ Mich \_\_\_ File No 152058. [Note: On 02-05-2016 the Supreme Court ordered the parties to file supplemental briefs regarding “whether the Court of Appeals correctly held that a necessary party-defendant may be brought into a lawsuit after the expiration of the limitations period based on the relation-back doctrine.”]

### **STANDING – EQUITABLE PARENT – SAME GENDER MARRIAGE**

In *Atkinson v Atkinson*, 160 Mich App 601 (1987) the Court of Appeals adopted the Equitable Parent Doctrine. It provides that “a husband who is not the biological father of a child born or conceived during the marriage may be

considered the natural father of that child where (1) the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce, (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support.” This doctrine also applies to a party to a marriage between two women who is not the child’s mother. *Stankevich v Milliron*, \_\_\_ Mich App \_\_\_, File No 310710 (11-19-2015).

### **SUPPORT – ABATEMENT – INCARCERATION**

In *Pierce v Pierce*, 162 Mich App 370 (1987), the Court of Appeals held that a payer who is incarcerated for a crime other than criminal nonsupport is not liable for current child support. Nothing in *Pierce* suggests that the result should be any different for a payer who is incarcerated for committing criminal sexual conduct against a child whom he is obligated to support. *Denhof v Challa*, 311 Mich App 499 (07-28-2015), app denied \_\_\_ Mich \_\_\_ File No 152195 (03-29-2016).

### **SUPPORT – FORMULA – DEVIATION**

The Court of Appeals held that the cost of living in a parent’s place of residence is **not** a factor that the trial court should consider in deciding whether to deviate from the support amounts recommended by the Child Support Formula. The panel noted that neither the State Legislature nor the SCAO FOC Bureau (which drafted the Formula) included COL as a deviation factor. And COL does not impact a parent’s ability to *earn* income. *Teran v Rittley*, \_\_\_ Mich App \_\_\_ File No 322016 (11-17-2015), app pending \_\_\_ Mich \_\_\_ File No 152927.

### **SUPPORT – POST-MAJORITY**

Under MCL 552.605b(2), a court may order support to continue until a child is 19 ½ years old if he or she is a full-time high school student. Agreement of the parties is not required. *Lee v Smith*, 310 Mich App 507 (05-19-2015).